



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R02-OAR-2017- 0712; FRL-9977-55-Region 2]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; United States Virgin Islands; Commercial and Industrial Solid Waste Incineration Units**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the Clean Air Act (CAA) section 111(d)/129 negative declaration for the United States Virgin Islands, for Commercial and Industrial Solid Waste Incineration (CISWI) units. This negative declaration certifies that CISWI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of the United States Virgin Islands. The EPA is accepting the negative declaration in accordance with the requirements of the CAA.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2017-0712, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Linky, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 10007-1866 at 212-637-3764 or by email at [linky.edward@epa.gov](mailto:linky.edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” refer to the EPA. This section provides additional information by addressing the following:

## **I. Background**

## **II. Analysis of State Submittal**

## **III. Statutory and Executive Order Reviews**

### **I. Background**

The Clean Air Act (CAA) requires that state<sup>1</sup> regulatory agencies implement the emission guidelines and compliance times using a state plan developed under sections 111(d) and 129 of the CAA.

The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants.

---

<sup>1</sup> Section 302(d) of the CAA includes the United States Virgin Islands in the definition of the term “State.”

Section 129 requires emission guidelines to be promulgated for all categories of solid waste incineration units, including commercial and industrial solid waste incineration (CISWI) units. A CISWI unit is defined, in general, as “any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined at 40 CFR 241.” See 40 CFR 60.2875. Section 129 mandates that all plan requirements be at least as protective as the promulgated emission guidelines. This includes fixed final compliance dates, fixed compliance schedules, and Title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to EPA within one year after EPA’s promulgation of the emission guidelines and compliance times.

States have options other than submitting a state plan in order to fulfill their obligations under CAA sections 111(d) and 129. If a state does not have any existing CISWI units for the relevant emission guidelines, a letter can be submitted certifying that no such units exist within the state (*i.e.*, negative declaration) in lieu of a state plan. The negative declaration exempts the state from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d)/129 plan.

On March 21, 2011 (76 FR 15704), the EPA established emission guidelines and compliance times for existing CISWI units (New Source Performance Standards (NSPS) and Emission Guidelines (EG)). The emission guidelines and compliance times are codified at 40 CFR 60, Subpart DDDD. Following promulgation of the 2011 CISWI rule, EPA received petitions for reconsideration requesting to reconsider numerous provisions in the 2011 CISWI rule. EPA granted reconsiderations on specific issues and promulgated a CISWI reconsideration rule on February 7, 2013. 78 FR 9112. EPA again received petitions to further reconsider certain

provisions of the 2013 NSPS and EG for CISWI units. On January 21, 2015 EPA granted reconsideration of four specific issues and finalized reconsideration of the CISWI NSPS and EG on June 23, 2016 (81 FR 40956).

In order to fulfill obligations under CAA sections 111(d) and 129, the Department of Planning and Natural Resources of the Government of the United States Virgin Islands submitted a negative declaration letter to the EPA on August 17, 2016. The submittal of this declaration exempts the United States Virgin Islands from the requirement to submit a state plan for existing CISWI units.

## **II. Analysis of State Submittal**

In this proposed rule the EPA proposes to amend 40 CFR part 62 to reflect receipt of the negative declaration letter from the United States Virgin Islands, certifying that there are no existing CISWI units subject to 40 CFR part 60, subpart DDDD, in accordance with section 111(d) of the CAA.

## **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the Act and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA.

Accordingly, this action, if finalized, would merely approve state law as meeting Federal requirements and would not impose additional requirements beyond those imposed by state law.

For that reason, this action, if finalized:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993); and 13563

(76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval does not have tribal implications as specified by Executive Order 13175 because the United States Virgin Islands' section 111(d)/129 submittal is not approved to apply in Indian country located in the in the United States Virgin Islands and, if finalized, would not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed approval.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial and industrial solid waste incineration units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 19, 2018.

Peter D. Lopez,  
Regional Administrator,  
Region 2.