

are often tied to the time of State plan approval, most State plans will have differing compliance dates. Hence, State plans and Federal plans are not expected to have the same compliance dates for a given category of sources. Furthermore, State plans and the Federal plan have the obligation to require compliance "as expeditiously as practicable." This is specifically required in section 129(f)(2) of the CAA as well as in 40 CFR 60.24(c) and may be sooner than the worst case dates identified in the emission guidelines.

State plans were due on December 1, 2002. If a State or Tribe with existing CISWI units did not submit an approvable plan by December 1, 2002, sections 129 and 111 of the CAA require the EPA to develop, implement, and enforce a Federal plan for units located in that State or Tribal area. By developing the Federal plan, we assumed the burden of implementing the EG for CISWI units not covered by an approved and effective State or Tribal plan. In the Federal plan, as in a State plan, the implementing agency has the discretion to apply an appropriate compliance schedule to the source category. In the case of the Federal plan, we developed our schedule to achieve compliance with provisions of the EG as expeditiously as practicable, based on the feasibility of owners or operators to retrofit combustion units with air pollution control devices.

Mindful of the requirements of section 129(f)(2), we examined the feasibility for owners or operators to retrofit combustion units with air pollution control devices prior to proposal. Based upon similarities in size and upon examination of eight case studies (Docket No. A-98-24, II-A-1) of hospital medical infectious waste incineration (HMIWI) units that completed retrofits of types of controls needed to meet the HMIWI Federal plan, we chose to require compliance within one year after publication of the final CISWI Federal plan. Our rationale for the compliance schedule is discussed fully in the proposal preamble at 67 FR 70646.

Implementation of the EG and Federal plans for HMIWI have shown that our expectations were well-founded. We concluded that CISWI owners and operators could meet the final compliance date just as promptly and efficiently. Also, we noted that in addition to the one year extension provision of the Federal plan, owner/operators could have used the time between promulgation of the final CISWI EG (or proposal of the Federal plan) and promulgation of this Federal plan to plan and begin retrofits.

However, the EPA expects that some CISWI units could need more than one year to comply, as did some HMIWI units, due to site-specific circumstances. For units that may have more complex retrofits or constraints that prevent them from complying within one year, the Federal plan establishes increments of progress and those units must comply within two years.

Thus, we will retain the proposed compliance schedule in the final CISWI Federal plan. Existing CISWI units must comply within one year after publication of the final rule in the **Federal Register** or meet increments of progress and comply within two years after publication of the final rule in the **Federal Register**.

We received a request (IV-G-02) to clarify the compliance schedule for CISWI units that may lose the rule exemption provided in § 62.14525(n)(4) after the effective date of the rule. Section 62.14525(n)(4) exempts chemical recovery units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts. The commenter owns an operating site which he believes qualifies for an exemption from the requirements of the CISWI Federal plan because catalyst metals in incinerator fly ash are reclaimed off site or used in making commercial grade catalysts. The commenter is concerned about the potential unavailability of an off-site reclamation facility and requested that we provide at least three years after the loss of his expected rule exemption for final compliance with the rule requirements.

As outlined above and in the preamble to the proposed rule, we respond by stating our expectation that most CISWI units will reach final compliance promptly and efficiently. Those CISWI units that become exempt through §§ 62.14525 and 62.14530 of the Federal plan, but lose that exemption after the compliance date of the Federal plan, must begin complying with the requirements of the Federal plan immediately upon loss of the exemption. Moreover, section 129(b)(3) requires that all CISWI units must be in compliance with the requirements of a State or Federal plan no later than five years after promulgation of the emission guidelines, which is December 1, 2005. Therefore, we would not have the authority to allow a compliance date three years after loss of an exemption, as suggested by the commenter.

If owners or operators of affected CISWI units anticipate that they will not be exempt in the future, we encourage

them to begin plans for installation of any controls needed to meet the CISWI emission limits. According to this final Federal plan, owners or operators are required to either: (1) Reach final compliance by the date one year after publication of this final rule in the **Federal Register**; or (2) meet increments of progress and reach final compliance by the date two years after publication of this final rule in the **Federal Register**. The final compliance schedule and increments of progress are contained in §§ 62.14535 through 62.14575 of the final CISWI Federal plan. Therefore, any unit that loses its exemption after the applicable compliance date (one year from publication of this final Federal plan, or if a facility has met all the requirements related to increments of progress, two years after the publication of this final Federal Plan) must meet the applicable standards as of the date that it loses its exemption. Similarly, if a facility loses an exemption prior to the applicable compliance date, the facility must meet the required standards as of the compliance date.

The same commenter (IV-G-02) opined that the proposed petition requirements in § 62.14536 for one year compliance extensions are unnecessary. He said that the CISWI EG include no corresponding requirement for compliance extensions beyond meeting the two increments of progress. The commenter believes the increment of progress requirements in proposed § 62.14540 are sufficient and requested that EPA remove the proposed requirements in § 62.14536.

We disagree. To develop the CISWI Federal plan, we must determine how to fill in implementation details not spelled out in the EG or subpart B, including how and when to grant compliance extensions (as must States when developing State plans). The EG provide a framework for implementation, but some details need to be developed through implementation plans. Paragraph 129(f)(2) requires that the EG be applied as expeditiously as practicable. Our prior experience with similar sources shows that requiring compliance within 12 months of promulgation of the final rule is generally achievable and this is reflected in the proposed rule. Prior experience also shows that, in some instances, site-specific concerns can make a one year compliance schedule impracticable and that is also reflected in the proposed one year extension of the compliance date. Some criteria are needed to guide the EPA and the regulated community as to when it would be appropriate to allow extra time for sources to achieve final