MISSOURI-LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* *	*	*
Iron County (part) Within boundaries of Liberty and Arcadia Townships.	October 29, 2004	Attainment.		
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[FR Doc. 04–24134 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03–OAR–2004–VA–0002a; FRL–7831–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions From Large Existing Municipal Solid Waste Combustor Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Commonwealth of Virginia Department of Environmental Quality (DEQ) municipal waste combustor plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for existing large MWC with a unit capacity of more than 250 tons per day (TPD) of municipal solid waste (MSW). An existing MWC unit is defined as one for which construction commenced on or before September 20, 1994.

DATES: This rule is effective December 28, 2004 without further notice, unless EPA receives adverse written comment by November 29, 2004. 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: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–VA–0002 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Agency Web Site: http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: http://wilkie.walter@epa.gov.*

D. *Mail: R03–OAR–2004–VA–0002,* Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–VA–0002. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWC units and emission guidelines (EG) applicable to existing MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

However, on April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with combustion capacity less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb now apply only to MWC units with individual unit combustion capacity of more than 250 tons per day of MSW (*i.e.*, large MWC units). This change was published in the **Federal Register** (62 FR 45116) on August 25, 1997. In addition, subsequent clarifying amendments were published in the **Federal Register** (66 FR 57824) on November 16, 2001.[1]

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable as a section 111(d)/129 plan upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B.

As required by section 129(b)(3) of the Act, on November 12, 1998 EPA promulgated a Federal implementation plan (FIP), amended May 24, 2000, for large MWC units that commenced construction on or before September 20, 1994. The FIP (40 CFR part 62, subpart FFF, 63 FR 63191 and 65 FR 33461) is a set of maximum achievable control technology (MACT) requirements that implement the 1995 large MWC emission guidelines for states, such as Virginia, without an approved plan. The FIP fills a Federal enforceability gap until state plans are approved and ensures that the affected MWC units stay on track to complete pollution control equipment retrofit schedules in order to meet the final statutory compliance date of December 19, 2000.

II. Review of Virginia's MWC Plan

EPA has reviewed the Virginia plan, submitted on August 18, 2003, for existing large MWC units in the context of the requirements of 40 CFR part 60, and subparts B and Cb, as amended. State plans must include the following essential elements: (1) Identification of legal authority, (2) identification of mechanism for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emissions limits, (6) compliance schedules, (7) testing, monitoring, recordkeeping, and reporting, (8) public hearing records, and (9) annual state progress reports on facility compliance.

A. Identification of Legal Authority

Title 40 CFR 60.26 requires the plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. The DEQ has demonstrated that it has the legal authority to adopt and implement the emission standards governing large MWC units. DEQ's legal authority is provided in the Air Pollution Control Law of Virginia, Title 10.1, Chapter 13, of the Code of Virginia. This authority is discussed in the plan narrative and a July 1, 1998 letter from the Virginia Office of the Attorney General to the DEQ. This meets the requirements of 40 CFR 60.26.

B. Identification of Enforceable State Mechanisms for Implementing the Plan

The subpart B provision at 40 CFR 60.24(a) requires that state plans include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' The Commonwealth of Virginia through the DEQ, has adopted State Air Pollution Control Board Regulations (Rule 4–54 and other supporting air program rules) to control large MWC emissions. Rule 4–54, Emission Standards for Large MWC, became effective on August 4, 1999, and was subsequently amended on February 1, 2002, and July 1, 2003. Other applicable and effective supporting air program rules were identified and submitted to EPA on August 11, 2003 and April 6, 2004. These rules collectively met the requirement of 40 CFR 60.24(a) to have a legally enforceable emission standard.

C. Inventory of Affected MWC Units

Title 40 CFR 60.25(a) requires the plan to include a complete source inventory of all affected facilities (i.e., existing MWC units with a capacity greater than 250 TPD). The DEQ has identified three (3) affected facilities. Each have an MWC unit capacity greater than 250 TPD. The affected facilities are Covanta Fairfax with four units, Covanta Alexandria with three units, and the Southeastern Public Service Authority with four units.

D. Inventory of Emissions From Affected MWC Units

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWC units contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC facility, the DEQ plan contains MWC unit emissions rates estimates that are given in an acceptable format. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emissions Limitations for MWC Units

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by section 129(b)(2) of the Act which requires that state plans be ''at least as protective'' as the EG , in this case 40 CFR part 60, subpart Cb. A review of the applicable Rule 4–54 emissions limitations shows that all are ''at least as protective'' as those in the EG, as amended. In addition to the required section 129 emissions limitations, other limitations under Rule 4–54 (i.e., 9 VAC 5–40–8080, 8100, and 8100E), relating to odors, toxic pollutants (state only requirements), and nitrogen oxides (NO_X) emissions trading, are not within the scope of section 129 requirements for plan approval. These other emissions limitations are not relevant or approvable under this plan approval action. This is discussed further in Section III, Final Action.

F. Compliance Schedules

Under 40 CFR 60.24(c) and (e), a state plan must include an expeditious compliance schedule that owners and operators of affected MWCs must meet in order to comply with the requirements of the plan. Also, Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. Accordingly, the DEQ determined that source compliance with the EG emissions limits must be achieved on or before December 19, 2000, as stipulated in the promulgated FIP. In order to implement this requirement, Rule 4–54, 9 VAC 5–40–8110, incorporates by reference the Federal plan compliance schedule provisions of 40 CFR 62.14108 and

[1] An additional EG amendment was promulgated in the **Federal Register** (66 FR 36473) on July 12, 2001. However, the amendment is known to impact only one affected facility in Georgia.

62.14109(e) through (m) which establish expeditious interim and final compliance dates that are consistent with the provisions of 40 CFR 60.24(c) and (e), and 40 CFR 60.39b of subparts B and Cb, respectively. The state plan meets the applicable Federal compliance schedule requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The provisions of 40 CFR 60.24(b) and 60.25(b) stipulate facility testing, monitoring recordkeeping and reporting requirements for state plans. Also, related EG provisions 40 CFR 60.38b and 60.39b cross reference applicable NSPS (subpart Eb) requirements that state plans must include. The DEQ regulation meets the subpart B requirements of 40 CFR 60.24 and 60.25; and the related subpart Cb provisions of 40 CFR 60.38b and 60.39b. However, when considering that Rule 4–54 references 40 CFR 60.11(e), which allows use of continuous opacity monitoring (COM) data, a point of clarity is in order. The opacity limitations promulgated under subparts Cb and Eb were based on stack test data using EPA Method 9. Accordingly, COM data is used only as an indicator for corrective actions, if necessary, or as the basis for a compliance retest of the MWC facility. This matter is discussed and clarified in EPA's Background Information Document (EPA–453/R–95–0136) for the MWC rules.

H. A Record of Public Hearing on the State Plan

Public hearings on the plan were held October 17, 2000 and July 23, 2003. Applicable portions of Rule 4–54 became effective initially on August 4, 1999, with subsequent amendments on February 1, 2002 and July 1, 2003. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The DEQ has met the 40 CFR 60.23 requirement for a public hearing on the plan.

I. Annual State Progress Reports to EPA

The DEQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan in accordance with 40 CFR 60.25. Accordingly, the DEQ will submit reports on progress in plan enforcement to EPA on an annual (calendar year) basis, commencing with the first full report period after plan approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its section 111(d)/129 program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is approving the Virginia plan, excluding the non-applicable rule provisions, as identified in the DEQ letters of August 11, and 18, 2003; and April 6, and August, 25, 2004 to EPA. The identified exclusions, for example, include Rule 4–54 provisions relating to odors, toxic pollutants (state only requirements), NO_X emissions trading, and MWC operator requirements under the Virginia Board for Waste Management Facility Operators. As a result of this EPA approval action, the Federal plan is no longer applicable, except for the compliance schedule provisions of 40 CFR 62.14108 and 62.14109(e) through (m) that are incorporated by reference into Rule 4–54. Also, with respect to certain plan decisions, EPA retains discretionary authority for several actions as listed in the August 18, 2003 plan narrative, paragraph H. As provided by 40 CFR 60.28(c), any revisions to the Virginia plan or supporting regulations will not be considered part of the applicable plan until submitted by the Commonwealth of Virginia in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this rule without prior proposal because the Agency

views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing large MWC units that are subject to the provisions of 40 CFR part 60, subparts B, and Cb; and 40 CFR part 62, subpart FFF, as applicable. 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 section 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective December 28, 2004 without further notice unless EPA receives adverse comments by November 29, 2004. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

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 (Public Law 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.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. 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. 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.*).

B. Submission to Congress and the Comptroller General

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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three (3) specific facilities.

C. Petitions for Judicial Review

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 December 28, 2004. 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, approving the Virginia section 111(d)/129 plan for large MWC units, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: September 27, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 is revised to read as follows:

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

Subpart VV—Virginia

■ 2. Add a center heading, and §§ 62.11640, 62.11641, and 62.11642 to subpart VV to read as follows:

EMISSIONS FROM EXISTING LARGE MUNICIPAL WASTE

COMBUSTOR (MWC) UNITS—SECTION 111(d)/129 PLAN

§ 62.11640 Identification of plan.

Section 111(d) /129 plan for large MWC units with a capacity greater than 250 tons per day (TPD) and the associated Virginia Air Pollution Control Board Regulations (Rule 4–54, and other supporting rules identified in the plan), submitted to EPA on August 18, 2003, including supplemental information submitted on August 11

and September 30, 2003; and April 6, and August 25, 2004.

§ 62.11641 Identification of sources.

The affected facility to which the plan applies is each large MWC unit for which construction commenced on or before September 20, 1994.

§ 62.11642 Effective date.

The effective date of the plan for large MWC units is December 28, 2004.

[FR Doc. 04–24240 Filed 10–28–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–2004–0006; FRL–7825–1]

Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria Applicable to Alaska, Arkansas, and Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to amend the Federal regulations to withdraw certain water quality criteria applicable to Alaska, Arkansas, and Puerto Rico. In 1992, EPA promulgated Federal regulations, through the National Toxics Rule (''NTR''), establishing water quality criteria for toxic pollutants for 12 states and two territories, including Alaska, Arkansas, and Puerto Rico. These two states and one territory have now adopted, and EPA has approved, certain water quality criteria included in the NTR. Since Alaska, Arkansas, and Puerto Rico now have criteria, effective under the Clean Water Act, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally promulgated criteria are no longer needed for these pollutants. In today's action, EPA is amending the Federal regulations to withdraw those certain criteria applicable to Alaska, Arkansas, and Puerto Rico. EPA is withdrawing its criteria without a notice and comment rulemaking because the adopted criteria are no less stringent than Federal criteria (*see* 65 FR 19659, April 12, 2000).

DATES: This final rule is effective on October 29, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2004–0006. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available, docket materials are available either electronically in EDOCKET or in hard copy at the following: The administrative record for the withdrawal of Alaska's federally promulgated criteria is also available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, WA 98101, during normal business hours of 8 a.m. to 4:30 p.m. Pacific time. The administrative record for the withdrawal of Arkansas's federally promulgated criteria is also available for public inspection at EPA Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, TX 75202, during normal business hours of 7:30 a.m. to 11 a.m. and 1 p.m. to 4:30 p.m. central time. The administrative record for the withdrawal of Puerto Rico's Federally promulgated criteria is also available for public inspection at EPA Region 2, 290 Broadway, New York, NY 10007, during normal business hours of 9 a.m. to 4:30 p.m. eastern time Monday through Thursday, and 9 a.m.–1 p.m. eastern time on Friday.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action with respect to Alaska, contact Sally Brough with EPA's Region 10 at 206–553–1295. For questions regarding this action with respect to Arkansas, contact Russell Nelson with EPA's Region 6 at 214–665–6646. For questions regarding this action with respect to Puerto Rico, contact Wayne Jackson with EPA's Region 2 at 212–637–3807. For general and administrative concerns, contact Stephanie Thornton at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–566–0606).

SUPPLEMENTARY INFORMATION:

I. General Information

No one is regulated by this rule. This rule withdraws certain Federal water quality criteria applicable to Alaska, Arkansas, and Puerto Rico.

II. Background

In 1992, EPA promulgated the ''National Toxics Rule'' (''NTR'') to establish numeric water quality criteria for 12 states and two Territories (hereafter ''States'') that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848, December 22, 1992). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria applicable to that State. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment because additional comment on the criteria is unnecessary (*see* 65 FR 19659, April 12, 2000). However, if a State adopts criteria that are less stringent than the Federally-promulgated criteria, but which the Agency judges to meet the requirements of the Act, EPA will seek public comment before withdrawing the Federally-promulgated criteria (*see* 57 FR 60860, December 22, 1992). Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment.

There is good cause for making today's rule final without prior proposal and comment because, being identical or more stringent, the States' criteria are no less stringent than the Federal regulations. For the same reason, and because this rule relieves a Federal restriction, good cause exists to waive the requirement for a 30-day period before the amendment becomes effective. Therefore, the amendment is immediately effective. This rule does not remove any water quality protections. It removes a Federal regulation that duplicates State regulation.

Alaska

On March 30 and April 27, 1999, Alaska adopted revisions to its surface water quality standards (18 AAC 70). Alaska submitted the revisions to EPA for approval by letter dated May 10, 1999, and EPA received the revisions on May 13, 1999.

EPA Region 10 approved the State's freshwater and marine water aquatic life criteria for certain NTR pollutants on September 28, 2001, because they were identical to the NTR values and were consistent with both the CWA and EPA's implementing regulations at 40 CFR part 131. These pollutants are Nickel (acute), Selenium (acute and