

revision went to public hearing on August 14, 2000 and became effective on July 1, 2001. This SIP revision added requirements for air curtain incinerators and exempted certain temporary flares from permitting. Since the most recent of the two SIP revisions incorporates all of the changes from the earlier SIP revision, EPA will incorporate by reference the version of 45CSR6 submitted on September 12, 2001 into the SIP.

I. Summary of SIP Revision

(A) The following definitions were revised as follows: (1) Definitions of "Commission," "Ringelmann Smoke Chart," "Construction and Demolition Wastes" were deleted, (2) "Incineration" was modified to include thermal oxidizers and thermal catalytic oxidizers, (3) "Director" was modified to include persons delegated authority by the Director; (4) "Open Burning" was modified to include "burn barrels," (5) "Person" was modified to include the State of West Virginia and the United States, (6) Definitions for "Land Clearing Debris," "Air Curtain Incinerator," "Clean Lumber," and "Yard Waste" were added.

(B) Restrictions on open burning were revised as follows: (1) Open burning is prohibited for any purpose unless specifically exempted in the regulation, (2) Open burning for fire training is exempt but must be conducted according to 45CSR15 and 40 CFR part 61, subpart M, (3) References to "construction and demolition wastes" were replaced with "land clearing debris" and the exemption for open burning of backyard wastes was removed, (4) Prior Director's approval for open burning of land clearing debris is required in all areas of the State, and (5) An exemption was added for open burning of propellant and explosive wastes, subject to 45CSR25.

(C) Emission Standards for incinerators were revised as follows: (1) Particulate matter emission standards were changed from a Ringelmann Chart reading to a measured percent opacity standard, (2) The regulations at 40 CFR part 60 subparts Eb, AAAA and CCCC for air curtain incinerators were incorporated by reference, restrictions were imposed on the types of wastes allowed to be burned in air curtain incinerators, permits for construction, operation and modification of air curtain incinerators are required and an exemption from permitting was given to temporary air curtain incinerators.

(D) Permit requirements were changed to require permits for the construction, modification and relocation of any incinerator as applicable in 45CSR13,

45CSR14 and 45CSR19 and temporary flares and flare stacks with potential emissions below stationary source or major modification thresholds are exempt from permitting.

(E) Stack testing must be conducted using 40 CFR part 60, appendix A, Method 5 or other EPA-approved equivalent method approved by the Director to perform stack testing for particulate matter.

(F) The following sections were added or deleted: (1) The section on delayed compliance orders was deleted, (2) A section titled "Emergencies and Natural Disasters" was added to exempt open burning activities resulting from incineration of vegetation, building debris and other non-hazardous debris from natural disasters, (3) A section titled "Effect of the Rule" was added to prohibit 45CSR6 from being used to allow or permit construction of a new incinerator in violation of other State regulation, and (4) A section titled "Inconsistency Between Rules" allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

These revisions strengthen the SIP by clarifying and updating definitions, updating opacity standards, requiring EPA-approved test methods, and clarifying and expanding open burning and incineration requirements.

III. Final Action

EPA is approving the revisions to 45CSR6, "To Prevent and Control Air Pollution from Combustion of Refuse," submitted by West Virginia on September 12, 2001. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 11, 2003 without further notice unless EPA receives adverse comment by March 12, 2003. If EPA receives adverse comment, 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. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Regulatory Assessment Requirements

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 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.