

February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) 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 action 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, 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. This determination must be supported by a brief statement. 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 date of July 13, 2000. 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 September 12, 2000. 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 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: June 26, 2000.

**Chuck Clarke,**

*Regional Administrator, Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[KS 105-1105a; FRL-6733-9]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWI); State of Kansas

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the state of Kansas' section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

**DATES:** This rule is effective on September 12, 2000 without further notice, unless EPA receives adverse comment by August 14, 2000. 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:** Written comments must be submitted to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What are the requirements of section 129 of the CAA?

What is a section 111(d) state plan?

What is Subpart Ce?

What are the requirements for the HMIWI state plan? What is contained in the Kansas state plan?

What are the approval criteria for the state plan?

#### What Are the Requirements of Section 129 of the CAA?

Section 129 of the CAA Amendments of 1990 requires us to set air emission standards and emission guidelines (EG) under the authority of section 111 of the CAA to reduce pollution from incinerators that burn solid waste. Incinerators that burn medical waste are classified as solid waste incinerators and therefore must be regulated.

#### What Is a Section 111(d) State Plan?

Section 111(d) of the CAA, "Standards of Performance for New Stationary Sources," authorizes us to set air emissions standards for certain categories of sources. These standards are called new source performance standards (NSPS). When an NSPS is promulgated for new sources, we also publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a state plan to adopt the EG into its body of regulations and submit it to us for approval. The state plan is called a 111(d) plan.

#### What Is Subpart Ce?

We issued regulations to reduce air pollution from incinerators that are used to burn hospital waste and/or medical/infectious waste. The NSPS at 40 CFR Part 60, Subpart Ec, and the EG, Subpart Ce, were promulgated by us on September 15, 1997 (62 FR 48374). These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. The EG applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The Subpart Ce EG is not a direct Federal regulation but is a "guideline" for states to use in regulating existing HMIWIs. The EG requires states to submit for our approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWIs.

#### What Are the Requirements for the HMIWI State Plan?

A section 111(d) state plan submittal must meet the requirements of 40 CFR Part 60, Subpart B, sections 60.23 through 60.26, and 40 CFR Part Ce. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules,

emission inventories, source surveillance, and compliance assurance and enforcement requirements. The technical requirements for existing HMIWI sources are contained in Subpart Ce. A state will generally address the HMIWI technical requirements by adopting by reference Subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, *i.e.*, by September 15, 1998.

Prior to submittal to us, the state must make available to the public the state plan and provide opportunity for public comment. If a state fails to have an approvable plan in place by September 15, 1999, sources will be subject to a Federal plan when it is promulgated.

### What Is Contained in the Kansas State Plan?

The state of Kansas submitted its section 111(d) state plan to us for approval on May 4, 2000. The state adopted the EG requirements into Kansas Department of Health and Environment (KDHE) rules at Kansas Administrative Regulations (K.A.R.) Article 19, rules 28-19-729 through 28-19-729h. The state effective date of these rules is May 5, 2000. The section 111(d) state plan contains:

1. A demonstration of the state's legal authority to implement the section 111(d) state plan. Pages one and two of the plan list 15 separate Kansas statutes which provide the basis for Kansas' authority to adopt and implement the 111(d) plan.

2. State rules K.A.R. 28-19-729 through 28-19-729h, as the enforceable mechanism. The specific rules are:

- 28-19-729—Standards for "hospital/medical/infectious waste incinerators."
- 28-19-729a—"Hospital/medical/infections waste incinerators"; definitions.
- 28-19-729b—"Hospital/medical/infections waste incinerators"; emission standards.
- 28-19-729c—Standards for "Hospital/medical/infections waste incinerators"; compliance schedule.
- 28-19-729d—"Hospital/medical/infections waste incinerators"; operation, operator training, and qualification standards.
- 28-19-729e—"Hospital/medical/infections waste incinerators"; waste management plan.
- 28-19-729f—"Hospital/medical/infections waste incinerators"; inspections.
- 28-19-729g—"Hospital/medical/infections waste incinerators"; compliance, performance testing, and monitoring guidelines.

- 28-19-729h—"Hospital/medical/infections waste incinerators"; reporting and recordkeeping.

3. An inventory of sources in Appendix A.

4. An emissions inventory on pages six through eleven, and in Table 2 of the plan.

5. Emission limits, as protective as the EG, are contained in rule 28-19-729b and Table 1 of the rule.

6. A final compliance date of September 15, 2002, which is specified in rule 28-19-729c(b)(2).

7. Testing, monitoring, and inspection requirements, which are contained in rule 28-19-729g.

8. Reporting and recordkeeping requirements, which are contained in rule 28-19-729h.

9. Operator training and qualification requirements, which are contained in rule 28-19-729d.

10. Requirements for the development of waste management plans, which are contained in rule 28-19-729e.

11. A record of the public notice and hearing requirements is provided starting on page 14 of the plan.

12. Provisions for progress reports to EPA is discussed on page 15 of the plan.

13. Title V permit application due date requirements are specified on page 13 of the plan. Title V permit applications must be submitted no later than September 15, 2000.

14. A final compliance date of September 15, 2002, is specified in the plan on page 13 and in rule 28-19-729c.

### What Are the Approval Criteria for the State Plan?

The state plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, Subpart B, "Adoption and Submittal of State Plans for Designated Facilities," and 40 CFR 60, 60.30e through 60.39e, Subpart Ce, "Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators." A detailed discussion of our evaluation of the state plan is included in our technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The state plan meets all of the applicable approval criteria.

### Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Kansas' May 4, 2000, section 111(d) state plan for the control of HMIWI emissions, except for those facilities located in Indian country. Any facilities located in Indian country will be subject to a Federal plan. In Kansas

there are no known HMIWIs in Indian country. Nothing in this action should be construed as making any determinations or expressing any position with regard to Kansas' audit law (K.S.A. 60-3332, *et seq.*), and this action does not express or imply any viewpoint regarding any legal deficiencies in this or any other Federally authorized, deleted, or approved program resulting from the effect of Kansas's audit law.

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 state plan should adverse comments be filed. This rule will be effective September 12, 2000 without further notice unless the Agency receives adverse comments by August 14, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 12, 2000 and no further action will be taken on the proposed rule.

### Administrative 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. 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 preexisting 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as

specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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), because it 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 CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our 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), we have no authority to disapprove a state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) 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 provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2000. 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 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 20, 2000.

**Michael Sanderson,**

*Acting Regional Administrator, Region 7.*

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 *et seq.*

#### Subpart R—Kansas

2. Subpart R is amended by adding § 62.4179 and an undesignated center heading to read as follows:

#### **Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators**

##### **§ 62.4179 Identification of plan.**

(a) Identification of plan. Kansas plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Kansas Department of Health and Environment on May 4, 2000.

(b) Identification of sources. The plan applies to existing hospital/medical/infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is September 12, 2000.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 180**

**[OPP-301013; FRL-6593-1]**

**RIN 2070-AB78**

#### **Pyridaben; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-choropyridazin-3(2H)-one] in or on citrus; citrus pulp, dried; citrus oil; apple; apple pomace, wet; pear; tree nuts; almond hulls; pistachio; peach (and nectarine); plum; prune; grape; and cranberry. Time-limited tolerances are established for residues of pyridaben on apricot and cherry (sweet and tart) which will expire and are revoked on June 30, 2004. This regulation also establishes tolerances for residues of pyridaben and its metabolites PB-7 and PB-9 in or on the following ruminant commodities: milk, and milk-by-product, fat, and meat of cattle, goat, hog, and sheep. BASF Corporation and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act (FQPA) of 1996.

**DATES:** This regulation is effective July 14, 2000. Objections and requests for hearings, identified by docket control number OPP-301013, must be received by EPA on or before September 12, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301013 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Melody A. Banks, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone