



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

**[EPA-R06-OAR-2020-0357; FRL-10016-22-Region 6]**

### **Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas, New Mexico, and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from Arkansas, New Mexico, and Albuquerque-Bernalillo County, New Mexico, for existing incinerators subject to the Commercial and Industrial Solid Waste Incineration units (CISWI) emission guidelines (EG). These negative declarations certify that incinerators subject to CISWI EG and the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Arkansas, New Mexico, and Albuquerque-Bernalillo County. The EPA is accepting the negative declarations and amending the CFR in accordance with the requirements of the CAA.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2020-0357. All documents in the docket are listed on the <https://www.regulations.gov>

Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Janna Roberts, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665-6532, [roberts.janna@epa.gov](mailto:roberts.janna@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our August 11, 2020, proposal (85 FR 48485). In that document we proposed to accept the negative declarations for incinerators subject to the CISWI EG from the Arkansas Department of Environmental Quality (ADEQ), New Mexico Environment Department (NMED), and City of Albuquerque Environmental Health Department (AEHD), and to amend the CFR in accordance with the requirements of the CAA. We received one comment on our proposal. We have determined that this comment is not relevant to this rulemaking and no further response is required.

## **II. Final Action**

The EPA is amending 40 CFR part 62 to reflect receipt of the negative declaration letters from ADEQ, NMED and AEHD certifying that there are no existing incinerators subject to the

CISWI EG subject to 40 CFR part 60, subpart DDDD, in in their respective jurisdictions in accordance with 40 CFR 60.2510, 40 CFR 60.2530, 40 CFR 60.23(b), 40 CFR 62.06, and sections 111(d) and 129 of the CAA.

If a designated facility is later found within the mentioned jurisdictions after publication of the final action, then the overlooked facility will become subject to the requirements of the federal plan for that designated facility, including the compliance schedule. The federal plan will no longer apply if we subsequently receive and approve the section 111(d)/129 plan from the jurisdiction with the overlooked facility.

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

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and DDDD; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) 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 the 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).

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).

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

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 29, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

**PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart E – Arkansas**

2. Add an undesignated center heading and § 62.867 to read as follows:

**Emissions From Existing Commercial and Industrial Solid Waste Incineration Units**

**§ 62.867 Identification of plan – negative declaration.**

Letter from the Arkansas Department of Environmental Quality dated April 26, 2017, certifying that there are no incinerators subject to the commercial and industrial solid waste incineration (CISWI) Emission Guidelines, under 40 CFR part 60, subpart DDDD, within its jurisdiction.

**Subpart GG – New Mexico**

3. Revise § 62.7890 to read as follows:

**§62.7890 Identification of sources—negative declarations.**

Letters from the New Mexico Environment Department and the City of Albuquerque Environmental Health Department dated June 15, 2020, and March 4, 2020, respectively, certifying that there are no incinerators subject to the commercial and industrial solid waste incineration (CISWI) Emission Guidelines, under 40 CFR part 60, subpart DDDD, within their respective jurisdictions in the State of New Mexico.

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