

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD11-05-019]

#### Drawbridge Operation Regulations; Carquinez Strait, Martinez, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Drawbridge across the Carquinez Strait, mile 7.0, at Martinez, CA. This deviation allows the bridge to remain in the closed-to-navigation position for the necessary replacement of drawspan Conley Joints.

**DATES:** This deviation is effective from 7 a.m. August 6, 2005 to 8 p.m. August 21, 2005.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50-3, Coast Guard Island, Alameda, CA 94501-5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3516. Commander (oan), Eleventh Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437-3516.

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad Company (UPRR) requested to secure the UPRR Drawbridge, mile 7.0, Carquinez Strait, in the closed-to-navigation position from August 6, 2005 through August 7, 2005 and from August 20, 2005 through August 21, 2005, during daylight hours, for the replacement of Conley Joints. The drawbridge provides 135 ft. vertical clearance above Mean High Water in the full open-to-navigation position, and 70 ft. vertical clearance when closed. The drawbridge opens on signal from approaching vessels, as required by 33 CFR 117.5.

The proposed work was coordinated with waterway users. During these times, the drawspan may be secured in the closed-to-navigation position and need not open for vessels. If safe to do so, a vessel can pass through the bridge during this period. The drawspan will be able to open in an emergency with

a two-hour advance notice. The drawspan shall resume normal operations at all other times and at the conclusion of the repair work.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2005.

**Kevin J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 05-15417 Filed 8-3-05; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[HI 125-NBK; FRL-7946-7]

#### Revisions to the State of Hawaii State Implementation Plan, Update to Materials Incorporated by Reference

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

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

**SUMMARY:** EPA is updating the materials submitted by the State of Hawaii that are incorporated by reference (IBR) into the State of Hawaii State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the territorial agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information, and the Regional Office.

**DATES:** *Effective Date:* This rule is effective on August 4, 2005.

**ADDRESSES:** SIP materials that are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and online at EPA Region IX's Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, EPA Region IX, (415) 947-4126, [rose.julie@epa.gov](mailto:rose.julie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### I. Background

###### A. State Implementation Plan History and Process

Each State is required to have a SIP that contains the control measures and strategies that will be used to attain and maintain the national ambient air quality standards (NAAQS). The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in Part 52, Approval and Promulgation of Implementation Plans, Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations that are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action should a State not enforce its SIP-approved regulations.

The SIP is a living document that the State can revise as necessary to address the unique air pollution problems in the State. From time to time, therefore, EPA must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), as a result of consultations between EPA and OFR, EPA revised the procedures for incorporating by reference federally-approved SIPs. EPA began the process of developing (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a

revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

#### *B. Content of Revised IBR Document*

The new SIP compilations contain the Federally-approved portion of regulations submitted by each State agency. These regulations have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in hard covered folders and will be updated, usually on an annual basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation and each nonregulatory provision. The table of identifying information corresponds to the table of contents published in 40 CFR part 52 for each State and Territory. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region IX EPA Office developed and will maintain the compilation for the State of Hawaii. A copy of the full text of each State's current compilation will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center.

#### *C. Revised Format of the "Identification of Plan" Section in Subpart M*

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section to include additional information that will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

#### *D. Enforceability and Legal Effect*

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to

paragraph (c), (d), or (e) of the applicable "Identification of plan" found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of plan" section, previously appearing in the CFR as the first section of part 52 for subpart M, State of Hawaii.

#### *E. Notice of Administrative Change*

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

## **II. Public Comments**

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) that, upon finding "good cause," authorizes agencies to dispense with public participation; and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions that are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

## **III. Statutory and Executive Order Reviews**

#### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment

requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

*B. Submission to Congress and the Comptroller General*

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective [insert date of publication]. 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**. These corrections to the "Identification of plan" for the State of Hawaii are not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the State of Hawaii SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate

circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization actions for the State of Hawaii.

**List of Subjects in 40 CFR Part 52**

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

Dated: July 15, 2005.

**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 M—State of Hawaii**

■ 2. Section 52.620 is redesignated as § 52.622 and the section heading and paragraph (a) are revised to read as follows:

**§ 52.622 Original identification of plan.**

(a) This section identified the original "Implementation Plan for Compliance With the Ambient Air Quality Standards for the State of Hawaii" and all revisions submitted by the State of Hawaii that were federally approved prior to June 1, 2005.

\* \* \* \* \*

■ 3. A new § 52.620 is added to read as follows:

**§ 52.620 Identification of plan.**

(a) Purpose and scope. This section sets forth the applicable State

implementation plan for State of Hawaii under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to June 1, 2005, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2005, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of June 1, 2005.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX EPA Office at 75 Hawthorne Street, San Francisco, CA 94105; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, N.W., Room B108, Washington, D.C.; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) EPA approved regulations.

TABLE 52.620.—EPA APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Department of Health, Title 11, Chapter 60, Air Pollution Control Regulations:				
11–60–1 .....	Definitions .....	11/29/1982	08/18/1983	48 FR 37403
11–60–2 .....	Permit system, applicability .....	11/29/1982	08/18/1983	48 FR 37403
11–60–3 .....	Permit system, applications .....	11/29/1982	08/18/1983	48 FR 37403
11–60–4 .....	Permit system, conditions for considering application.	11/29/1982	08/18/1983	48 FR 37403
11–60–5 .....	Permit system, action on applications .....	11/29/1982	08/18/1983	48 FR 37403
11–60–6 .....	Permit system, performance testing .....	11/29/1982	08/18/1983	48 FR 37403
11–60–7 .....	Permit system, cancellation of authority to construct.	11/29/1982	08/18/1983	48 FR 37403
11–60–8 .....	Permit system, suspension or revocation of permit to operate.	11/29/1982	08/18/1983	48 FR 37403
11–60–9 .....	Permit system, transfer of permit to operate	11/29/1982	08/18/1983	48 FR 37403

TABLE 52.620.—EPA APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11-60-10	Permit system, reporting discontinuance or dismantlement.	11/29/1982	08/18/1983	48 FR 37403
11-60-11	Permit system, posting of permit to operate ..	11/29/1982	08/18/1983	48 FR 37403
11-60-12	Permit system, fees .....	11/29/1982	08/18/1983	48 FR 37403
11-60-13	Permit system, fee schedule for a permit to operate.	11/29/1982	08/18/1983	48 FR 37403
11-60-14	Permit system, period of permit .....	11/29/1982	08/18/1983	48 FR 37403
11-60-15	Sampling, testing, and reporting methods .....	11/29/1982	08/18/1983	48 FR 37403
11-60-16	Malfunction of equipment testing .....	11/29/1982	08/18/1983	48 FR 37403
11-60-17	Prohibition of air pollution .....	11/29/1982	08/18/1983	48 FR 37403
11-60-18	Control of open burning .....	11/29/1982	08/18/1983	48 FR 37403
11-60-19	Agricultural burning, permit requirement .....	11/29/1982	08/18/1983	48 FR 37403
11-60-20	Agricultural burning, applications .....	11/29/1982	08/18/1983	48 FR 37403
11-60-21	Agricultural burning, "No burn" days .....	11/29/1982	08/18/1983	48 FR 37403
11-60-22	Agricultural burning, recordkeeping and monitoring.	11/29/1982	08/18/1983	48 FR 37403
11-60-23	Agricultural burning, action on application .....	11/29/1982	08/18/1983	48 FR 37403
11-60-24	Visible emissions .....	11/29/1982	08/18/1983	48 FR 37403
11-60-25	Control of motor vehicles .....	11/29/1982	08/18/1983	48 FR 37403
11-60-26	Fugitive dust .....	11/29/1982	08/18/1983	48 FR 37403
11-60-27	Incineration .....	11/29/1982	08/18/1983	48 FR 37403
11-60-28	Bagasse-burn vehicles .....	11/29/1982	08/18/1983	48 FR 37403
11-60-29	Process industries .....	11/29/1982	08/18/1983	48 FR 37403
11-60-35	Prevention of air pollution emergency episodes.	11/29/1982	08/18/1983	48 FR 37403
11-60-37	Penalties and remedies .....	11/29/1982	08/18/1983	48 FR 37403
11-60-38	Severability .....	11/29/1982	08/18/1983	48 FR 37403

(d) EPA approved State source specific requirements.

Name of source	Permit No.	Effective date	EPA approval date	Explanation
None.				

(e) [Reserved].

[FR Doc. 05-15436 Filed 8-3-05; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R10-OAR-2005-0004; FRL-7944-4]

**Approval and Promulgation of Implementation Plans; Washington**

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

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is approving revisions to the State of Washington Implementation Plan (SIP). The Director of the Washington State Department of Ecology (Ecology) submitted a request to EPA dated March 1, 2004 to revise the Washington SIP to include revisions to WAC Ch. 173-434, Solid Waste Incinerator Facilities. The revisions were submitted in accordance

with the requirements of section 110 of the Clean Air Act (hereinafter "the Act"). EPA is approving the revisions to WAC Ch. 173-434 as part of the SIP, with the exception of two submitted rule provisions which are inappropriate for EPA approval because they are unrelated to the purposes of the implementation plan.

**DATES:** The final rule is effective on September 6, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. R10-OAR-2005-0004. Some information is not publicly available (i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute). Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101, from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553-4273.

**FOR FURTHER INFORMATION CONTACT:** Roylene A. Cunningham, EPA, Office of Air, Waste, and Toxics (AWT-107), Seattle, Washington 98101, (206) 553-0513, or e-mail address: [cunningham.roylene@epa.gov](mailto:cunningham.roylene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- II. Public Comments on the Proposed Action
- III. Final Action
- IV. Geographic Scope of SIP Approval
- V. Statutory and Executive Order Reviews

**I. Background**

On May 20, 2005, EPA solicited public comment on a proposal to approve for inclusion in the Washington SIP revisions to WAC Ch. 173-434, Solid Waste Incinerator Facilities. These changes became effective as a matter of State law on January 22, 2004. EPA last approved WAC Ch. 173-434 into the SIP on January 15, 1993 (58 FR 4578). A detailed description of our action was published in the **Federal Register** on May 20, 2005. The reader is referred to