

§ 124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

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(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Japan, New Zealand, or South Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 6. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp. p. 899.

■ 7. Section 126.8 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) * * *

(1) * * *

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea; and

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PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 8. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

■ 9. Section 129.6 is amended by revising paragraph (b)(2) to read as follows:

§ 129.6 Requirements for license/approval.

(b) * * *

(1) * * *

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Japan, New

Zealand, or South Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

■ 10. Section 129.7 is amended by revising paragraphs (a)(1)(vii) and (a)(2) introductory text to read as follows:

§ 129.7 Prior approval (license).

(a) * * *

(1) * * *

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea (see §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by Part 121, of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea whenever any of the following factors are present:

* * * * *

Dated: June 19, 2009.

Rose E. Gottemoeller,

Assistant Secretary, Verification, Compliance and Implementation, Department of State.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2009–0482; FRL–8938–6]

Approval and Promulgation of State Air Quality Plans For Designated Facilities and Pollutants, West Virginia; Control of Emissions From Commercial and Industrial Solid Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia (WV) commercial and industrial solid waste incinerator (CISWI) 111(d)/129 plan (the “plan”). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule that streamlines and consolidates the state’s regulatory structure (WV45CSR6, 18 and 24) for

incinerator units and incorporates applicable Clean Air Act (CAA), section 129, requirements into one rule, WV45CSR18. This approval action relates only to CISWI units. The streamlining of the state’s regulatory structure of its incinerator rules is not an EPA requirement.

DATES: This rule is effective October 2, 2009 without further notice, unless EPA receives adverse written comment by September 2, 2009. 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 Docket ID Number EPA–R03–OAR–2009–0482 by one of the following methods:

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

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

C. Mail: EPA–R03–OAR–2009–0482, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. 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 Docket ID No. EPA–R03–OAR–2009–0482. 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.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is 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 <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 <http://www.regulations.gov> index. 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 <http://www.regulations.gov> 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 West Virginia Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

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

SUPPLEMENTARY INFORMATION:

I. Background

The initial West Virginia CISWI plan, and related state rule, WV45CSR18, were approved by EPA in the April 11, 2003 edition of the **Federal Register**. (68FR17738). The plan approval is codified in 40 CFR part 62, subpart XX. On May 11, 2009, the West Virginia Department of Environmental Protection submitted to EPA a formal 111(d)/129 plan revision for CISWI units. The submitted plan revision is part of an effort to streamline and consolidate DAQ's Clean Air Act, section 129, requirements for CISWI and hospital, medical infectious waste incinerator (HMIWI) units. All applicable section 129 incinerator regulatory requirements are now in one state rule, WV45CSR18. However, this approval action relates only to CISWI units. A related plan revision for HMIWI units will be addressed in a separate **Federal Register** notice and rulemaking action. The consolidation of the DAQ incinerator rules into one is not an EPA requirement.

Section 129 of the CAA regulates a mixture of air pollutants. These pollutants include organics (dioxins/

furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

II. Review of West Virginia's CISWI Plan Revision

EPA has reviewed the West Virginia CISWI plan revision submittal in the context of the requirements of 40 CFR Part 60, and subparts B and DDDD; and part 62, subpart A. The submitted plan revision meets all the cited requirements and those as described in EPA's original approval of West Virginia's plan approval on April 11, 2003. (68 FR 17738).

III. Final Action

EPA is approving the West Virginia CISWI plan revision that streamlines and consolidates its section 111(d)/129 existing incinerator regulations into one rule, WV45CSR18. Therefore, EPA is amending 40 CFR part 62, subpart XX, to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action. This plan revision approval does not negate or void any of the initial plan approval requirements (68 FR 17738), including compliance dates, for E. I. du Pont de Nemours and Company, Washington Works ("DuPont"), or any other affected facility. Initial CISWI plan requirements have been consolidated into a modified rule WV45CSR18. The scope of the plan revision approval is limited to 40 CFR Part 60 and 62 provisions for existing CISWI units, and the related new source performance standard provisions, subpart CCCC, as referenced in the emission guidelines, subpart DDDD. A related plan revision for HMIWI units will be addressed in a separate **Federal Register** notice and rulemaking action.

The EPA Administrator continues to retain authority for several tasks, as cited in state rule WV45CSR18, section 45-18-9. This retention of federal authority also includes the granting of waivers for initial and annual compliance testing requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for state air pollution control agencies and existing CISWI units that are subject to the provisions of 40 CFR part 60, subparts B and DDDD, respectively. 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 111(d)/129 plan revision should relevant adverse or critical comments be filed. This rule will be effective October 2, 2009 without further notice unless the Agency receives relevant adverse comments by September 2, 2009. If EPA receives such comments, then 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. 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 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 requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 approves a state rule implementing a Federal standard. In reviewing section 111(d)/129 plan submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. 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 2, 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.

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action, approving the submitted West Virginia CISWI plan revision, 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: July 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

- 40 CFR Part 62, Subpart XX, 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 XX—West Virginia

- 2. Section 62.12155 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 62.12155 Identification of plan.

* * * * *

(b) On May 11, 2009, the West Virginia Department of Environmental Protection submitted a State plan revision (#1) that consolidates all existing section 111(d)/129 incinerator regulatory requirements into one modified rule, WV45CSR18.

- 3. Section 62.12157 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 61.12157 Effective date.

* * * * *

(b) Plan revision #1 is effective October 2, 2009.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2009-0463; FRL-8938-8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, West Virginia; Control of Emissions From Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia (WV) hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the “plan”). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule that streamlines the State’s regulatory structure (WV45CSR6, 18, and 24) for incinerator units and incorporates applicable Clean Air Act (CAA), section 129, requirements into one rule, WV45CSR18. This approval action relates only to HMIWI units. The streamlining of the State’s regulatory structure of its incinerator rules is not an EPA requirement.

DATES: This rule is effective October 2, 2009 without further notice, unless EPA receives adverse written comment by September 2, 2009. 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 Docket ID Number EPA-R03-OAR-2009-0463 by one of the following methods:

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

B. *E-mail:* *E-mail:* wilkie.walter@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0463, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and