

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #1

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FILED

2001 JUN -6 P 5:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WVDEP-Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W.Va Code §22-5-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Permits"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 12, 2001 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: Division of Air Quality

7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John A. Benedict, Deputy Chief

Division of Air Quality

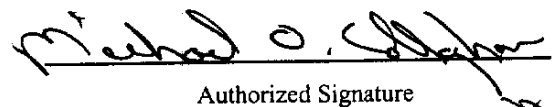
7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

\$8.00

Briefing Document
Page 1

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT

RULE TITLE: 45CSR33 - "Acid Rain Provisions and Permits"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

Title IV of the federal Clean Air Act, as amended, November 15, 1990, required each state to implement an operating permit system conforming to Title IV and Title V of the Clean Air Act as amended. West Virginia complied by enacting rule 45 CSR 33 "Acid Rain Provisions and Permits" which is an incorporation by reference of the federal counterpart regulation 40 CFR Part 72, and became effective May 1, 1994. The United States Environmental Protection Agency (USEPA) approved West Virginia's Acid Rain Program with its approval of West Virginia's Title V Operating Permit Program effective December 15, 1995. 45 CSR 33 was last amended in the 2000 legislative session to include all revisions and additions promulgated under 40 CFR Part 72 and related Parts between June 1998 and June 1999.

The revisions contained herein are intended to update 45 CSR 33 by incorporating all pertinent revisions and additions promulgated by the USEPA between June 1, 1999 and June 1, 2001 under the federal counterpart regulation 40 CFR Part 72 and related Parts.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Under the Acid Rain Program promulgated by the USEPA, pursuant to Title IV of the Clean Air Act, as amended, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain source in violation of 40 CFR Part with all rules promulgated under the pertinent federal counterparts under the Clean Air Act, as amended.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Briefing Document**Page 2**

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 29, 2001 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

TITLE 45
LEGISLATIVE RULE
~~DIVISION-DEPARTMENT OF ENVIRONMENTAL PROTECTION~~
OFFICE OF AIR QUALITY

SERIES 33
ACID RAIN PROVISIONS AND PERMITS

FILED

2001 JUN -6 P 5:01
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§45-33-1. General.

1.1. Scope. -- This rule establishes general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the United States Environmental Protection Agency under Title IV of the Clean Air Act, as amended. It is the intent of the ~~Director~~ Secretary to adopt these standards by reference. It is also the intent of the ~~Director~~ Secretary to adopt associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W. Va. Code §§22-5-1 et seq.

1.3. Filing Date. -- ~~May 19, 2000.~~

1.4. Effective Date. -- ~~June 1, 2000.~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. - The ~~Director~~ Secretary has determined that a federal counterpart regulation exists, and in accordance with the ~~Director's~~ Secretary's recommendation this rule incorporates by reference the following provisions: 40 CFR Part 72, "Permits Regulation"; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins"; 40 CFR Part 75, "Continuous Emissions Monitoring"; 40 CFR Part 76, "Nitrogen Oxides Reduction Program"; and 40 CFR Part 77, "Excess Emissions"; effective ~~July 1, 1998~~ July 1, 2000, as amended by the Federal Register through ~~June 1, 1999~~ June 1, 2001.

1.6. Former Rules. -- This legislative rule amends 45CSR33 "Acid Rain Provisions and Permits" which was filed ~~May 20, 1999~~ May 19,

~~2000~~, and which became effective ~~June 1, 1999~~
June 1, 2000

§45-33-2. Requirements.

2.1. No person may construct, modify, or operate or cause to be constructed, modified, or operated an Acid Rain source which results or will result in a violation of this rule.

§45-33-3. Definitions.

3.1. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

3.2. "~~Director~~" shall mean the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8. "Permitting Authority" shall mean the West Virginia Department of Environmental Protection.

3.3. "~~Permitting Authority~~" shall mean the ~~West Virginia Division of Environmental Protection~~. "Secretary" shall mean the secretary of the department of environmental protection or such other person to whom the secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

§45-33-4. Adoption of Standards.

4.1. The Secretary hereby adopts and incorporates by reference the following provisions of the United States Environmental Protection Agency Acid Rain Program effective ~~July 1, 1998~~ July 1, 2000, as amended by the Federal Register through ~~June 1, 1999~~ June 1, 2001: 40 CFR Part

72, "Permits Regulation", including all Subparts and Appendices; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins", including all Subparts; 40 CFR Part 75, "Continuous Emissions Monitoring", including all Subparts and Appendices; 40 CFR Part 76, "Nitrogen Oxides Emissions Reduction Program", including all Appendices; and 40 CFR Part 77, "Excess Emissions". These provisions are adopted for the purposes of implementing an acid rain program that meets the requirements of Title IV of the federal Clean Air Act, as amended.

§45-33-5. Inconsistency Between Rules.

5.1. The provisions of this rule shall not be construed as exempting persons subject to this rule from compliance with any other provisions of the Clean Air Act, including the provisions of Title I of the Clean Air Act relating to applicable National Ambient Air Quality Standards, the State Implementation Plan, or any other rules of the West Virginia Department of Environmental Protection, except as expressly provided under Title IV of the Clean Air Act; provided however, that in the event of any inconsistency between the provisions of this rule and any provisions of 45CSR30, the provisions of this rule shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain provision of an operating permit.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR33 - "Acid Rain Provisions and Permits"

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

Costs incurred are covered under the budget estimate for implementing the Clean Air Act, as amended, under 45CSR30 promulgated by the Legislature during the 1994 Session.

3. Objectives of These Rules:

This rule, originally promulgated by the 1994 Legislature, establishes general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the U. S. EPA under Title IV of the Clean Air Act, as amended. Rule 45CSR33 was enacted by incorporating the federal counterpart rule at 40 CFR Part 72 and related parts. These revisions are to incorporate appropriate federal revisions promulgated between June 1, 1999 and June 1, 2001.

Rule Title: 45CSR33 - "Acid Rain Provisions and Permits"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

No impact above that resulting from the currently applicable federal requirements.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal requirements.

Date: _____

Signature of Agency Head or Authorized Representative:

**WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ADVISORY COUNCIL MEETING – MINUTES

Tuesday, May 29, 2001 ~ 1:00 p.m.
Second Floor Conference Room - Nitro

Attendees:

Advisory Council Members:

Michael O. Callaghan – Chairman
Lisa Dooley
Jackie Hallinan
Larry Harris
Bill Raney
Rick Roberts
Bill Samples

DEP:

Bill Adams
John Ailes
Dave Bassage
John Benedict
Bill Brannon
Laura Crowder
Mike Dorsey
Lewis Halstead

Randy Huffman
Pam Nixon
Ken Politan
Charlie Sturey
Allyn Turner
Dave Watkins
Karen Watson
Mike Zeto

CITIZENS:

Victoria Moore
Elaine Purkey
Freda Williams

The meeting was called to order at 1:00 p.m. by Chairman Michael O. Callaghan.

Welcome/Opening Remarks - Chairman Callaghan:

Chairman Callaghan opened the meeting by announcing that he had reorganized the West Virginia Department of Environmental Protection (WV DEP) and consolidated certain offices into four divisions: Division of Mining and Reclamation, Matt Crum, Director; Division of Waste Management, Ken Ellison, Director; Division of Water

Resources, Allyn Turner, Director; and Division of Air Quality, Director position currently vacant. Other appointments by Chairman Callaghan include Dave Bassage, Coordinator of Innovative Policy; Cap Smith, Head of Special Projects; and John Ailes, Special Advisor for Mining Affairs. Mr. Callaghan distributed a copy of May 29th news release, announcing the restructuring (see attached).

2001 Legislative Session Overview:

William E. Adams, Jr., Deputy Secretary, provided an overview of the 2001 legislative session. Mr. Adams commented that DEP was successful in getting all but two of their rules passed during the session, and he distributed a copy of a news release covering the scope of legislative action regarding DEP's rules (news release attached).

Presentation of 2002 Proposed Legislative Rules:

Office of Air Quality -

John Benedict presented rules 45CSR1 and 45CSR26 to the Council.
Karen Watson presented rules 45CSR 8, 9, 15, 16, 18, 25, 33 and 34.

Office of Mining and Reclamation -

Lewis Halstead presented rules 38CSR2 and 38 CSR 4.

Office of Waste Management -

Mike Dorsey presented rule 33CSR20.

Office of Water Resources -

Ken Politan presented rules 47CSR5A and 47CSR30.
David Watkins presented rules 47CSR57B and 47CSR13.
Allyn Turner - Discussed the anti-degradation legislation passed during the 2001 legislative session and the need to file any proposed 2002 rules after July 1, 2001 because the authority for the promulgation of this rule will not vest with the DEP until then.

Environmental Enforcement -

Mike Zeto presented the rule for Administrative Proceedings and Civil Penalty Assessment.

Upon conclusion of rules presentations, Randy Huffman, DEP Assistant Secretary, thanked everyone for coming and commented that the rules will be filed with the Secretary of State's office by Wednesday, June 06, 2001, for the thirty-day comment period and then go to public hearings. Cindy Lawson read the 2002 rules filing guideline and deadline dates. Mr. Huffman asked for guidance from the council members. A comment was made that the rules should be in the hands of the Advisory Council a week preceding the meeting and Mr. Huffman stated that this was the goal of the agency. With the legislative session beginning 30 days later this year, however, the process was delayed as an overlapping of final filing and pre-filing for 2002 could not be prevented.

Bill Raney, Council Member, made a motion that the Advisory Council acknowledges the submission and presentation of the 2002 rules. William Samples, Council Member, seconded the motion.

A motion to adjourn the meeting was made by Bill Raney and seconded by Larry Harris, Council Member. The meeting adjourned 3:50 p.m.

Attachments



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

DEP program offices consolidated from eight to four; Crum to head mining office

CHARLESTON — The state's environmental protection agency is being reorganized into four primary regulatory divisions and a former federal prosecutor is taking over the mining office, the state's foremost environmentalist said Tuesday.

Under the change, four office heads, who will be called division directors, will report directly to DEP Secretary Michael O. Callaghan, the Cabinet secretary said.

They are directors of the Division of Air Quality, Division of Water Resources, Division of Waste Management and Division of Mining & Reclamation.

The reorganization takes in the current program offices of Abandoned Mine Lands & Reclamation, Air Quality, Environmental Remediation, Explosives and Blasting, Mining and Reclamation, Oil & Gas, Waste Management and Water Resources.

"These changes are long overdue and are necessary to make the entire structure of the new Department of Environmental Protection more manageable," Callaghan said.

The Legislature at the request of Gov. Bob Wise this year elevated the agency from the Division of Environmental Protection to department status and made Callaghan a Cabinet-level secretary.

"I want the agency head to be immediately accessible to those who are in critical decisionmaking positions," Callaghan said. "This is needed to respond to environmental problems promptly and for the complex process of issuing permits. These changes give the division heads more authority than the old chiefs had and I hope groups them together as environmental protectors rather than as eight entities doing their individual thing."

Callaghan also announced he has named Matthew B. Crum, an environmental lawyer with the U.S. Justice Department in Washington, as director of the mining office, taking over for John Ailes, who has been acting chief.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

Ailes has been named as a special adviser for mining affairs and will report directly to Callaghan.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "John Ailes will serve equally well in a key advisory capacity to the secretary. I am building a new mining program and am looking at least a decade into the future to set those plans in place."



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Reorg 2-2-2

Ken Ellison, who has been chief of the Office of Remediation, will become director of the waste office. Former Office of Waste Management Chief Cap Smith is joining Callaghan's staff as head of special projects. Office of Water Resources Chief Allyn Turner takes over the water division.

Callaghan is seeking a director for the Air Division after Skipp Kropp, former chief of the Office of Air Quality, submitted his resignation last week.

Dr. Dee Ann Staats, Ph.D, rounds out the staff reorganization. DEP has suffered for years by the lack of a formal science adviser, particularly in the areas over which Ellison will have control. Staats is being hired in the newly created position of science adviser and will deal primarily with Ellison's office.

Staats, 44, of South Charleston, earned an undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

Callaghan has been promising changes in the top management of DEP since he took over the agency Feb. 13.

"This agency long has failed to adequately complete its mission," Callaghan said. "It has been plagued by faltering, indecision and a lack of self-confidence. The management structure has failed to meet the expectations and output of the 800 fine employees who have made every effort to do the right thing for the agency and properly perform its mission. It is time for management to support the effort of these quality employees."

Earlier, Callaghan named general counsel Bill Adams as his sole deputy secretary, eliminating two other deputy positions. He also named former Deputy Randy Huffman as assistant secretary.

Continuing to report directly to Callaghan will be Environmental Advocate Pam Nixon, Innovative Policy Director Dave Bassage, Enforcement Coordinator Mike Zeto, and the Public Information Office.

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Department of Environmental Protection

SECRETARY
Michael Callaghan

DRAFT
5/23/01

Asst. Secretary
Randy Huffman

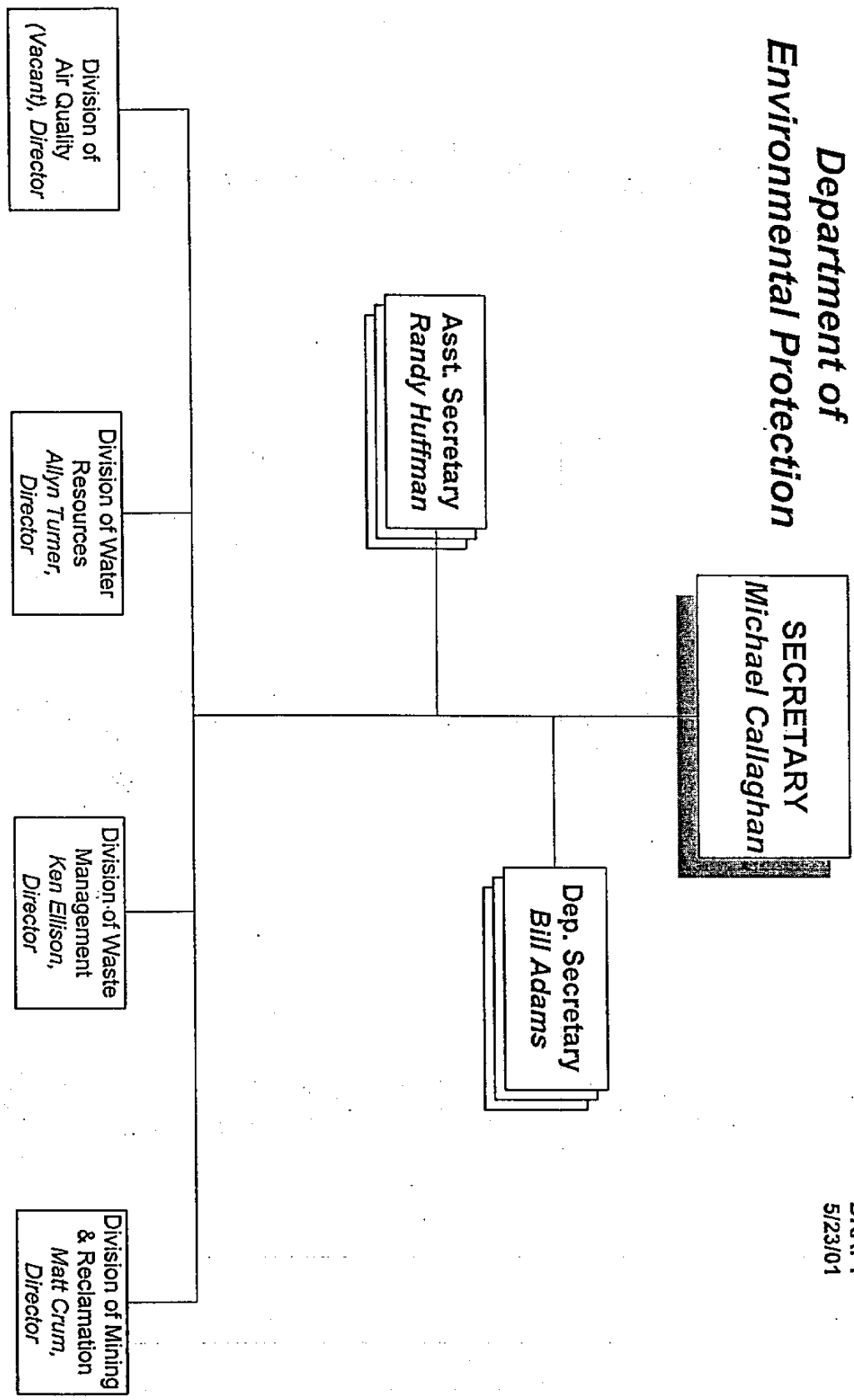
Dep. Secretary
Bill Adams

Division of
Air Quality
(Vacant), Director

Division of Water
Resources
Allyn Turner,
Director

Division of Waste
Management
Ken Ellison,
Director

Division of Mining
& Reclamation
Matt Crum,
Director



Department of Environmental Protection

SECRETARY
Michael Callaghan

DRAFT
5/23/01

Asst. Secretary
Randy Huffman

Aviation
Larry Copley

ITO Sr. Manager
Keith Borgel

Oil & Gas Chief
John Johnston

ADM Chief
Randy Huffman

AML Acting Chief
Charlie Stover

Dep. Secretary
Bill Adams

OLS Chief
Perry McDaniel
Gen. Counsel
Bill Adams

Division of
Air Quality
(Vacant), Director

Division of Water
Resources
Allyn Turner,
Director

Env Advocate
Pam Nixon

Innovative Policy
Dave Bassage

Science Advisor
Dee Ann Staats,
Ph.D.

Comm. Officer
Andy Gallagher

Public
Information

Mining Advisor
John Alles

Director of
Special Projects
Cap Smith

Enforcement
Coord.
Mike Zeto

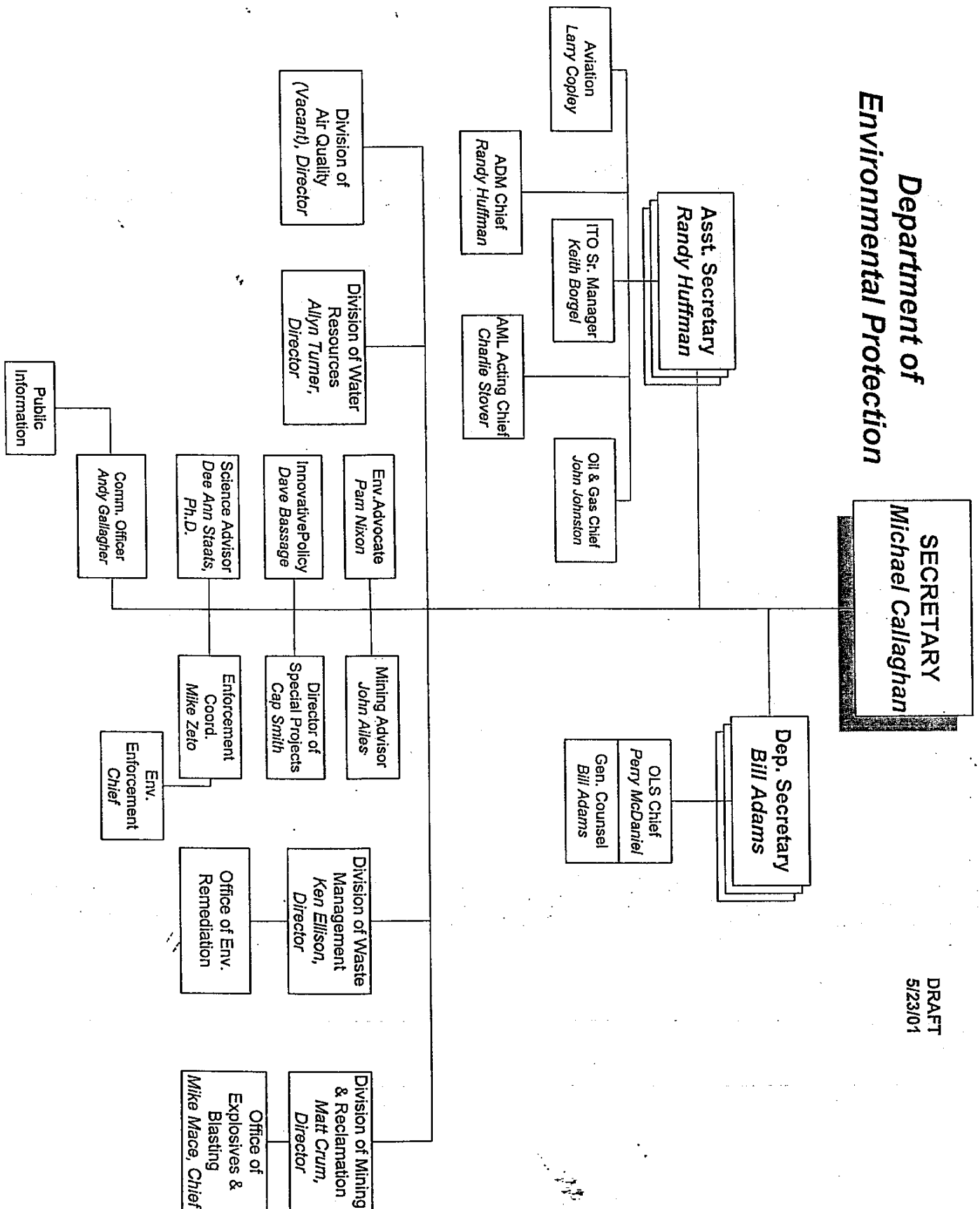
Env.
Enforcement
Chief

Division of Waste
Management
Ken Ellison,
Director

Office of Env.
Remediation

Division of Mining
& Reclamation
Matt Crum,
Director

Office of
Explosives &
Blasting
Mike Mace, Chief





News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Justice Department environmental lawyer to head up the DEP's mines office

NITRO — An environmental lawyer with the U.S. Department of Justice is taking over West Virginia's mining regulatory program, Department of Environmental Protection Secretary Michael O. Callaghan said Tuesday.

Matthew B. Crum, named chief of the Office of Mining and Reclamation, begins work June 11. He replaces John Ailes, who becomes a special adviser to Callaghan, focusing on mining issues.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

He was lead counsel representing the federal government in the prosecution of civil enforcement cases under the Clean Water Act; the Clean Air Act; the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "We are extremely fortunate to attract a person of his ability and character to head this program, which has seen too much turbulence in recent years.

"I believe Matt will give the program the stability it needs to help Governor Wise fulfill his mission for West Virginia," Callaghan said.

"I recognize that the department is facing several complex and contentious issues regarding the mining program," Crum said. "I look forward to returning to the agency to directly address these challenges. My family and I are very pleased to be coming back to the state of West Virginia."

Crum also has been involved in negotiations with the regulated community to resolve environmental enforcement issues, with emphasis on the prevention of illegal discharge of pollutants into waterways, the improper handling or storage of hazardous wastes and the unpermitted emission of airborne contaminants; negotiations designed to resolve conflict with corporations and individuals without compromising the integrity of the environment

He has been involved in the management of litigation teams consisting of U.S. Environmental Protection Agency regional counsel and technical personnel.

From 1994 to 1997, Crum was a deputy chief for the Office of Legal Services for the former Division of Environmental Protection.



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Crum 2-2-2

He served as lead counsel before circuit courts and administrative tribunals regarding enforcement actions against numerous corporations and municipalities. He also defended agency permits.

In 1996, Crum was an acting deputy attorney general in Charleston and served as supervisor of operations of the energy and environment division. He was in the environmental and litigation departments of the Charleston law firm of Robinson & McElwee from 1991 to 1994.

Crum and Perry McDaniel, head of the DEP legal office, were on opposite sides during a longtime dispute over licensing of a pulp mill at Apple Grove on the Ohio River. The proposal eventually was abandoned. Crum, who was working for the DEP at the time, was defending the agency's issuance of the permit. McDaniel, who represented the challengers, opposed it.

"I thought he was fair and I got along fine with him," McDaniel said. "I believe Matt is a good choice to head up this important program and I look forward to working with him."

Crum won commendations in 1997 from the U.S. Attorney General for outstanding performance and invaluable service to the Justice Department relating to environmental enforcement and from the U.S. Environmental Protection Agency for environmental enforcement.

He previously served as director of development and communications for The Nature Conservancy of West Virginia in 1997.

Crum is a 1991 graduate of Washington and Lee University's College of Law and holds a political science undergraduate degree from Virginia Tech.

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News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Science adviser position created and Staats added to staff

CHARLESTON – To beef up the science component of the Department of Environmental Protection, a toxicologist is being added to the agency staff, Cabinet Secretary Michael O. Callaghan said Tuesday.

“I am very pleased to announce Doctor Dee Ann Staats is joining the staff on June 1,” Callaghan said. She is a Ph.D.

“She will be an invaluable addition to help us with a number of complex health issues,” Callaghan said. “She will be the science adviser.” It is a newly created position attached to the secretary’s staff. Callaghan created the position to emphasize the importance of having a more science-orientation to the way DEP does business.

While Staats is part of the central office, she will be assigned to the critical area of the Office of Waste & Remediation, the unit that is attempting to bring back into production industrial sites that were polluted in the past.

“We have needed someone of Doctor Staats caliber for some time,” Waste & Remediation Director Ken Ellison said. “We will be able to use her expertise in a number of different areas. I am eager for her to begin work. With her, we now can start looking at environmental protection more from a health risk standpoint.”

Staats, 44, has been president of her own consulting firm, D.A. Staats Inc., since September 1991. She specialized in environmental and occupational toxicology, consulting nationwide for the federal government.

She is a native of West Virginia, however, and wanted to return to the state. Her brother, Ed Staats, is chief of operations for Gov. Bob Wise. Dee Ann Staats now lives in South Charleston.

“I am happy to be home in West Virginia,” Staats said. “I’m honored to contribute my expertise in environmental health in the service of her people.”

Staats earned her undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

Environmental agency has successful legislative session

CHARLESTON – Lawmakers provided nearly \$1 million for water measurements, established new water protection standards and increased water pollution penalties during the 2001 session of the West Virginia Legislature.

The House of Delegates approved the state's budget 81-12 and the Senate on a vote of 27-0 Monday night to end the legislative session.

"We faced a number of serious and difficult challenges during this session and I believe came to the forefront in facing each," said Michael O. Callaghan, who was confirmed as DEP director by the Senate on a 34-0 vote.

"Governor Bob Wise was solidly behind our environmental initiatives and I want to personally thank him and the members of the House of Delegates and the state Senate for their steadfast support," Callaghan said Tuesday.

The new state budget, adopted in the extended session of the Legislature, includes \$946,000 to permit the DEP's Office of Water Resources to develop studies on impaired streams, a program commonly known as total maximum daily loads. The TMDLs determine how much pollution a stream can assimilate and still meet federal protection standards.

TMDLs will be used in the future to determine whether development can take place along impaired streams. The federal government had been doing the studies and the state wanted to assume control of them.

After a lengthy battle, legislators also adopted standards aimed at providing additional protections to more than 2,000 miles of trout and other high-quality streams in West Virginia.

The antidegradation legislation rewrote rules to prevent water sources in the state from being further polluted by industrial activity.

"We believe the proposal crafted by the DEP and pushed vigorously by Office of Water Resources Chief Allyn Turner is a good compromise that will be found acceptable by the U.S. Environmental Protection Agency," Callaghan said. "It will protect streams, provide for future protections, and still allow development."

A key element retained by DEP is a classification of a stream known as tier 2.5, which allows only limited additional wastes to be discharged on those waters. It is a higher standard than that found under federal law. The bill also allows for landowners to petition Callaghan for a redress of their complaints if they believe their water has been improperly classified.

EPA has indicated it supports the legislation.

This same bill also included a number of other rules changes the agency wanted that dealt with air, mining, hazardous waste, underground storage, blasting and other offices.

One of the proposals provides a limited exemption to the prohibition of disposing yard waste in landfills by allowing it only where no other option is available.

After a three-year push, the DEP was successful, with the cooperation of business, particularly the West Virginia Manufacturers Association, and conservation groups, in increasing penalty limits for water pollution violations.

The proposal, advocated by Chief Inspector Mike Zeto, brings the state in line with surrounding states and had been sought by EPA.

It takes the maximum potential daily fine to \$25,000 from the current \$10,000.

Legislation also was approved to change the division into the Department of Environmental Protection, to make Callaghan a Cabinet-level secretary and give him a pay raise.

The change reflects the importance Governor Wise places on the DEP in protecting the state's environment and in also furthering business development.

Legislation to provide change in last year's blasting laws to ensure homeowners receive copies of preblast surveys also was enacted. The surveys are done prior to blasting to document whether the explosions have damaged a residence or water sources. The federal government sought the changes. The measure also adds inspection, enforcement and appeals procedures.

The Legislature approved a bill to continue the operations of the Department of Environmental Protection until July 2, 2002.

Only one major bill was lost by the DEP this session when a member of the House of Delegates blocked enactment of the Senate-passed measure. It was legislation to protect people living downstream from dangerous dams. The bill died in the House of Delegates.



Federal Register

Thursday,
March 1, 2001

Part II

Environmental Protection Agency

40 CFR Parts 72, 74, and 78
Acid Rain Program—Permits Rule
Revision, Industrial Utility-Units
Exemption; Final Rule; Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Parts 72, 74, and 78
[FRL-6930-9]
**Acid Rain Program—Permits Rule
Revision, Industrial Utility-Units
Exemption**
AGENCY: Environmental Protection
Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to remove the provision for the industrial utility-units exemption in the regulations for the Acid Rain Program under title IV of the Clean Air Act (Act). The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological effects of acidic deposition (or acid rain) resulting from these emissions. In January 1993, EPA issued rules implementing the program, including the permits rule. In October 1997, EPA revised the permits rule in order to add, among other things, a provision establishing a limited exemption from the program for certain industrial boilers (referred to as "industrial utility-units"). One party filed a petition for review challenging the industrial utility-units exemption. On August 23, 2000, EPA and the petitioning party signed a settlement agreement addressing the exemption provision. Today, EPA is removing the industrial utility-units exemption based on a review of the record. This action is consistent with the August 23, 2000 settlement.

DATES: This rule is effective on May 10, 2001 without further notice, unless EPA receives adverse comment by April 16, 2001. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments:* If you submit any written comments on this proposed rule, the comments must reference Docket No. A-95-56 and must be submitted in duplicate to EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Room M-1500, Washington, DC 20460.

Docket. Docket No. A-95-56, containing supporting information used in developing the direct final rule, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at EPA's

Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Room M-1500, Washington, DC 20460. EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT:

Dwight C. Alpern, at (202) 564-9151, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6204)], Washington, DC 20460; or the Acid Rain Hotline at (202) 564-9089.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule as a direct final rule because we view this as a noncontroversial amendment and anticipate no adverse comment. The rule, which removes the provision for the industrial utility-units exemption, is consistent with a settlement signed by EPA and the only party that petitioned for review of the industrial utility-units exemption. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule revision if we receive any timely, adverse comments on today's direct final rule. Today's direct final rule will be effective on May 10, 2001 without further notice unless we receive adverse comment by April 16, 2001. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The information in this preamble is organized as follows:

- I. Regulated Entities
- II. Background
- III. Rule Revision
- IV. Administrative Requirements
 - A. Executive Order 12866: Regulatory Impacts Analysis
 - B. Regulatory Flexibility Act: Small Entity Impacts
 - C. Unfunded Mandates Reform Act
 - D. Paperwork Reduction Act
 - E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - F. Executive Order 12898: Environmental Justice
 - G. Executive Order 13132: Federalism
 - H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
 - I. National Technology Transfer and Advancement Act
 - J. Submission to Congress and the General Accounting Office

I. Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or

turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
NAICS Code: 221112, Fossil Fuel Electric Power Generation.	Electric service providers, boilers and turbines from a wide range of industries.

EPA does not intend this table 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 that, EPA is now aware, this action could potentially affect. This action could also affect other types of entities not listed in the table. To determine whether this action affects your facility, you should carefully examine the applicability criteria in §§ 72.6 and 76.1 and the exemptions in §§ 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 **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Under title IV of the Act, "utility units" are subject to sulfur dioxide (SO₂) emission limitations (under sections 404, 405, 408, and 409) and must monitor SO₂, NO_x, carbon dioxide (CO₂), and opacity (under section 412)¹. On October 24, 1997, EPA issued a final rule establishing a limited exemption from most Acid Rain Program requirements for certain industrial boilers ("industrial utility-units") that are not cogeneration units and that generate small amounts of electricity for sale. See 62 FR 55460, 55462-55466 and 55478-55480 (October 24, 1997). A cogeneration unit is a unit that uses the same energy to produce sequentially both: Thermal energy (heat or steam) that is used for industrial, commercial, or heating or cooling purposes; and electricity.

Under the industrial utility-unit exemption in the existing rule, the owners or operators of an industrial utility-unit that is not a cogeneration unit and that meets several requirements specified in § 72.14 may apply for, and obtain from the permitting authority, an exemption from most Acid Rain Program requirements. First, the existing § 72.14 requires that the unit must have no owner or operator whose principal business is electricity

¹ See also section 821 of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651k note (concerning monitoring of CO₂).

sale, transmission, or distribution or that is a public utility subject to State or local utility regulation. Second, on or before March 23, 1993, the owners or operators of the unit must have entered into an interconnection agreement with a company whose principal business is electricity sale, transmission, or distribution or that is a public utility subject to State or local utility regulation. The agreement must require that the generator served by the unit produce electricity for sale only for incidental sales. Third, in 1985 and any year thereafter, the generator served by the unit must have actually produced electricity for sale only for incidental sales to the public utility. EPA defined "incidental sales" as annual sales not exceeding the lesser of 10 percent of the output capacity of the generator or 10 percent of the actual annual electric output of the generator. See 62 FR 55478.

III. Rule Revision

After the issuance of the October 24, 1997 rule, one commenter filed a petition for review of the rule. On August 23, 2000, EPA and the commenter signed a settlement addressing the issues raised by the petition for review.

The commenter's units were among the 15 units that, according to EPA estimates in the October 24, 1997 rule, might qualify for the industrial utility-unit exemption. See 62 FR 55463 n.7. In connection with the petition for review, this party has raised significant questions as to whether industrial utility-units that are covered by the exemption provided in § 72.14 are actually "utility units" and would otherwise be subject to the Acid Rain Program. If such industrial utility-units would not otherwise be subject to the Acid Rain Program, then their owners or operators would not need to apply and qualify for an exemption under § 72.14. Indeed, there might not be any purpose for retaining § 72.14. In the rulemaking in which EPA proposed and then adopted § 72.14, these questions concerning whether industrial utility-units were "utility units" were not raised or addressed in any comprehensive way. Instead, the comments on the proposal and EPA's analysis of the comments focused on the details of what requirements an industrial utility-unit would have to meet in order to qualify for an exemption from most Acid Rain Program requirements. See 62 FR 55463-55466.

Under these circumstances, EPA concludes that the adoption of § 72.14 was premature. EPA believes that the

underlying questions concerning whether industrial utility-units are actually "utility units" and would otherwise be subject to the Acid Rain Program should be fully addressed before an exemption for such units is implemented. Consequently, today's rule provides that § 72.14 in the October 24, 1997 rule is vacated, all references to § 72.14 in the parts 72-78 of the regulations (40 CFR parts 72-78) implementing the Acid Rain Program under title IV of the Clean Air Act are removed, and the portion of the preamble of the December 27, 1996 proposed rule addressing § 72.14 (i.e., section I.B.4 at 61 FR 68344-68347) and of the October 24, 1997 rule addressing § 72.14 (i.e., section II.B.3 of the preamble of the October 24, 1997 rule (62 FR 55462-55466)) is no longer valid and should not be regarded as representing EPA's views.

This will provide EPA an opportunity to consider comments that industrial-utility units (as defined in § 72.14) are not affected utility units under title IV of the Act and therefore do not need an exemption from requirements of title IV. Further, EPA will not take any further action on the provisions of § 72.14 in the December 27, 1996 proposed rule or the portion of the preamble of the December 27, 1996 rule addressing § 72.14 (i.e., section I.B.4 of the preamble of the December 27, 1996 rule (61 FR 68344-68347)) without first promulgating a new notice of proposed rulemaking that proposes such action and without first providing a new opportunity for public comment on any such new notice. EPA notes that today's rule is consistent with the August 23, 2000 settlement.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Impacts Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that today's final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Regulatory Flexibility Act: Small Entity Impacts

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), Public Law 104-121, generally requires the 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. Such entities include small businesses, small organizations, and small governmental jurisdictions.

Today's final rule will not significantly change the regulatory burden or economic impact of the existing Acid Rain regulations on any parties. When EPA promulgated the industrial utility-units exemption provision, EPA concluded that the provision would not change the overall economic impact of the Acid Rain regulations and would not have a significant economic impact on a substantial number of small entities. 62 FR 55474. EPA anticipated that the exemption would cover about 15 units with 4 owners, who were unlikely to be small entities. See 62 FR 55463 n. 7. Today's final rule vacates the industrial utility-units exemption provision and similarly will not change the overall economic impact of the Acid Rain regulations and will not have a significant economic impact on a substantial number of small entities.

For these reasons, I certify that today's final rule will not have a significant, economic impact on a substantial number of small entities.

C. 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule with "Federal mandates" that may 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. 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 regulatory requirements.

The EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Today's final rule will not significantly change the regulatory burden or economic impact of the existing Acid Rain regulations on any parties. When EPA promulgated the industrial utility-units exemption provision, EPA concluded that the provision would not change the overall economic impact of the Acid Rain regulations and would not have a significant economic impact on a substantial number of small entities. 62 FR 55474. EPA anticipated that the exemption would cover about 15 units with 4 owners, who were unlikely to be State, local, or tribal governments. See 62 FR 55463 n. 7. Today's final rule vacates the industrial utility-units

exemption provision and similarly will not change the overall economic impact of the Acid Rain regulations. Accordingly, little or no additional costs to State, local, or tribal governments in aggregate, or to the private sector, will result from the final rule. Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Similarly, EPA has determined that today's rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of sections 202, 203, or 205 of the UMRA.

D. Paperwork Reduction Act

Today's final revisions to part 72 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). OMB has previously approved the information collection requirements contained in the permits rule, 40 CFR part 72, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* See OMB Control Number 2060-0258 (Acid Rain Program ICR No. 1633.12).

Today's final rule vacates the industrial utility-units exemption and thus any information required to qualify and apply for the exemption. Any units otherwise qualifying for the exemption that are covered by the Acid Rain Program will have the same information requirements as any other units subject to the Acid Rain Program. Those requirements were previously approved.

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.

Copies of the previously approved ICR may be obtained from Sandy

Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (28822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260-2740. Include the ICR and/or OMB number in any correspondence.

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

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines, (1) is "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.

Today's final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, the Agency does not have reason to believe that the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

Today's final rule vacates the industrial utility-units exemption provision. Neither the industrial utility-units exemption provision nor the vacating of the provision has disproportionately high and adverse human health or environmental effects on minorities and low-income populations.

G. 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.”

Today's final rule vacates the industrial utility-units exemption provision. Neither the provision nor the vacating of the provision has any federalism implications. This action will not have substantial direct effects on the States, on the relationship between the national governments and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to today's final rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the

preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today's final rule vacates the industrial utility-units exemption provision. Neither the industrial utility-units exemption provision nor the vacating of the provision significantly or uniquely affects the communities of Indian tribal governments or imposes any direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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.

Today's final rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

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 today's final 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**. Today's final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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

Environmental protection, Acid rain program, Administrative practice and procedure, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 3, 2001.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.6 [Amended]

2. Section 72.6 is amended in paragraph (b)(9) by revising the words “§ 72.7, § 72.8, or § 72.14” wherever they occur to read “§ 72.7 or § 72.8”.

§ 72.9 [Amended]

3. Section 72.9 is amended in paragraph (c)(6) by revising the words “§§ 72.7, 72.8, or 72.14” to read “§ 72.7 or § 72.8”; paragraph (g)(1) by revising the words “§ 72.7, § 72.8, or § 72.14” by to read “§ 72.7 or § 72.8”; and in paragraph (h) by revising the words “§ 72.7, § 72.8, or § 72.14” to read “§ 72.7 or § 72.8”.

§ 72.14 [Removed]

4. Section 72.14 is removed.

§ 72.70 [Amended]

5. Section 72.70 is amended in paragraph (b) by removing the words “or for issuing exemptions under § 72.14”.

§ 72.72 [Amended]

6. Section 72.72 is amended by removing paragraph (b)(6).

§ 72.83 [Amended]

7. Section 72.83 is amended in paragraph (a)(13) by removing the words “or which was approved by the permitting authority under § 72.14”.

PART 74—[AMENDED]

The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.2 [Amended]

2. Section 74.2 is amended by revising the words “§ 72.7, § 72.8, or § 72.14” to read “§ 72.7 or § 72.8”.

PART 78—[AMENDED]

1. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 78.1 [Amended]

2. Section 78.1 is amended by removing and reserving paragraph (b)(1)(v).

§ 78.12 [Amended]

3. Section 78.12 is amended by removing from paragraph (a)(2), after the words “an Acid Rain permit”, the words “or an exemption under § 72.14 of this chapter”.

[FR Doc. 01-721 Filed 2-28-01; 8:45 am]

BILLING CODE 6560-50-U

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 23, 1999.
A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

Chapter I, title 40, 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 II—North Carolina

2. Section 52.1770(c) is amended by revising the entries for Sections .0518, .0530, .0902, .0907, .0909, .0910, .0911, .0954, and .0107 and by adding section .0104 to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED REGULATIONS FOR NORTH CAROLINA

State citation	Title/subject	Adoption date	EPA approval date	Explanation
Subchapter 2D		Air Pollution Control Requirements		
Section .0518	Miscellaneous Volatile Organic Compound Emissions.	11/21/96	10/15/99	
Section .0530	Prevention of Significant Deterioration.	11/21/96	10/15/99	
Section .0902	Applicability	11/21/96	10/15/99	
Section .0907	Compliance Schedules for Sources in Nonattainment Areas.	11/21/96	10/15/99	[Repealed]
Section .0909	Compliance Schedules for Sources in New Nonattainment Areas.	11/21/96	10/15/99	
Section .0910	Alternate Compliance Schedules ..	11/21/96	10/15/99	[Repealed]
Section .0911	Exceptions for Compliance Schedules.	11/21/96	10/15/99	[Repealed]
Section .0954	Stage II Vapor Recovery	11/21/96	10/15/99	
Subchapter 2Q		Air Quality Permits Requirements		
Section .0104	Where to Obtain and File Permit Applications.	11/21/96	10/15/99	
Section .0107	Confidential Information	11/21/96	10/15/99	

[FR Doc. 99-26193 Filed 10-14-99; 8:45 am]
 BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL-6455-4]

Acid Rain Program—Nitrogen Oxides Emission Reduction Program, Rule Revision in Response to Court Remand

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to revise the regulations for the Acid Rain Nitrogen Oxides Emission Reduction Program under title IV of the Clean Air Act in response to a remand by the U.S. Court of Appeals for the District of Columbia Circuit. In

December 1996, EPA issued regulations setting nitrogen oxides (NO_x) emission limits for specified types of existing, coal-fired boilers, including cell burner boilers, that are subject to such limits starting in 2000. In February 1998, the Court upheld the regulations except for one provision addressing what boilers qualify as cell burner boilers. The Court vacated and remanded that provision. EPA is revising the regulations, consistent with the Court's decision, to treat, as a cell burner boiler, any boiler subject to the limits starting in 2000, constructed as a cell burner boiler, and converted to the burner configuration of a wall-fired boiler. Under the regulations, a cell burner boiler must meet an annual average NO_x emission limit of 0.68 lb/mmBtu. The NO_x emission limits under title IV will reduce the serious, adverse effects of NO_x emissions on human health, visibility, ecosystems, and materials.

DATES: This rule is effective on December 14, 1999 without further

notice, unless EPA receives adverse comment by November 29, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments: Commenters must identify all written comments with the appropriate docket number (Docket No. A-95-28) and must submit them in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A-95-28, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, at (202) 564-9151,

U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; or the Acid Rain Hotline at (202) 564-9089.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule revision as a direct final rule because we view this as noncontroversial and anticipate no adverse comment. The rule revision is consistent with a remand by the U.S. Court of Appeals for the District of Columbia Circuit. Further, EPA projects that the rule revision will affect only one boiler, by increasing the boiler's NO_x emission limit under title IV. However, in the "Proposed Rules" section of today's *Federal Register*, we are publishing a separate document that will serve as the proposed rule revision if we receive any timely, adverse comments. Today's direct final rule will be effective on December 14, 1999 without further notice unless we receive adverse comment by November 29, 1999. If we receive such adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The information in this preamble is organized as follows:

- I. Regulated Entities
- II. Background and Revisions
- III. Administrative Requirements
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Executive Order 12875: Enhancing Intergovernmental Partnerships
 - C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
 - D. Unfunded Mandates Act
 - E. Paperwork Reduction Act
 - F. Regulatory Flexibility
 - G. Applicability of Executive Order 13045: Children's Health Protection
 - H. National Technology Transfer and Advancement Act
 - I. Submission to Congress and the General Accounting Office

I. Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers that burn coal and that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
NAICS Code: 22112, Fossil Fuel Electric Power Production.	Electric service providers, boilers that burn coal.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. This action could also regulate other types of entities not listed in the table. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 72.6 and 76.1 and the exemption in § 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.

II. Background and Revisions

Under title IV of the Act, utility units are subject to sulfur dioxide (SO₂) emission limits (as required in sections 404, 405, 408, and 409) and must monitor SO₂, NO_x, carbon dioxide (CO₂), and opacity (as required in section 412). Further, under section 407(a), NO_x emission limits established under section 407(b) apply to any existing "coal-fired utility unit," generally when the unit is subject to SO₂ emission limits. 40 U.S.C. 7651f(a). Section 407(b)(1) requires EPA to set NO_x emission limits for tangentially fired boilers and dry bottom, wall-fired boilers. Section 407(b)(2) authorizes EPA to establish more stringent emission limits for these types of boilers effective starting in 2000. In addition, section 407(b)(2) requires EPA to set NO_x emission limits for all other types of existing coal-fired boilers, including "units applying cell burner technologies." 40 CFR 7651f(b)(2). However, title IV does not define the phrase "units applying cell burner technology." EPA therefore interpreted the phrase in the regulations setting the applicable limits.

Cell burner boilers have closely spaced clusters of 2 or 3 burners (*i.e.*, cells) that together result in a single flame. In addition, the boilers are, like many wall-fired boilers, relatively compactly designed with small furnaces. Two types of combustion control systems are available for cell burner boilers. First, the boiler owner or operator can retain the cell configuration of the burners by replacing each burner in each cell with a low NO_x burner (referred to as "plug-in combustion controls"). Second, the owner or operator can replace the sections of the boiler walls containing the cells with wall sections that reconfigure and replace the burners and that contain low NO_x burners more

widely spaced in a row (referred to as "non-plug-in combustion controls"), like those in wall-fired boilers. Either type of combustion controls may or may not include additional ports for the injection of air above the low NO_x burners.

In interpreting section 407 for purposes of setting emission limits under sections 407(b)(1) and (2), EPA had to decide how to apply the boiler categories to boilers to which the owner or operator made physical changes after original construction. Some of these changes could arguably put the boilers in a different boiler category. EPA first addressed this issue in the rulemaking under section 407(b)(1) where EPA issued the April 13, 1995 rule setting the initial limits for tangentially fired boilers and dry bottom, wall-fired boilers. The rule provided that a cell burner boiler that is subject to SO₂ limits during 1995 through 1999 (*i.e.*, Phase I of the Acid Rain Program) and that converted to the conventional burner configuration of a wall-fired boiler (*i.e.*, through retrofitting with non-plug-in combustion controls) on or before January 1, 1995 is classified as a wall-fired boiler. 40 CFR 76.5(d).

EPA also addressed this issue in the rulemaking under section 407(b)(2) where EPA issued the December 19, 1996 rule that, among other things, set an emission limit for cell burner boilers. In the preamble of the proposed rule in that rulemaking, EPA stated that the replacement of the cells in a cell burner boiler by conventionally spaced burners "essentially convert[s] the cell burner boiler to a conventional wall-fired boiler". 61 FR 1442,1465 (1996). EPA proposed treating, as a cell burner boiler, any cell burner boiler (other than a Phase I boiler) that replaced its cells on or before the commencement of Phase II of the Acid Rain Program (*i.e.*, January 1, 2000). 61 FR 1480. One commenter submitted comments on this matter.

Noting that the Agency was also considering an alternative that would classify, as wall-fired boilers, any cell burner boilers that converted their cells on or before November 15, 1990, the commenter opposed that alternative. The commenter noted that it originally constructed two of its units as cell burner boilers and that it installed non-plug-in combustion controls at the first unit in 1989 and at the second unit in 1991. The commenter argued that the two units are, as a technical matter, still cell burner boilers after conversion of their cells to conventionally spaced low NO_x burners. According to the commenter, the two units should therefore be subject to the NO_x emission

limit for cell burner boilers, not the more stringent NO_x emission limit for wall fired boilers. The commenter urged that, for purposes of determining how to classify cell burner boilers that convert to conventionally spaced burners, EPA adopt a "case-by-case policy wherein each installation is evaluated on its own merits." Docket Item IV-D-051 at 4.

In response to these comments, the December 19, 1996 rule established the date of enactment of title IV (November 15, 1990) as the cutoff date for classifying converted cell burners as wall-fired boilers. Section 407 does not specifically address how to categorize cell burners that are converted so that they are no longer applying cell burner technology. EPA took the approach of applying the statutory boiler category of "units applying cell burner technology" as of the date of enactment of title IV. Under the December 19, 1996 rule, the commenter's unit with non-plug-in combustion controls installed in 1989 is a wall-fired boiler with NO_x limit of 0.46 lb/mmBtu, and the unit with non-plug-in combustion controls installed in 1991 is cell burner boiler with NO_x limit of 0.68 lb/mmBtu.

In response to petitions for review of the December 19, 1996 rule, the U.S. Court of Appeals for D.C. upheld all provisions of the rule except for the provision addressing the treatment of cell burner boilers with non-plug-in combustion controls as wall-fired boilers. *Appalachian Power v. EPA*, 135 F.3d 791, 822 (D.C. Cir. 1998). The Court vacated, and remanded that rule provision to EPA. *Id.* The Court explained that:

the fact that no retrofitted cell burner [i.e., no cell burner with non-plug-in combustion controls] can achieve the * * * emission limit [for wall-fired boilers] using only the technology Congress authorized for setting that limit (low NO_x burner technology) is evidence that retrofitted cell burners are not the functional equivalent of wall-fired boilers, as measured by congressional concerns. 135 F.3d at 821.

In today's action, EPA is revising the December 17, 1996 rule to remove the provision vacated by the Court in *Appalachian Power* and, in light of the Court's opinion, has decided to take no further action on this matter. As a result, boilers subject to the NO_x limit starting in 2000 and originally constructed as cell burner boilers will be subject to the NO_x limit for cell burner boilers, regardless of whether or when they are modified through the installation of non-plug-in combustion controls. Today's rule revision does not address or change in any respect the compliance dates, which are in the existing regulations and which the Court upheld

in *Appalachian Power*, for any units subject to the NO_x limits under the Acid Rain Program.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that today's final rule is not a "significant regulatory action" and therefore is not subject to OMB review.

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create a mandate on State, local or tribal governments and does not impose any enforceable duties on these entities. EPA projects that the rule will affect only one boiler, by increasing the level of the boiler's NO_x emission limit under title IV. Moreover, the boiler is not owned or operated by a State, local, and tribal government. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely effect, or impose any substantial direct compliance costs on, the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Unfunded Mandates 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA must 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 explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially 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.

Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

As discussed above, EPA projects that today's final rule will affect only one boiler, by increasing the level of the boiler's NO_x emission limit under title IV. Moreover, the boiler is not owned or operated by a State, local, and tribal government.

E. Paperwork Reduction Act

Today's final revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). OMB has previously

approved the information collection requirements contained in the Acid Rain Nitrogen Oxides Emission Reduction Program regulations, 40 CFR part 76, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* See OMB Control Number 2060-0258.

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.

Copies of the previously approved ICR may be obtained from the Director, Regulatory Information Division, EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564-2740. Include the ICR and/or OMB number in any correspondence.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small government jurisdictions.

As discussed above, EPA projects that today's final rule will affect only one boiler, by increasing the level of the boiler's NO_x emission limit under title IV. Moreover, the boiler is not owned or operated by a small entity. For these reasons, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

G. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 29, 1997) applies to any rule if EPA determines (1) that the rule is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a

disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA.

Today's final rule is not subject to Executive Order 13045, because the action is not economically significant and does not address an environmental health or safety risk that may disproportionately affect children.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 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, or business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the NTTAA.

I. Submission to Congress and the General Accounting Office

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*. Today's final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Electric utilities, Nitrogen oxides.

Dated: October 5, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citation for part 76 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 76.6 is amended by removing from paragraph (a)(1) the words "after November 15, 1990" and the entire last sentence.

[FR Doc. 99-26658 Filed 10-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300915; FRL-6380-4]

RIN 2070-AB78

Rhizobium Inoculants; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Rhizobium* inoculants (pure strains of *Rhizobium* spp. bacteria [e.g. *Sinorhizobium*, *Bradyrhizobium* & *Rhizobium*]; hereinafter referred to as *Rhizobium* inoculants) when used as inert ingredients in pesticide formulations applied to all leguminous food commodities. This would not include strains expressing rhizobitoxine or strains deliberately altered to expand the range of antibiotic resistance. EPA is establishing this regulation on its own initiative. EPA submitted a proposed rule under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Rhizobium* inoculants.

DATES: This regulation is effective October 15, 1999. Objections and requests for hearings, identified by docket control number OPP-300915, must be received by EPA on or before December 14, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by

mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-300915 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Biological Pesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: 9th Floor, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-8699; e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select

"Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300915. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the Federal Register of May 19, 1999 (64 FR 27223) (FRL-6074-3), EPA issued a proposed rule pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170). This rule was proposed by EPA on its own initiative. The rule included a summary of the petition prepared by EPA. There were no comments received in response to the proposed rule.

The petition requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for residues of *Rhizobium* inoculants.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section