



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-HQ-OAR-2019-0298; FRL-9998-68-OAR]

RIN 2060-AU49

General Provisions: Incorporation by Reference of State Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to amend the Approval and Promulgation of State Plans for Designated Facilities and Pollutants, General Provisions to clarify the process by which state plans for the control of pollutants and facilities are incorporated by reference into this part. This action is intended to update and modify the outdated General Provisions that note that state plans are incorporated by reference and that describe the availability of state plans.

DATES: The direct final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, without further notice, unless the EPA receives significant adverse written comment by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** on the amendments. If significant adverse comments are received on the amendments, the EPA will publish a timely withdrawal in the **Federal Register** clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2019-0298, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2019-0298 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2019-0298.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2019-0298, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand/Courier Delivery: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this direct final action, contact Jodi Howard, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4607; fax number: (919) 541-4991; and email address: howard.jodi@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2019-0298. All documents in the docket are listed in Regulations.gov. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in Regulations.gov or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2019-0298. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional

submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media

that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2019-0298.

Organization of this document. The information in this preamble is organized as follows:

- I. Background
- II. The Amendments
- III. Statutory and Executive Order Reviews
 - [A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review](#)
 - B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
 - [C. Paperwork Reduction Act \(PRA\)](#)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)

I. Background

In 1978, the EPA established a new part 62 of Title 40 of the Code of Federal Regulations, including a subpart A—General Provisions. 43 FR 51393 (November 3, 1978). 40 CFR part 62 relates to the approval and promulgation of state plans and federal plans under Clean Air Act sections 111(d) and 129. Emission guidelines for various source categories are

implemented through 40 CFR part 62 via an approved state plan or a federal plan for each separate source category. The EPA generally intends to incorporate in part 62, by reference, approved state plans. The requirements of the General Provisions, together with the provisions of the state-specific subparts of part 62, reflect that intention.

Among other matters, the General Provisions refer to the Incorporation by Reference (IBR) of state plans, stating generally that: “All approved regulatory provisions of each plan are incorporated by reference in this part.” 40 CFR 62.02(a). The General Provisions also address the availability of applicable plans, indicating that state plans would be available at EPA Headquarters, as well as at EPA Regional offices at stated addresses. 40 CFR 62.12 (cross-referencing 40 CFR 62.10). These references to EPA locations are, at least in part, out of date. The address for EPA Headquarters, for example, is given as the EPA’s former location in Southwest Washington, D.C., rather than its current location in Northwest Washington, D.C.

The Freedom of Information Act generally requires federal agencies to publish substantive rules in the **Federal Register**, but also allows for IBR: otherwise “reasonably available” matter “is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the **Federal Register**.” 5 U.S.C. 552(a). The Office of the **Federal Register** (OFR) published regulations setting out policies and procedures relating to IBR at 1 CFR part 51 and, on several occasions, significantly modified and amended those procedures. *See*, for example, 37 FR 23614 (November 4, 1972); 44 FR 19181 (April 2, 1979); 47 FR 34107 (August 6, 1982); and 79 FR 66267 (November 7, 2014).

II. The Amendments

The original, unamended, 1978 IBR language in 40 CFR part 62 has not fully kept pace with OFR’s evolving policies and procedures on IBR. In addition, the existing regulations—

dating back to 1978—relating to the availability of approved state plans only reference the physical availability of the plans at specified EPA locations, and the addresses for the EPA Headquarters in Washington, D.C., as well as some of the Regional offices, are out of date. The EPA is amending sections 62.02, 62.10, and 62.12 of 40 CFR part 62, subpart A. These amendments will help to ensure that part 62 state plans or state plan revisions are appropriately incorporated by reference through the OFR’s current IBR process. As part of that effort, the EPA is amending 40 CFR 62.02(d) to remove a broad, general statement relating to IBR. The EPA intends to continue to incorporate state plans by reference, but, going forward, the EPA intends to use appropriate IBR language in connection with each individual action relating to the approval of particular state plans, rather than attempt to rely, in all cases, on a simple statement in the General Provisions. In addition, we are updating the addresses of the EPA Region II and IV offices in the table to 40 CFR 62.10. Finally, we are adding an address for the National Archives and Records Administration and updating the EPA addresses in 40 CFR 62.12 (a), (b), and (c).

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not

significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action is administrative and does not change any requirements for affected entities. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action is administrative and does not change any requirements for affected entities, including tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

This action is merely administrative.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, and Air pollution control.

Dated: August 15, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 62 as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 62.02 is amended by revising paragraph (d) to read as follows:

§62.02 Introduction.

* * * * *

(d) Section 62.12 provides information on availability of applicable plans. The Administrator and state and local agencies shall enforce

(1) Regulatory provisions of a plan approved or promulgated by the Administrator, and

(2) All permit conditions or denials issued in carrying out the approved or promulgated regulations for the review of designated facilities.

* * * * *

3. Section 62.10 is amended by:

a. Revising the introductory text.

b. Revising the table heading entitled “Region and jurisdiction covered”.

c. Revising the entries “II—New York, New Jersey, Puerto Rico, Virgin Islands”, “IV—Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee”, and “VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas”.

The revisions read as follows:

§62.10 Submission to the Administrator.

Except as otherwise provided in §60.23 of this chapter, all requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional office of the Environmental Protection Agency.” The Regional offices are as follows:

Table 1 to §62.10

Region and Jurisdiction	Address

II—New York, New Jersey, Puerto Rico, Virgin Islands	290 Broadway, New York, NY 10007-1866

IV—Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee	61 Forsyth Street, SW, Atlanta, GA 30303-3104

VI-Arkansas, Louisiana, New Mexico, Oklahoma, Texas	1201 Elm Street, Suite 500 Dallas, TX 75270

3. Section 62.12 is amended by revising paragraphs (a) and (b) to read as follows:

§62.12 Availability of applicable plans.

* * * * *

(a) EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue, NW, Washington, DC.

(b) The applicable EPA Regional office, at the address listed in §62.10.

[FR Doc. 2019-18235 Filed: 8/29/2019 8:45 am; Publication Date: 8/30/2019]