

■ 2. From 8 a.m. on March 6, 2005 through 2 p.m. on April 29, 2005 add temporary § 100.T07–010 to read as follows:

**100.T–07–010 2005 Special Local Regulations; Rowing Regattas; Indian Creek, Miami Beach, FL**

(a) *Regulated area.* (1) The regulated area encompasses all waters from shore to shore, located on Indian Creek from one nautical mile south of the 63rd Street Bridge to the entrance of Surprise Lake, Miami Beach, Florida.

(2) Races will be conducted on the western side of the regulated area with race participants returning along the length of the racecourse via the eastern side of the regulated area.

(b) *Regulations.* In accordance with § 100.35 of this part, all vessels and persons are prohibited from anchoring, mooring, or entering into the regulated area unless authorized by the Coast Guard Captain of the Port, Miami, Florida or his designated representative. Persons desiring to enter into or transit the regulated area may seek permission from the Captain of the Port of Miami via telephone, at (305) 535–8701, or from his designated representative on-scene. All persons and vessels within the regulated area must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Definitions.* Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Miami, Florida, in the enforcement of the special local regulations.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 2 p.m. on March 6, March 12, and April 29, 2005.

Dated: February 16, 2005.

**W.E. Justice,**

*Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.*  
[FR Doc. 05–4294 Filed 3–4–05; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[R04–OAR–2004–TN–0003–200428(a); FRL–7881–7]

**Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Nashville, TN**

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

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency is approving the section 111(d) /129 plan submitted by Tennessee for the Pollution Control District (PCD) of the Metro Public Health Department for Nashville/Davidson County on May 28, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units that commenced construction on or before November 30, 1999.

**DATES:** This direct final rule will be effective May 6, 2005 unless EPA receives adverse comments by April 6, 2005. If adverse comments are 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 No. R04–OAR–2004–TN–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:* [Majumder.joydeb@epa.gov](mailto:Majumder.joydeb@epa.gov).

4. *Fax:* (404) 562–9164.

5. *Mail:* "R04–OAR–2004–TN–0003,"

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.

6. *Hand Delivery or Courier.* Deliver your comments to: Joydeb Majumder, Air Toxics and Monitoring Branch 12th

floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to RME ID No. R04–OAR–2004–TN–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 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. EPA requests that if at all possible, you contact the contact 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 am to 4:30 pm, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Melissa Krenzel at (404) 562-9196 or Joydeb Majumder at (404) 562-9121.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, arsenic, beryllium, chromium, hydrocarbons, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by Tennessee for the PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

**II. Discussion**

Tennessee submitted to EPA on May 28, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in Nashville/Davidson County: Public Hearings; Inventory of Affected CISWI Units; Regulation No. 17, "Regulation For Control of Commercial and

Industrial Solid Waste Incineration Units"; Emission Inventories of Affected CISWI Units; Enforceable Mechanism for Implementing the EG; Submittal of Progress Reports to EPA; and Demonstration of Authority to Carry Out the Plan.

The approval of the PCD's Nashville/Davidson County State Plan is based on finding that: (1) PCD provided adequate public notice of public hearings for the EG for CISWIs, and (2) PCD also demonstrated legal authority to adopt emission standards and compliance schedules to designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping and to make inspections and conduct tests of designated facilities; and authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amount of emissions from such facilities.

PCD cites the following references for the legal authority: the Tennessee Code Annotated (TCA), in 68-201-115, gives Metro Public Health Department the authority to adopt and enforce laws for the control of air pollution as long as those laws are not less stringent than those of the State of Tennessee. Article 10, "Public Health and Hospitals," Chapter 1, "Public Health," Sections 10.101 through 10.104 of the Charter of the Metropolitan Government empowers the Board to adopt regulations having the force of law for the control of air pollution. The Metropolitan Code of Laws (MCL), Chapter 10.56, "Air Pollution Control," Section 10.56.090, "Board—Powers and Duties" and Section 10.56.150, "Nuisance Declared—Injunctive Relief" give the Board the legal authority to enforce relevant laws, regulations, standards, and compliance schedules, and to seek injunctive relief. MCL Chapter 10.56, "Air Pollution Control," Section 10.56.290, "Measurement and Reporting of Emissions" gives the Board the legal authority to obtain the necessary information to determine compliance, require recordkeeping, make inspections, and conduct tests and to require the use of monitors and the submittal of emission reports. Tennessee Statute, TCA 10-7-503, "Records Open to Public Inspection—Exceptions" and 10-7-504,

"Confidential Records" and MCL, Section 2.36.130, "Records and Proceedings—Public Inspection Authorized When" provide the authority to make available to the public any emission data submitted by CISWI facilities.

An enforcement mechanism is a legal instrument by which the PCD can enforce a set of standards and conditions. PCD has adopted the model rule from 40 CFR part 60, subpart DDDD, as Regulation No. 17, "Regulation for Control of Commercial and Industrial Solid Waste Incineration Units which Commenced Construction On or Before November 30, 1999." Therefore, PCD's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Regulation No. 17. On the basis of these statutes and rules of the Metropolitan Board of Health, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

PCD adopted all emission standards and limitations applicable to existing CISWI units. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

PCD submitted the compliance schedule for CISWIs under their jurisdiction in Nashville/Davidson County. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

PCD submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in Nashville/Davidson County. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

PCD includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix 3 of the State Plan. In Appendix 3, PCD also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective

as Federal requirements for existing CISWI units. PCD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting. This action approves the State Plan submitted by PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

### III. Final Action

This action approves the State Plan submitted by Tennessee for the PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 6, 2005 without further notice unless the Agency receives adverse comments by April 6, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 6, 2005 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions 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 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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan 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 6, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: February 11, 2005.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ Chapter I, title 40 of the Code of Federal Regulation 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 RR—Tennessee

■ 2. Subpart RR is amended by adding an undesignated center heading and § 62.10630 to read as follows:

## Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

### § 62.10630 Identification of sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999, in Nashville/Davidson County.

[FR Doc. 05-4337 Filed 3-4-05; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 04-53; FCC 04-194; DA 05-331]

## Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of list of wireless domain names now available to public.

**SUMMARY:** In this document the Consumer & Governmental Affairs Bureau, on delegated authority from the Federal Communications Commission (Commission), announces the publication of the list of wireless domain names, in accordance with an order previously approved by the Commission and information collections requirements previously approved by the Office of Management and Budget, both of which were already published in the **Federal Register**.

**DATES:** Persons or entities sending Mobile Service Commercial Messages without prior express authorization from individual wireless subscribers must comply by March 10, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau at (202) 418-2512 (voice), or e-mail [Kelli.Farmer@fcc.gov](mailto:Kelli.Farmer@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On August 12, 2004, the Commission released an *Order, In the Matter of Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, FCC 04-194, published at 69 FR 55765, September 16, 2004 and most of the rules were effective October 18, 2004. On December 15, 2003, OMB

approved the remaining rules, 47 CFR 64.3100(a)(4), (d), (e) and (f), for three years. OMB Control No. 3060-1078. On December 17, 2004, the Consumer & Governmental Affairs Bureau issued a notice of the effective date of the rules, gave a deadline for Commercial Mobile Radio Service (CMRS) carriers to supply the required information, and stated that the Commission would issue a second public notice announcing the date on which senders and the general public will have access to the list, 69 FR 77141, December 27, 2004. The notice stated further, as did the Order itself that senders would then have an additional thirty (30) days from the date that the list becomes publicly available to comply with the rules.

### Synopsis

On February 7, 2005, the Federal Communications Commission (Commission) first made available to the public a list of wireless domain names that are used to transmit electronic messages to subscribers of commercial mobile service, such as cellular service, Personal Communications Service (PCS) and enhanced Specialized Mobile Radio Services (SMRS). This list is published in accordance with the Commission's Order implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act (*Order*).

The *Order* adopted rules to protect wireless subscribers from unwanted commercial electronic mail messages. Specifically, the rules prohibit initiating or sending most electronic commercial messages to any address associated with subscription to wireless service, unless the individual addressee has given the sender express prior authorization. To assist senders of commercial messages in identifying the addresses that belong to wireless subscribers, the *Order* required first that wireless service providers supply the FCC with the names of the relevant mail domain names.

The list of wireless mail domain names can be seen and downloaded in several formats from <http://www.fcc.gov/cgb/policy> by clicking on "Download Registered Domain Names." The list includes the portions of electronic mail addresses that can be found after the "@" symbol in wireless subscriber addresses, used for sending both text messages and e-mail. Some CMRS providers have supplied full mail domain names, which take up all the characters to the right of the "@" symbol in such addresses, while others have listed subdomain names used for wireless service. (For example, if a

wireless subscriber's e-mail address was [JohnDoe@mobile.fccegov.gov](mailto:JohnDoe@mobile.fccegov.gov), the carrier could have registered "mobile.fccegov.gov." Alternatively, the carrier could have registered "fccegov.gov," as long as all such subscriber addresses including that domain name would be for commercial mobile service. Hence, the prohibition applies for all subscriber addresses that include any listed subdomain or domain name. For example, a listing of "fccegov.gov" would cover all subscribers with "fccegov.gov" in their electronic addresses, including [JohnDoe@fccegov.gov](mailto:JohnDoe@fccegov.gov), [JohnDoe@mobile.fccegov.gov](mailto:JohnDoe@mobile.fccegov.gov) and [JohnDoe@sms.fccegov.gov](mailto:JohnDoe@sms.fccegov.gov).) The prohibition discussed below applies to all electronic addresses that include the mail domain names in this list, whether they be the full mail domain name used in the address or just the portion of the name furthest to the right.

As explained in the *Order*, senders of mobile service commercial messages (MSCMs) have thirty (30) days from the date the list became publicly available to comply with the prohibition on initiating MSCMs to any electronic mail address that references any domain names on the list, unless they have received express prior authorization or the message falls under any other exceptions to the rule. A commercial message is presumed to be an MSCM if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC's wireless domain names list. We remind senders that any person or entity that initiates or sends a message to an address that they *otherwise know* to be associated with a wireless subscription will be in violation of our rules, regardless of how long the domain name has been on the published list. We note also that the prohibition applies only to "commercial electronic mail messages" as they are defined in our rules, not to "transactional or relationship" messages, such as those sent regarding product safety or security information, notification to facilitate a commercial transaction, and notification about changes in terms, features, or the customer's account status.

The official list, which includes the date that each mail domain name was added to the list, will be updated regularly. Those members of the public who rely upon the list to identify wireless domain names are urged to check the list monthly. A paper version will be available at the Commission's headquarters in Washington, DC. Any party who cannot access the list electronically and needs to view a paper