

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 18, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

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 *et seq.*

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(405) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(405) New and amended regulations for the following APCDs were submitted on August 26, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4684, "Polyester Resin Operations," amended on August 18, 2011.

\* \* \* \* \*

[FR Doc. 2012-2599 Filed 2-3-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA-HQ-OAR-2009-0491; FRL-9626-2]

#### Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone: Effect of Stay of Transport Rule

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

**ACTION:** Notice of Intent.

**SUMMARY:** A December 30, 2011 order of the U.S. Court of Appeals for the District of Columbia Circuit stayed the Transport Rule, also known as the Cross State Air Pollution Rule.<sup>1</sup> This document sets out EPA's interpretation of the effect of the Court's stay on the federal implementation plans finalized by EPA on December 15, 2011 (SNFR), which included the conclusion that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states and required sources in five states to comply with the Transport Rule's ozone season NO<sub>x</sub> trading program.<sup>2</sup>

**DATES:** The effective date of this notice of intent is February 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Gabrielle Stevens, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave. NW.,

<sup>1</sup> Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States: Final Rule (76 FR 48208, August 8, 2011). Available on the Web at <http://www.epa.gov/crossstaterule>.

<sup>2</sup> EPA did not finalize a FIP for Kansas with respect to the 1997 ozone NAAQS in the SNFR. EPA had previously approved a section 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS on March 9, 2007 (75 FR 10608), and that SIP submission did not rely on the unlawful CAIR trading programs or on the conclusion that compliance with CAIR was sufficient to satisfy its 110(a)(2)(D)(i)(I) obligations with respect to the 1997 ozone and PM<sub>2.5</sub> NAAQS. EPA therefore did not have the obligation to promulgate a FIP for Kansas under section 110(c)(1) of the CAA, and instead proposed a SIP Call for Kansas under section 110(k)(5) of the Act (76 FR 763, January 6, 2011). EPA proposed to find Kansas' SIP substantially inadequate to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS based on the proposed conclusion that emissions from Kansas are significantly contributing to nonattainment or interfering with maintenance of the 1997 ozone NAAQS in another state. EPA has not taken final action yet on the proposed SIP Call.

Washington, DC 20460, telephone (202) 343-9252, email at [stevens.gabrielle@epa.gov](mailto:stevens.gabrielle@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 6, 2011, the EPA issued a final rule promulgating the Transport Rule (76 FR 48208, August 8, 2011). The Transport Rule limits the interstate transport of emissions of nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) that contribute to harmful levels of fine particulate matter (PM<sub>2.5</sub>) and ozone in downwind states. The rule identified emissions within 27 states in the eastern United States that significantly affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter NAAQS and the 1997 ozone NAAQS. EPA established trading programs to reduce these emissions through Federal Implementation Plans (FIPs) that regulate electric generating units (EGUs) in the 27 states.

As explained in the preambles to the final Transport Rule (76 FR 48208) and the supplemental notice of final rulemaking (SNFR) (76 FR 80761), EPA updated and improved its modeling platforms and inputs in response to public comments received on the proposed Transport Rule and subsequent Notices of Data Availability (NODAs), and performed other updates. Therefore, some of the results of the analysis performed for the final Transport Rule differed from the results of the analysis conducted for the Transport Rule proposal. Under the proposed Transport Rule, EPA's analysis did not identify Wisconsin, Iowa, and Missouri as states that significantly contribute to nonattainment and/or interfere with maintenance of the ozone NAAQS in another state with respect to the 1997 ozone NAAQS. Under the final Transport Rule's analysis, however, the results indicated that emissions from these states do interfere with maintenance of the ozone NAAQS of another state. The results also showed that emissions from Missouri significantly contribute to nonattainment of the ozone NAAQS in another state. The analysis for the final rule also identified two ozone maintenance receptors, located in Allegan County, Michigan and Harford County, Maryland, which were not identified by modeling conducted for the proposed rule. The analysis indicated that five states—Iowa, Kansas, Michigan, Oklahoma, and Wisconsin—interfered with maintenance problems at these receptors. EPA did not include

these states in the final Transport Rule with respect to the 1997 ozone season NAAQS or finalize ozone season NO<sub>x</sub> budgets for these states, but instead published a supplemental notice of proposed rulemaking (SNPR) (76 FR 40662) to provide the public with an opportunity to comment on the conclusion that these states significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in downwind states. EPA finalized the supplemental notice of proposed rulemaking on December 15, 2011, which was published in the **Federal Register** on December 27, 2011 (SNFR) (76 FR 80761). The SNFR found that emissions of NO<sub>x</sub> from sources in Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin either significantly contributed to nonattainment or interfered with maintenance in downwind states. The SNFR also finalized FIPs for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin that required sources within the states to comply with the Transport Rule.<sup>3</sup>

After publication of the final Transport Rule, various parties filed petitions for review of EPA's action in the U.S. Court of Appeals for the District of Columbia Circuit (*EME Homer City Generation, L.P. v. EPA*, No. 11–1302 and consolidated cases). On December 30, 2011, upon the motions of various petitioners, the Court ordered the Transport Rule stayed pending the completion of its review.

## II. This Notice of Intent

The Court did not explicitly address the effect of its order on the SNFR affecting Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin. Because the underlying programs of the Transport Rule have been stayed by the Court, there is no practical way for covered sources under the SNFR to comply with those programs. The SNFR employs the same methodology, modeling, and analysis as the final Transport Rule and extends the programs established in the Transport Rule to additional states. The agency will therefore treat the new rule in the same manner as the underlying Transport Rule, which has been stayed. EPA does not expect covered sources under the SNFR to comply with the provisions of that rule for the duration of the Court's stay.

Dated: January 26, 2012.

**Gina McCarthy**,

*Assistant Administrator.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 81

[Docket Number NIOSH–209]

RIN 0920–AA39

### Guidelines for Determining Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Revision of Guidelines on Non-Radiogenic Cancers

**AGENCY:** Centers for Disease Control and Prevention, HHS.

**ACTION:** Final rule.

**SUMMARY:** In a notice of proposed rulemaking published in the **Federal Register** on March 21, 2011, the Department of Health and Human Services (HHS) proposed to treat chronic lymphocytic leukemia (CLL) as a radiogenic cancer under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (76 FR 15268). Under this final rule, CLL will be treated as being potentially caused by radiation and hence as potentially compensable under EEOICPA. HHS reverses its decision to exclude CLL from such treatment.

**DATES:** This final rule is effective March 7, 2012.

**FOR FURTHER INFORMATION CONTACT:** Stuart Hinnefeld, Director, Division of Compensation Analysis and Support,<sup>1</sup> National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS–C46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by email to [dcas@cdc.gov](mailto:dcas@cdc.gov).

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<sup>1</sup>The name of the NIOSH Office of Compensation Analysis and Support (OCAS) was changed to the Division of Compensation Analysis and Support (DCAS) in March 2010.

- A. Executive Order 12866 and 13563
- B. Regulatory Flexibility Act
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## I. Public Participation and Technical Review by the Advisory Board on Radiation and Worker Health

On March 21, 2011, HHS published a notice of proposed rulemaking (76 FR 15268), proposing to treat CLL as a radiogenic cancer. HHS initially solicited public comments from March 21, 2011, to June 20, 2011. Upon request, HHS extended the comment period to July 20, 2011 (76 FR 36891, June 23, 2011).

HHS received comments from seven stakeholders, including the Advisory Board on Radiation and Worker Health, which was required by EEOICPA to provide a technical review of a proposed amendment to the probability of causation guidelines.<sup>2</sup> All of the comments offered support for the inclusion of CLL under the coverage provided by EEOICPA. Specifically, the Advisory Board concurred with the NIOSH position that “given that the law requires the use of the upper 99 percent credibility level in making compensation decisions, the inclusion of CLL despite the limited evidence of radiogenicity, is considered appropriate by NIOSH.” Furthermore, the Advisory Board agreed that the risk model proposed by NIOSH is based on the best available science and methodological approaches to express the dose-response relationship between radiation exposure and CLL. In addition to the technical review submitted by the Advisory Board, three of the seven comments were personal stories submitted by family members of deceased energy employees who developed CLL, and the remaining three comments argued that to be fair to claimants, CLL should be included as a radiogenic cancer under Part B of EEOICPA. There were no comments opposing this change.

## II. Background

### A. Introduction

The Energy Employees Occupational Illness Compensation Program Act of

<sup>2</sup> 42 U.S.C. 7384n(c)(2), 7384o(b)(1).

<sup>3</sup> EPA did not finalize a FIP for Kansas. See *supra* footnote 2.