

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

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 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 to approve miscellaneous Maryland SIP revisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter.

Dated: February 4, 2003.

**Thomas Voltaggio**,

*Acting Regional Administrator, Region III.*

40 CFR part 52 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 V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(180) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(180) Revisions to the Code of Maryland Administrative Regulations (COMAR) submitted on November 18, 2002 and November 26, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 18, 2002 from the Maryland Department of the Environment transmitting the removal of Code of Maryland Administrative Regulation (COMAR) 10.18.03.08—the State ambient air quality standard for hydrocarbons.

(B) Removal of COMAR 10.18.03.08, effective October 14, 1985.

(C) Letter of November 26, 2002 from the Maryland Department of the Environment transmitting revisions to COMAR 10.18.09.05 regarding the removal of provisions granting visible emissions exceptions by control officers in Maryland Areas I, II, V, and VI.

(D) Removal of COMAR 10.18.09.05A(3)(b)(i) and .05A(3)(b)(ii), effective December 3, 1984.

(ii) Additional Material.

(A) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(180)(i) of this section.

(B) Letter dated January 9, 2003 from the Maryland Air and Radiation Management Administration to the Environmental Protection Agency, Region III, clarifying the reasons for removing the provisions of COMAR 10.18.09.05B(3)(i) and (ii).

[FR Doc. 03-4516 Filed 2-26-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region II Docket No. VI4-249a, FRL-7455-3]

### Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States (US) Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incineration (CISWI) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing CISWI units in the state and if it submits a negative declaration letter in place of the State Plan.

**DATES:** This direct final rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comment by March 30, 2003.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637-4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at [ellis.demian@epa.gov](mailto:ellis.demian@epa.gov). The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007-1866.

A copy of the Virgin Islands submittal is also available for inspection at the following locations:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI, 00802.

#### FOR FURTHER INFORMATION CONTACT:

Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, Telephone, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

#### Table of Contents

- A. What action is EPA taking today?
- B. Why is EPA approving the Virgin Islands' negative declaration?
- C. What if an existing CISWI unit is discovered in the Virgin Islands after today's action becomes effective?
- D. What is the background for Emission Guidelines and State Plans?
- E. Where can you find the EG requirements for CISWI units?
- F. Who must comply with the EG requirements?
- G. What are EPA's conclusions?
- H. Statutory and Executive Order Reviews

#### A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) dated October 25, 2002. This negative declaration finds that there are no existing commercial and industrial solid waste incineration (CISWI) units throughout the Territory of the Virgin Islands. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units" (65 FR 75338, December 1, 2000). The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no CISWI units in operation within the Territory.

### B. Why Is EPA Approving the Virgin Islands' Negative Declaration?

EPA has evaluated the negative declaration submitted by the Virgin Islands for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that the Virgin Islands' negative declaration meets all applicable requirements and, therefore, EPA is approving the Virgin Islands' certification that there are no existing CISWI units in operation throughout the Territory. The Virgin Islands has certified in its negative declaration that there are no CISWI units that meet the EG criteria based on file review, inspections, and a territory-wide search.

EPA's approval of the Virgin Islands' negative declaration is based on the following:

(1) The Virgin Islands has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the Code of Federal Regulations (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities within the Territory. Such certification exempts the Virgin Islands from the requirements to submit a plan.

(2) EPA's own source inventory files indicate there are no existing CISWI units operating within the Territory of the Virgin Islands.

### C. What if an Existing CISWI Unit Is Discovered in the Virgin Islands After Today's Action Becomes Effective?

Section 60.2530 of 40 CFR part 60, subpart DDDD (65 FR 75364, December 1, 2000) requires that if, after the effective date of today's action, an existing CISWI unit is found within the Virgin Islands, the Federal Plan implementing the EG would automatically apply to that CISWI unit until a State Plan is approved by EPA.

The Federal Plan was proposed on November 25, 2002 (67 FR 70640) and is expected to be promulgated in the near future. The Federal Plan will apply to CISWI units in states, commonwealths, and territories (1) where the EPA inventory identifies CISWI units and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any CISWI unit and a negative declaration has been received and approved by EPA (such as the Virgin Islands) and a CISWI unit is subsequently identified in the State or territory. If and when a State Plan, or in this case a Territorial Plan, for CISWI units is submitted and approved, the Federal Plan would no longer apply.

### D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

### E. Where Can You Find the EG Requirements for CISWI Units?

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI units and the EG applicable to existing CISWI units. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC (65 FR 75350 December 1, 2000) and DDDD (65 FR 75362 December 1, 2000), respectively.

### F. Who Must Comply With the EG Requirements?

If you own or operate a combustion device that combusts commercial and industrial waste and you (1) began the construction of your CISWI unit on or before November 30, 1999 or (2) began reconstruction or modification of your CISWI unit prior to June 1, 2001, you must comply with these requirements. See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of CISWI units exempt from the Federal requirements.

### G. What Are EPA's Conclusions?

EPA has determined that the Virgin Islands' negative declaration meets all federal requirements and, therefore, EPA is approving the Virgin Islands' certification that no applicable CISWI

units are in operation within the Territory of the U.S. Virgin Islands. If any existing CISWI units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that CISWI unit until the State Plan is approved by EPA.

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 Territory's submittal should adverse comments be filed. This rule will be effective April 28, 2003 without further notice unless the Agency receives adverse comments by March 31, 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.

### H. Statutory and Executive Order Reviews

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### *Executive Order 13045*

Executive Order 13045 entitled, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### *Executive Order 13132*

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."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a CISWI unit is found within the Territory of the U.S. Virgin Islands the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

#### *Executive Order 13175*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### *Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) 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 governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the CISWI EG requirements. Therefore, because the Federal 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.

#### *Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, commonwealth, territorial, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new

requirements. Accordingly, no additional costs to State, commonwealth, territorial, local, or tribal governments, or to the private sector, result from this action.

#### *Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective April 28, 2003 unless EPA receives material adverse written comments by March 31, 2003.

#### *National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 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, Air pollution control, Commercial and industrial solid waste incineration units, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: February 11, 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 CCC—Virgin Islands**

2. Part 62 is amended by adding new § 62.13356 and an undesignated heading to subpart CCC to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999 or Reconstructed or Modified prior to June 1, 2001.

**§ 62.13356 Identification of plan—negative declaration.**

Letter from the Virgin Islands Department of Planning and Natural Resources, submitted October 25, 2002, certifying that there are no existing commercial and industrial solid waste incineration units in the Territory of the United States Virgin Islands subject to part 60, subpart DDDD of this chapter.

[FR Doc. 03–4518 Filed 2–26–03; 8:45 am]

**BILLING CODE 6560–50–P**