

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m. on July 31, 2001 until 11:59 p.m. on September 3, 2001, temporarily suspend paragraph (r) and add temporary paragraph (vv) to read as follows:

#### § 117.26 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

\* \* \* \* \*

(vv) The Donald Ross Road Bridge shall open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, both single spans need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., both single spans need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. The draw shall open as soon as possible for the passage of public vessels of the United States and vessels in distress.

Dated: July 27, 2001.

**J.S. Carmichael,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 01–19727 Filed 8–6–01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region II Docket No. NY50–224a, FRL–7024–7]

### Approval and Promulgation of State Plans for Designated Facilities; New York

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the State of New York. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incinerator (CISWI) sources. 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 sources 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 October 9, 2001 without further notice, unless EPA receives adverse comment by September 6, 2001.

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.

Copies of the State submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233–3251  
Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

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

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- E. Where can you find the EG requirements for CISWI sources?
- F. Who must comply with the requirements?
- G. What are EPA's conclusions?
- H. Administrative Requirements

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

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the State of New York dated February 1, 2001. This negative declaration concerns existing commercial and industrial solid waste incinerators (CISWI) throughout the State of New York. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" (65 FR 75338, December 1, 2000; and corrected at 66 FR 16605, March 27, 2001). The negative declaration officially certifies to EPA that, to the best of the State's knowledge, there are no CISWI sources in operation in the State of New York.

### B. Why Is EPA Approving New York's Negative Declaration?

EPA has evaluated the negative declaration submitted by New York for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that New York's negative declaration meets all the requirements and, therefore, EPA is approving the State's certification that there are no existing CISWI units in operation throughout the State.

EPA's approval of New York's negative declaration is based on the following:

(1) New York 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 in the State. Such certification exempts the State from the requirements to submit a plan.

(2) EPA's own source inventory indicates there are no existing CISWI units operating in the State of New York. In November 2000, EPA compiled an inventory of CISWI sources (Docket No. A–94–63, IV–J–28) as a required element of a CISWI Federal Plan that is

to be proposed in 2001. EPA's CISWI inventory was developed from EPA's Industrial Combustion Coordinated Rulemaking<sup>1</sup> (ICCR) survey database. The ICCR survey database contains incineration data compiled by EPA in 1998 from responses to an information collection request.

### C. What if an Existing CISWI Source Is Discovered After Today's Action Becomes Effective?

Section 60.2530 of 40 CFR 60, subpart DDDD (page 75363 @ 65 FR 75338, December 1, 2001) requires that if, after the effective date of today's action, an existing CISWI unit is found in the State, the Federal Plan implementing the EG would automatically apply to that CISWI unit until a State Plan is approved by EPA.

### 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 sources?

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI sources and the EG applicable to existing CISWI sources. The NSPS and EG are codified

at 40 CFR part 60, subparts CCCC and DDDD (65 FR 75338), respectively.

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

All CISWI sources that commenced construction on or before November 30, 1999 ("existing CISWI sources") must comply with these requirements. See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of incinerator source categories that are exempt from the federal requirements for CISWIs.

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

EPA has determined that New York's negative declaration meets all the requirements and, therefore, EPA is approving New York's certification that no CISWI units are in operation in New York State. If any existing CISWI sources 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.

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 negative declaration should relevant adverse comments be filed. This rule will be effective October 9, 2001 without further notice unless the Agency receives significant, material adverse comments by September 6, 2001.

If EPA receives significant, material adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

### H. Administrative Requirements

#### *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*

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 source is found in the State of New York the source 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.

<sup>1</sup> The ICCR has not been proposed by EPA and is not planned for publication in the future.

*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 CISWIEG 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, 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, 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. 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). This rule will be effective October 9, 2001 unless EPA receives material adverse written comments by September 6, 2001.

**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 October 9, 2001. 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, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: July 26, 2001

**Kathleen C. Callahan,**

*Acting 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:** 62 U.S.C. 7401–7671q.

**Subpart HH—New York**

2. Part 62 is amended by adding new § 62.8106 and an undesignated heading to subpart HH to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerator Units

**§ 62.8106 Identification of plan—negative declaration.**

Letter from the New York State Department of Environmental Conservation, submitted February 1, 2001, certifying that there are no commercial and industrial solid waste incinerators in the State of New York subject to part 60, subpart DDDD of this chapter.

[FR Doc. 01–19558 Filed 8–6–01; 8:45 am]

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