

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

[R07-OAR-2004-IA-0003; FRL-7805-4]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is proposing to approve a revision to the Iowa section 111(d) plan for the purpose of adopting by reference the commercial and industrial solid waste incineration (CISWI) rule that was Federally promulgated on October 3, 2003. The rule contains 11 major components that address the regulatory requirements applicable to existing CISWI units. When adopted by reference, these components will constitute the state plan.

**DATES:** This direct final rule will be effective October 25, 2004, without further notice, unless EPA receives adverse comment by September 23, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07-OAR-2004-IA-0003, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search;" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

4. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to RME ID No. R07-OAR-2004-IA-0003.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

"we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a Clean Air Act Section 111(d) State Plan?

What is being addressed in this document?

What action is EPA taking?

**What Is a Clean Air Act Section 111(d) State Plan?**

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) of the same type, and EPA has established emission guidelines 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 the standard of performance for new stationary sources.

The EPA proposed emission guidelines and compliance schedules for CIWSI units on November 30, 1999, and promulgated them on December 1, 2000 (40 CFR part 60, subpart DDDD). Subpart DDDD provided model emission guidelines and compliance schedules for states to use in the development of state plans and to implement and enforce the emission guidelines. The Federal plan was promulgated on October 3, 2003, as Subpart III of 40 CFR part 62, and became effective on November 3, 2003.

**What Is Being Addressed in This Document?**

The state of Iowa has requested a revision to the CAA section 111(d) state plan to adopt by reference subpart III of 40 CFR part 62, the CISWI rule that was Federally promulgated on October 3, 2003. Subpart III contains eleven components that address the regulatory requirements applicable to existing CISWI units. This rule became effective in the state of Iowa on April 21, 2004. When adopted by reference, these components will constitute a state plan. EPA Region 7 and the State of Iowa have a Delegation Agreement of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants under sections 111 and 112 of the Clean Air Act.

**What Action Is EPA Taking?**

EPA is approving this revision for adoption by reference of Subpart III of 40 CFR part 62 to the Iowa CAA Section 111(d) state plan. Subpart III contains

eleven major components that address the regulatory requirements applicable to existing CISWI units. When this revision is finalized, these components will constitute the state plan. The components include increments of progress toward compliance, waste management plans, operator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirements, monitoring, recordkeeping and reporting, definitions, and associated tables.

This revision will establish emission requirements and compliance schedules for the control of emissions from existing CIWSI units that commenced construction on or before November 30, 1999. The Monsanto Company, Muscatine, Iowa, is the only identified facility in Iowa to which this applies. The Monsanto company was granted an extension of initial compliance until October 2004, by EPA Region 7.

It should be noted that for purposes of this adoption by reference, references that refer to EPA's authority will be IDNR's authority except for § 62.14838, "What authorities are withheld by the EPA Administrator?"

We are processing this action as a direct final action because the revision makes routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

#### 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, 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, our 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 state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of a state program 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 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 25, 2004. 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, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: August 12, 2004.

**William A. Spratlin,**

*Acting Regional Administrator, Region 7.*

■ 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 *et seq.*

#### Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3916 to read as follows:

#### Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

##### § 62.3916 Identification of Plan.

(a) *Identification of plan.* The Iowa Department of Natural Resources approved this revision to the 567 Iowa Administrative Code, 23.1(5)(455B) to the State of Iowa section 111(d) plan for the purpose of adopting by reference subpart III of 40 CFR part 62, the commercial and industrial solid waste incineration rule, which became effective on April 21, 2004. For purposes of this adoption by reference, references that refer to EPA's authority

will be IDNR's authority except for § 62.14838, "What authorities are withheld by the EPA Administrator?" This revision was submitted on June 29, 2004.

(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.

(c) *Effective date.* The effective date of the plan is October 25, 2004.

[FR Doc. 04-19335 Filed 8-23-04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 00-32; FCC 04-185]

#### Suspension of Effective Date in 47 CFR 90.1211(a)

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; suspension of effectiveness.

**SUMMARY:** In this document, the Commission grants a petition for stay of the *Memorandum Opinion and Order and Third Report and Order*, 68 FR 38635, June 30, 2003, released on May 2, 2003, in this proceeding. Specifically, the FCC stays the effectiveness of 47 CFR 90.1211(a), which authorizes 700 MHz Regional Planning Committees to submit regional plans for the sharing of the 4.9 GHz spectrum, and requiring

such plans to be submitted to the Commission within twelve months after the effective date of the rules. The *Memorandum Opinion and Order and Third Report and Order* was published in the **Federal Register** on June 30, 2003, with an effective date of July 30, 2003. Regional Planning Committee plans for the shared use of the 4.9 GHz spectrum were due July 30, 2004. A temporary stay of the July 30, 2004 deadline is granted until six months after resolution of a pending petition for reconsideration filed in this proceeding.

**DATES:** Effective September 23, 2004, 47 CFR 90.1211(a) is stayed temporarily. The Commission will publish a document in the **Federal Register** announcing a new effective date.

**FOR FURTHER INFORMATION CONTACT:**

Jeannie Benfaida, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Order*, released on August 2, 2004. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [joshir@erols.com](mailto:joshir@erols.com). The full text may also be downloaded at:

<http://www.fcc.gov/Wireless/Orders/2004/fcc040185.txt>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

In the *Order*, the Commission stayed the effectiveness of 47 CFR 90.1211(a), which authorizes the fifty-five 700 MHz Regional Planning Committees to develop and submit a plan on guidelines to be used for sharing the 4.9 GHz spectrum within the region to the Commission within twelve months of the effective date of the *Memorandum Opinion and Order and Report and Order*, 68 FR 38635, June 30, 2003, which established licensing and service rules for the 4940-4990 MHz (4.9GHz) band. Given the uncertainty created by the pendency of the petition for reconsideration, twelve months has not been enough time for RPCs to complete plans for the sharing of the 4.9 GHz spectrum. The stay will remain in effect until six months after the resolution of the petition for reconsideration of the *Memorandum Opinion and Order and Report and Order*, released on May 2, 2003, in this proceeding.

The Commission will not send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the *Order* stays the effectiveness of a final rule.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-19359 Filed 8-23-04; 8:45 am]

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