is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: February 8, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4406 Filed 2–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR7–236, FRL–7149–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Section 111(d)/129 Plan submitted by the Commonwealth of Puerto Rico for the purpose of implementing and enforcing the Emission Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. The plan was submitted to fulfill requirements of the Clean Air Act. The Puerto Rico (PR) plan establishes emission limits for existing HMIWI and provides for the implementation and enforcement of those limits.

DATES: Comments must be received on or before March 27, 2002.

ADDRESSES: Comments may be mailed to Raymond W. Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Division of Environmental Planning and Protection, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866; Environmental Protection Agency, Region II, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127; and the Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis at (212) 637–3713, or by e-mail at ellis.demian@epa.gov.

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I. What Action Is Being Taken by the Environmental Protection Agency (EPA) Today?

EPA is proposing to fully approve the Puerto Rico plan, as submitted on February 20, 2001, for the control of air emissions from HMIWIs. When EPA developed the New Source Performance Standard (NSPS) for HMIWI, it also developed Emission Guidelines (EG) to control air emissions from existing HMIWI. (See 62 FR 48379, September 15, 1997, 40 CFR Part 60, Subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and Subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The Puerto Rico Environmental Quality Board (EQB) developed a plan, as required by Sections 111(d) and 129 of the Clean Air Act (CAA), 42 U.S.C. 7411(d) and 7429, to adopt the EG into its body of regulations, and EPA is proposing action today to fully approve it.

II. The HMIWI State Plan Requirement

What Is a HMIWI State Plan?

A HMIWI state plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste.

Why Are We Requiring Puerto Rico To Submit a HMIWI Plan?

States are required under Sections 111(d) and 129 of the CAA to submit plans to control emissions from existing HMIWI in the State. The state plan requirement was triggered when EPA published the EG for HMIWI under 40 CFR Part 60, Subpart Ce (See 62 FR 48379, September 15, 1997). For the purposes of the Clean Air Act, Puerto Rico is treated as a state.

Under Section 129 of the CAA, EPA was required to promulgate EGs for several types of existing solid waste incinerators. These EGs establish emission standards that states must adopt to comply with the CAA. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in HMIWI plans.

The intent of the HMIWI plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWI?

The HMIWI plan establishes control requirements which reduce the following emissions from HMIWI: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to public health and the environment.

Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders. Dioxin may also pose risks to the reproductive and immune systems and is a likely human carcinogen. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI Plan Meet To Be Approved?

The criteria for approving a HMIWI plan include requirements from Sections 111(d) and 129 of the CAA and 40 CFR part 60, Subpart B. Under the requirements of Sections 111(d) and 129 of the CAA, a HMIWI plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and record keeping and reporting. Under Section 129(e), HMIWI plans must ensure that affected HMIWI facilities submit Title V permit applications to the state by September 15, 2000. Under the requirements of 40 CFR part 60, Subpart B, the criteria for an approvable Section 111(d) plan must include a demonstration of adequate legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a state progress report commitment.

III. What Does the Puerto Rico HMIWI Plan Contain?

EQB amended its Rules 102 and 405(b) of the Regulations for the Control of Atmospheric Pollution (RCAP) to incorporate the requirements for implementing the HMIWI EG covered under Sections 111(d) and 129 of the CAA, and codified in the 40 CFR part 60, Subpart Ce. Revisions to the Commonwealth rules became effective on April 20, 2001.

The Puerto Rico HMIWI plan contains:

1. A demonstration by the Attorney General of the Commonwealth's legal authority to implement the Section 111(d)/129 HMIWI plan;
2. Revisions to Commonwealth rules 102 (definitions) and 405(b) (Incineration), as the enforceable mechanism;
3. An inventory of six (6) known designated facilities, along with estimates of their air emissions;
4. Emission limits that are as protective as the EG;
5. A final compliance date no later than September 15, 2002;
6. Testing, monitoring, inspection, reporting and record keeping requirements for the designated facilities;
7. Documentation from the public hearing on the HMIWI plan; and,
8. Provisions to make progress reports to EPA.

The reader is referred to the Technical Support Document for further details on Puerto Rico's plan.

IV. Which HMIWIs Are Subject to These Regulations?

The EG for existing HMIWI affect any HMIWI built on or before June 20, 1996. If a facility meets this criterion, it is subject to these regulations.

V. What Steps Do HMIWIs Need To Take?

A facility must meet the requirements listed in Puerto Rico Rule 405(b) of the Regulations for the Control of Atmospheric Pollution (RCAP), summarized as follows:

1. Determine the size of the facility's incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which the facility's incinerator must meet. [Rule 405(b)] Please refer to EQB's Rule 405(b), Table 1 to determine the specific emission limits which apply to the facility. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events.
3. There are provisions to address small rural incinerators (if your unit is applicable). Please see Rule 405(b)(5) for further details.
4. The facility must meet a 10 percent opacity limit on its discharge, averaged over a six-minute block. Please see Rule 405(b)(2) for further details.
5. The facility must have a fully trained and qualified HMIWI operator available to supervise the operation of the incinerator. This operator must be trained and qualified through a state-approved program, or a training program that meets the requirements listed in Rule 405(b)(3).
6. The facility's operator must be certified, as discussed in 5 above, no later than one year after EPA approval of the HMIWI plan or after publication date of EPA's federal plan, whichever is sooner. Please see Rule 405(b)(9)(G) for further details.
7. The facility must develop and submit to EQB a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, ''An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities,'' 1993, and must be submitted to EQB no later than 60 days following the initial performance test for the affected unit. Please see Rule 405(b)(4) for further details.
8. The facility must conduct an initial performance test to determine the incinerator's compliance with these emission limits. This performance test must be completed no later than 180 days after final compliance is achieved, and as required under 40 CFR 60.37e and Rule 405(b)(9)(E).
9. The facility must install, calibrate, maintain, and operate devices to monitor the parameters listed under Rule 405(b)(7).
10. The facility must document and maintain information concerning: Calendar date of each record; records of: (a) Pollutant concentrations or opacity measurements (as determined by the continuous emissions monitoring system); (b) HMIWI charge dates, times, and weights and hourly charge rates; and other operational data. This information must be maintained for a period of five years. Please see Rule 405(b)(8) for further details.
11. The facility must submit an annual report to EQB containing records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facility's manager.

VI. Is the Puerto Rico HMIWI Plan Approvable?

EPA compared the Puerto Rico Rule 405(b) of the Regulations for the Control of Atmospheric Pollution (RCAP) with our HMIWI EG. EPA finds the Puerto Rico rules to be at least as protective as the EG. The Puerto Rico HMIWI plan was reviewed for approval compared to the following criteria: 40 CFR 60.23 through 60.26, Subpart B—Adoption and Submittal of State plans for Designated Facilities; 40 CFR 60.30e through 60.39e, Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators; and, 40 CFR 62.14400 through 62.14495, Subpart HHH—Federal Plan Requirements for Hospital/

Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996. It should be noted that Puerto Rico is currently subject to the federal plan requirements for Hospital/Medical/Infectious Waste Incinerators, 40 CFR 62.14400 through 62.14495.

The EPA finds that the Puerto Rico HMIWI plan satisfies the requirements for an approvable Section 111(d)/129 plan under Subparts B and Ce of 40 CFR Part 60 and Subpart HHH of 40 CFR Part 62 and is therefore, proposing to approve the Puerto Rico HMIWI plan.

VII. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0363. For additional information concerning these requirements, *See* 40 CFR 60.38e. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a HMIWI source is found in the Commonwealth of Puerto Rico in which case the source will become subject to the federal plan until a Puerto Rico HMIWI plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do no apply to this rule.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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: February 11, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02–4405 Filed 2–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-month Finding for a Petition To List the Big Cypress Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Big Cypress fox squirrel (*Sciurus niger avicennia*) under the Endangered Species Act of 1973, as amended (Act). After a review of all available scientific and commercial information, we find that listing of the Big Cypress fox squirrel is not warranted at this time. We will continue to seek new information on the biology, ecology, distribution, and habitat of the Big Cypress fox squirrel, as well as potential threats to its continued existence. If additional data become available in the future, we may reassess the need for listing.

DATES: The finding announced in this document was made on February 15, 2002.

ADDRESSES: The complete file for this finding, including comments and information submitted, is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960.

FOR FURTHER INFORMATION CONTACT: David Martin (see **ADDRESSES** section; telephone 561/562–3909 extension 230; facsimile 561/562–4288).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we must make a finding within 12 months of the date of receipt of the petition as to whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Upon making a 12-month finding, we must promptly publish notice of such finding in the **Federal Register**.

The Big Cypress fox squirrel (*Sciurus niger avicennia*) is a subspecies of the fox squirrel (*Sciurus niger*), which occurs over most of the eastern and central United States, extending into south-central Canada (Koprowski 1994). The Big Cypress fox squirrel is restricted to southwest Florida. Its historic range was southwest Florida from south of the Caloosahatchee River, west of the Everglades, to as far south as Cape Sable (Williams and Humphrey 1979, Moore 1956). Despite human development and changes in land use in the southwestern Florida peninsula, the current range of the Big Cypress fox squirrel, based on its description in the best available information, is essentially unchanged (Humphrey and Jodice 1992, Williams and Humphrey 1979, and Moore 1956). Big Cypress fox squirrels have been reported present in Hendry and Lee Counties south of the Caloosahatchee River, Collier County, the mainland of Monroe County, and extreme western Miami-Dade County (a strip of land on the western side of the true Everglades, largely in Big Cypress National Preserve) (Humphrey and Jodice 1992, Jodice 1990, Wooding 1990, and Williams and Humphrey 1979). The Big Cypress fox squirrel is, however, absent from a few areas of its historic range like the Cape Sable coast of Everglades National Park in the vicinity of Flamingo, Monroe County. (Wooding 1990, Jodice 1990, Humphrey and Jodice 1992).

Fox squirrel research specific to Florida was only begun in the 1950s (Wooding 1990). Therefore, very little information regarding Big Cypress fox squirrels is available from prior to that time. Studies of the Big Cypress fox squirrel in its natural habitat are virtually nonexistent. Available reports specific to the Big Cypress fox squirrel provide limited details regarding the biology of, population status of, and threats faced by this fox squirrel range-wide. In addition, no recent studies or evaluations of the Big Cypress fox squirrel have been conducted. The only recent analysis was conducted on potential Big Cypress fox squirrel habitat (WilsonMiller Inc. 2002). The previous range-wide report by Cox *et al.* (1994) on habitat used 1985–1989 Landsat imagery.

The State has protected the Big Cypress fox squirrel since 1973, when the Florida Fish and Wildlife Commission (Commission) listed it as endangered. The State reclassified the Big Cypress fox squirrel to threatened in 1979; the species retained protection as a nongame species. As a threatened species, Big Cypress fox squirrels and their nests cannot be taken or possessed without authorization from the Commission.

Our involvement with the Big Cypress fox squirrel began when we identified the Big Cypress fox squirrel as a category 2 candidate species in Notices of Review published in the **Federal Register** on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Prior to 1996, a category 2 species was one that we were considering for possible addition to the Federal Lists of Endangered and Threatened Wildlife and Plants, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. We identified the Big Cypress fox squirrel's status as ''D'' or ''Declining'' in the 1991 and 1994 Notices of Review. This designation indicates decreasing numbers or increasing threats. In addition, we identified a priority for this subspecies and most of our other category 2 candidates during the completion of the 1991 and 1994 Notices of Review. In 1991, the Big Cypress fox squirrel was identified as a priority 9. Based on the listing priority system detailed in the **Federal Register** in 1983 (48 FR 43103), this priority indicated that the Big Cypress fox squirrel faced a moderate to low magnitude of imminent threats. In