

The EPA is publishing this rule without prior proposal because the Agency 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 plan revision should adverse comments be filed. This rule will be effective May 5, 2003 without further notice unless the Agency receives adverse comments by April 7, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will 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.

#### Statutory and Executive Order Reviews

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 standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a plan submission, to use VCS in place of a plan submission that otherwise satisfies the provisions of the 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

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 May 5, 2003. 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 62

Environmental protection, Air pollution control, Intergovernmental

relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 62—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

#### Subpart FF—New Jersey

2. Part 62 is amended by adding § 62.7603 and an undesignated heading to subpart FF to read as follows:

#### **Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Large Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste**

##### **§ 62.7603 Identification of plan—delegation of authority.**

(a) On November 9, 1999, the New Jersey Department of Environmental Protection (NJDEP) submitted to the Environmental Protection Agency (EPA) a request for delegation of authority to implement and enforce the Federal Plan (40 CFR part 62, subpart FFF) for Large Municipal Waste Combustors (MWC).

(b) Identification of sources: The Federal Plan applies to existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste.

(c) On January 17, 2001, EPA prepared and signed a Memoranda of Agreement (MOA) between the EPA and the NJDEP that defines the policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart FFF and 40 CFR part 60, subpart Cb, by which the Federal Plan for large MWCs will be administered by both the NJDEP and EPA. On January 24, 2001, Robert C. Shinn, Commissioner NJDEP, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to enforce and implement the policies, responsibilities, and procedures of the Federal Plan for large MWCs.

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