

**9.0 Refunds and Exchanges**

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**9.2 Postage and Fee Refunds**

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**9.2.4 Full Refund**

A full refund (100%) may be made when:

\* \* \* \* \*

*[Revise item 1 to read as follows:]*

1. Express Mail is not delivered according to the applicable service standard, except as provided in 114.3.1 and 414.3.0. \* \* \*

\* \* \* \* \*

Stanley F. Mires,

Chief Counsel, Legislative.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[HI-126-NBK; FRL-8916-9]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Hawaii; Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by the State of Hawaii that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State of Hawaii and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective July 22, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and online at EPA Region IX Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street San Francisco, CA 94105-3901.  
Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Headquarters Library, Room Number

3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) *Docket/Telephone number:* (202) 566-1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### FOR FURTHER INFORMATION CONTACT:

Cynthia G. Allen, (415) 947-4120 or by e-mail at [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The SIP is a living document which the State revises as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On August 4, 2005 (70 FR 44852), as corrected on August 23, 2005 (70 FR 49377), EPA published a document in the **Federal Register** beginning the new IBR procedure for the State of Hawaii. Today's action is an update to the August 4, 2005 document.

##### II. EPA Action

In this document, EPA is doing the following:

A. Announcing an update to the IBR material as of May 1, 2009; and

B. Revising the entries in paragraphs 52.620(b) and (c) to reflect this update.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies

provisions which are already in effect as a matter of law. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

#### III. 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 is therefore 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). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

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 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 an economically significant regulatory action based on health or safety risks.

This rule does not involve technical standards, 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA’s compliance with these statutes and Executive Orders for the underlying rules is discussed in previous actions taken on the State’s rules.

#### *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 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. Today’s action simply reforms the codification of provisions which are already in effect as a matter of law. 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 22, 2009]. 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 update to the Identification of plan for Hawaii is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Hawaii SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” reorganization update action for the State of Hawaii.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 25, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

#### **Subpart M—State of Hawaii**

■ 2. Section 52.620 is amended by revising paragraphs (b) and (c) to read as follows:

#### **§ 52.620 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date prior to May 1, 2009, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after May 1, 2009 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules and regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of May 1, 2009.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region IX Office at 75 Hawthorne Street, San Francisco, CA 94105; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) EPA approved regulations.

#### **EPA-APPROVED STATE OF HAWAII REGULATIONS**

State citation	Title/subject	Effective date	EPA approval date	Explanation
Department of Health, Public Health Regulations, Chapter 43, Air Pollution Control Regulations:				
Section 22 .....	Hearings and Appeals .....	12/26/1972	05/14/1973, 38 FR 12711 ....	See also 74 FR 11037 (March 16, 2009). See also 74 FR 11037 (March 16, 2009).
Section 23 .....	Application .....	03/28/1972	05/31/1972, 37 FR 10842 ....	
Department of Health, Title 11, Chapter 60, Air Pollution Control Regulations:				
11–60–1 .....	Definitions .....	11/29/1982	08/18/1983, 48 FR 37403.	

## EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11-60-2 .....	Permit system, applicability ..	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-3 .....	Permit system, applications	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-4 .....	Permit system, conditions for considering applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-5 .....	Permit system, action on applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-6 .....	Permit system, performance testing.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-7 .....	Permit system, cancellation of authority to construct.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-8 .....	Permit system, suspension or revocation of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-9 .....	Permit system, transfer of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-10 .....	Permit system, reporting discontinuance or dismantlement.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-11 .....	Permit system, posting of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-12 .....	Permit system, fees .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-13 .....	Permit system, fee schedule for a permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-14 .....	Permit system, period of permit.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-15 .....	Sampling, testing, and reporting methods.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-16 .....	Malfunction of equipment reporting.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-17 .....	Prohibition of air pollution ....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-18 .....	Control of open burning .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-19 .....	Agricultural burning, permit requirement.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-20 .....	Agricultural burning, applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-21 .....	Agricultural burning, "no burn" days.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-22 .....	Agricultural burning, record keeping and monitoring.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-23 .....	Agricultural burning, action on applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-24 .....	Visible emissions .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-25 .....	Control of motor vehicles .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-26 .....	Fugitive dust .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-27 .....	Incineration .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-28 .....	Bagasse-burning boilers .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-29 .....	Process industries .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-35 .....	Prevention of air pollution emergency episodes.	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-37 .....	Penalties and remedies .....	11/29/1982	08/18/1983, 48 FR 37403.	
11-60-38 .....	Severability .....	11/29/1982	08/18/1983, 48 FR 37403.	

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