

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 72, 73, 74, 77, and 78**

[EPA-HQ-OAR-2008-0774; FRL-8750-9]

RIN 2060-AP35

**Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO<sub>2</sub>) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in this direct final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

**DATES:** This rule is effective, and the interim final rule (EPA-HQ-OAR-2008-0744; FRL-8750-8) published simultaneously in the **Federal Register** is withdrawn, on April 14, 2009 without further notice, unless EPA receives adverse comment on the rule by January 29, 2009. If EPA receives timely adverse comment on the direct final rule, the Agency will publish a timely

withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn.

In addition to submitting written comments on this rule, any party wanting to submit oral testimony on the rule must request a public hearing by telephone or by e-mail to EPA by December 22, 2008. If such a telephone or e-mail request for a public hearing is received by that date, a public hearing will be held on December 30, 2008 in Washington, DC. For further information on requesting a public hearing, see the **DATES** and **SUPPLEMENTARY INFORMATION** sections of the proposed rule published in the **Federal Register** simultaneously with this notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0774, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *Mail*: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460

- *Hand Delivery*: Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions.** Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0774 (which incorporates by reference the dockets for CAIR and the CAIR FIPs, *i.e.*, Docket ID Nos. EPA-HQ-OAR-2003-0053 and EPA-HQ-OAR-2004-0076). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**Docket:** All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9151, e-mail at *alpern.dwight@epa.gov*. Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets*.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities.** Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry .....	221112 and others .....	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Administrative Procedures Used in This Action.* EPA is publishing this rule without a prior proposed rule because the Agency views this as a noncontroversial action and anticipates no adverse comment. In this rule, EPA is simply reaffirming the promulgation of certain revisions, of the Acid Rain Program rules, that were previously issued and have been in effect since mid-2006 and withdrawing the interim final rule that reaffirms the promulgation of the same revisions. However, in the “Proposed Rules” section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposed rule to reaffirm the promulgation of these revisions to the Acid Rain Program rules, and withdraw the interim final rule, if any adverse comment is received on this direct final rule during the comment period. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so during the comment period established by this notice. For further information about commenting on this rule, see the **DATES** and **ADDRESSES** sections of this preamble.

If EPA receives any adverse comment on this direct final rule during the comment period, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn. EPA will address timely comments on the direct final rule in any subsequent final rule based on the proposed rule.

EPA notes that it is also simultaneously publishing the interim

final rule, referenced above, that reaffirms the promulgation of these revisions. The interim final rule is effective immediately upon the date of publication in the **Federal Register** and will continue in effect until December 15, 2009, unless the interim final rule is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these revisions.

**Considerations in Preparing Comments for EPA**

*A. Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*B. Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

*Judicial Review.* Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 13, 2009. 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, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

*Outline.* The following outline is provided to aid in locating information in this preamble.

- I. Overview
- II. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

**I. Overview**

In May 2005 and April 2006, EPA promulgated certain revisions to the rules for the Acid Rain Program (in 40 CFR parts 72 through 78). These revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs.<sup>1</sup> 70 FR 25162 (May

<sup>1</sup> The titles for the May 12, 2005 and April 28, 2006 **Federal Register** notices identify the actions taken in those notices. The full title for the May 12, 2005 notice is “Rule to Reduce Interstate Transport

12, 2005); 71 FR 25328 (Apr. 28, 2006). Most of these revisions were adopted for reasons independent of CAIR and the CAIR FIPs, although some were adopted to facilitate coordination of the Acid Rain trading program with the trading programs offered by EPA in CAIR and the CAIR FIPs. A few additional revisions, which are not being reaffirmed by this rule, were adopted to implement CAIR and the CAIR FIPs.

On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). EPA and other parties in the proceeding have petitioned for rehearing, and the Court has not yet issued a mandate in the case. While the Court upheld petitioners' objections concerning a number of issues related to CAIR and the CAIR FIPs, none of the issues raised by the petitioners, and none of the Court's determinations, addressed the Acid Rain Program rule revisions reaffirmed by this rule.

Only a few of the Acid Rain Program rule revisions were adopted to implement CAIR and the CAIR FIPs and thus were encompassed by petitioners' arguments and the Court's decision: *i.e.*, revisions to part 73 providing that SO<sub>2</sub> allowances used for compliance with CAIR and CAIR FIPs would not be used for compliance in the Acid Rain Program and revisions to part 78 providing that final actions of the Administrator under the CAIR and CAIR FIP trading programs could be appealed under the administrative appeal procedures applicable to the Acid Rain Program. See 70 FR 25,335/3 (revision adding § 73.35(a)(3)) and 25,338–39 (revisions referencing subparts AA through III of part 96 and the CAIR designated representative and CAIR authorized account representative); and 71 FR 25,379–80 (revisions referencing subparts AA through III of part 97 and the CAIR designated representative and CAIR authorized account representative).

This notice reaffirms the promulgation of only the other Acid Rain Program rule revisions—*i.e.*, the revisions that were not necessary for implementing CAIR and the CAIR FIPs—finalized in the **Federal Register** notices that also finalized the CAIR and

CAIR FIP rules. (These revisions are herein referred to as “non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions”.) EPA believes it is reasonable to view the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions (which are described in detail above) as unaffected by the Court's decision, which did not address them. However, EPA is concerned that there be no uncertainty about the legal status of these rule revisions. Most of them are crucial to the ongoing operation of the Acid Rain Program, while the rest of them streamline and, in some cases, clarify the requirements of the program, thereby facilitating its operation.

EPA is, in this notice, reaffirming—pursuant to its authority under Title IV of the CAA and CAA section 301—the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules as a direct final rule and withdrawing the interim final rule as of the effective date of the direct final rule. The reasons why the rule revisions are appropriate for the Acid Rain Program, why EPA maintains that it should remove any uncertainty about the legal status of the rule revisions, and therefore why EPA is issuing this direct final rule are set forth in detail in the preamble of the interim final rule published in the **Federal Register** simultaneously with this notice and in the preceding **SUPPLEMENTARY INFORMATION** section. In addition, EPA is publishing simultaneously in the **Federal Register** a parallel proposed rule reaffirming the promulgation of these revisions and withdrawing the interim final rule in order to provide interested persons a full opportunity to comment on the rule revisions in the direct final rule. The interim final rule reaffirming the promulgation of these revisions is effective immediately upon the date of promulgation in the **Federal Register** and continues to be effective for 12 months from that date, unless the interim final rule is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these revisions. The interim final rule removes any potential that these non-CAIR- and non-CAIR-FIP-related revisions would suddenly become no longer effective while this direct final rule and the parallel proposed rule are providing the opportunity for public comment on these revisions.

## II. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

In this notice, EPA is reaffirming, as a direct final rule, the promulgation of the non-CAIR- and non-CAIR-FIP-

related revisions of the Acid Rain Program rules, which revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. EPA is reaffirming the following three types of non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules: (1) Revisions that implement source-level, rather than unit-level compliance with the allowance-holding requirement in the Acid Rain Program, effective on July 1, 2006; (2) revisions that expressly allow designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator, effective on June 27, 2006; and (3) revisions making technical changes to streamline and, in some cases, clarify the requirements of the Acid Rain Program, effective on June 27 and July 1, 2006 depending on the specific revision. Of all the Acid Rain Program rule revisions that were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs, the only revisions whose promulgation EPA is not reaffirming are those that are related to CAIR and the CAIR FIPs, *i.e.*, those (which are described in detail in Section I of this preamble) that are necessary for implementation of the CAIR and CAIR FIP trading programs. This action will have no impact on those revisions.

The non-CAIR- and non-CAIR-FIP-related revisions whose promulgation is reaffirmed in this direct final rule are described in detail, along with EPA's reasons for such reaffirmation, in the interim final rule published in the **Federal Register** simultaneously with this notice. The revisions whose promulgation is reaffirmed in this direct final rule comprise all of the revisions of the Acid Rain Program rules that were included in May 12, 2005 final rulemaking notice that also finalized CAIR (70 FR 25,333–39) and the April 28, 2006 final rulemaking notice that also finalized the CAIR FIPs (71 FR 25,377–80) *except* those listed in section III.D of the preamble of the interim final rule.

## III. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to review under the Executive Order. In this action, EPA is simply reaffirming the promulgation of Acid Rain Program rule revisions that were

of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call.” 70 FR 25162. The full title for the April 28, 2006 **Federal Register** notice is “Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Acid Rain Program.” 71 FR 25328.

previously issued and are currently in effect and have been since mid-2006.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden.

Moreover, EPA maintains that the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, *e.g.*, by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small

entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule does not change the existing Acid Rain Program rules and thus the economic impact of those rules on small entities. This rule simply reaffirms the promulgation of existing Acid Rain Program rule revisions that have been in effect since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the economic impact of the then-existing rules on all regulated sources and thus on small entities that might be, or own, regulated sources. For example, by requiring compliance on a source, rather than a unit, basis, the revisions reduced the potential for excess emissions penalties due to an inadvertent error, *e.g.*, in the owner's distribution of allowances among the units at a source that would cause one unit to have more than enough allowances to cover emissions and another unit to not have enough allowances to cover emission. As a further example, the revisions removed some requirements (*e.g.*, the required submission of an annual compliance certification report) and thereby removed some costs of compliance for all regulated sources.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination With Indian Tribal Governments” (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, entitled “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

This rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on April 14, 2009 without further notice, except to the extent EPA receives adverse comment on the rule or one or more provisions of the rule by January 29, 2009 or date 30 days from date on which public hearing will be held.

If EPA receives timely adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public which provisions of this rule are being withdrawn and will not take effect.

**List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78**

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

**Stephen L. Johnson,**

Administrator.

[FR Doc. E8-29389 Filed 12-12-08; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 72, 73, 74, 77, and 78**

[EPA-HQ-OAR-2008-0744; FRL-8750-8]

RIN 2060-AP35

**Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is taking interim final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO<sub>2</sub>) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the

Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in this interim final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

**DATES:** This action is effective on December 15, 2008 and will continue in effect until December 15, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0774, which incorporates by reference the dockets for CAIR and the CAIR FIPs (Docket ID Nos. EPA-HQ-OAR-2003-0053 and EPA-HQ-OAR-2004-0076). All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Although listed in the index, some information is

not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9151, e-mail at [alpern.dwight@epa.gov](mailto:alpern.dwight@epa.gov). Electronic copies of this document can be accessed through the EPA Web site at: <http://www.epa.gov/airmarkets>.

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry .....	221112 and others .....	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 13, 2009. 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, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

*Outline.* The following outline is provided to aid in locating information in this preamble.

- I. Overview
- II. Administrative Procedures Used in This Action
- III. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
  - A. Rule Revisions Implementing Source-Level Compliance
  - B. Rule Revisions Allowing Use of Agents by Designated Representative and Authorized Account Representatives
  - C. Rule Revisions Making Technical Changes
  - D. Identification of Specific Rule Revisions Whose Promulgation Is Reaffirmed
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act