

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard temporarily amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 10 a.m. to 4 p.m. on September 10, 2005, suspend § 165.162(c) and add § 165.162(d) to read as follows:

#### § 165.162 Safety Zone; New York Super Boat Race, Hudson River, New York.

\* \* \* \* \*

(d) *Effective Period.* This section is in effect from 10 a.m. until 4 p.m. on Saturday, September 10, 2005.

Dated: August 29, 2005.

**Glenn A. Wiltshire,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AS123–NBK; FRL–7955–6]

#### Revisions to the Territory of American Samoa 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 Territory of American Samoa that are incorporated by reference (IBR) into the Territory of American Samoa 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 September 9, 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 ensures 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 Territory of American Samoa. 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 DDD

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 DDD, American Samoa.

### 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 September 9, 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**. These corrections to the "Identification of plan" for the Territory of American Samoa 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 Territory of American Samoa 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 Territory of American Samoa.

#### **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: August 2, 2005.

**Keith Takata,**

*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 DDD—American Samoa**

■ 2. Section 52.2820 is redesignated as § 52.2823 and the Section heading and

paragraph (a) are revised to read as follows:

#### **§ 52.2823 Original identification of plan.**

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

\* \* \* \* \*

■ 3. A new § 52.2820 is added to read as follows:

#### **§ 52.2820 Identification of plan.**

(a) Purpose and scope. This section sets forth the applicable State implementation plan for American Samoa 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, NW., Room B108, Washington, DC; 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 52.2820.—EPA APPROVED TERRITORY OF AMERICAN SAMOA REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Air Pollution Control Rules and Regulations				
Section 1.0 .....	Definitions (1.0.1—1.0.18) .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.1 .....	Approval of New Sources: Permit to Operate (1.1.1—1.1.14).	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.2 .....	Source Monitoring, Record Keeping, and Reporting (1.2.1—1.2.2).	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.3 .....	Sampling and Testing Methods (1.3.1—1.3.2) ...	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.4 .....	Malfunction of Equipment; Reporting (1.4.1—1.4.2).	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.5 .....	Prohibition of Air Pollution .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.6 .....	Compliance Schedule (1.6.1, Existing Sources)	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.7 .....	Circumvention .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.8 .....	Severability .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 1.9 .....	Ambient Air Quality Standards (1.9.1—1.9.2) ....	06/08/1972	03/02/1976, 41 FR 8956	
Section 2.1 .....	Control of Open Burning .....	06/08/1972	03/02/1976, 41 FR 8956	
	Control of Particulate Emissions .....			
Section 3.1 .....	Visible Emissions (3.1.1—3.1.2) .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 3.2 .....	Fugitive Dust (3.2.1—3.2.3) .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 3.3 .....	Incineration (3.3.1—3.3.4) .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 3.4 .....	Fuel Burning Equipment (3.4.1—3.4.2) .....	06/08/1972	03/02/1976, 41 FR 8956	
Section 3.5 .....	Process Industries—General (3.5.1, 3.5.3—3.5.5).	06/08/1972	03/02/1976, 41 FR 8956	
Table 1 .....	Particulate Emission Allowable Based on Process Weight.	06/08/1972	03/02/1976, 41 FR 8956	
Section 3.6 .....	Sampling Methods (3.6.1) .....	06/08/1972	03/02/1976, 41 FR 8956	
	Control of Sulfur Compound Emissions .....			
Section 4.1 .....	Fuel Combustion (4.1.1) .....	06/08/1972	03/02/1976, 41 FR 8956	

(d) EPA approved State source specific requirements.

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

(e) [Reserved].

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[RO3–OAR–2005–MD–0008; FRL –7966–7]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the May 12, 2005 negative declaration letter submitted by the Maryland Department of the Environment (MDE). The negative

declaration certifies that existing CISWI units, subject to Clean Air Act (the Act) requirements of sections 111(d) and 129 and related emission guidelines (EG), have been permanently shut down and have been dismantled in the State of Maryland.

**DATES:** This rule is effective November 8, 2005 without further notice, unless EPA receives adverse written comment by October 11, 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–0008 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 online instructions for submitting comments.

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

D. Mail: RO3–OAR–2005–MD–0008, Walter Wilkie, Chief, Air Quality Analysis, 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–0008. 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