

FACT SHEET

Amendments to the General Provisions of Part 62 for Incorporation by Reference of Clean Air Act Section 111(d) and 129 State Plans

ACTION

- On August 15, 2019, the U.S. Environmental Protection Agency (EPA) issued a direct final rule and a parallel proposed rule to amend the General Provisions of 40 Code of Federal Regulations (CFR) part 62 (sections 62.02, 62.10, and 62.12).
- The amendments will improve the ability of EPA Regional offices to obtain proper administrative approval from the Office of the Federal Register (OFR) for regulatory actions and comply with existing laws.
- With this action EPA is proposing to amend 40 CFR part 62, subpart A to:
 - Remove vague language that made the process of gaining approval for the Incorporation by Reference of state plans unclear;
 - Update the outdated addresses of EPA Regional offices.
- EPA will accept comment on the proposed amendments for 45 days after publication in the *Federal Register*.
- If no significant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.
- If the EPA receives significant adverse comments, EPA will publish a timely withdrawal in the *Federal Register* of the direct final rule.
- If the direct final rule is withdrawn, all comments will be addressed in a subsequent final rule based on this proposal. EPA will not institute a second comment period pertaining to the revisions on the subsequent final action. Any parties interested in commenting should do so at this time.

BACKGROUND

- Part 62 of 40 CFR describes the process for approval and promulgation of state plans and federal plans under Clean Air Act sections 111(d) and 129.
- One of the areas this process affects is the enforcement of emission guidelines. EPA establishes emission guidelines under 40 CFR part 60, but they are not directly enforceable under that regulation. Instead, a state or the federal government creates a plan that will meet the requirements of the emission guidelines. The state or federal plan is then incorporated by reference through 40 CFR part 62, and at that point the plan becomes enforceable.
- Incorporation by reference allows federal agencies to include materials published outside the CFR as part of their regulations without having to publish the full text of that material in the *Federal Register* and CFR.
- The Freedom of Information Act states that regulatory provisions (*i.e.*, state plans) may be incorporated by reference in the *Federal Register* “with the approval of the Director of the Federal Register.”

- However, the process of gaining approval for incorporation by reference was previously unclear, leading to administrative confusion.

HOW TO COMMENT

- EPA will accept comment for 45 days after publication of the direct final rule and parallel proposal in the *Federal Register*.
- Comments, identified by Docket ID No. EPA-HQ-OAR-2019-0298, may be submitted by one of the following methods:
 - Go to <https://www.regulations.gov/> and follow the online instructions for submitting comments.
 - Send comments by email to: a-and-r-Docket@epa.gov, with the subject line: Attention Docket ID No. EPA-HQ-OAR-2019-0298.
 - Fax your comments to: (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2019-0298.
 - Mail your comments to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2019-0298.
 - Deliver comments in person to: EPA Docket Center, 1301 Constitution Ave., NW, Room 3334, Washington, DC. Note: In person deliveries (including courier deliveries) are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

FOR MORE INFORMATION

- Interested parties can download a copy of the direct final rule and parallel proposal from EPA's website at the following address: <https://www.epa.gov/stationary-sources-air-pollution/amendments-general-provisions-part-62-incorporation-reference-clean>.
- Today's action and other background information are also available either electronically at <https://www.regulations.gov/>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located at the EPA Headquarters Library, room number 3334 in the EPA WJC West Building, 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
 - Materials for this action can be accessed using Docket ID No. EPA-HQ-OAR-2019-0298.
- For further information about the amendments to the General Provisions of 40 CFR part 62, contact Jodi Howard, EPA's Office of Air Quality Planning and Standards, at (919) 541-4607 or howard.jodi@epa.gov.