

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 state and local declarations that rules implementing certain federal standards are unnecessary, 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 State 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 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 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.*).

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. 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**. 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. 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 March 11, 2005. Filing a petition for reconsideration by the Administrator of this direct 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* 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

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

Dated: December 21, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 62, 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 GG—New Mexico

■ 2. Subpart GG is amended by adding a new undesignated center heading and a new § 62.7881 to read as follows:

Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units

§ 62.7881 Identification of sources—negative declaration.

Letter from the City of Albuquerque Air Pollution Control Division dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC-2004-0004; FRL-7859-8]

RIN 2060-AM83

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On October 13, 2004, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for pushing, quenching, and battery stacks at new and existing coke oven batteries. The amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any significant adverse comments on the direct final amendments. Because a significant adverse comment was received on one provision, EPA is withdrawing the corresponding parts of the direct final rule. We will address the adverse comment in a subsequent final rule based on the parallel proposal published on October 13, 2004.

DATES: As of January 10, 2005, the EPA withdraws the direct final amendments to 40 CFR 63.7300(c)(1) published on October 13, 2004 (69 FR 60813). The remaining provisions published on October 13, 2004, will be effective on January 11, 2005.

ADDRESSES: *Docket:* The EPA has established a docket for this action under Docket ID No. OGC-2004-0004. 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.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, 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 form at Docket ID No. OGC-2004-0004, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Fruh, Emission Standards Division (C439-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-2837, fax number (919) 541-3207, e-mail address: fruh.steve@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2004, we published a direct final rule (69 FR 60813) and a parallel proposal (69 FR 60837) amending the NESHAP for pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The direct final rule amendments added provisions for a control system not covered by the existing rule, adjusted the parametric operating limits and associated compliance requirements for capture systems used to control pushing emissions, and adjusted the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1).

We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comments by November 12, 2004 (or by November 29, 2004 if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received adverse comments from one commenter on the amendments to the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1). The direct final amendments to 40 CFR 63.7300(c)(1) included:

- 40 CFR 63.7300(c)(1), which required completion of repairs within 30 days except as allowed in paragraphs (c)(1)(i) and (ii);
- 40 CFR 63.7300(c)(1)(i), which required the facility to notify the permitting authority if the repair could be completed within 60 days; and
- 40 CFR 63.7300(c)(1)(ii), which required the facility to request an extension if the repair could not be completed within 60 days.

Accordingly, we are withdrawing all amendments to 40 CFR 63.7300(c)(1). The amendments are withdrawn as of January 10, 2005. We will take final action on the proposed rule after considering the comment received. We will not institute a second comment period on this action. The provisions for

which we did not receive adverse comment will become effective on January 11, 2005, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 4, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ Accordingly, the Amendment to 40 CFR 63.7300 (c) (1), published in the **Federal Register** on October 13, 2004 (69 FR 60813) which was to become effective January 11, 2005 is withdrawn.

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DEPARTMENT OF DEFENSE

Department of the Navy

RIN 0703-ZA00

Policies and Responsibilities for Implementation of SECNAVINST 7220.85, Notice of Back Pay for Members of the Navy and Marine Corps Selected for Promotion While Interned as Prisoners of War (POW) During World War II

AGENCY: Department of the Navy, DoD.

ACTION: Policy statement.

SUMMARY: The Department of the Navy (DON) hereby gives notice of implementing its instruction (SECNAVINST 7220.85), an internal regulation that establishes the responsibilities and procedures within DON regarding the payment of back pay to any person who, by reason of being interned as a POW while serving as a member of the Navy or Marine Corps during World War II (WW II), was not available to accept a promotion for which the person had been selected.

DATES: This rule is effective until January 10, 2007.

ADDRESSES: The WW II Prisoner of War Promotion Back Pay Application and all pertinent information should be mailed to Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF-F10, Washington, DC 20380-1775 or Commander, Navy Personnel Command (PERS 62), 5720 Integrity Drive, Millington, TN 38055.

FOR FURTHER INFORMATION CONTACT: Deputy Commandant of the Marine Corps for Programs & Resources, [Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF-F10, Washington, DC

20380-1775 / 1-866-472-7139] or Commander, Navy Personnel (PERS 62) [Retired Activities Branch-62, 5720 Integrity Drive, Millington, Tennessee 38055 / (901) 874-4396].

SUPPLEMENTARY INFORMATION: Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, sec. 667 (Pub. L. 106-398), directed the DON to pay, from currently available appropriations, back pay to persons interned during World War II, who were selected for promotion but not available to accept the promotion. The Act authorizes payment to the former member or a surviving spouse of the deceased former member. If there is no surviving spouse of the deceased former member, no claim may be paid.

The amount of back pay payable is the amount equal to the difference between:

(1) The total amount of basic pay that would have been paid if the person had been promoted to the grade to which selected; and

(2) The total amount of basic pay that was actually paid.

The back pay computation period is the period:

(1) Beginning on the date as of when that person's promotion would have been effective for pay purposes but for the person's internment as a POW; and

(2) Ending on the earliest of:

(a) The date of the person's discharge or release from active duty;

(b) The date on which the person's promotion to that grade in fact became effective for pay purposes; or

(c) The end of World War II.

To be eligible for payment, claims must be postmarked within 2 years of publication in the **Federal Register**.

Definitions

a. World War II. The period of time beginning on December 7, 1941, and ending on December 31, 1946, as defined in 38 U.S.C. 101(8).

b. Surviving spouse. A husband or wife by lawful marriage who out lives the other spouse.

Policy

a. DON will take action to ensure that the benefits and eligibility for benefits are widely publicized and that all persons eligible for payment are afforded an opportunity to apply. Notification will be made through all appropriate means such as organizational newsletters, Internet websites, published media, and retiree correspondence.

b. While there is no requirement to submit a POW Promotion Back Pay Application, eligible veterans or surviving spouses must provide the information requested on the POW