

(b) *Effective Dates.* This safety zone becomes effective at 11:30 a.m. (PDT) and terminates at 3 p.m. (PDT) on September 13, 1998. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the safety zone by contacting Vessel Traffic Service on Channel 14 VHF-FM.

Dated: August 24, 1998.

R.C. Lorigan,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay.

[FR Doc. 98-23444 Filed 9-1-98; 8:45 am]

BILLING CODE 4910-15-M

POSTAL SERVICE

39 CFR Part 241

Expansion, Relocation, Construction of New Post Offices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures by which the Postal Service notifies local citizens and public officials of facility projects, and solicits and considers the community's input before making a final decision to expand an existing facility, relocate to a new building, or start new construction. The purpose of the rule is to build into the facility project planning process specific opportunities and adequate time for the community to be an active participant in the decision making process and to have its views heard and considered.

DATE: Effective October 5, 1998.

FOR FURTHER INFORMATION CONTACT: John Sorenson, U.S. Postal Service, Facilities, 4301 Wilson Boulevard, Suite 300, Arlington, VA 22203-1861. Phone (703) 526-2782.

SUPPLEMENTARY INFORMATION: On May 7, 1998, the Postal Service published an interim rule (63 FR 25166) that added a new section 241.4 to 39 CFR Part 241 to require that local citizens and public officials be notified and invited to comment at critical stages of the planning to enlarge, relocate, or construct a postal customer service facility. In addition, the interim rule

required postal officials to take into account community input, including alternative recommendations. Although the interim rule took effect immediately, the Postal Service established a 30-day comment period and invited comments from interested persons and organizations. Nine responses were received.

The respondents generally supported the intent of the interim rule— involvement of local communities in facility decisions by the Postal Service—but differed as to whether and how the rule would accomplish that intent. Following is a summary of the comments received, in order of the specific sections of the interim rule to which they relate.

General Comments and Application; 241.4(a)

One respondent's letter noted that "the changes proposed fail to provide assurance that citizens and postal customers will have any voice at all in the decisions impacting their communities." A state agency is concerned that the rule does not suggest any significant changes in USPS policies and urges a greater emphasis on a clear protocol for dialog between the Postal Service and the public. Another state agency opposes the rule generally as not giving full consideration of alternatives or of community preferences as a top priority. On the other hand, another state agency approved of the interim rule's clear statement of priorities for facilities projects, which establish the right context for public participation and the consideration of alternatives.

We disagree with the respondents who doubt that the interim rule sets out effective means to ensure community participation in facility project decisions. The final rule published today, like the interim rule, states the Postal Service's priorities for facility projects: the first consideration is expansion of the present facility; next is relocation to another building; and last is new construction. The rule requires and sets time tables for pre-decisional in-person discussion and formal written notices to elected local officials of the affected community. It also requires press releases to the local media and posting in the local post office, as well as an opportunity for a minimum of one public hearing or meeting (and more as needed), followed by a comment period for receipt and consideration of additional comments before a decision is made to expand, relocate, or construct a post office.

The question of whether the interim rule is a statement of existing policies

was mentioned by several respondents. The interim rule, and this final rule, clarify, expand, and formalize, through the Federal Regulation process, the opportunities for public participation in facility project decisions that are already embodied in postal policy.

The views, ideas, and proposals of local citizens and postal customers are an important part of the process of making facility project decisions. However, many other factors must also be considered. Among them are whether an expiring lease can be renegotiated at a reasonable rent, and operational requirements including access to transportation, local population growth, and the availability of buildings that are safe and environmentally healthful for both customers and employees. The Postal Service agrees that the community's voice must be heard and its views considered in facility projects that affect them; however, the final decision remains the responsibility of the Postal Service.

One state governmental office expressed concern that the interim rule does not address the consolidation or closing (i.e., the "discontinuance") of post offices. In fact, this facility project rule is independent of the criteria and requirements for closing or consolidating post offices. It is not intended to broaden, reduce, or otherwise modify the scope of the rules related to the discontinuance of post offices—prescribed by U.S.C. 404(b) and 39 CFR 241.3. Those requirements and criteria are unchanged by this rule and will continue in full effect.

There may be instances where the facility project rule issued today governs a project that is also covered by the discontinuance rules. For example, if two post offices are both housed in substandard buildings in a rural area that has experienced significant population loss, the Postal Service may consider consolidating the post offices and relocating all operations to a single new building convenient to both affected areas. In that situation, the Postal Service would comply both with the discontinuance rules at 39 CFR 243.1 with respect to the closing/consolidation decision and with this facility project rule with respect to the decisions about selecting or building a new facility. Where the rules prescribe different notice requirements or comment or waiting periods for a particular action, the longer one, resulting in greater public participation, would be used. Similarly, as discussed below, the requirements of section 106 of the National Historic Preservation Act (NHPA) would also continue to be applicable independently of this facility

project rule. Accordingly, no change is required in the language of the rule in order to preserve the applicability of the consolidation/closing requirements.

Exemption From Rule for Temporary or Emergency Use; 241.4(a)(1)

Most of the respondents recommended that the exemption from public notification and participation when a project is "to meet an emergency requirement or is for temporary use" should be modified to define "emergency" and to impose time limits for both emergency and temporary use. The Postal Service agrees with this recommendation and has therefore defined "emergency" in the final rule to include such situations as earthquakes, flood, fire, or any other acts of God, and also the possible inability to renegotiate a renewal of an expiring lease that could necessitate the relocation of a post office. Also included within "emergency" would be acts of violence against people or a building. "Temporary" space is typically used for special events such as state or county fairs where the Postal Service might set up a retail office. It also includes space used during a holiday season, such as Christmas, for overflow business that cannot safely and efficiently be handled at an existing post office.

We agree that time limitations, whether for emergency or temporary space are important, but are more difficult to define in a way that allows the reasonable flexibility needed in a nationwide organization that serves the public under a wide range of conditions. An example of the need for flexibility is when a fire forces the relocation of postal operations from one building to another on a temporary basis, but matters of liability and damages require months or even years to resolve. Another is when an earthquake or flood devastates an entire region and there is no realistic way to predict accurately when the area's governmental infrastructure will return to normalcy so that a postal relocation project can be shepherded through its system. We believe that the need for reasonable time limits on the use of temporary and emergency space without public involvement in the decision process, and the need for reasonable operational flexibility can both be met. Accordingly, we have modified this section to include a time limitation of 180 days for emergency and temporary space, with additional authorizations in 180-day increments to be made only with specific approval by the office of Facilities at Postal Service Headquarters.

Exception for Repairs and Alterations; 241.4(a)(2)

Several respondents expressed concern about exempting from this rule facility projects that are limited to repair and alterations, which include painting, replacement or upgrade of a structural or functional element of a building, or landscaping. The rule expressly puts no limit on the amount of repair, replacement, or painting work that would be exempted from this rule.

Comments about this section were of two kinds. One is the recommendation that the Postal Service be required to comply with all local zoning, land use, and building codes. The other is a concern that, because the instant rule does not cover maintenance, repair, and alterations projects, those projects would not be subject to NHPA procedures that would otherwise apply. Several respondents also raised these concerns separately from the exception for repairs and alterations.

Public Meetings or Hearings; 241.4(c)(1) and (c)(4)

Almost all of the respondents recommended that the public meeting required by sections 241.4 (c)(1)(iii) and (c)(4)(ii) be mandatory, and they objected to leaving the door open to any exception. There may be exceptional circumstances, however, that prevent postal representatives from attending or conducting a public meeting or hearing on the planned project within a reasonable time. In that event, and subject in each instance to the specific approval of the Vice President, Facilities, the Postal Service would distribute a notification card to all affected customers, seeking their comment or other feedback. An example of exceptional circumstances warranting this means of soliciting community input would be a project in an area quite distant from the seat of local government or any forum where a postal-conducted meeting could be held. Therefore, no change was made to this provision other than to reserve approval for such action to the Vice President, Facilities.

Three respondents objected to the statement in the interim rule that if an expansion project was impracticable, that fact would be disclosed at the meeting and noted in the project file. In some cases, the Postal Service may have been notified that a leased post office will no longer be available at the conclusion of a lease term; or the landlord is demanding rent far above its fair value. In other cases, a landlord may refuse to make much needed repairs or properly to maintain the building. In

still other situations, a post office may be bounded by public sidewalks and streets, and it is obvious that expansion is not possible. Nevertheless, the respondents pointed out the exchange of needs and information at the public meeting could disclose alternatives that were not previously apparent or available to the Postal Service. Having experienced in at least a few instances the expansion of options as a consequence of public meetings and other public participation, the Postal Service has revised section 241.4(c)(4)(ii) of the final rule to incorporate the recommendation.

Posting of Notices in Affected Post Offices; 241.4(c)(4)

One respondent recommended that the same notice of a facility project that is given to local officials be posted in the lobby of the affected post office. In many post offices, that is already a standard practice. Accordingly, the recommendation is expanded and incorporated in the final rule to require the posting of the letter to local officials or the media release or, space permitting, both. If not already contained in the notice, when a meeting or hearing date is known, that information will be added to the posting.

Time for Review of Community Input; 241.4(c)(5) and (c)(6)

In different ways, most respondents felt that the interim rule allowed little or no time after a public meeting before a project decision could be made, thus precluding feedback from the community. They recommended both a waiting period, and an appeals process after the community is notified of decisions. Three respondents made a similar recommendation, suggesting the appeals process employed for a post office discontinuance.

We agree that community participation in the facility project process could be improved with longer waiting periods between, for example, a public meeting and the next decision. We also agree that some avenue of appeal is an appropriate safeguard of the process. However, the appeal route used for a post office discontinuance, as proposed, would stifle rather than open the facility project process. Accordingly, we have carefully reviewed the entire process for community input, and in the final rule extended some of the comment periods and added an avenue of appeal to the Vice President, Facilities. We have also added a requirement that postal representatives will advise of appeal rights during the public meeting or hearing.

National Historic Preservation Act Concerns; 241.4(d)(1)

Several respondents addressed the relationship between the interim rule relating to repair and maintenance projects and the relationship with the NHPA compliance process.

Three preservation groups were concerned that the language of the interim rule meant that the Postal Service intended not to comply with section 106 of the NHPA or that its compliance would be limited to the selection of a new building after a decision to move from an existing post office had been made. In addition, most of the respondents expressed concern that the protections offered in section 241.4(d)(1) were "gutted" by section 241.4(a)(2) which exempts repairs and alterations from the rule. Nothing in the interim rule or this final rule is meant to avoid or diminish the Postal Service's compliance with historic preservation policies. To the contrary, section 106 of the NHPA, and the applicable Executive Orders addressing downtown areas and historic buildings were mentioned in the interim rule specifically to emphasize that commitment.

If any project, including repair, maintenance, alteration, expansion, relocation, or new construction, will have an adverse effect under provisions of the NHPA or executive orders, the Postal Service will continue to consider and mitigate such effects independently from this rule. Accordingly, in order to prevent any misunderstanding, we have revised section 241.4(d).

Recommendations of Sites for New Facilities; 241.4(e)

Two respondents noted a lack of clarity about who may propose recommended sites, and urged that members of the public be permitted to do so. One of the two respondents further suggested that an owner of property not being given further consideration should be notified, in some manner, in addition to local official notification. For projects that are relocations or new construction, for example, it has been standard procedure to advertise in local newspapers for land or buildings, and to post a notice in the local post office. In addition, individual contacts are normally made with community officials or members of the community who may be aware of sites that are not on the market but might be made available for a postal project. It is the property owners themselves (or their agents) who propose their sites. This is generally done in response to an advertisement describing specific postal requirements, including the preferred

area for the new facility. The notice and public meeting provisions of this final rule may provide additional opportunity for property owners to indicate their interest in a sale or lease to the Postal Service. It is also standard postal practice to notify property owners if their property is not being considered.

Zoning and Other Local Codes; 241.4(f)

The Postal Service is a long-term member of nearly every community and wants to be a good neighbor and supporter of the community's values. People view their post office as much more than a place to send and receive mail. A community's post office is a vital part of its infrastructure; a place to greet old friends, make new ones, and exchange information. Post offices support the commercial activities of a town and are relied upon by many businesses to ship and receive goods, and to communicate with customers. With more than 35,000 leased and owned postal facilities, the Postal Service takes seriously its commitment to be a good neighbor and a vital part of every community.

The facility project rule published today also contains the Postal Service's policy of complying with local zoning and land use ordinances and building codes in new construction, repairs, upgrades, and alterations to its facilities, when it can do so consistent with dynamic service needs and unique postal requirements. We believe our record of compliance is a good one. However, to make it mandatory—and thereby abandon standardized, national service mandates and the need to accommodate postal needs—would impose an unreasonable burden on the conduct of a basic service of the national government. It would severely hamper the Postal Service's ability to provide adequate facilities to serve all communities in the country, and it could result in a great departure from the mandate to provide the nation "basic and fundamental service" that is "prompt, reliable and efficient." 39 U.S.C. 101(a). It could result, moreover, in anomalies such as sprinkler systems that would damage or destroy mail, or handicapped accessibility for Inspection Service lookout galleries. Delivering mail is an important federal function. Like other federal entities, the Postal Service should not be in a position where the fundamental quality, consistency, and efficiency of its services can be compromised by various and oftentimes conflicting local requirements.

Summary

Adding new facilities and upgrading or replacing existing ones is a continuing activity that is influenced by population growth and shifts, the increasing automation of mail processing, aging and deteriorating building stock, and changing environmental and energy conservation requirements. In order to fulfill its role as a member of virtually every U.S. community—yet also provide a standardized platform of economical and universal mail service for the entire country—the Postal Service believes that to the maximum extent possible it should undertake its most visibly significant projects—to expand, relocate, or build a new facility—in partnership with the local community.

These community relations procedures are being published to help assure that communities and local public officials, as well as postal employees, will have the most up-to-date policy for projects that involve expansion, relocation, or new construction of a postal customer service facility, and to help assure that such projects are handled in accordance with the revised procedures.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies).

Accordingly, the Postal Service adopts the following amendment to 39 CFR Part 241.

PART 241—[AMENDED]

1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 401.

2. Effective October 5, 1998, 39 CFR part 241 is amended by revising § 241.4, to read as follows:

§ 241.4 Expansion, relocation, and construction of post offices.

(a) *Application.* (1) This section applies when the USPS contemplates any one of the following projects with respect to a customer service facility: expansion, relocation to another existing building, or new construction, except when the project is to meet an emergency requirement or for temporary use. Emergency situations include, but are not limited to, earthquakes, floods, fire, lease terminations, safety factors, environmental causes, or any other actions that would force an immediate relocation from an existing facility. Temporary relocation of space is used for, but not limited to, holidays, special events, or for overflow business. Use of emergency and temporary space will be limited to 180 days in duration. Any

additional incremental time periods of up to 180 days each must be approved by the Vice President, Facilities.

(2) This section does not apply when the project under consideration is limited to repair and alterations, such as—

- (i) Painting;
- (ii) Repairs;
- (iii) Replacement or upgrade of structural or functional elements of a postal building or of its equipment;
- (iv) Paving, striping, or other repair of parking areas;
- (v) Landscaping.

(b) *Purpose.* The purpose of the procedures required by this section is to assure increased opportunities for members of the communities who may be affected by certain USPS facility projects, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final decision to expand, relocate to another existing building, or construct a new building that is owned or leased.

(c) *Expansion, relocation, new construction.* When a need is identified that will require the expansion, relocation, or new construction of a customer service facility, postal representatives responsible for the project will take the following steps in accordance with the time schedule shown:

(1) Personally visit one or more of the highest ranking local public officials (generally individuals holding elective office). During the visit, the postal representatives will—

(i) Identify the need and fully describe the project that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit a working partnership with the community officials for the success of the project.

(ii) Emphasize that in meeting a need for increased space, the first priority is to expand the existing facility; the second priority is to find an existing building in the same area as the current facility; and the third option is to build on a new site; all within the downtown area, if possible.

(iii) Ask that a Postal Service presentation of the project be placed on the regular agenda of a public meeting or hearing. If no such meeting is planned within the next 60 days or the agenda of a planned meeting cannot accommodate the project, the USPS will schedule its own public hearing concerning the project, and will advertise the meeting or hearing in a local general circulation newspaper.

(iv) Give the local officials a letter describing the intended project.

(2) Notify the lessor of the affected facility of the project, in writing.

(3) Send an initial news release to local communications media.

(4)(i) Post in the public lobby of the affected post offices a copy of the letter given to local officials, or the news release, or, space permitting, both. If such information is available at the time, include in the posting a public notice of the date, time, and location of a public meeting or hearing at least 7 days prior to the meeting or hearing.

(ii) Except as provided in this paragraph, attend, or conduct, one or more public hearings to describe the project to the community, invite questions, solicit written comment, and describe the process by which community input will be considered. If it is believed at the time that the existing facility is not able to be expanded or that expansion is impracticable, disclose that fact and the reasons supporting that belief. If, during the public meeting or hearing process, a new development should occur to allow for an expansion of the existing facility, the Postal Service will make a good faith effort in pursuing this alternative. Under exceptional circumstances that would prevent postal representatives from attending a public meeting or conducting a postal hearing on the planned project within a reasonable time, and subject to approval of the Vice President, Facilities, the Postal Service may distribute a notification card to all affected customers, seeking their comments or other feedback. An example of exceptional circumstances would be a project in a sparsely populated area remote from the seat of local government or any forum where a postal conducted meeting could be held.

(iii) At any public meeting or hearing, advise local officials and the community of their appeal rights and the process by which an appeal can be made. Information provided must include time limitations and an address for the appeal.

(5) Review comments and notify local officials of decision. Not less than 15 days after the date of the most recent public meeting, or after receipt of notification cards, make a decision that takes into account community input and is consistent with postal objectives (e.g., expansion, relocation to another building, or construction of a new owned or leased facility), and notify local officials in writing. This notification must include information on the availability and terms of review under paragraph (c)(6) of this section. At the same time, post a copy of the

notification letter in the local post office for the community. Take no action on the decision for at least 30 days following notification of local officials and the community.

(6) Within the time period identified in paragraph (c)(5) of this section, any person may request in writing that the decision be reviewed by the Vice President, Facilities, at Postal Service Headquarters. No particular format is required for requesting review, but the request must be in writing and identify the post office or location affected; and should identify the decision objected to, and state the reasons for the objection. The Vice President, Facilities, will obtain the views of the decision maker, review relevant parts of the project file, and if necessary request more information from the appellant. Upon review of the facts, the Vice President, or a representative, will issue a written determination, if possible, within 15 days. In no event will the Postal Service take action on the decision being reviewed until 15 days following issuance of the final review determination. If the determination on review is to set aside the decision, the project process will return to the public hearing stage of paragraph (c)(4) of this section.

(7) Advertise for sites and existing buildings, in accordance with existing postal procedures.

(d) *Discontinuance of post offices; historic preservation.* (1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82-7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, Executive Order 12072, and Executive Order 13006. Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy.

(2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 CFR 243.1. In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.

(e) *Site selection.* (1) When the decision is to advertise for sites and existing buildings, and after such sites have been identified, advise local officials in writing of all contending sites, and with respect to all sites not selected, provide an explanation. This notice will advise local officials, and the community, that no decision to select a site will be made for a minimum of 30 days, and that comments or discussions

of all sites are solicited. Post a copy of this letter in the lobby of the affected post office for public notice.

(2) Once a specific site is then selected, notify local officials in writing of the selection decision.

(3) Take no final action to acquire or lease the selected site for 30 days following the notification in paragraph (e)(2) of this section.

(f) *Planning, zoning, building codes.* In carrying out customer service facilities projects, it is the policy of the Postal Service to comply with local planning and zoning requirements and building codes consistent with prudent business practices and unique postal requirements. In order to promote a partnership with local officials and assure conformance with local building codes, plans and drawings will be sent to the appropriate building department or other officials for review. Where payment of fees is normally required of private entities, the Postal Service will pay a reasonable fee for the review. The Postal Service will give local public officials written notice of any timely, written objections or recommendations that it does not plan to adopt or implement.

(g) *Continuing communication.* During construction, whether renovation or new construction, the postmaster should keep local officials and the community informed via letters and news releases. The postmaster and other postal officials should plan, conduct and invite the community and local officials to any "grand opening", as appropriate.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 98-23377 Filed 9-1-98; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY27-2-181; FRL-6140-3]

Approval and Promulgation of Implementation Plans; Emission Trade to Meet Reasonably Available Control Technology for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is announcing approval of a revision to the New York State Implementation Plan for ozone. This revision establishes and allows an emission trade between Niagara

Mohawk Power Corporation and Champion International Corporation which will result in both sources meeting the requirements of reasonably available control technology for oxides of nitrogen. The intended effect of this action is to approve source-specific permit conditions, requiring the sources to trade emissions in accordance with requirements of the Clean Air Act, and resulting in emission reductions which will help toward attaining the national ambient air quality standards for ozone. **EFFECTIVE DATE:** This rule will be effective October 2, 1998.

ADDRESSES: Copies of the state submittals and other information are available for public inspection during normal business hours, by appointment, at the Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York, 10007-1866; as well as the New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233; and the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Environmental Engineer, Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866; (212) 637-4014.

SUPPLEMENTARY INFORMATION: On April 9, 1996, New York State submitted special permit conditions for two sources to EPA as a source-specific revision to the State Implementation Plan (SIP) for ozone. The special permit conditions are for the Niagara Mohawk Power Corporation and the Champion International Corporation for an emission trade to meet the reasonably available control technology for oxides of nitrogen (NO_x RACT) requirements of New York State's Part 227-2. New York supplemented the April 9, 1996 SIP revision with amended special permit conditions on February 2, 1998. On May 21, 1998, EPA published in the **Federal Register** (63 FR 27897) a Notice of Proposed Rulemaking (NPR) proposing to approve the special permit conditions as a SIP revision and providing for a 30-day public comment period. EPA received no comments regarding the NPR. For a more detailed discussion of New York's SIP submittal and EPA's action, the reader is referred to the NPR.

Conclusion

EPA is approving the source-specific permit conditions which allow Niagara Mohawk Power Corporation and Champion International Corporation to

trade emissions to meet the requirements of NO_x RACT. EPA is approving these special permit conditions, as submitted by the State of New York on April 9, 1996 and supplemented on February 2, 1998, as part of the SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Executive Order 13045

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.