

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This correction to 40 CFR 52 for Indiana is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2009. 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 22, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

- 40 CFR Part 52 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 P—Indiana

- 2. Section 52.770 is amended by revising paragraph (c)(176) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(176) On December 21, 2005, Indiana submitted revised regulations to the EPA. As a result, the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate, are added to the list of "nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" in 326 IAC 1–2–48 and these compounds are deleted from the list of VOCs in 326 IAC 1–2–90. Companies producing or using the four compounds will no longer need to follow the VOC

rules for these compounds. The requirements in 326 IAC 1–2–48 and 1–2–90 were also modified for the compound t-butyl acetate. It is not considered a VOC for emission limits and content requirements. T-butyl acetate will still be considered a VOC for the recordkeeping, emissions reporting, and inventory requirements.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 1: General Provisions, Rule 2: Definitions, Section 48:

“‘Nonphotochemically reactive hydrocarbon’ or ‘negligibly photochemically reactive compounds’ defined”, and Section 90: “‘Volatile organic compound’ or ‘VOC’ defined”. Filed with the Secretary of State on October 20, 2005 and effective November 19, 2005. Published in 29 *Indiana Register* 795–797 on December 1, 2005.

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[FR Doc. E9–13486 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R04–OAR–2008–0159(b); FRL–8912–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; City of Memphis, TN; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Clean Air Act (CAA) section 111(d)/129 State Plan submitted by the Memphis-Shelby County Health Department (MSCHD) for the City of Memphis, Tennessee on February 16, 2006 (State Plan). The State Plan is for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units that commenced construction on or before June 20, 1996.

DATES: This direct final rule will be effective August 10, 2009, unless EPA receives adverse comments by July 10, 2009. If adverse comments are received, EPA 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) by Docket ID No. EPA–R04–OAR–2008–0159 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 online instructions for submitting comments.

3. *E-mail:* louis.egide@epa.gov.

4. *Fax:* (404) 562–9095.

5. *Mail:* “EPA–R04–OAR–2008–0159,” 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: Dr. Egede N. Louis, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency, Region 4, 12th Floor, 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 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. EPA–R04–OAR–2008–0159. 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://www.regulations.gov) or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.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://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://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 person 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egede Louis at (404) 562-9240.

SUPPLEMENTARY INFORMATION:

I. Background

On February 16, 2006, pursuant to the CAA sections 111 and 129, EPA promulgated new source performance standards (NSPS) applicable to new HMIWI units and EG applicable to existing HMIWI units. The NSPS and EG are codified at 40 CFR part 60, subparts Ce and Ec. Subparts Ce and Ec regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

For existing sources, CAA section 129(b)(2) requires States to submit to EPA for approval State Plans that implement and enforce the EG contained in 40 CFR part 60, subpart Ce. State Plans must be at least as protective as the EG, and become federally enforceable upon approval by EPA.

Pursuant to subpart Ce, State Plans must include the following nine items: An inventory of affected HMIWI units; an inventory of emissions from affected HMIWI units; compliance schedules for each affected HMIWI unit; operator training and qualification requirements, a waste management plan, and operating limits for affected HMIWI units; performance testing, recordkeeping, and reporting requirements; certification that a public hearing was held; provision for State progress reports to EPA; identification of enforceable State mechanisms for implementing the EG; and a demonstration of the State's legal authority to carry out the State Plan. The procedures for adoption are codified in 40 CFR part 60, subpart B.

In this action, EPA is approving the State Plan for existing HMIWI units submitted by MSCHD because it meets the requirements of 40 CFR part 60, subpart Ce.

II. Discussion

MSCHD's 111(d)/129 State Plan for implementing and enforcing the EG for existing HMIWI units includes the following: Public Participation— Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend Public Hearing; Emissions Standards and Compliance Schedules; Emission Inventories, Source Surveillance, and Reports; and Legal Authority. EPA's approval of the State Plan is based on our finding that it meets the nine requirements of 40 CFR part 60, subpart Ce.

Requirements (1) and (2): Inventory of affected HMIWI units and inventory of emissions. MSCHD submitted an emissions inventory of all designated pollutants for existing HMIWI units under their jurisdiction in the City of Memphis. This portion of the State Plan has been reviewed and approved as meeting the Federal requirements for existing HMIWI units.

Requirement (3): Compliance schedules for each affected HMIWI unit. MSCHD submitted the compliance schedule for existing HMIWI units under their jurisdiction in the City of Memphis. This portion of the State Plan has been reviewed and approved as being at least as protective as Federal requirements for existing HMIWI units.

Requirement (4): Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected HMIWI units. MSCHD adopted all emission standards and limitations applicable to existing HMIWI units. These standards and

limitations have been approved as being at least as protective as the Federal requirements contained in subpart Ce for existing HMIWI units.

Requirement (5): Performance testing, recordkeeping, and reporting requirements. The State Plan contains requirements for monitoring, recordkeeping, reporting, and compliance assurance. This portion of the State Plan has been reviewed and approved as being at least as protective as the Federal requirements for existing HMIWI units. The MSCHD State Plan also includes its legal authority to require owners and operators of designated facilities to maintain records and report on the nature and amount of emissions and any other information that may be necessary to enable MSCHD to judge the compliance status of the facilities in the State Plan. MSCHD also submitted its legal authority to provide for periodic inspection and testing, and provisions for making reports of existing HMIWI unit emissions data, correlated with emission standards that apply, available to the general public.

Requirement (6): Certification that a public hearing was held. MSCHD provided certification that a public hearing was held on April 3, 2003.

Requirement (7): Provision for State progress reports to EPA. The MSCHD State Plan provides for progress reports of plan implementation updates to 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 State Plan has been reviewed and approved as meeting the Federal requirements for State Plan reporting.

Requirement (8): Identification of enforceable State mechanisms for implementing the EG. An enforcement mechanism is a legal instrument by which MSCHD can enforce a set of standards and conditions. Pursuant to the authority of the Tennessee Code Annotated (T.C.A.) Section 68-201-115, MSCHD is authorized to enforce regulations and/or ordinances for the control of air pollution, which are as stringent as the State of Tennessee's requirements. On March 2, 2004, the City of Memphis amended its Code of Ordinances to adopt Section 16-84.1, "Emission Standards for Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)," which is equivalent to 40 CFR part 60, subpart Ce. Therefore, MSCHD's mechanism for enforcing the standards and conditions of 40 CFR, part 60, subpart Ce is the City of Memphis Code, Section 16-84.1. On the basis of this rule and the rules identified in Requirement (9) below, the State Plan is approved as being at least

as protective as Federal requirements for existing HMIWI units.

Requirement (9): A demonstration of the State's legal authority to carry out the State Plan. MSCHD demonstrated legal authority to adopt emissions standards and compliance schedules for 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 recordkeeping, make inspections, and conduct tests at designated facilities; authority to require owners or operators of designated facilities to install, maintain and use emission monitoring devices and to make periodic reports to MSCHD on the nature and amount of emissions from such facilities; and authority to make emissions data publicly available.

MSCHD cites the following references for the legal authority noted above: Adopt emission standards and compliance schedules—T.C.A. Section 68–201–115(b)(3), and the City of Memphis Code 16–84.1(c) and 16–84.1(d); enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief—T.C.A. 68–201–105, T.C.A. 68–201–108, T.C.A. 68–201–109, T.C.A. 68–201–110, and T.C.A. 68–201–112, and the City of Memphis Code 16–84.1; obtain information necessary to determine compliance—T.C.A. Section 68–201–105 and T.C.A. Section 68–201–115(b)(3); require recordkeeping, make inspections and conduct tests—City of Memphis Code 16–84.1(g), and 16–84.1(i), and T.C.A. 68–201–107; require the use of monitors and require emission reports of owners and operators—City of Memphis Code 16–84.1(h) and City of Memphis Code 16–84.1(i); and make emissions data publicly available—City of Memphis Code 16–84.1(i).

EPA is approving the State Plan for existing HMIWI units submitted by MSCHD because it meets the nine requirements of 40 CFR part, 60, subpart Ce.

III. Final Action

In this action, EPA approves the 111(d)/129 State Plan submitted by MSCHD for the City of Memphis to implement and enforce 40 CFR part 60, subpart Ce, as it applies to existing HMIWI units. EPA is publishing this rule without prior proposal because EPA 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 State Plan should adverse comments be filed. This rule will be effective August 10, 2009, without further notice unless the Agency receives adverse comments by July 10, 2009.

If 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. EPA will not institute a second comment period on this action. Parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective August 10, 2009 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.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule 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 rule 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 rule 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 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 rule 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 within 60 days from the effective date of this rule. 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 rule 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; Intergovernmental relations; Reporting and recordkeeping requirements.

Dated: April 10, 2009.

Beverly H. Banister,
Acting, Regional Administrator, Region 4.

■ 40 CFR part 62, subpart RR, 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. Section 62.10626 is amended by adding paragraphs (b)(6) and (c)(3) to read as follows:

§ 62.10626 Identification of plan.

* * * * *

(b) * * *

(6) City of Memphis Implementation Plan: Federal Emission Guidelines Hospital/Medical/Infectious Waste Incinerators (HMIWI), submitted on February 16, 2006, by the Memphis and Shelby County Health Department.

(c) * * *

(3) Existing Hospital/Medical/Infectious Waste Incinerators

■ 3. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10632 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.10632 Identification of sources.

The Plan applies to all existing HMWI facilities at St. Jude Children's Hospital in the City of Memphis, for which

construction was commenced on or before June 20, 1996.

[FR Doc. E9-13595 Filed 6-9-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0395; FRL-8412-1]

Residues of Silver in Foods from Food Contact Surface Sanitizing Solutions; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the exemption from the requirement of a tolerance for residues of silver (excludes silver salts) in or on all foods when applied or used in public eating places, dairy processing equipment, and food-processing equipment. ETO H2O, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act requesting to establish concentration limits for silver in end-use solutions eligible for tolerance exemption. The regulation being established will exempt all foods from the requirement of a tolerance for residues of silver resulting from contact with surfaces treated with solutions in which the end-use concentration of silver is not to exceed 50 parts per million (ppm).

DATES: This regulation is effective June 10, 2009. Objections and requests for hearings must be received on or before August 10, 2009 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0395. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-6341; e-mail address: swindell.marshall@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a dairy cattle milk producer, food manufacturer, or beverage manufacturer. Potentially affected entities may include, but are not limited to:

- Food Manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 3121).
- Dairy Cattle Milk Production (NAICS code 11212).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 180.940 (a) Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>