

1831. This regulation shall remain in effect until October 11, 2001.

Dated: November 20, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-31192 Filed 11-28-97; 8:45 am]

BILLING CODE 4410-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-A192

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRRLs). In a document published in the Federal Register on October 8, 1997 (62 FR 52503), VA issued an interim final rule which generally limited these loans to instances where the veteran's monthly mortgage payment will decrease, and generally required that the loans being refinanced be current in their payments. The interim final rule stated that it was effective on the date of publication. A subsequent administrative issuance delayed the effective date of the changes made by the interim final rule until December 1, 1997. This administrative issuance has caused uncertainty concerning the implementation of the interim final rule. Under these circumstances, this document rescinds the interim final rule and VA is rescinding the administrative issuance. We intend in the near future to publish a proposed rule to address the same issues that were addressed in the interim final rule. Further, the comments received in response to the interim final rule will be considered in the new rulemaking proceeding.

DATES: Effective Date: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-7368.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found good cause to dispense with

notice and comment on this final rule and to dispense with a 30-day delay of its effective date. Such actions are impracticable, unnecessary, and contrary to the public interest. The issues raised by the interim final rule will be subjected to notice and comment in a future rulemaking proceeding. Further, the final rule is necessary to avoid uncertainty regarding the implementation of the interim final rule.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: November 25, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(6) and (a)(7) are removed and paragraphs (a)(3) through (a)(5) are revised, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) \* \* \*

(3) The amount of the refinancing loan may not exceed:

- (i) An amount equal to the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or
(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

(4) The dollar amount of the guaranty of the 38 U.S.C. 3710(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712 the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3710(e)(1))

3. In § 36.4337, paragraph (a) is revised, to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) Use of standards. Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

\* \* \* \* \*

[FR Doc. 97-31369 Filed 11-28-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 036-1036; FRL-5929-3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve an Iowa State Implementation Plan (SIP) revision pertaining to the Muscatine, Iowa, sulfur dioxide (SO2) nonattainment area. This action will make federally enforceable state permits and related source specific emission limits and other conditions which will ensure attainment and maintenance of the SO2 National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on December 31, 1997.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the August 15, 1997 **Federal Register** (62 FR 43681), the EPA proposed to approve an Iowa SIP revision which pertained to the Muscatine, Iowa, SO<sub>2</sub> nonattainment area. The SIP was submitted to satisfy the requirements of section 110 and part D of title I of the Clean Air Act (Act).

No comments were received during the public comment period. Thus, the EPA is taking final action to approve the state's SIP revision.

The proposed approval discussed the state's submittal in detail. The SIP includes revised permits for three affected SO<sub>2</sub> sources in the Muscatine nonattainment area. These permits contain enforceable emission limits and conditions with compliance dates of March 15, 1996, for two of the sources and July 18, 1996, for the third. The permits result in actual and potential emission reductions intended to prevent any exceedances or violations of the SO<sub>2</sub> NAAQS.

The SIP also demonstrated the state's conformance with the nonattainment plan provisions of part D, section 172(c) of the Act and section 110.

There have been no exceedances or violations of the NAAQS at the Muscatine monitors since September 1995. The state has committed to continue operation of the three monitors in the Muscatine area, and will implement provisions of its contingency plan in the event of a NAAQS exceedance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

**II. Administrative Requirements**

**A. Executive Order 12866**

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

**B. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

**C. Unfunded Mandates**

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal

governments, or to the private sector, result from this action.

**D. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 5, 1997.

**Dennis Grams,**

*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart Q—Iowa**

2. Section 52.820 is amended by adding paragraph (c)(65) to read as follows:

**§ 52.820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(65) On June 13, 1996, and April 25, 1997, the Director of the Iowa Department of Natural Resources (IDNR) submitted a revision to the State Implementation Plan (SIP) which included permits containing source specific emission limits and conditions for three sources in Muscatine, Iowa.

(i) Incorporation by reference.

(A) Grain Processing Corporation permits #95-A-374, #74-A-015-S, #79-A-194-S, #79-A-195-S, signed September 18, 1995.

(B) Muscatine Power and Water permits #74-A-175-S, #95-A-373 signed September 14, 1995.

(C) Monsanto Corporation permits #76-A-265S3, #76-A-161S3, signed July 18, 1996.

(ii) Additional material.

(A) Letters from Allan E. Stokes, IDNR, to Dennis Grams, Environmental Protection Agency, dated June 13, 1996,

and April 21, 1997, containing supporting SIP information. [FR Doc. 97-31410 Filed 11-28-97; 8:45 am] BILLING CODE 6560-50-F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AZ033-0007; FRL-5928-3]

#### Approval and Promulgation of Implementation Plans; Arizona—Maricopa County CO Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This action constitutes EPA's response to the Ninth Circuit Court of Appeals' July 31, 1997 opinion in *DiSimone versus Browner*, No. 96-70974 (9th Cir. July 31, 1997). As a result of the opinion, EPA is restoring the contingency procedures in the carbon monoxide (CO) federal implementation plan (FIP) for the Maricopa County, Arizona nonattainment area (Phoenix) that it promulgated in accordance with Agency guidance issued prior to the 1990 Clean Air Act Amendments (CAAA). EPA is also withdrawing its approval of two contingency measures submitted by the State as revisions, pursuant to the 1990 CAAA, to the CO state implementation plan (SIP) for Phoenix.

**EFFECTIVE DATE:** This action is effective as of December 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jan Taradash, Office of Regional Counsel (ORC-2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, 94105-3901, (415) 744-1335 or Sara Schneeberg, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-5145.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In March 1990, the United States Court of Appeals for the Ninth Circuit vacated EPA's 1988 approval of the State of Arizona's SIP for the Phoenix CO nonattainment area and directed the Agency to promulgate a Federal implementation plan (FIP) under section 110(c) of the Clean Air Act (CAA) that included contingency procedures in accordance with its then existing guidance.<sup>1</sup> *Delaney versus EPA*,

<sup>1</sup> The CAA prior to the 1990 Amendments contained no statutory provision for contingency

898 F.2d 687 (9th Cir. 1990). In November 1990, the 1990 Amendments to the Clean Air Act (CAAA) were enacted which comprehensively revised the statute, including the provisions dealing with nonattainment areas and the deadlines and requirements for achieving attainment. EPA then filed in the Ninth Circuit a motion to recall the *Delaney* mandate, arguing, in part, that promulgation of the FIP under the pre-amended statute was inconsistent with both the structure and substantive provisions of the new law. EPA also argued that section 193, the general savings clause, of the 1990 Amendments did not preserve the Agency's pre-amendment FIP obligation.<sup>2</sup> The Ninth Circuit denied EPA's motion without opinion and EPA subsequently promulgated the FIP contingency procedures. 56 FR 5458 (Feb. 11, 1991).

In 1994 Arizona submitted to EPA contingency measures (an enhanced remote sensing program and a traffic diversion measure) adopted to satisfy the requirements of section 172(c)(9), a new provision added to the CAA by the 1990 Amendments.<sup>3</sup> In 1996, EPA approved these State measures as meeting the requirements of sections 110(a) and 172(c)(9) of the CAA and withdrew the FIP contingency procedures. 61 FR 51599 (Oct. 3, 1996). The Arizona Center for Law in the Public Interest (ACLPI) subsequently filed a petition for review of this action in the Ninth Circuit and the Court issued its opinion on July 31, 1997. *DiSimone versus Browner*, No. 96-70974 (9th Cir. July 31, 1997).

In its petition, ACLPI challenged EPA's action on several grounds, including that: (1) EPA violated section 193 by approving measures that did not insure equivalent or greater emission reductions than the FIP, and (2) the contingency measures approved by EPA did not comply with the requirements of

procedures or measures. As a result of this absence, EPA developed the guidance pursuant to which the FIP was promulgated. 46 FR 7187 (January 22, 1981).

<sup>2</sup> Section 193 provides, in pertinent part:

No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

EPA did not advance in its motion an argument concerning the effect of section 193 on any subsequent replacement of the FIP contingency procedures with approved state measures.

<sup>3</sup> Section 172(c)(9) requires SIPs to provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress (RFP) or attain the national ambient air quality standard (NAAQS) by the applicable attainment date.

section 172(c)(9). On these grounds, petitioners requested that the court vacate EPA's approval of the state's contingency measures and withdrawal of the FIP contingency procedures, and direct EPA to restore the FIP contingency procedures.

In its opinion, the Court found that EPA's replacement of the court-ordered federal contingency provisions with state provisions under the new statutory scheme violated the *Delaney* mandate. Slip op. at 9023. The Court further found that EPA was precluded from litigating in *DiSimone* the issue of whether the amended Act authorized EPA's withdrawal of the FIP contingency procedures and approval of the State's contingency measures in their place. Slip op. at 9025. To support that conclusion, the Court reasoned that:

[T]he issue presented in EPA's motion to recall the mandate [in *Delaney*] and the issue presented in this case [*DiSimone*] are indeed identical. The arguments advanced by EPA in both cases were that requiring the continued adherence to pre-Amendment guidelines would thwart Congressional intent and be inconsistent with the reclassification scheme introduced by the 1990 amendments. In addition, both the motion to recall the mandate and EPA's brief in this case addressed the General Savings Clause \* \* \* as not applicable to the court's order in *Delaney*. Slip op. at 9026.

The Court also stated that the 9th Circuit panel denying EPA's motion to recall the mandate "decided against all of the arguments presented in EPA's motion because such a determination was necessary to deny the motion." Slip op. at 9027. The Court did not, however, indicate what specific relief sought by ACLPI it was granting. Instead, it merely granted the petition "for the foregoing reasons." (Emphasis added). Slip op. at 9028.

Because of the Court's exclusive reliance on *Delaney*, the restoration of the FIP contingency procedures is clearly compelled by its granting of ACLPI's petition. As to the State's contingency measures, nowhere in the opinion does the Court address the issue of whether the State's measures meet the requirements of sections 110(a) and 172(c)(9) of the CAA.<sup>4</sup> Thus there is no indication as to whether EPA's approval of these measures could remain in place in light of the restoration of the FIP.

However, throughout the opinion there is evidence that the gravamen of the Court's objection to EPA's action was the substitution of the State's contingency measures for the FIP

<sup>4</sup> In fact, ACLPI did not raise in its petition for review any issues relating to EPA's approval of the contingency measures under section 110(a).