

are not the subject of an adverse comment.

### III. 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 Clean Air Act. 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 approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 SIP 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 SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 *August 10, 2009*. 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 3, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(359)(i)(B)(2) and (D) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(359) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 445, “Wood Burning Devices,” adopted on March 7, 2008.

\* \* \* \* \*

(D) Antelope Valley Air Quality Management District.

(1) Rule 444, “Open Outdoor Fires,” adopted on October 8, 1976 and revised on February 19, 2008.

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[FR Doc. E9–13483 Filed 6–10–09; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[EPA–RO4–OAR–2008–0160; FRL–8912–4]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Tennessee and Commonwealth of Kentucky

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule, notice of administrative change.

**SUMMARY:** EPA is notifying the public that it has received negative declarations for Hospital/Medical/ Infectious Waste Incinerator (HMIWI) units from the State of Tennessee and the Commonwealth of Kentucky. These negative declarations certify that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the air pollution control programs of Tennessee Division of Air Pollution Control and Kentucky Division for Air Quality.

**DATES:** This final action is effective July 13, 2009 without further notice.

**ADDRESSES:** *Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9240. Dr. Louis can also be reached via electronic mail at [louis.egide@epa.gov](mailto:louis.egide@epa.gov).

**SUPPLEMENTARY INFORMATION:** Sections 111(d) and 129 of the CAA require submittal of 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(d) for new sources 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 a standard of performance for new stationary sources.

Standards of performance for all existing HMIWI units (designated facilities) constructed on or before June 20, 1996, have been established by EPA, and emission guidelines for HMIWI units were promulgated on September 15, 1997 (62 FR 48348). The emission guidelines are codified at 40 CFR part 60, subpart Ce. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants at designated facilities. Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans. When

designated facilities are located under the jurisdiction of a state, or local agency, the state or local agency must then develop and submit a plan for their respective jurisdiction for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the state or local agency's jurisdiction, the state or local agency may submit a letter of certification to that effect or negative declaration, in lieu of a plan. The negative declaration exempts the state or local agency from the requirements to submit a plan for that designated pollutant.

#### **Final Action**

The State of Tennessee and the Commonwealth of Kentucky have determined there are no existing HMIWI units in their jurisdictions. Consequently, the State of Tennessee and the Commonwealth of Kentucky have submitted letters of negative declaration certifying this fact. Pursuant to 40 CFR part 60, subpart Ce, EPA is providing the public with notice of these negative declarations. Notice of these negative declarations will appear at 40 CFR part 62.

#### **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 notifies the public of negative declarations for HMIWI units received by EPA from state or local agencies. This action imposes no requirements. Accordingly, the Administrator certifies that this action 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 action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for HMIWI units from state or local agencies and does not alter the distribution of power and responsibilities established in the Clean Air Act. This action 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.

With regard to negative declarations for HMIWI units received by EPA from states or local agencies, EPA's role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 plan submission, to use VCS in place of a CAA section 111(d)/129 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 action 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. This action is not a rulemaking, however, EPA will submit a report containing this action 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).

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

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

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 62 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 S—[Kentucky]

■ 2. Part 62 is amended by adding a new undesignated center heading to subpart S and a new § 62.4374 to read as follows:

#### Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—SECTION 111(d)/129 Plan

##### § 62.4374 Identification of plan—negative declaration.

Letter from Kentucky Division of Air Quality submitted on Dec. 1, 2000, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR part 60, subpart Ce in its jurisdiction.

#### Subpart RR—[Tennessee]

■ 4. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10633 to read as follows:

#### Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—SECTION 111(d)/129 Plan

##### § 62.10633 Identification of plan—negative declaration.

Letter from Tennessee Division of Air Pollution Control submitted on December 15, 2001, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR parts 60, subpart Ce in its jurisdiction.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-RO4-OAR-2008-0158; FRL-8912-5]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Jefferson County, KY; and Forsyth County, NC; and Knox and Davidson Counties, TN

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule, notice of administrative change.

**SUMMARY:** EPA is notifying the public that it has received negative declarations for Hospital/Medical/Infectious Waste Incinerator (HMIWI) units from Jefferson County Air Pollution Control District, Kentucky; Forsyth County Environmental Affairs Department, North Carolina; Knox County Department of Air Quality Management, and Nashville/Davidson County Metropolitan Health Department, Tennessee. These negative declarations certify that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the local air pollution control programs of Jefferson County, Kentucky; Forsyth County, North Carolina; Knox County, and Nashville/Davidson County, Tennessee.

**DATES:** This final action is effective July 13, 2009 without further notice.

**ADDRESSES:** *Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. 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 <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9240. Dr. Louis can also be reached via electronic mail at [louis.egide@epa.gov](mailto:louis.egide@epa.gov).

**SUPPLEMENTARY INFORMATION:** Sections 111(d) and 129 of the CAA require submittal of plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources 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 a standard of performance for new stationary sources.

Standards of performance for all existing HMIWI units (designated facilities) constructed on or before June 20, 1996, have been established by EPA, and emission guidelines for HMIWI units were promulgated on September 15, 1997 (62 FR 48348). The emission guidelines are codified at 40 CFR part 60, subpart Ce. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants at designated facilities. Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a State, or local agency, the State or local agency must then develop and submit a plan for their respective jurisdiction for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the State or local agency's jurisdiction, the State or local agency may submit a letter of certification to that effect or negative declaration, in lieu of a plan. The negative declaration exempts the State or local agency from the requirements to submit a plan for that designated pollutant.

#### Final Action

The Jefferson County Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC;