

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MI83-02-7292; FRL-7581-9]

**Approval and Promulgation of Air Quality Implementation Plans; Michigan; Withdrawal of Direct Final Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the EPA is withdrawing the direct final rule approving a revision to Michigan's definition of volatile organic compound. The approval would have revised Michigan's State Implementation Plan (SIP) for ozone. In the direct final rule published on September 2, 2003 (68 FR 52104), EPA stated that if EPA receives adverse comment by October 2, 2003, the rule would be withdrawn and not take effect. On September 2, 2003, EPA subsequently received one comment. We believe this comment is adverse and, therefore, we are withdrawing the direct final rule. EPA will address the comment received in a subsequent final action based on the proposed action published on September 2, 2003.

**DATES:** The direct final rule published at 68 FR 52104 on September 2, 2003, is withdrawn as of October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Criteria Pollutant Section, Air Programs Branch (AR-18)), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-1767. E-Mail Address: [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 23, 2003.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

**PART 52—[AMENDED]**

■ Accordingly, the addition of 40 CFR 52.1170(c)(119) is withdrawn as of October 31, 2003.

[FR Doc. 03-27549 Filed 10-30-03; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 62**

[Region 2 Docket No. PR11-267a; FRL-7581-4]

**Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action on the "State Plan" submitted by the Commonwealth of Puerto Rico to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Commercial and Industrial Solid Waste Incineration (CISWI) units. Puerto Rico's State Plan provides for the implementation and enforcement of the Emissions Guidelines, as promulgated by EPA on December 1, 2000, applicable to existing CISWI units for which construction commenced on or before November 30, 1999. Specifically, the State Plan that EPA is approving today, establishes emission limits for organics, carbon monoxide, metals, acid gases and particulate matter and compliance schedules for the existing CISWI units located in the Commonwealth of Puerto Rico which will reduce the designated pollutants.

**DATES:** This rule is effective on December 30, 2003, without further notice, unless EPA receives adverse comment by December 1, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Electronic comments could be sent either to [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, Puerto Rico 00907-4127.

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381 or [Wieber.Kirk@epa.gov](mailto:Wieber.Kirk@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

Sections 111(d) and 129 of the Clean Air Act (CAA) require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for Commercial and Industrial Solid Waste Incineration (CISWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and the EG, 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Section 111(d) of the CAA requires that "designated" pollutants, regulated

under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an EG document. Section 129 of the CAA specifically addresses solid waste combustion and emission controls based on what is commonly referred to as "maximum achievable control technology" (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements. The CISWI EG under 40 CFR part 60, subpart DDDD, establishes emission and operating requirements under the authority of the CAA sections 111(d) and 129. These requirements must be incorporated into a state plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B.

## II. Puerto Rico's Submittal

On May 20, 2003, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a section 111(d)/129 plan to implement 40 CFR part 60, subpart DDDD—Emission Guidelines, for existing CISWI units located in the Commonwealth of Puerto Rico. PREQB's submittal included: Enforceable mechanisms; the necessary legal authority; inventory of CISWI units; emissions inventory; enforceable compliance schedules; testing, monitoring, recordkeeping, and reporting requirements; record of public hearing; and a provision for annual state progress reports.

## III. Review of Puerto Rico's Submittal

### A. Identification of Enforceable Mechanism for Implementing the EG

40 CFR 60.24(a) requires that a section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions."

On June 4, 2003, Puerto Rico adopted revisions to Rule 102 and Rule 405 of the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP), entitled "Definitions" and "Incineration", respectively. Revised rules 102 and 405 became effective on July 4, 2003, and are intended to control air emissions from existing CISWI units located in Puerto Rico.

### B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires that a section 111(d) plan demonstrate that the state has the necessary legal authority to adopt and implement the plan. In order to make this demonstration, the plan must show that the state has the legal authority to adopt emission standards and compliance schedules for the designated facilities; enforce the applicable laws, regulations, emission standards and compliance schedules, including the ability to obtain injunctive relief; the authority to obtain information from the designated facilities in order to determine compliance, including the authority to require recordkeeping from the facilities, to make inspections and to conduct tests at the facilities; the authority to require designated facilities to install, maintain and use emission monitoring devices; the authority to require periodic reporting to the state on the nature and amounts of emissions from the facility; and the authority for the state to make such emissions data available to the public. Puerto Rico has demonstrated all these elements. As a result, Puerto Rico has demonstrated that it has sufficient authority to adopt rules governing existing CISWI units and that the PREQB has sufficient legal authority to enforce these rules and to develop and administer this CISWI plan.

### C. Inventory, Including Emissions, of Existing CISWI Units in Puerto Rico Affected by the State Plan

40 CFR 60.25(a) requires that a section 111(d) plan include a complete source inventory of all existing CISWI units (i.e., those CISWI units that commenced construction on or before November 30, 1999) in Puerto Rico that are subject to the plan. 40 CFR 60.25(a) also requires an estimate of the regulated pollutants. A list of the existing CISWI units in Puerto Rico and emission estimates for organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity) for each existing CISWI unit located in Puerto Rico, has been submitted as part of Puerto Rico's CISWI plan.

### D. Emission Limitations for CISWI Units

40 CFR 60.24(c) specifies that a state plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if

certain conditions are met). 40 CFR 60.2875 contains the emissions standards applicable to existing CISWI units. Subsection 405(c)(2) of the PRRCAP includes emission limitation requirements consistent with 40 CFR 60.2875.

### E. Compliance Schedules

A state's section 111(d) plan must include a compliance schedule that owners and operators of affected CISWI units must meet in complying with the requirements of the plan. 40 CFR 60.2535 indicates that final compliance should be achieved as expeditiously as practicable after EPA approval of the state plan but no later than December 1, 2005 or three years after the effective date of the state plan approval, whichever is sooner. If the owner or operator of a CISWI unit plans to achieve compliance more than one year following the effective date of the state plan approval, then two increments of progress must be met, which are; submit a final control plan; and achieve final compliance.

Subsection 405(c)(8) of the PRRCAP includes the increments of progress and the dates by which those increments must be met, which are, submit final control plan six months after the effective date of EPA plan approval and achieve final compliance 18 months after the effective date of EPA plan approval, or by December 1, 2005, whichever date is earlier.

### F. Testing, Monitoring, Recordkeeping and Reporting Requirements

Subsection 405(c)(5) of the PRRCAP includes the performance testing requirements and testing methods. Subsection 405(6) includes the monitoring requirements including the monitoring equipment and parameters to be used. Subsection 405(c)(7) requires that all designated CISWI facilities subject to the rule keep appropriate records of the operation and maintenance of the CISWI units. Subsection 405(c)(7) also includes the reporting requirements.

### G. Record of the Public Hearing on the State Plan

On January 15, 2003, Puerto Rico held a public hearing on its CISWI plan, including the revisions to Rules 102 and 405 of the PRRCAP. PREQB included in its May 20, 2003, submittal to EPA, copies of the public notices and public hearing record.

### H. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) requires states to submit to EPA annual reports on the

progress of plan enforcement. Puerto Rico has acknowledged this requirement and will submit to EPA annual reports on the progress in the implementation of its CISWI plan.

#### IV. Conclusion

EPA has evaluated the CISWI plan submitted by Puerto Rico for consistency with the CAA, EPA emission guidelines and policy. EPA has determined that Puerto Rico's Plan meets all requirements and, therefore, EPA is approving Puerto Rico's Plan to implement and enforce subpart DDDD, as promulgated on December 1, 2000, applicable to existing CISWI units that have commenced construction on or before November 30, 1999. EPA is also approving revisions to Rule 102 and Rule 405 of the Puerto Rico Regulations for the Control of Atmospheric Pollution, entitled, "Definitions" and "Incineration", respectively.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective December 30, 2003, without further notice unless the Agency receives adverse comments by December 1, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Puerto Rico's State plan applies to all affected sources regardless of whether it has been identified in its plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications nor does it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 14, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 62—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart BBB—Puerto Rico

■ 2. Subpart BBB is amended by adding a new undesignated center heading and § 62.13108 to read as follows:

## Control of Air Emissions of Designated Pollutants From Existing Commercial and Industrial Solid Waste Incineration Units

### § 62.13108 Identification of plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency on May 20, 2003, a "State Plan" for implementation and enforcement of 40 CFR part 60, subpart DDDD, Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units.

(b) Identification of sources: The plan applies to all applicable existing Commercial and Industrial Solid Waste Incineration Units for which construction commenced on or before November 30, 1999.

[FR Doc. 03-27484 Filed 10-30-03; 8:45 am]

BILLING CODE 6560-50-P

## OFFICE OF PERSONNEL MANAGEMENT

### 48 CFR Part 1733

RIN 3206-AK07

### Protests, Disputes, and Appeals

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to reflect a change of address for the Interior Board of Contract Appeals (IBCA). IBCA has moved to a new building in Arlington, Virginia.

**DATES:** This rule is effective October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Henry Wong, Contracting Officer, Office of Personnel Management, Contracting Branch, Room 1342, 1900 E Street, NW., Washington, DC 20415-7710. Telephone: 202-606-1598 Fax number: 202-606-1464, e-mail: [hlwong@opm.gov](mailto:hlwong@opm.gov).

### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements

#### I. Background

In 48 CFR part 1733, OPM has promulgated regulations concerning disputes and appeals involving OPM contracting officer decisions. Pursuant to a designation by the Director of OPM, appeals under the Contract Disputes Act, 41 U.S.C. 601 *et. seq.*, are handled by IBCA. Since 1970, IBCA has been located at 4015 Wilson Boulevard, and

that address is included in two sections within 48 CFR part 1733.

IBCA has relocated to 801 North Quincy Street, Arlington, Virginia. OPM is revising its administrative appeals regulations to reflect IBCA's new street address.

## II. Procedural Requirements

### A. Determination To Issue Final Rule Effective in Less Than 30 Days

OPM has determined that the general notice of proposed rulemaking and comment provisions of the Administrative Procedures Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the changes being made relate solely to matters of agency organization, procedure, and practice. They therefore satisfy the exemption from notice and comment rulemaking in 5 U.S.C. 553 (b)(A).

### B. Review Under Procedural Statutes and Executive Orders

OPM has reviewed this rule under the following statutes and executive orders governing rulemaking procedures: The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et. seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*; the Small Business. Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et. seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*; the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et. seq.*; Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). OPM has determined that this rule does not trigger any of the procedural requirements of those statutes and executive orders, since this rule merely changes the street address for IBCA.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

Executive Order 12860, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

### List of Subjects in 48 CFR Part 1733

Administrative practices and procedures, Government procurement.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

■ For reasons stated in the preamble, OPM amends its regulations in 48 CFR part 1733 as follows:

## PART 1733—[AMENDED]

■ 1. The authority citation for part 1733 continues to read as follows:

**Authority:** 40 U.S.C 486(c); 48 CFR 1.301.

■ 2. In part 1733 of 48 CFR, remove all references to "4015 Wilson Boulevard" and add in its place "801 North Quincy Street".

[FR Doc. 03-27381 Filed 10-30-03; 8:45 am]

BILLING CODE 6325-44-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1805, 1823, 1825, and 1852

RIN 2700-AC92

### Conformance With Federal Acquisition Circulars 2001-15 and 2001-14

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the NASA FAR Supplement (NFS) to conform to changes made to the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 2001-15 by providing guidance to contracting officers for use of clause alternates to implement environmental management system (EMS) requirements on NASA facilities and removing the requirement for submission of SF 129, Solicitation Mailing List Application. Additional changes are made to conform to the revised definition of "United States" contained in FAC 2001-14 and to update the designated NASA ombudsman.

**EFFECTIVE DATE:** October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

### SUPPLEMENTARY INFORMATION:

#### A. Background

Item I of FAC 2001-15 eliminated the SF 129, Solicitation Mailing List Application and the need to maintain paper-based sources of contractor information. As a result, a change to NFS Part 1805 is required. FAC 2001-15, item number V, Leadership in