

section 179 sanctions associated with SJVUAPCD Rule 4101 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action 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.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 11, 2005. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

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

Environmental protection, Air pollution control, Intergovernmental regulations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05-15833 Filed 8-10-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[RO3-OAR-2005-MD-0007; FRL-7951-3]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Maryland; Control of Emissions From Small Municipal Waste Combustor (SMWC) Units; Delegation of Authority

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the Maryland Department of the Environment's (MDE) request for delegation of authority to implement and enforce the Federal plan (68 FR 5144, January 31, 2003) for small municipal waste combustor (SMWC) units under sections 111(d) and 129 of the Clean Air Act (the "Act"). The plan establishes emissions limits, compliance schedules, monitoring, operating, and recordkeeping requirements for existing SMWC units for which construction commenced on or before August 30,

1999. The request for delegation was submitted to EPA on March 28, 2005. EPA and the MDE signed a Memorandum of Agreement (MOA) which is the mechanism for the transfer of authority from EPA to the MDE. The MOA defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the "Federal plan") and 40 CFR 60 subpart BBBB (Emission Guidelines), by which the Federal plan will be administered by both the EPA and the MDE.

**DATES:** This rule is effective October 11, 2005 without further notice, unless EPA receives adverse written comment by September 12, 2005. 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:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number RO3-OAR-2005-MD-0007 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [http://wilkie.walter@epa.gov](mailto:wilkie.walter@epa.gov).

D. Mail: RO3-OAR-2005-MD-0007, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. RO3-OAR-2005-MD-0007. 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://www.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://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web

sites are an "anonymous access" system, 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://www.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://www.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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21130.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In 1997, the United States Court of Appeals for the District of Columbia Circuit vacated the initial MWC unit rules, subparts Cb and Eb as they apply to MWC units with a capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW). As a result, subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (*i.e.*, large MWC units). In response to the court's decision, on December 6, 2000, EPA promulgated new source performance standards (NSPS)

applicable to new small MWC units (*i.e.*, capacities of 35 to 250 TPD) and EG applicable to existing (*i.e.*, construction commenced on or before August 30, 1999) small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAAA and BBBB, respectively. See 65 FR 76350 and 76378. The SMWC rule regulates the following air pollutants: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Under sections 111 and 129 of the Act, EG are not Federally enforceable. However, 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.

As required by Section 129(b)(3) of the Act, on January 31, 2003 EPA promulgated a Federal plan (FP) for small MWCs that commenced construction on or before August 30, 1999. The FP is a set of maximum available control technology (MACT) requirements that implement the EG. It is applicable to those small existing MWC units not specifically covered by an approved State plan under sections 111(d) and 129 of the CAA. In addition, it fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete, in an expeditious manner, pollution control equipment retrofits in order to meet the final compliance dates on or before of May 6, 2005, and November 6, 2005 for Class II and I units, respectively. On February 24, 2004, the U.S. Court of Appeals for the District of Columbia in the case of *Northeast Maryland Waste Disposal Authority v. EPA*, D.C. Cir., No. 01-1053, agreed with petitioners, including Earthjustice. In summary, EPA must show evidence that the emissions limits in its SMWC rule reflect the performance of the best performing units, as required by the Act, and explain its decision to subcategorize SMWC units according to aggregate capacities of the plants at which they are located. Without vacating the rule, the court remanded the rule back to EPA, and thus let stand the FP final compliance dates.

##### **II. Submittal and Review of Request for Delegation by the MDE**

On March 28, 2005, the MDE requested delegation of authority from

EPA to implement and enforce the FP for existing small MWC units, codified at 40 CFR part 62, subpart JJJ. The scope of the request includes all of the geographical area of Maryland.

Under EPA's Delegation Manual, item 7-139, the Regional Administrator is authorized to delegate implementation and enforcement of section 111(d)/129 Federal plans to State air pollution control agencies. The requirements and limitations of a delegation agreement are defined in item 7-139. On May 12, 2005, EPA signed a MOA between the EPA and the MDE that defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the "Federal plan") and 40 CFR 60 subpart BBBB (Emission Guidelines), by which the FP plan will be administered by both agencies. Subsequently, on May 25, 2005, Kendl P. Philbrick, Secretary, MDE, signed the MOA, thus agreeing to its terms and conditions, and accepting responsibility for implementation and enforcement of the policies and procedures of the FP.

### III. Final Action

Pursuant to EPA's Delegation Manual and the FP preamble, section V, Implementation of the Federal Plan and Delegation, EPA is approving MDE's request for delegation of authority to implement and enforce the FP and to adhere to the terms and conditions of the subject MOA. The purpose of this delegation is to acknowledge MDE's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to the MDE for existing small MWC units. While MDE is delegated the authority to implement and enforce the FP, nothing in the delegation agreement shall prohibit EPA from enforcing sections 111(d) and 129 requirements of the Act or the FP for small MWC units.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The delegation imposes no additional requirements on the one known affected facility. This action simply reflects an already existing Federal requirement for State air pollution control agencies and existing small MWC units that are subject to the provisions of 40 CFR part 60, subpart BBBB, and 40 CFR part 62, subpart JJJ. Under the provisions of the MOA, both EPA and MDE are obligated to revise the delegation agreement as a result of any Federal regulatory changes. Accordingly, any EPA response to the court remand, which requires revision of the EG requirements, will also be incorporated into the MOA. 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 plan delegation should relevant adverse or critical comments be filed. This rule will be effective October 11, 2005 without further notice unless the Agency receives relevant adverse comments by September 12, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### IV. Administrative Requirements

#### A. General Requirements

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 request for 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 section 111(d)/129 plan delegation request 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 section 111(d)/129 plan related submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 plan related submission, to use VCS in place of a section 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.*).

#### 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. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### C. Petitions for Judicial Review

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 October 11, 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, approving the MDE's request for delegation of the Federal plan for small MWC units, 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, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: August 5, 2005.

**Donald S. Welsh,**  
Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

**PART 62—[AMENDED]**

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. A new center heading, after § 62.5112, §§ 62.5120, 62.5121, and 62.5122 are added to read as follows:

**Emissions From Existing Small Municipal Waste Combustor (MWC) Units—Section 111(d)/129 Federal Plan Delegation**

**§ 62.5120 Identification of plan—delegation of authority.**

On May 12, 2005, EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the “Federal plan”) by which it will be administered by the MDE for existing small MWC units. On May 25, 2005, the MDE Secretary signed the MOA, thus agreeing to its terms and conditions.

**§ 62.5121 Identification of sources.**

The MOA and related Federal plan apply to all affected small MWC units for which construction commenced on or before August 30, 1999.

**§ 62.5122 Effective date of delegation.**

The delegation became fully effective on May 25, 2005, the date the MOA was signed by the MDE Secretary.

[FR Doc. 05–15920 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 52**

**Federal Acquisition Regulation; Leadership in Environmental Management (E.O. 13148)**

*CFR Correction*

In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 52 to 99), revised as of October 1, 2004, on page 58, in 52.213–4, the second paragraph (b)(1)(vii) is removed and the paragraph following (b)(1)(i), also designated as (vii), is inserted in its place, and paragraph (b)(1)(ii) is reinstated to read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(ii) 52.222–20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35–45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

\* \* \* \* \*

[FR Doc. 05–55509 Filed 8–10–05; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 041126332–5039–02; I.D. 080805B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; apportionment of reserves; request for comments.

**SUMMARY:** NMFS apportions amounts of the non-specified reserve of groundfish to the arrowtooth flounder initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and

objectives of the fishery management plan for the BSAI.

**DATES:** Effective August 11, 2005 through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., August 23, 2005.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to [bsairelarth@noaa.gov](mailto:bsairelarth@noaa.gov) and include in the subject line of the e-mail comment the document identifier: bsairelarth; or
- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 ITAC of arrowtooth flounder in the BSAI was established as 10,200 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). The Administrator, Alaska Region, NMFS, has determined that the ITAC for arrowtooth flounder in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 3,000 metric tons from the non-specified reserve of groundfish to the arrowtooth flounder ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch (70 FR 8979, February 24, 2005).