

Dated: October 25, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-HQ-OAR-2007-0510; FRL-8485-8]

#### Federal Implementation Plans for the Clean Air Interstate Rule: Automatic Withdrawal Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full State implementation plan (SIP) revision meeting the CAIR requirements. EPA believes it is appropriate for the FIP withdrawal to be automatic because to the extent EPA approves the State's full CAIR SIP, this corrects the deficiency that provided the basis for EPA's promulgation of the FIPs in that State.

In the "Rules" section of this **Federal Register**, we are issuing this action as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received by December 17, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0510, by one of the following methods:

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

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Attention Docket ID No. EPA-HQ-OAR-2007-0510.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2007-0510.

- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2007-0510, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2007-0510, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334;

Washington, DC. 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-2007-0510. 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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. 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 and 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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 EPA Docket Center is (202) 566-1742.

Rulemaking actions related to the CAIR and the CAIR FIPs are also available at the EPA's CAIR Web site at [www.epa.gov/cair](http://www.epa.gov/cair).

#### FOR FURTHER INFORMATION CONTACT:

Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, mail code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-3347; fax number: 919-541-0824; e-mail address: [oldham.carla@epa.gov](mailto:oldham.carla@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Why Is EPA Issuing This Proposed Rule?

This document proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full SIP revision meeting the CAIR requirements. We have published a direct final rule making such amendments in the "Rules" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for this proposal is identical to that for the direct final rule published in the "Rules" section of this **Federal Register**. For further information and the detailed rationale for this proposal, see the information provided in the direct final rule.

##### II. Does This Action Apply to Me?

This action does not propose any control requirements. It proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of the CAIR SIP for the State. EPA promulgated the CAIR FIPs on April 28, 2006 (71 FR 25328). Categories and entities potentially regulated by the CAIR FIPs include the following:

Category	NAICS code <sup>1</sup>	Examples of potentially regulated entities
Industry .....	221112	Fossil fuel-fired electric utility steam generating units.
Federal government .....	<sup>2</sup> 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government .....	<sup>2</sup> 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

<sup>1</sup> North American Industry Classification System.

<sup>2</sup> Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the CAIR FIPs. To determine whether your facility is affected by the CAIR FIPs, you should examine the definitions and applicability criteria in 40 CFR 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305. If you have any questions regarding the applicability of the CAIR FIPs to a particular entity, consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT.**

**III. What Action Is EPA Proposing?**

The EPA is proposing to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA’s approval of a full SIP revision meeting the CAIR requirements. All CAIR States are required to revise their SIPs to include control measures to reduce emissions of nitrogen oxides and/or sulfur dioxide. The EPA issued the CAIR FIPs as a backstop to implement the CAIR in each CAIR State until that State has an EPA-approved CAIR SIP in place to achieve the required reductions. In the FIP rulemaking, EPA stated it would withdraw the FIPs in a State in coordination with the approval of the CAIR SIP for that State. EPA believes it is appropriate for the FIP withdrawal to be automatic because to the extent EPA approves the State’s full CAIR SIP, this corrects the deficiency that provided the basis for EPA’s promulgation of the FIPs in that State. The automatic withdrawal provision would not apply to EPA approvals of any abbreviated SIPs revisions submitted pursuant to 40 CFR 51.123(p), 40 CFR 51.123(ee) and 40 CFR 51.124(r). The detailed description of and rationale for this proposal appears in the direct final rule published in the “Rules” section of this **Federal Register.**

**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.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This action proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State once the State’s CAIR SIP is in place. EPA believes that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requirements of the existing CAIR FIPs rule are satisfied through the Information Collection Request (ICR) (EPA ICR number 2152.02; OMB control number 2060–0570) submitted to the OMB for review and approval as part of the CAIR (70 FR 25162–25405) and approved by the OMB in September 2005. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The 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 (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 this rule on small entities, small entity is defined as: (1) A small business “as defined by the Small Business Administration’s (SBA) 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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This proposal would not impose new requirements on any entities, but instead would provide for the automatic withdrawal of the CAIR FIPs in certain circumstances. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector because this proposal would not impose new requirements on any entities, but instead would provide for the automatic withdrawal of the CAIR FIPs in certain circumstances. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *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 proposed 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 proposal would not impose an enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this proposal. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *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 proposed rule does not have tribal implications, as specified in Executive Order 13175 because it would not impose an enforceable duty on any State, local or tribal governments or the private sector. 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: "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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not

establish an environmental standard intended to mitigate health or safety risks.

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

This proposal is not subject to Executive Order 13211, "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, 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629 (Feb. 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 proposal would not have

disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment. This action does not propose an enforceable duty on any State, local or tribal governments or the private sector. It would neither increase nor decrease environmental protection.

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

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 17, 2007.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E7-20845 Filed 11-1-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA-B-7744]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be

used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before January 31, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-7744, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) [bill.blanton@dhs.gov](mailto:bill.blanton@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151 or (e-mail) [bill.blanton@dhs.gov](mailto:bill.blanton@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than

the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

**Administrative Procedure Act Statement.** This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

**National Environmental Policy Act.** This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

**Regulatory Flexibility Act.** As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

**Executive Order 12866, Regulatory Planning and Review.** This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

**Executive Order 13132, Federalism.** This proposed rule involves no policies that have federalism implications under Executive Order 13132.

**Executive Order 12988, Civil Justice Reform.** This proposed rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

#### PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: