The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because the regulation will only affect the bridge's current operation by several minutes per opening per hour and continue to provide for navigational needs.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

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.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.261 revise paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea. The draws shall open on signal; except that, from 7 a.m. to 6 p.m., the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 23, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–4780 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–082–0072; FRL–7626–1]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County Ozone, PM–10 and CO Nonattainment Areas; Approval of Revisions to Maricopa County Area Cleaner Burning Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are approving revisions to the Arizona Cleaner Burning Gasoline

(CBG) program currently approved in the State implementation plan (SIP). Specifically, we are approving revisions that, among other changes, replace Arizona's interim CBG program with a permanent program, amend the wintertime CBG program to limit the types of gasoline that may be supplied, and remove the minimum oxygen content requirement for summertime gasoline.

EFFECTIVE DATE: April 5, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901. Due to increased security, please call 24 hours ahead of your visit so that we can arrange to have someone meet you.

Electronic Availability

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air/phoenixcbg/.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Phone: (520) 622–1622; e-mail: *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'' and ''our'' refer to U.S. EPA.

I. Background

On September 29, 2003 (68 FR 55920), EPA published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of revisions to the SIP for Arizona's CBG program. These revisions to the Arizona CBG program have been adopted by the Arizona Department of Environmental Quality (ADEQ) and the State legislature since EPA approval of the interim CBG program in 1998.

ADEQ submitted the changes to its CBG program to EPA for approval into the SIP in five separate SIP submittals: *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* February 1999 (''CBG Permanent Rules''), State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, March 2001 (''Summertime Minimum Oxygen Content Removal''), *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas,* August 2001 (''CBG Wintertime Rules''), *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision,* September 2001 (''Technical Supplement'') and *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision,* January 2004 (''Statutory Supplement'').[1] The key changes from the interim CBG program approved into the SIP in 1998 are described below.

Since 1997, ADEQ has adopted several amendments to its CBG rule in order to make it a permanent rule and to reflect changes made by the State legislature to the fuel provisions of the Arizona Revised Statutes (ARS). Most of these changes involve the removal of SIP-approved requirements and options. The ''CBG Permanent Rules'' include the following key changes from the interim rules currently approved in the SIP:

- The standards for Type 3 gasoline (modeled after Federal Phase 1 reformulated gasoline [RFG]), which was only available as an option in 1998, have been removed along with references to this fuel option.[2]
- Summertime minimum oxygen content standards for Type 1 gasoline (modeled after Federal Phase 2 RFG) have been removed by specifying a 0.0% minimum oxygen content for April 1 through November 1 in Table 1 of the rule.[3]
- The option of supplying Type 1 fuel during the winter fuel season (November 2 through March 31) has been removed by including wintertime fuel specifications that limit suppliers to Type 2 gasoline (modeled after California Air Resources Board (CARB) Phase 2) beginning in 2000. With this change, requirements for wintertime NO_X surveys have also been removed because Type 2 gasoline does not include a NO_X performance standard.
- The option to provide non-ethanol oxygenated fuel during the winter has been removed by amending the wintertime oxygen content provisions to require fuel containing 10% ethanol, unless the use of a non-ethanol oxygenate is approved by the Director of ADEQ.[4]
- NO_X performance standards for Type 1 gasoline and summer survey requirements have been amended to conform with changes made by EPA to the Federal RFG regulations in December 1997 (62 FR 68196).[5]
- The area subject to the program has been redefined to include all of Maricopa County as well as some western portions of Pinal County and a small part of southern Yavapai County.[6]

A more complete description of Arizona's submittals and the rationale for our approval are presented in the notice of proposed rulemaking (68 FR 55920, Sept. 29, 2003), and associated Technical Support Document (available at *www.epa.gov/region09/air/phoenixcbg/*).

II. Public Comments on the Proposed Action

We received two comment letters on the September 29, 2003, proposal. The first, from the Western States Petroleum Association (WSPA), strongly supported the proposed SIP approval. The second, from the Arizona Center for Law in the Public Interest (ACLPI), raised concerns regarding the impact on ambient ozone concentrations. ACLPI's comments are addressed below.

In addition to these comments, we received e-mails submitted prior to publication of the proposal in the **Federal Register**, apparently reacting to news stories about the CBG program and MTBE. While these e-mails do not appear to address our proposed action and therefore do not appear to be intended as comments, we discuss them below to address potential confusion over the nature of today's action.

ACLPI Comments

Comment: ACLPI suggests EPA's finding under CAA section 110(l)—that the CBG program revisions will not interfere with attainment and reasonable further progress—is not sufficiently definitive. Specifically, ACLPI notes that, ''EPA acknowledges that this removal [of the summertime minimum oxygen content requirement] 'could result in increases in VOC and CO emissions and a decrease in NO_X emissions' all of which would have the effect of increasing ozone.'' ACLPI argues that the basis for EPA's finding is the unsupported assumption that

[1] In accordance with section 110(k)(1)(B), these SIP submittals were deemed complete by operation of law six months after submittal.

[2] This change was included in ADEQ's February 1999 ''CBG Permanent Rules'' submittal and reflects changes to the Arizona Revised Statutes by HB 2307.

[3] For additional information, see ADEQ's March 2001 ''Summertime Minimum Oxygen Content Removal'' submittal. These changes reflect amendments to the Arizona Revised Statutes by SB 1504.

[4] This change was also included in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal implementing changes to the Arizona Revised Statutes by HB 2347.

[5] *See* ADEQ's August 2001 ''CBG Wintertime Rules'' submittal.

[6] The definition of the covered area has been changed in several statutory and regulatory revisions. The final definition submitted for EPA approval is described in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal and reflects statutory changes made by HB 2189.

oxygen content will not affect emissions from newer vehicles and therefore the projected emissions changes are ''relatively small'' and are more than offset by Phoenix's general downward trend in ambient ozone concentrations from 1996 to 2002.

Response: We concluded in our proposal that the removal of the two percent minimum oxygen requirement for summertime CBG is not a relaxation of the SIP because the SIP-approved regulations already allowed the use of non-oxygenated CBG (CBG Type 2 produced under the averaging option) during the summer control period. Thus, the fuel options allowed under the revised State rules will be no less stringent than those allowed under the current SIP. This side-by-side comparison of regulatory requirements is appropriate for purposes of satisfying CAA section 110(l) in areas meeting the NAAQS. *See Hall* v. *EPA,* 273 F.3d 1146, 1160 n. 11 (9th Cir. 2001) (noting ''no relaxation'' test would ''clearly be appropriate in areas that achieved attainment under preexisting rules'').

We nonetheless went further in working with ADEQ to assess the changes in emissions and ozone concentrations likely to occur as a result of this change to the CBG program. ACLPI notes our preliminary conclusion that small emissions increases might not be a concern given the declining ozone concentrations in the area. As noted above, this preliminary assessment was not the basis for our 110(l) determination. Nor was it the end of our analysis.

To confirm this preliminary conclusion we conducted detailed modeling to predict not only how emissions might change but what these emission changes would mean for ozone concentrations. First, we looked at how historical ozone concentrations would have been affected by the potential fuel changes. Our modeling showed that the new fuel, if used in place of the baseline fuel, would have resulted in a four percent decrease in the ozone design value from the 1999 baseline year. Second, to evaluate future ozone concentrations, we conducted a qualitative analysis to predict likely trends in emissions and concentrations. We explained that with newer vehicles, the effect of gasoline oxygen content on vehicle emissions is likely to diminish, and any small emissions changes will be overwhelmed by emission reductions achieved by new engine controls. Between these two findings, we concluded that the fuel provided to the area will be better for ozone concentrations than the fuel used in the area at the time of attainment and that emissions from vehicles will continue to decline into the future.

ACLPI does not acknowledge the analysis provided. Instead, ACLPI points to our note that there is not enough data to conclude that gasoline oxygen content will affect emissions from the newest generation of vehicles. ACLPI implies that we therefore do not know how fuel changes will affect emissions in the future.

While our models for estimating vehicle emissions do not yet include data for the newest generation of vehicles, we know how gasoline oxygen content affects older vehicles and we know that as the overall fleet of vehicles changes, the effect of oxygen content diminishes.[7] In addition, we know that as the fleet changes to include more newer vehicles, engine technologies will result in significant emission reductions that overwhelm this diminishing effect from gasoline oxygen content. Thus, even though we cannot model the specific effect of oxygen content on newer vehicles, it is reasonable to conclude that emissions will continue to improve with changes to the fleet.

Comment. ACLPI also claims that it is anticipated that Phoenix will violate the new 8-hour ozone standard and therefore objects to EPA's failure to analyze the potential impact on 8-hour ozone concentrations.

Response. While we did not conduct a separate analysis for 8-hour ozone concentrations, we did explain that the analysis described above should ensure that the revisions to the fuel program will not interfere with 8-hour ozone attainment. Modeling showed that the new fuels likely to be provided to the area will result in a decrease in peak ozone concentrations as compared to the fuel provided in 1999. In addition, motor vehicle emissions will continue to decline as improvements in engine technologies will overwhelm the diminishing effect of gasoline oxygen content on these emissions.

Related E-mails Submitted to EPA

We received four e-mails, all submitted before the September 29 publication of the proposed action—one on September 8, one on September 15 and two from the same person on September 23. The first two of these e-mails encouraged ADEQ to move away from using MTBE as an oxygenate. The final two raised questions about how emission reductions would be achieved if the area no longer had a CBG program with MTBE.

These e-mails suggest some confusion regarding the nature of the action being taken by ADEQ and EPA. We therefore felt it important to reiterate that our action does not ban MTBE from Arizona summertime gasoline. The revisions to the CBG program remove the minimum summertime oxygen content requirement, but do not ban the use of MTBE or any other oxygenate during the summer. Our approval of these revisions likewise, does not preclude the use of MTBE.

With this in mind, we evaluated the fuel formulations refiners are likely to supply the area. We concluded approval of these CBG program revisions may result in a mixture of MTBE-oxygenated CBG and non-oxygenated CBG (*i.e.*, ethanol-oxygenated fuel appears unlikely). The cheapest fuel to produce will likely be non-oxygenated Type 1 CBG. We used these likely fuels to evaluate air quality impacts and concluded these changes will not adversely affect air quality in the area.

III. Final Action

In today's action, we are finding that the Arizona CBG program implemented in the Maricopa County area meets CAA and EPA requirements for a state fuels program. In addition, under CAA section 110(l), we are finding that the SIP revisions submitted by ADEQ do not interfere with any applicable requirements for CO, ozone, and PM–10 attainment and reasonable further progress (RFP) or any other requirements of the CAA applicable to the Phoenix area. The basis for these findings is discussed in the proposal for today's action. *See* 68 FR 55920.

We have evaluated the submitted SIP revisions and have determined that they are consistent with the CAA and EPA regulations. Therefore, we are approving the Arizona CBG program into the Arizona SIP under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D to address ozone, CO and PM–10 nonattainment in the Maricopa County area.

Specifically, we are approving the following elements of the CBG program: Arizona Administrative Code (AAC) R20–2–701, R20–2–716, R20–2–750 through 762, and title 20, chap. 2, art. 7, Tables 1 and 2 (March 31, 2001); and Arizona Revised Statutes (ARS) §§ 49–541(1)(a), (b), and (c) (as codified on

[7] The benefit of adding oxygen to gasoline is to ''lean out'' chemically an engine that is running rich (*i.e.*, too much fuel, not enough air (oxygen)), so that complete combustion occurs (*i.e.*, the additional air/oxygen results in CO being converted to CO_2). Newer vehicles, however, include sophisticated feedback controls, which enable these vehicles to maintain air/fuel ratios within tight parameters. These ratios are maintained with or without the addition of oxygen to gasoline. As a result, the benefits of gasoline oxygenates will decline as these feedback controls improve in newer vehicles.

August 9, 2001), 41–2124 (as codified on April 28, 2000), 41–2123 (as codified on August 6, 1999), 41–2113(B)(4) (as codified on August 21, 1998), 41–2115 (as codified on July 18, 2000), and 41–2066(A)(2) (as codified on April 20, 2001).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to a state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Statutory and Executive Order Review

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 (Public Law 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 is not economically significant.

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 May 3, 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* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 26, 2004.

Wayne Nastri,

Regional Administrator, Region 9.

■ 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(112) and (c)(113) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(112) Revised regulations were submitted on August 15, 2001, by the Governor's designee as part of the submittal entitled *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas.* The incorporated materials from this submittal supercede those included in the submittals entitled *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* submitted on February 24, 1999, and *State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area,* submitted on March 29, 2001.

(i) Incorporation by reference.

(A) Arizona Administrative Code.

(*1*) AAC R20–2–701, R20–2–716, R20–2–750 through 762, and Title 20, Chap. 2, Art. 7, Tables 1 and 2 (March 31, 2001).

(113) Revised statutes were submitted on January 22, 2004, by the Governor's designee as part of the submittal entitled *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision.* The incorporated materials from this submittal supercede those included in the submittals entitled *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* submitted on February 24, 1999, *State Implementation Plan Revision for the*

Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, submitted on March 29, 2001, and *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas,* submitted August 15, 2001.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) ARS sections 49–541(1)(a), (b), and (c), 41–2124, 41–2123, 41–2113(B)(4), 41–2115, and 41–2066(A)(2) (as codified on March 31, 2001).

[FR Doc. 04–4814 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA190–7008a; FRL–7631–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Emissions from Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a section 111(d)/129 negative declaration submitted by the Pennsylvania Department of Environmental Protection (PADEP). The negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (the Act), do not exist within its air pollution control jurisdiction, excluding the jurisdictions of the Health Departments (air pollution control agencies) in Allegheny and Philadelphia counties.

DATES: This rule is effective on May 3, 2004 without further notice, unless EPA receives adverse written comment by April 5, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *wilkie.walter@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part II of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Act requires states to submit 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(b) for new sources of the same type, and EPA has established emission guidelines (EG) 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. However, section 129 of the Act, also requires EPA to promulgate EG for MWC units that emit a mixture of air pollutants. These pollutants include organics (*i.e.,* dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350 and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subpart AAAA, and emission guidelines (EG), subpart BBBB, respectively. The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

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. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

The Harrisburg Materials, Energy, Recycling and Resource Recovery Facility was the only known designated facility (based on the derated capacity of its two combustion units) subject to the EG. However, on June 18, 2003, the City of Harrisburg permanently ceased operation of its two small MWC units. Permanent closure of the units was confirmed by PADEP staff during inspections of the facility on August 4 and 11, 2003.

II. Final EPA Action

The PADEP has determined that there are no designated facilities, subject to the small MWC unit EG requirements, in its air pollution control jurisdiction. Accordingly, the PADEP Bureau of Air Quality Director has submitted to EPA a negative declaration letter certifying this fact. The submittal date of the letter is October 30, 2003.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the PADEP. Amendments are being made to 40 CFR part 62, subpart NN (Pennsylvania). These amendments exclude the local Pennsylvania air pollution control jurisdictions that submitted their own approvable negative declarations—Allegheny and Philadelphia (City) counties.

After publication of this **Federal Register** notice, if a small MWC unit is later found within jurisdiction of the PADEP, then that unit will become subject to the requirements of the Federal small MWC 111(d)/129 plan, as promulgated on January 31, 2003 (68 FR 5144).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 negative declaration if adverse comments are filed. This rule will be effective on May 3, 2004 without further