

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2012-0213; FRL-9661-6]

**Revision to the Hawaii State Implementation Plan, Minor New Source Review Program**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Hawaii State Implementation Plan (SIP). These revisions would update and replace the minor new source review rules that EPA approved into the Hawaii SIP in 1983.

**DATES:** This rule is effective on June 22, 2012 without further notice, unless EPA receives adverse comments by May 23, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2012-0213, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. *Email:* [r9airpermits@epa.gov](mailto:r9airpermits@epa.gov).

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While EPA generally lists the documents in the docket in the index, some information may not be specifically listed as a line item in the index or may be publicly

available only at the hard copy location (e.g., voluminous records, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. The hard copy materials constitute the docket.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Glass, EPA Region IX, (415) 972-3534, [glass.geoffrey@epa.gov](mailto:glass.geoffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Hawaii Department of Health (HDOH).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No.    | Rule title  | Revised  | Submitted |
|--------------|-------------|---|----------|-----------|
| HDOH         | 11-60.1-3   | General conditions for considering applications   | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-5   | Permit conditions                                 | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-7   | Transfer of permit                                | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-12  | Air quality models                                | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-19  | Penalties and remedies                            | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-81  | Definitions                                       | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-82  | Applicability                                     | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-83  | Initial covered source permit application         | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-84  | Duty to supplement or correct permit applications | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-91  | Temporary covered source permits                  | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-92  | Covered source general permits                    | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-93  | Federally-enforceable permit terms and conditions | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-99  | Public participation                              | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-103 | Applications for minor modifications              | 11/14/03 | 12/14/11  |
| HDOH         | 11-60.1-104 | Applications for significant modifications        | 11/14/03 | 12/14/11  |

On January 27, 2012, EPA determined that the submittal for Hawaii Department of Health Chapter 60.1 met the completeness criteria in 40 CFR Part

51 Appendix V, which must be met before formal EPA review.

*B. What rules are being removed from the SIP?*

Table 2 lists rules that we had previously approved into the SIP with the date of adoption by HDOH and the date of publication in the **Federal Register**. These rules are superseded by the rules listed in Table 1.

TABLE 2—DELETED RULES

| Local agency | Rule No. | Rule title  | Adopted  | Published |
|--------------|----------|---|----------|-----------|
| HDOH .....   | 11–60–02 | Permit system, applicability .....                              | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–03 | Permit system, applications .....                               | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–04 | Permit system, conditions for considering applications .....    | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–05 | Permit system, action on applications .....                     | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–07 | Permit system, cancellation of authority to construct .....     | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–08 | Permit system, suspension or revocation of permit to operate .. | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–09 | Permit system, transfer of permit to operate .....              | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–11 | Permit system, posting of permit to operate .....               | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–12 | Permit system, fees .....                                       | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–13 | Permit system, fee schedule for a permit to operate .....       | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–14 | Permit system, period of permit .....                           | 11/29/82 | 8/18/83   |
| HDOH .....   | 11–60–37 | Penalties & remedies .....                                      | 11/29/82 | 8/18/83   |

### C. What is the purpose of the submitted rule revisions?

Section 110(a)(2)(C) of the Clean Air Act as amended in 1990 (CAA or the Act) requires States to include in their SIPs programs that regulate the construction and modification of stationary sources adequate to ensure that the national ambient air quality standards are achieved. The purpose of these revisions is to fulfill this requirement of the CAA as it applies to minor stationary sources and minor modifications made to major stationary sources.

## II. EPA's Evaluation and Action

### A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(l)).

Specifically, EPA evaluates minor new source review programs included as a SIP submittal based on the criteria in subpart I of 40 CFR 51, excluding 40 CFR 51.165 and 50.166, which relate to review of new major sources and major modifications under part C or D of title I of the CAA.

### B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and meet the criteria in subpart I of 40 CFR part 51 sections 160–164. The technical support document has more information on our evaluation.

### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this

**Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 23, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 22, 2012. This will incorporate these rules into the federally enforceable SIP for Hawaii.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 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).

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 June 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of

proposed rulemaking for this action published in the Proposed Rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, New source review, Reporting and recordkeeping requirements.

Dated: March 20, 2012.

**Jared Blumenfeld**,  
*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 M—Hawaii**

- 2. In § 52.620, the table in paragraph (c) is amended by:

- a. Removing the following twelve entries under the category for Title 11, Chapter 60: 11–60–2, 11–60–3, 11–60–4, 11–60–5, 11–60–7, 11–60–8, 11–60–9, 11–60–11, 11–60–12, 11–60–13, 11–60–14, and 11–60–37.

- b. Adding the following fifteen entries in numerical order under the category for Chapter 60.1: Sections 11–60.1–3, 11–60.1–5, 11–60.1–7, 11–60.1–12, 11–60.1–19, 11–60.1–81, 11–60.1–82, 11–60.1–83, 11–60.1–84, 11–60.1–91, 11–60.1–92, 11–60.1–93, 11–60.1–99, 11–60.1–103, and 11–60.1–104.

The additions read as follows:

**§ 52.620 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED STATE OF HAWAII REGULATIONS**

| State citation   | Title/subject                                    | Effective date | EPA Approval date   | Explanation  |
|--|--|----------------|---|--|
| * * *  | * * *  | * * *          | * * *   | * * *  |
| Department of Health, Title 11, Chapter 60.1, Air Pollution Control. | Hawaii Administrative Rules.                     |                |   |  |
| 11–60.1–3  | General conditions for considering applications. |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | Supersedes 11–60–04, 11–60–11, 11–60–13, 11–60–14. |
| 11–60.1–5  | Permit conditions                                |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.                                    |
| 11–60.1–7  | Transfer of permit                               |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | Supersedes 11–60–09.                               |
| 11–60.1–12   | Air quality models                               |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.                                    |
| 11–60.1–19   | Penalties and remedies                           |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | Supersedes 11–60–37.                               |
| 11–60.1–81   | Definitions                                      |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.                                    |
| 11–60.1–82   | Applicability                                    |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | Supersedes 11–60–02.                               |

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

| State citation | Title/subject                                      | Effective date | EPA Approval date   | Explanation  |
|----------------|--|----------------|---|--|
| 11-60.1-83     | Initial covered source permit application.         |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | Supersedes 11-60-03, 11-60-05, 11-60-07, 11-60-08, 11-60-12. |
| 11-60.1-84     | Duty to supplement or correct permit applications. |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-91     | Temporary covered source permits.                  |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-92     | Covered source general permits.                    |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-93     | Federally-enforceable permit terms and conditions. |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-99     | Public participation                               |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-103    | Applications for minor modifications.              |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |
| 11-60.1-104    | Applications for significant modifications.        |                | 04/23/2012 [ <i>Insert page number where the document begins</i> ]. | New regulation.  |

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[FR Doc. 2012-9705 Filed 4-20-12; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 120412408-2408-01]

RIN 0648-XA795

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Final 2012 Summer Flounder, Scup, and Black Sea Bass Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing final specifications, which consist of catch levels and management measures, for the 2012 summer flounder, scup, and black sea bass fisheries. The specifications are necessary to ensure the three species are not overfished or subject to overfishing in 2012. This final rule makes no changes to the interim specifications implemented on January 1, 2012, which were established using the best available scientific information.

**DATES:** Effective April 23, 2012, through December 31, 2012.

**ADDRESSES:** Copies of the 2012 specifications document, which includes an Environmental Assessment (EA), are available from Daniel S. Morris, Acting Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

**SUPPLEMENTARY INFORMATION:** On December 30, 2011 (76 FR 82189), NMFS published interim specifications for the summer flounder, scup, and black sea bass fisheries, including commercial quotas, recreational harvest limits, and, as appropriate, commercial possession limits. These interim specifications were effective on January 1, 2012, through December 31, 2012. The background and rationale supporting the interim specifications can be found in the preamble to the interim final rule cited above and are not repeated here.

As discussed in the interim final rule cited above, on December 14, 2011, the Mid-Atlantic Fishery Management Council (Council), and its Scientific and Statistical Committee (SSC), met to reconsider new stock assessment information on scup and summer flounder and to develop revised recommendations to NMFS for the 2012 specifications. The Council's revised recommendations are consistent with

the measures implemented by NMFS in the interim final rule, so no changes to the interim specifications are necessary to address the Council's action.

As part of the interim final rule, NMFS solicited comment on the interim measures and acknowledged that it may adjust, as needed, the final 2012 specifications based on the Council's recommendations and public comment on the interim measures. During the 30-day comment period on the interim final rule, NMFS received three comments. These comments are addressed later in this final rule, but none warrant any changes to the interim specifications. Therefore, this final rule makes no changes to the measures implemented on January 1, 2012, for the 2012 fishing year, which remain as follows:

**Summer Flounder**

The updated stock assessment overfishing limit (OFL) is 31,588,000 lb (14,328 mt). The projected 2012 spawning stock biomass (SSB) is 134,667,008 lb (61,084 mt), above the SSB<sub>MSY</sub> (where MSY means maximum sustainable yield) level of 132,440,000 lb (60,074 mt). Thus, the B/B<sub>MSY</sub> ratio is 1.01. Applying the Council's risk policy results in an overfishing risk tolerance (P\*) of 0.40, or a 40-percent risk of overfishing the summer flounder stock. Using this information, the resulting acceptable biological catch (ABC) remains 25,581,054 lb (11,603 mt).

Consistent with § 648.102(a), for summer flounder, the sum of the