

FOR FURTHER INFORMATION CONTACT: Phyllis J. Pyles, Director, Torts Branch, Civil Division, Department of Justice, Washington, DC 20530, telephone (202) 616-4252.

SUPPLEMENTARY INFORMATION: This rule amending 28 CFR part 43 represents the first increase since 1992 of the settlement and waiver authority delegated to the departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care. During the intervening period, the cost of medical care and treatment has increased substantially. That increase warrants a corresponding increase in settlement and waiver authority to further the efficient operation of the government.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and therefore is exempt from the usual requirements of prior notice and comment and a thirty-day delay in effective date. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. A Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866: Regulatory Planning and Review

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), "Principles of Regulation." This rule is limited to agency organization, management, and personnel as described by Executive Order 12866, § (3)(d)(3), and therefore is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132: Federalism

This rule 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. Therefore, in accordance with Executive Order 13132,

the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 43

Claims, Health care.

■ Accordingly, by virtue of the authority vested in the Attorney General by law, including 42 U.S.C. 2651-2653, Executive Order 11060 (3 CFR, 1959-1963 Comp. p. 651), part 43 of title 28 of the Code of Federal Regulations is amended as follows:

PART 43—RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

■ 1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 2, 76 Stat. 593; 42 U.S.C. 2651-2653; E.O. 11060, 3 CFR, 1959-1963 Comp. p. 651.

■ 2. In § 43.3, paragraphs (a)(2), (a)(3), and (b) are revised to read as follows:

§ 43.3 Settlement and waiver of claims.

(a) * * *

(2) Compromise or settle and execute a release of any claim, not in excess of \$300,000, which the United States has for the reasonable value of such care and treatment; or

(3) Waive and in this connection release any claim, not in excess of \$300,000, in whole or in part, either for the convenience of the Government, or if the head of the Department or Agency, or his or her designee, determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

* * * * *

Dated: February 23, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010-4025 Filed 2-26-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0964; FRL-9116-8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; NO_x Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation Plan (SIP) that would terminate the provisions of the Nitrogen Oxides (NO_x) Budget Trading Program that apply to electric generating units. EPA is no longer operating the NO_x Budget Trading Program as a compliance option under the NO_x SIP Call. These sources are now subject to provisions in a newer set of approved Illinois rules that address EPA's Clean Air Interstate Rule (CAIR). For these reasons, the sunset of the NO_x Budget Trading Program for these sources merely deactivates duplicative rule language.

DATES: This direct final rule will be effective April 30, 2010, unless EPA receives adverse comments by March

31, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R05-OAR-2009-0964 by one of the following methods:

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

2. *E-mail*: damico.genevieve@epa.gov.

3. *Fax*: (312) 385-5501.

4. *Mail*: Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2009-0964. 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 send an e-mail comment directly to EPA without going through *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 should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, (312) 886-6067, or by e-mail at summerhays.john@epa.gov.

SUPPLEMENTARY INFORMATION:

This supplementary information section is arranged as follows:

- I. Review of State's Submittal
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Review of State's Submittal

On December 7, 2009, Illinois submitted a rule revision to EPA for the sunset of 35 Illinois Administrative Code (IAC) 217 Subpart W, which sets requirements for electric generating units (EGUs) in the NO_x Budget Trading Program. These sources are now subject to requirements of rules adopted pursuant to CAIR (in 35 IAC 225) and approved by EPA on October 16, 2007, which supersede 35 IAC 217 Subpart W. Illinois' revision would add 35 IAC 217.751, the full text of which is:

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

The NO_x Budget Trading Program was mandated under a rule commonly known as the NO_x SIP Call, published on October 27, 1998, at 63 FR 57356, with subsequent amendments. Subsequently, EPA promulgated a

similar set of requirements in CAIR, published May 12, 2005, at 70 FR 25162. Illinois adopted and submitted rules in 35 IAC 225 that addressed CAIR which, among other provisions, required EGUs to participate in the CAIR NO_x Ozone Season Trading Program. This latter program has largely superseded the NO_x Budget Trading Program. Indeed, EPA no longer offers the NO_x Budget Trading Program as an option to meet the requirements of the NO_x SIP Call, and EPA encourages states to clarify their regulatory requirements by terminating provisions established with the NO_x Budget Trading Program that have been superseded by provisions established pursuant to CAIR.¹ EPA approved the pertinent Illinois rules of 35 IAC 225 on October 16, 2007, at 72 FR 58528. These rules fully supersede the requirements applicable to EGUs in 35 IAC 217 Subpart W with respect to ozone seasons of 2009 and beyond, and so EPA finds that the sunset of the Subpart W requirements (except to the extent that any enforcement actions for noncompliance prior to 2009 remain pending) is fully approvable.

Under the NO_x Budget Trading Program, an excess emissions penalty assessed for the 2008/2009 control periods requires the deduction of allowances from a subsequent control period. Generally, no NO_x Budget Trading Program allowances will be allocated for the 2009 control period and thereafter. Therefore, if any such excess emissions penalty is to be imposed, the Administrator will deduct CAIR NO_x Ozone Season allowances allocated for a subsequent control period.

II. Final Action

EPA is approving 35 IAC 217.751. This paragraph terminates the provisions of 35 IAC 217 Subpart W, which sets requirements for EGUs pursuant to the NO_x SIP Call, since these requirements have been

¹ EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (D.C. Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

superseded by requirements pursuant to CAIR. The sunset of these provisions takes effect with the 2009 ozone season, except that the provisions remain in effect for purposes of addressing noncompliance with Subpart W prior to 2009.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 30, 2010 without further notice unless we receive relevant adverse written comments by March 31, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective April 30, 2010.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

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 30, 2010. 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. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 10, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 O—Illinois

■ 2. Section 52.740 is amended by adding paragraph (c)(185), to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(185) On December 7, 2009, Illinois submitted a rule for the sunset of the provisions of 35 IAC 217 Subpart W, regulating electric generating unit participation in the NO_x Budget Trading Program, since these provisions have been superseded by provisions established pursuant to the Clean Air Interstate Rule.

(i) *Incorporation by reference.* The Illinois rule at 35 IAC 217.751, entitled "Sunset Provisions," submitted on December 7, 2009, effective on November 2, 2009, is incorporated by reference.

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