DEP drops plan to finalize stream list

By Ken Ward Jr.
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State regulators have dropped their plan to finalize a list of protected West Virginia streams, saying they don't want to pick a fight with lawmakers over the issue.

Earlier this year, the Legislature declined to act on the list of more than 300 streams the state Department of Environmental Protection said deserved tougher pollution protections.

DEP Secretary Stephanie Timmermeyer said she planned to finalize the list anyway. Timmermeyer said the DEP had the legal authority to do so.

On Friday, Deputy DEP Secretary Randy Huffman said the agency now plans to start all over.

A new list will be published in draft form. The DEP will accept public comments and then finalize the list. The resulting version will be submitted for legislative review during the 2008 session.

"It was maybe a subversion of the legislative process for us to just go out and file the rule," Huffman said. "It's a legislative process whether you agree or not."

The list in question covers streams that are deemed to qualify for "Tier 2.5" protection under West Virginia's water quality anti-degradation policy.

Under that policy, clean streams are generally supposed to be kept that way. Streams on the Tier 2.5 list could not be degraded by more than 10 percent.

DEP officials had already whittled down the Tier 2.5 list and allowed three separate rounds of public comments. But lawmakers, at the urging of coal companies, timber operators and the Farm Bureau, were slashing dozens of streams from the list.

Originally, the DEP proposed Tier 2.5 protection for about 300 streams, about 4 percent of the waterways in the state, agency officials said.

Don Garvin, lobbyist for the West Virginia Environmental Council, said the DEP's action would help regulated industries gut the stream list.

"It's going to be almost impossible to protect streams in this state," Garvin said.

Huffman said he doesn't believe the DEP ever made a definite decision to move forward without legislative action on the stream list.

"My understanding was that was an option that was on the table at the time," said Huffman, who is running the DEP while Timmermeyer is on maternity leave. "There were a number of options there."

In a March 15 interview, Timmermeyer and DEP spokeswoman Jessica Greathouse said the agency planned to file the final rules, despite legislative inaction.

Timmermeyer cited several state Supreme Court decisions she said supported the DEP's plan.

Under those rulings, she said, lawmakers can approve, reject or amend state agency rules, but she said the Legislature can't veto an agency rule by simply not acting on it at all.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: WV Dept. of Environmental Protection - Div. of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Standards of Performance for New Stationary Sources ~~Pursuant to 40 CFR Part 60~~

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Stephanie R. Timmermeyer
Authorized Signature

Stephanie R. Timmermeyer, Secretary

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR16 - Standards of Performance for New Stationary Sources

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 7, 2006

b. What other notice, including advertising, did you give of the hearing?

Published notice on June 9th in The Charleston Daily Mail and The Charleston Gazette. Posted on the Department of Environmental Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

July 10, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2006

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499
Fax: 304 926-0488
e-mail: jbenedict@wvdep.org

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499
Fax: 304 926-0488
e-mail: tmowrer@wvdep.org

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200
Fax: 304 926-0479

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

BRIEFING DOCUMENT

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources"

A. AUTHORITY: W.Va. Code §22-5-4.

B. SUMMARY OF RULE:

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines and Monitoring Requirements.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As set forth in 40 CFR §60.4(b), Section 111(c) of the CAA directs the U.S. EPA Administrator to delegate to each State the authority to implement and enforce standards of performance for new stationary sources. Promulgation of this rule will enable the State to continue to be the primary enforcement authority for the NSPS promulgated by U.S. EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill the State's responsibilities under the CAA. Revisions to the rule include revised title, annual incorporation by reference updates, updated exclusions to 40 CFR Part 60 incorporation by reference, and general language clarification and correction.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 31, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - May 31, 2006
1:00 p.m. – 3:00 p.m.
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:
Larry Harris
Jackie Hallinan
Rick Roberts
Bill Raney (via conference call)
Karen Price

DEP:
Stephanie R. Timmermeyer, Cabinet Secretary
Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Heather A. Connolly, General Counsel
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Mike Zeto, WVDEP
Charlie Sturey, WVDEP
Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Jim Mason – WVDEP
Bill Brannon – WVDEP
Carroll Cather – WVDEP
Terrie Sangid – WVDEP
Scott Mandirola – WVDEP
Cliff Whyte – WVDEP
John Morgan – WVDEP
Gary Rogers – WVDEP
Mike Dorsey – WVDEP
Patrick Campbell – WVDEP
Ken Politan – WVDEP
Pam Nixon – WVDEP

VISITORS:
Don Garvin – WVEC
Allan S. Tweddle – WVEC
Adam Webster – WVRC
Tim Mallan – Appalachian Power
Steve Keen – Bright Enterprises
Charlie Burd – IOGA – WV
Tom Boggs – WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

COMMENTS

Secretary Timmermeyer - Procedural History – 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

Yes

Will there be another comment period after filing with Secretary of State's Office?

Yes

Is this the final list?

Yes

So §6.2 is gone?

Yes

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.

Since rulemaking authority has been taken from EQB how do you appeal?

This is like any other rule, EQB has no appellate jurisdiction.

When does it go into effect?

If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1st time issuances.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

COMMENTS

Secretary Timmermeyer – Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

We relied on DNR's data to come up with the list.

Was it a scientific study or did it include streams where trout are stocked?

The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.

6 streams are being taken off in this rule because they cannot support trout over time.

How recent are DNR's survey's?

The surveys range from 1975 to present.

We have to maintain waters that "previously sustained trout."

Where is Watershed at in definition?

When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)

There is no *definition of "water body" in State Code, only "Waters."*

33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENTS

Can we give an example?

Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.

47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Does this apply to any other industry?

No, it is only coal related.

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

No, it is information contained in other forms.

4.2.f.a WV. Jobs creation

Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

58CSR5 – Recycling Assistance Grant Program

SUMMARY

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clairfies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

COMMENT

Someone worked really hard on putting this together - Really thinks they did a great job.

The changes are a result of suggestions from grant recipients and the recycling community in general.

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

COMMENT

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old "prevent and control" new "control" why drop the term "prevent" from the rule?

We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.

The federal government doesn't use the term "prevent" and we are trying to mirror their rules for consistency.

Does it involve timbering operations?

No.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate ;recent changes in toxicological profiles posted by EPA for several constituents.

COMMENT

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.

SUMMARY

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

COMMENT

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

199CSR1 – Surface Mining Blasting Rule

SUMMARY

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fixcal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

3.2.c. 1000 ft requirement for seismograph
3.4. defines where DEP gives up regulatory authority as 40ft.
3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

> *Modified – Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.*

Would that include the convicted felon requirements?

> *The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.*

Any provision for appeals on the convicted felon prohibition?

> *Not at this tme.*

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.
4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for "Other structures" and "habitable dwelling"
Shaft and slope (40 ft)

> *Other structures or "Protective structure" can house people – habitable dwelling one that can house people (snowbird example)- "shaft and slope" DEP worked with miner's health and safety to develop the distance criteria.*

We're (WVCA) probably fine with them.

Does OSM require it?

No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.

HOLD OVER FOR NEXT MEETING.

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removals duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

COMMENT

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term "databases" specifically

Some of those databases don't exist. We have our own database now.

Has the current notification timeframe changed?

No, it is the same as using the existing spill line.

What about mining related spills?

Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.

Is there anyway to sample water for slurry spills?

Currently DEP Inspectors take stream water samples and that data is on file.

Is there anything dangerous in the slurry to the public?

Not usually. We can get you data on existing samples.

Dialysis system are bothered by trace stuff in the water.

Coal fines are usually what kill fish, not the trace chemicals.

HOLD OVER FOR NEXT AC MEETING

47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

COMMENT

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

Haul roads, storage, etc.

Does this do away with any existing public comment period?

No. These small changes wouldn't require a hearing.

HOLD FOR NEXT MEETING.

35CSR3 – Coalbed Methane Wells Rule –

HOLD FOR NEXT MEETING

33CSR20 – Hazardous Waste Management

HOLD FOR NEXT MEETING

45CSR8 – Ambient Air Quality Standards

SUMMARY

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

COMMENT

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

> *It's now in 3.1 and adopts federal standards.*

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

> The federal EPA is *currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.*

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial-Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

COMMENT

Standard Update of fed requirements.

No Questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61" filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

COMMENT

Standard update of fed requirements combining 45CSR___ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

45CSR39 – Control of Annual Nitorgen Oxides Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_X emission reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are

known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind NO_X emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_X Ozone Season Trading Program requirements are set forth in 45CSR40.

COMMENT

Standard update of Fed requirements.
CAIR rules
Picking up EPA rules

Are all the cross-outs just picking up federal standards?

Yes.

No other questions.

45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_X emission reductions be implemented in two phases. The first phase of ozone season NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind ozone season NO_X emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_X SIP Call trading program, existing NO_X SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_X reduction provisions must be "sunsetted" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which

effectively "sunsets" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_X SIP Call ozone season NO_X emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_X Annual Trading Program requirements are set forth in 45CSR39.

COMMENT

These changes have they resulted in any change in stringency?

No we are simply streamlining the CAIR rules

We haven't lost any ground?

No.

45CSR1 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO_2 Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO_2).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO_2 reduce annual emissions based upon the implementation of retirement ratios for SO_2 allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO_2 emission reductions be implemented in two phases. The first phase of SO_2 reductions starts in 2010 and requires retiring SO_2 allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO_2 allowances at a 2.86:1 ratio, and continues thereafter. The SO_2 emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO_2 emission allowances from or to other program participants. Reducing upwind SO_2 emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).
45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

COMMENT

No questions.

OTHER BUSINESS

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn – Bill Raney seconds.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources"

Type of Rule: ___X__ Legislative _____Interpretive _____Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: 926-0475 Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2007 Increase/Decrease (use "-")	2008 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 0	$ 0	$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 60 as of June 1, 2006 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 5, 2006

Signature of Agency Head or Authorized Representative

John A. Benedict, Director

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~OFFICE~~ DIVISION OF AIR QUALITY

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
~~PURSUANT TO 40 CFR PART 60~~

§45-16-1. General.

1.1. Scope. -- This rule establishes and adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 CFR Part 60. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~April 28, 2006~~.

1.4. Effective Date. -- ~~June 1, 2006~~.

1.5. Incorporation By Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, ~~June 1, 2005~~ June 1, 2006.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60" which was filed ~~May 20, 2005~~ April 28, 2006, and which became effective ~~June 1, 2005~~ June 1, 2006.

§45-16-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §7401 et seq.

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.4. Other words and phrases used in this rule, unless otherwise indicated, ~~will~~ shall have the meaning ascribed to them in 40 CFR Part 60. Words and phrases not defined therein ~~will~~ shall have the meaning given to them in the federal Clean Air Act.

§45-16-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Part 60 which results or will result in a violation of this rule.

§45-16-4. Adoption of Standards.

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, including any reference methods, performance specifications

and other test methods which are appended to these standards and contained in 40 CFR Parts 60 and 65, effective ~~June 1, 2005~~ June 1, 2006, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 CFR §60.9 is amended to provide that information ~~will~~ shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; and

4.1.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, and HHHH of 40 CFR Part 60 ~~will~~ shall be excluded.

§45-16-5. Secretary.

5.1. Any and all references in 40 CFR Parts 60 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator ~~will~~ shall retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to recordkeeping and reporting;

5.1.b.7. emissions averaging;

5.1.b.8. applicability determinations; or

5.1.b.9. the authority to require testing under Section 114 of the Clean Air Act, as amended; or

5.1.c. where the context of the regulation clearly requires otherwise.

§45-16-6. Permits.

6.1. Nothing contained in this adoption by reference ~~must~~ shall be construed or inferred to mean that permit requirements in accordance with applicable rules ~~will~~ shall be in any way be limited or inapplicable.

§45-16-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency ~~will~~ shall be resolved by the determination of the Secretary and the determination ~~will~~ shall be based upon the application of the more stringent provision, term, condition, method or rule.

excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–108 is added to read as follows:

§ 165.T09–108 Safety Zone; NY.

(a) *Location.* The following area is a temporary safety zone: all waters of the Niagara River within an 800 foot radius of the fireworks barge moored/anchored in approximate position 43°09′27″ N, 076°20′25″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 10 p.m. (local) until 10:30 p.m. (local) on September 17, 2005.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: August 4, 2005.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 05–17159 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN–86–2; FRL–7962–6]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the Revised Format of 40 CFR part 52 for Materials Being Incorporated by Reference for Minnesota.

DATES: This final rule is effective on August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–8328, or by e-mail at *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a document on February 24, 2005 (70 FR 8930) redesignating § 52.1220 as § 52.1222, when § 52.1222 already existed. The intent of the rule was to remove the then existing § 52.1222 titled "EPA-approved Minnesota State regulations" and then redesignate § 52.1220 as § 52.1222. This document corrects the erroneous amendatory language.

Correction

In the final rule published in the **Federal Register** on February 24, 2005 (70 FR 8930), on page 8932 the amendatory instruction is corrected. 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 procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 8, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

§ 52.1222 [Removed]

■ 2. Section 52.1222 titled "EPA-approved Minnesota State regulations" is removed.

§ 52.1220 [Redesignated as § 52.1222]

■ 3. Section 52.1220 is redesignated as § 52.1222 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1222 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of Minnesota" and all revisions submitted by Minnesota that were federally approved prior to December 1, 2004.

* * * * *

[FR Doc. 05–17203 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 75

[OAR–2002–0056; FRL–7960–1]

RIN 2060–AJ65

Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This action corrects and clarifies certain text of the final rule entitled "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating

Units." The final rule was published in the **Federal Register** on May 18, 2005 (70 FR 28606).

This action corrects certain section designations set forth in the final rule at 70 FR 28652. In addition, this action corrects certain revisions set forth in the final rule at 70 FR 28678. These corrections do not affect the substance of the action, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain section designations to eliminate duplication with other rules. Thus, it is proper to issue these final rule corrections without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

EFFECTIVE DATE: May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Combustion Group, Emission Standards Division (C439–01), EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5430; fax number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Is the Background for the Corrections?

On May 18, 2005 (70 FR 28606), EPA issued a final rule in which EPA promulgated new source performance standards for new coal-fired electric utility steam generating units and emission guidelines for existing coal-fired electric utility steam generating units designed to limit mercury (Hg) emissions from such sources. EPA subsequently determined that certain sections of the final rule were not properly designated, *i.e.*, the numbering was not correct, and that certain rule text was not properly identified as introductory text. This action corrects those technical errors.

II. What Are the Corrections to Final Rule (70 FR 28652, 27678)?

This notice corrects the following errors. In inserting a section to 40 CFR part 60, subpart Da (*e.g.*, 40 CFR 60.45a), to incorporate emission limitations for Hg, subsequent sections were renumbered. In so doing, we inadvertently assigned section numbers to 40 CFR part 60, subpart Da, that were already in use in 40 CFR part 60, subpart Ea. To correct this error, it is necessary to renumber all of the sections in 40 CFR part 60, subpart Da, and to correct the associated internal references in the same manner. Further, in revising 40 CFR 75.6, we inadvertently indicated that we were revising entire paragraphs, rather than just the introductory text.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (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 (OMB). This action is not a "major rule" as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, 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. 104B4). 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 the UMRA.

The corrections do not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of Tribal governments, as specified in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. EPA will submit a report containing today's final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on May 18, 2005.

EPA's compliance with the above statutes and EO for the underlying rule is discussed in the May 18, 2005 **Federal Register** notice containing "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (70 FR 28606).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Incorporation by reference, Intergovernmental relations, Metals, Natural gas, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 19, 2005.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of the Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

Subpart Da—[AMENDED]

■ 2. Subpart Da is amended as follows:
■ a. Redesignating § 60.40a as § 60.40Da;
■ b. Redesignating § 60.41a as § 60.41Da;
■ c. Redesignating § 60.42a as § 60.42Da;
■ d. Redesignating § 60.43a as § 60.43Da;
■ e. Redesignating § 60.44a as § 60.44Da;
■ f. Redesignating § 60.45a as § 60.45Da;
■ g. Redesignating § 60.46a as § 60.46Da;
■ h. Redesignating § 60.47a as § 60.47Da;
■ i. Redesignating § 60.48a as § 60.48Da;
■ j. Redesignating § 60.49a as § 60.49Da;
■ k. Redesignating § 60.50a as § 60.50Da;
■ l. Redesignating § 60.51a as § 60.51Da; and
■ m. Redesignating § 60.52a as § 60.52Da.

§ 60.43Da [Amended]

■ 3. Newly redesignated § 60.43Da is amended by revising the existing reference in paragraph (f) from "§ 60.45a" to "§ 60.47Da".

§ 60.44Da [Amended]

■ 4. Newly redesignated § 60.44Da is amended as follows:
■ a. Revising the existing reference in paragraph (a) from "§ 60.46a(j)(1)" to "§ 60.48Da(j)(1)";
■ b. Revising the existing reference in paragraph (b) from "§ 60.45a" to "§ 60.47Da"; and
■ c. Revising the existing reference in paragraph (d)(1) from "§ 60.46a(k)(1)" to "§ 60.48Da(k)(1)".

§ 60.45Da [Amended]

■ 5. Newly redesignated § 60.45Da is amended by:
■ a. Revising the existing reference in paragraph (a) from "§ 60.50a(h)" to "§ 60.50Da(h)"; and
■ b. Revising the existing reference in paragraph (b) from "§60.50a(g)" to "§60.50Da(g)".

§ 60.47Da [Amended]

■ 6. Newly redesignated § 60.47Da is amended as follows:
■ a. Revising the existing reference in paragraph (b) from "§ 60.43a(c)" to "§ 60.43Da(c)";
■ b. Revising the existing reference in paragraph (c) from "§ 60.43a(a)" to "§ 60.43Da(a)"; and
■ c. Revising the existing reference in paragraph (d) from "§ 60.44a(a)" to "§ 60.44Da(a)".

§ 60.48Da [Amended]

■ 7. Newly redesignated § 60.48Da is amended as follows:
■ a. Revising the existing references in paragraph (a) from "§ 60.42a(a)(1)" to "§ 60.42Da(a)(1)" and from "§ 60.42a(a)(2) and (3)" to "§ 60.42Da(a)(2) and (3)";
■ b. Revising the existing references in paragraph (b) from "§ 60.44a(a)" to "§ 60.44Da(a)" and from "§ 60.44a(a)(2)" to "§ 60.44Da(a)(2)";
■ c. Revising the existing references in paragraph (c) from "§ 60.42a" to "§ 60.42Da", from "§ 60.44a" to "§ 60.44Da", and from "§ 60.45a" to "§ 60.45Da";
■ d. Revising the existing reference in paragraph (d)(3) from "§ 60.43a" to "§ 60.43Da";
■ e. Revising the existing references in paragraph (e) from "§ 60.43a" to "§ 60.43Da" and from "§ 60.44a" to "§ 60.44Da";
■ f. Revising the existing references in paragraph (f) from "§ 60.43a" to "§ 60.43Da" and from "§ 60.44a" to "§ 60.44Da";
■ g. Revising the existing references in paragraph (h) from "§ 60.49a" to "§ 60.49Da", from "§ 60.43a" to "§ 60.43Da", and from "60.44a" to "§ 60.44Da";
■ h. Revising the existing references in paragraph (i) from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)", from "§ 60.49a(c)" to "§ 60.49Da(c)", from "§ 60.49a(l)" to "§ 60.49Da(l)", and from "§ 60.49a(k)" to "§ 60.49Da(k)";
■ i. Revising the existing reference in paragraph (j) introductory text from "§ 60.44a(a)(1)" to "§ 60.44Da(a)(1)";
■ j. Revising the existing reference in paragraph (j)(1) from "§ 60.44a(a)(1)" to "§ 60.44Da(a)(1)";
■ k. Revising the existing references in paragraph (j)(2) from "§ 60.49a" to "§ 60.49Da";
■ l. Revising the existing references in paragraph (k) introductory text from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ m. Revising the existing reference in paragraph (k)(1) from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ n. Revising the existing reference in paragraph (k)(1)(iv) from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ o. Revising the existing reference in paragraph (k)(2) introductory text from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ p. Revising the existing references in paragraph (k)(2)(ii) from "§ 60.49a" to "§ 60.49Da" and from "§ 60.49a(l)" to "§ 60.49Da(l)";
■ q. Revising the existing reference in paragraph (k)(2)(iii) from "§ 60.49a(k)" to "§ 60.49Da(k)";
■ r. Revising the existing reference in paragraph (k)(2)(iv) from "§ 60.49a(l)" to "§ 60.49Da(l)"; and
■ s. Revising the existing references in paragraph (l) from "§ 60.45a" to "§ 60.45Da", from "§ 60.49a(p)" to "§ 60.49Da(p)", from "§ 60.49a(l) or (m)" to "§ 60.49Da(l) or (m)", and from "§ 60.49a(k)" to "§ 60.49Da(k)".

§ 60.49Da [Amended]

■ 8. Newly redesignated § 60.49Da is amended as follows:
■ a. Revising the existing reference in paragraph (b)(2) from "§ 60.43a(d)" to "§ 60.43Da(d)";
■ b. Revising the existing references in paragraph (c)(2) from "§ 60.51a" to "§ 60.51Da";
■ c. Revising the existing reference in paragraph (g) from "§ 60.48a" to "§ 60.48Da";
■ d. Revising the existing reference in paragraph (k) from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ e. Revising the existing reference in paragraph (l) from "§ 60.44a(d)(1)" to "§ 60.44Da(d)(1)";
■ f. Revising the existing references in paragraph (o) from "§ 60.41a" to "§ 60.41Da" and from "§ 60.44a(a)(1) or (d)(1)" to "§ 60.44Da(a)(1) or (d)(1)";
■ g. Revising the existing reference in paragraph (p) from "§ 60.45a" to "§ 60.45Da";
■ h. Revising the existing reference in paragraph (p)(4)(iii) from "§ 60.49a(p)(4)(i)" to "§ 60.49Da(p)(4)(i)"; and
■ i. Revising the existing reference in paragraph (p)(4)(iv) from "§ 60.49a(p)(4)(i)" to "§ 60.49Da(p)(4)(i)".

§ 60.50Da [Amended]

■ 9. Newly redesignated § 60.50Da is amended as follows:
■ a. Revising the existing reference in paragraph (b) introductory text from "§ 60.42a" to "§ 60.42Da";
■ b. Revising the existing reference in paragraph (c) introductory text from "§ 60.43a" to "§ 60.43Da";

■ c. Revising the existing reference in paragraph (c)(5) from "§ 60.49a(b) and (d)" to "§ 60.49Da(b) and (d)";
■ d. Revising the existing reference in paragraph (d) introductory text from "§ 60.44a" to "§ 60.44Da";
■ e. Revising the existing reference in paragraph (d)(2) from "§ 60.49a(c) and (d)" to "§ 60.49Da(c) and (d)";
■ f. Revising the existing reference in paragraph (e)(2) from "§ 60.48a(d)(1)" to "§ 60.48Da(d)(1)";
■ g. Revising the existing references in paragraph (g) introductory text from "§ 60.45a" to "§ 60.45Da" and from "§ 60.46a" to "§ 60.46Da";
■ h. Revising the existing reference in paragraph (h) introductory text from "§ 60.45a" to "§ 60.45Da"; and
■ i. Revising the existing reference in paragraph (h)(1) from "§ 60.49a(p)(4)(i)" to "§ 60.49Da(p)(4)(i)".

§ 60.51Da [Amended]

■ 10. Newly redesignated § 60.51Da is amended as follows:
■ a. Revising the existing references in paragraph (c) introductory text from "§ 60.49a" to "§ 60.49Da" and from "§ 60.48a(h)" to "§ 60.48Da(h)";
■ b. Revising the existing reference in paragraph (d) introductory text from "§ 60.43a" to "§ 60.43Da";
■ c. Revising the existing reference in paragraph (d)(1) from "§ 60.48a(d)" to "§ 60.48Da(d)";
■ d. Revising the existing reference in paragraph (e) introductory text from "§ 60.43a" to "§ 60.43Da";
■ e. Revising the existing reference in paragraph (e)(1) from "§ 60.50a" to "§ 60.50Da"; and
■ f. Revising the existing reference in paragraph (i) from "§ 60.42a(b)" to "§ 60.42Da(b)".

§ 60.52Da [Amended]

■ 11. Newly redesignated § 60.52Da is amended by revising the existing references from "§ 60.45a" to "§ 60.45Da" and from "§ 60.46a" to "§ 60.46Da".

PART 75—[AMENDED]

■ 12. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k.

■ 13. Section 75.6 is amended by revising paragraphs (b) introductory text, (c), (d) introductory text, and (e) introductory text to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(b) The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007–2900:

* * * * *

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, New York 10036:

(1) ISO 8316: 1987(E) Measurement of Liquid Flow in closed Conduits-Method by Collection of the Liquid in a Volumetric Tank, for appendices D and E of this part.

(2) [Reserved].

* * * * *

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74143:

* * * * *

(e) The following American Gas Association materials are available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

* * * * *

[FR Doc. 05–16927 Filed 8–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0121; AD–FRL–7961–9]

RIN 2060–AN09

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On July 1, 2005, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because adverse comment was received, EPA is withdrawing the corresponding parts of the direct final rule. We stated in that direct final rule that if we received adverse comment by August 1, 2005, we would publish a timely withdrawal in the Federal Register. We will address all comments in a subsequent final rule based on the parallel proposal published on July 1, 2005. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of August 30, 2005, EPA withdraws the direct final rule amendments to 40 CFR 63.2485(c)(4) and Table 1 to subpart FFFF of part 63, published on July 1, 2005 (70 FR 38554). The remaining provisions published on July 1, 2005, will be effective on August 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0121. All documents in the docket are listed in the 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: Air and Radiation Docket, 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. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 2005, we published a direct final rule (70 FR 38554) and a parallel proposal (70 FR 38562) amending the NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR part 63, subpart FFFF). We amended the NESHAP by: Clarifying the compliance requirements for flares and the alternative standard, extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specified requirements for effluent from control devices, clarified the definition of the term continuous process vent, and

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. An Environmental Analysis Checklist and Categorical Exclusion Determination are available for review at the location listed under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006, add temporary § 165.T01–106 to read as follows:

§ 165.T01–106 Regulated Navigation Area, East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York.

(a) *Location.* The following area is established as a Regulated Navigation Area: All waters of East Rockaway Inlet in an area bounded by lines drawn from the approximate position of the Silver Point breakwater buoy (LLN 31500) at 40°34′56″ N, 073°45′19″ W, running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across the bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning.

(b) *Regulations.* (1) Vessels carrying petroleum products as cargo, with a loaded draft greater than five feet, are prohibited from transiting within the regulated navigation area.

(2) Operators of vessels carrying petroleum products as cargo with a loaded draft greater than five feet must submit a request to transit the regulated navigation area to the Captain of the Port, Long Island Sound, at least 48 hours prior to transiting the area. Requests to transit the area shall consist of a general voyage plan identifying parameters for transit, to include the following: Weather conditions for transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum acceptable under keel clearance. Once approved, vessels may transit the area in accordance with the approved voyage plan. Any modification or deviation from approved voyage plans must be submitted to the Captain of the Port, Long Island Sound at least 24 hours prior to the transit to which the modification applies.

(c) *Effective period.* This rule is effective from 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006.

Dated: November 28, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–24135 Filed 12–15–05; 8:45 am]
BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In title 40 of the Code of Federal Regulations, Part 60 (§ 60.1 to End), revised as of July 1, 2005, on page 167, in § 60.41c, correct the definition of "Annual capacity factor" to read as follows:

§ 60.41c Definitions.

* * * * *

Annual capacity factor means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

* * * * *

[FR Doc. 05–55521 Filed 12–15–05; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0234; FRL–7753–4]

Acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester (Cloquintocet-mexyl); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting in part, and denying in part, pesticide petition PP 4E6831 submitted by Syngenta Crop Protection, Inc. that requested certain amendments to 40 CFR 180.560 for acetic acid [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester; cloquintocet-mexyl; CAS Reg. No. 99607–70–2] and its acid metabolite (5-chloro-8-quinolinoxyacetic acid). EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of June 2, 2004 (69 FR 31116) (FRL–7357–8) announcing the filing of this petition requesting that the tolerance expressions under § 180.560 for wheat forage and hay be increased, the addition of tolerances for barley commodities (grain, hay, and straw), and the inclusion of a reference to the active ingredient pinoxaden. Although EPA finds it is safe to add a reference to pinoxaden and tolerances for barley (grain, hay, and straw) to this tolerance regulation, EPA does not agree that grounds exist to increase the tolerance expressions for wheat forage and hay. Thus, EPA is granting Syngenta's petition in as far as it seeks to add the reference pinoxaden and tolerances for barley (grain, hay, and straw) but is denying the request to increase the tolerance expressions for wheat forage and hay.

■ b. When using only banding to secure bundles, the following additional requirements apply.

■ 1. Use at least one band to encircle the length of the bundle and use at least one band to encircle the width of the bundle.

■ 2. Use tension sufficient to tighten and depress the edges of the bundle so that pieces do not slip out of the banding during transit and processing.

* * * * *

340 Standard Mail

* * * * *

345 Mail Preparation

* * * * *

2.0 BUNDLES

* * * * *

2.6 Preparing Bundles in Sacks

■ [Revise introductory text to refer to the new banding requirements as follows. Delete item b to remove the old banding requirements and renumber items c through f as items b through e. Make identical changes in 707.19.8 (for Periodicals).]

■ In addition to the standards in 2.5, mailers must prepare and secure bundles placed in sacks as follows.

* * * * *

■ [Switch 445.2.5 and 445.2.6 for Standard Mail parcels. Revise new 2.5 using the text in 335.2.4 above; revise new 2.6 using the text in 345.2.6 above.]

* * * * *

■ [Replace text in 705.8.5.11 with text in new 335.2.4 above for bundles on pallets. Delete 705.8.5.12; renumber 8.5.13 and 8.5.14 as new 8.5.12 and 8.5.13.]

* * * * *

Neva R. Watson,
Attorney, Legislative.

[FR Doc. 06–1703 Filed 2–23–06; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–OAR–2002–0053, FRL–8025–9]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: EPA is taking direct final action to revise certain portions of the standards of performance for stationary gas turbines. We are taking direct final action to revise the standards to clarify that EPA is not imposing new requirements for turbines constructed after 1977. Owners and operators of existing and new turbines may use monitoring that meets the pre-existing monitoring requirements. In addition, we have described a number of acceptable compliance monitoring options that owners and operators may elect to use for these units. We see making the amendments by direct final rule as non-controversial and anticipate no adverse comments.

DATES: The direct final rule amendments are effective on April 25, 2006 without further notice, unless EPA receives adverse comment by March 27, 2006 or a public hearing is requested. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OAR–2002–0053. All documents in the docket are listed on the *www.regulations.gov Web* site. 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 through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–OAR–2002–0053, 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address "*pagan.jaime@epa.gov.*"

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in 40 CFR 60.331(a).	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Comments. EPA is publishing the direct final amendments without prior proposal because we view the amendments as noncontroversial and anticipate no adverse comment. In the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal in the event that timely adverse comments are received. Comments may be submitted using the methods and following the instructions specified in the proposal published in the "Proposed Rules" section of today's **Federal Register**. If EPA receives adverse comment on the amendments, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn

due to adverse comment. EPA will address all public comments on the proposed rule in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. EPA will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by April 25, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of this document. The information presented in this preamble is organized as follows:

I. Background

Under section 111 of the Clean Air Act (CAA), 42 U.S.C. 7411, the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The standards were promulgated on September 10, 1979 (44 FR 52798). Since that time, there have been many advances in the design of NO_X emission controls used in gas turbines, and additional test methods have been developed to measure emissions from gas turbines. As a result of these advances, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for gas turbines regulated under subpart GG of 40 CFR part 60. We promulgated the 2004 amendments to subpart GG of 40 CFR part 60 to codify the alternatives that have been routinely approved. Additionally, we were attempting to harmonize, where appropriate, the provisions of subpart GG of 40 CFR part 60 with the monitoring provisions of 40 CFR part 75, the continuous emission monitoring requirements of the acid rain program under title IV of the CAA, since many existing and new gas turbines are subject to both regulations.

On April 14, 2003, we published a direct final rule (68 FR 17990) and a parallel proposal (68 FR 18003) amending the standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). We stated in the preambles to the direct final rule and parallel proposal that if we received adverse comments on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. The preamble to the proposal also stated that if a public hearing was requested by April 24, 2003, the hearing would be held on May 14, 2003, and the comment period would be extended until 30 days after the date of the public hearing. Since a public hearing was requested, the comment period was extended until June 13, 2003. The entire direct final rule was withdrawn in order to avoid the direct final rule becoming effective.

On July 8, 2004, we published a final rule (69 FR 41346) amending the standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). On September 1, 2004, the Interstate Natural Gas Association of America filed a Petition for Review of EPA's final rule. Interstate Natural Gas Association of America v. EPA, No. 04–1296 (D.C. Cir.). In accordance with a settlement agreement in that case, EPA is promulgating the direct final rule, which contains certain revisions to the final rule published on July 8, 2004.

II. Today's Action

A. Monitoring Options

Under the original provisions of subpart GG, 40 CFR part 60, any affected unit with a water injection system to control NO_X emissions was required to install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. These operating parameters demonstrate that a turbine continues to operate under the same performance conditions as those documented during the initial and any subsequent compliance tests, thus providing reasonable assurance of compliance with the NO_X standard. Subpart GG of 40 CFR part 60, as originally promulgated, did not include NO_X monitoring requirements for gas turbines that did not use water injection to control NO_X.

The amendments finalized on July 8, 2004, were intended to codify several alternative testing and monitoring procedures for NO_X emissions that have routinely been approved by EPA, State, and local permitting authorities. The amendments were also intended to reflect changes in NO_X emission control technologies and turbine design since the standards were promulgated. We stated in the preamble to the 2004 amendments that nothing in the amendments was intended to impose new requirements for turbines constructed between 1977 and the effective date of the final rule amendments.

The 2004 amendments set forth several alternative methods for monitoring NO_X emissions that could be used by owners or operators of newer turbines (turbines put into operation since subpart GG of 40 CFR part 60 was originally promulgated) (40 CFR 60.334(b) through (f)). Some of these provisions presented NO_X monitoring options for turbines that use water or steam to control NO_X emissions (40 CFR 60.334(b) and (d)), while others presented NO_X monitoring options for turbines that do not use water or steam to control NO_X (40 CFR 60.334(c), (e), and (f)). For both newer turbines that use water or steam to control NO_X emissions and those that do not, these provisions were written using permissive language (the owner or operator "may" use a particular method) rather than obligatory language (the owner or operator "shall" use a particular method).

While we stated in the July 8, 2004, preamble to the final rule amendments that nothing in the amendments was intended to impose new requirements for newer turbines, the preamble also contained statements that may have implied that newer turbines that do not use water or steam to control NO_X emissions were required to install one of the types of monitoring devices described in the amendments. (See, e.g., response to comment at 69 FR 41352 ("We do not agree with the commenter's suggested clarification that the monitoring requirements should apply only to turbines that use steam or water injection to control NO_X emissions to comply with the NO_X standards under 40 CFR 60.332(a). * * * Although a turbine may be able to meet the NO_X emission standard with other control technologies, continuous monitoring is needed to ensure that the emission limit is being met at all times.").) Furthermore, while the final rule provisions governing newer turbines that do not use water or steam to control NO_X emissions were written using permissive language, the final rule, read in conjunction with the preamble language, could be interpreted to imply that owners or operators of such newer turbines were required to install one of the types of monitoring devices. In addition, other final rule provisions, namely 40 CFR 60.334(j) and 40 CFR 60.335(b)(8), appeared to support the reading of the NO_X monitoring standards as requiring that newer turbines not using water or steam to control NO_X must comply with one of the continuous monitoring options.

Because, contrary to our stated intent, the standards applying to newer turbines that do not use water or steam to control NO_X could be read to impose new monitoring requirements, we are revising particular provisions of the amended subpart GG of 40 CFR part 60 regulations to make clear that the enumerated monitoring methods are optional rather than mandatory. We have revised the amended standards at 40 CFR 60.334(c), (e), and (f) to clarify that the monitoring methods described in these provisions are options rather than requirements for turbines that do not use water or steam to control NO_X emissions.

We decided that it was not necessary to impose continuous monitoring requirements on turbines that do not use water injection to control NO_X because the NO_X emissions of these turbines are, in almost all instances, well below the 40 CFR part 60, subpart GG, NO_X emission limits. For example, most lean premix turbines and many diffusion-flame turbines do not need any add-on controls to meet the NO_X limit under subpart GG that can range from 75 to over 100 parts per million by volume NO_X, depending on the efficiency of the unit. It is very unlikely that the turbine will be found to be out of compliance with the NO_X limit. Thus, requiring the use of NO_X continuous emission monitoring systems (CEMS) is not appropriate. In addition, we have recently proposed standards of performance for new stationary combustion turbines in 40 CFR part 60, subpart KKKK, that will set new NO_X emissions limits and monitoring requirements. (70 FR 8314, February 18, 2005.) Thus, once the standards in subpart KKKK are final, the amendments to subpart GG of 40 CFR part 60 affect only gas turbines commencing construction, reconstruction, and modification after July 8, 2004, and prior to February 18, 2005, for newly constructed sources or 6 months after the date that subpart KKKK becomes final for reconstructed and modified sources.

B. Other Minor Revisions to the Rule Amendments

1. Revision to Language on Previously Approved Monitoring Procedures

The second sentence of amended 40 CFR 60.334(c) provided: "Also, if the owner or operator has previously submitted and received EPA or local permitting authority approval of a petition for an alternative procedure of continuously monitoring compliance with the applicable NO_X emission limit under 40 CFR 60.332, that approved procedure may continue to be used, even if it deviates from paragraph (a) of this section." It has been brought to our attention that many alternative monitoring methods are approved by incorporation into permits, rather than through a petition process. Therefore, we have revised 40 CFR 60.334(c) to reflect that approval process. Furthermore, we have removed the word "continuously" and the final phrase of 40 CFR 60.334(c) because monitoring methods other than the continuous monitoring methods described in 40 CFR 60.334(a) and the first sentence of 40 CFR 60.334(c) have been approved by EPA, State, and local permitting authorities. In addition, the last sentence of 40 CFR 60.334(e) is being revised to reflect the fact that other monitoring methods, including periodic testing, have been approved by EPA, State, and local authorities for regulated turbines that do not use water and steam to control NO_X emissions.

2. Clarification of the Types of New Turbines Being Referred to in 40 CFR 60.334(f) Introductory Text

The introductory text to 40 CFR 60.334(f) described parametric monitoring options that could be used by new turbines. We added text to clarify our intent that this provision applies to turbines that commence construction after July 8, 2004, which do not use water or steam to control NO_X emissions.

3. Modification of the Reference to "Lean Premixed (Low-NO_X) Combustion Mode" in 40 CFR 60.334(f)(2)

Section 60.334(f)(2) described an acceptable continuous parameter monitoring option for turbines that do not use water or steam to control NO_X as follows: "For any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in the lean premixed (low-NO_X) combustion mode." The petitioner has asserted that the term "lean premixed (low-NO_X) combustion mode" is not clearly defined, especially for units that are in load following applications or operating with short-duration load variability. Furthermore, current generation industrial turbines are not likely to exceed the new source performance standard (NSPS) emission limit even when operating in a transition mode. We believe that shortening this phrase to simply "low-NO_X mode" is a better indicator of acceptable emissions performance in compliance with the emission limit.

4. Other Minor Revisions to Reflect the Fact That the Described Monitoring Methods Are Optional for Turbines That Do Not Use Water or Steam To Control NO_X Emissions

For the same reasons that we modified 40 CFR 60.334(c), (e), and (f) to reflect the fact that the monitoring methods are options rather than requirements for the newer turbines in question, we revised the introductory text of 40 CFR 60.334(j), 60.334(j)(1)(iv), and 40 CFR 60.335(b)(8) to reflect that these monitoring methods are optional rather than required.

5. Addition of References to States as Permitting Authorities

We have revised 40 CFR 60.334(c) and (e) by adding a reference to State permitting authorities, to reflect the fact that State permitting authorities, in addition to EPA and local permitting authorities, are in some instances the appropriate authorities to approve alternative monitoring procedures.

6. Correction of an Inadvertent Error in 40 CFR 60.334(j)(5) That Resulted in Changes to the Frequency of Submittals of Excess Emissions Reports

Excess emissions reports for affected turbines are due semi-annually as required under 40 CFR 60.7(c). Only turbines that qualify under the "ice fog" exemption (40 CFR 60.334(j)(3)) are required to submit quarterly reports. When revising 40 CFR 60.334 in the July 8, 2004, final rule, we inadvertently stated in 40 CFR 60.334(j)(5) that the reports required under 40 CFR 60.7 shall be filed quarterly rather than semi-annually. In this action, we are revising 40 CFR 60.334(j)(5) to correct this inadvertent error.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that today's action is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to Executive Order 12866 review.

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

Today's action contains no revisions to the information collection requirements of the current NSPS that would increase the burden to sources, and the currently approved OMB information collection requests are still in force for the final rule.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt per hour (kW-hr) per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in six NAICS codes may be affected by the final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

After considering the economic impacts of today's action on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the direct final rule does not create, modify nor eliminate any of the requirements in the 40 CFR part 60, subpart GG regulations. Furthermore, the stringency of the emission standards is not affected by this action.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's action contains no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or

impose obligations upon them. Therefore, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us 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" are 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."

Today's action does not have federalism implications. It will 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. Thus, Executive Order 13132 does not apply to today's action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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."

Today's action 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. We do not know of any stationary gas turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to today's action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's action is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. Section 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 the final rule amendments 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 final rule amendments in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 25, 2006.

List of Subjects in 40 CFR Part 60

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

Dated: January 20, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart GG—[Amended]

■ 2. Section 60.334 is amended by:
■ a. Revising paragraphs (c) and (e);
■ b. Revising paragraph (f) introductory text and (f)(2); and
■ c. Revising paragraph (j) introductory text, (j)(1)(iv), and (j)(5) to read as follows:

§ 60.334 Monitoring of operations.

* * * * *

(c) For any turbine that commenced construction, reconstruction or modification after October 3, 1977, but before July 8, 2004, and which does not use steam or water injection to control NO_X emissions, the owner or operator may, but is not required to, for purposes of determining excess emissions, use a CEMS that meets the requirements of paragraph (b) of this section. Also, if the owner or operator has previously submitted and received EPA, State, or local permitting authority approval of a procedure for monitoring compliance with the applicable NO_X emission limit under § 60.332, that approved procedure may continue to be used.

* * * * *

(e) The owner or operator of any new turbine that commences construction after July 8, 2004, and which does not use water or steam injection to control NO_X emissions, may, but is not required to, elect to use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in

paragraph (b) of this section. Other acceptable monitoring approaches include periodic testing approved by EPA or the State or local permitting authority or continuous parameter monitoring as described in paragraph (f) of this section.

(f) The owner or operator of a new turbine that commences construction after July 8, 2004, which does not use water or steam injection to control NO_X emissions may, but is not required to, perform continuous parameter monitoring as follows:

* * * * *

(2) For any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in low-NO_X mode.

* * * * *

(j) For each affected unit that elects to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content or fuel nitrogen content under this subpart, the owner or operator shall submit reports of excess emissions and monitor downtime, in accordance with § 60.7(c). Excess emissions shall be reported for all periods of unit operation, including startup, shutdown and malfunction. For the purpose of reports required under § 60.7(c), periods of excess emissions and monitor downtime that shall be reported are defined as follows:

(1) * * *

(iv) For owners or operators that elect, under paragraph (f) of this section, to monitor combustion parameters or parameters that document proper operation of the NO_X emission controls:

* * * * *

(5) All reports required under § 60.7(c) shall be postmarked by the 30th day following the end of each 6-month period.

■ 3. Section 60.335 is amended by revising paragraph (b)(8) to read as follows:

§ 60.335 Test methods and procedures.

* * * * *

(b) * * *

(8) If the owner or operator elects under § 60.334(f) to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls, the appropriate parameters shall be continuously monitored and recorded during each run of the initial performance test, to establish acceptable operating ranges, for purposes of the parameter monitoring plan for the affected unit, as specified in § 60.334(g).

* * * * *

[FR Doc. 06–1743 Filed 2–23–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 413, 414, 424 and 426

[CMS–1502–F2 and CMS–1325–F]

RIN 0938–AN84 and 098–AN58

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006 and Certain Provisions Related to the Competitive Acquisition Program of Outpatient Drugs and Biologicals Under Part B; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment to final rule with comment.

SUMMARY: In the November 21, 2005 **Federal Register** (70 FR 70116), we published a final rule with comment period entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006 and Certain Provisions Related to the Competitive Acquisition Program of Outpatient Drugs and Biologicals Under Part B." This correcting amendment corrects technical errors in the November 21, 2005 publication.

EFFECTIVE DATE: This correcting amendment is effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 05–22160, entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006 and Certain Provisions Related to the Competitive Acquisition Program of Outpatient Drugs and Biologicals Under Part B" and appearing in the **Federal Register** on November 21, 2005 (70 FR 70116), addressed Medicare Part B payment policy, including the physician fee schedule, that is applicable for calendar year (CY) 2006; and finalized certain provisions of the interim final rule to implement the Competitive Acquisition Program (CAP) for Part B Drugs.

It also revised Medicare Part B payment and related policies regarding: Physician work, practice expense and malpractice relative value units (RVUs); Medicare telehealth services; multiple diagnostic imaging procedures; covered outpatient drugs and biologicals; supplemental payments to Federally Qualified Health Centers (FQHCs); renal dialysis services; coverage for glaucoma screening services; National Coverage Decision (NCD) timeframes; and physician referrals for nuclear medicine services and supplies to health care entities with which physicians have financial relationships.

In addition, the rule finalized the interim RVUs for CY 2005 and issued interim RVUs for new and revised procedure codes for CY 2006. This rule also updated the codes subject to the physician self-referral prohibition and discussed payment policies relating to teaching anesthesia services, therapy caps, private contracts and opt-out, and chiropractic and oncology demonstrations.

We have identified a number of technical errors in that final rule with comment period.

II. Summary of Errors

We are identifying and correcting errors made to certain parts of the preamble, regulations text and addenda of the November 21, 2005 final rule with comment (70 FR 70116). In addition, addendum B, C, D, E and F are revised under this correcting amendment, although these addenda will not appear in the Code of Federal Regulations.

A. Summary of Preamble Errors

In the preamble text, there were a number of errors and omissions beginning on pages 70150 through 70335.

1. On page 70150, in the first column, in the last paragraph under Section m. (Additional PE Issues Raised by Commenters), in the second sentence, the number of the CPT code referenced is incorrect.

2. On page 70155, in the center column, the last sentence of the second paragraph under the discussion titled, "3. Cardiac Catheritization and Angioplasty Exception," there was an error in one of the code ranges referenced.

3. On page 70263, in the third column; in last paragraph, the reference to Table 26 is incorrect.

4. On page 70263, Table 26 was numbered incorrectly.

5. On page 70274, in the first column; in the second paragraph language concerning the specific deleted practice

Federal Register

Monday,
February 27, 2006

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Electric Utility Steam Generating Units, Industrial–Commercial–Institutional Steam Generating Units, and Small Industrial–Commercial–Institutional Steam Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–8033–3]

RIN 2060–AM80

Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: Pursuant to section 111(b)(1)(B) of the Clean Air Act (CAA), EPA has reviewed the emission standards for nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter (PM) contained in the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. EPA proposed amendments to 40 CFR part 60, subparts Da, Db, and Dc, on February 28, 2005. This action reflects EPA's responses to issues raised by commenters, and promulgates the amended standards of performance.

The final rule amendments revise the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revise the existing standards for NO_X emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO_2 emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced, and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units, and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction.

Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules.

DATES: The final rule amendments are effective on February 27, 2006.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0031. All documents in the docket are listed on the Internet at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., 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 through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–2004–0490, 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 and Radiation Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; e-mail *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule amendments are new, reconstructed, and modified electric utility steam generating units and new, reconstructed, and modified industrial-commercial-institutional steam generating units. The final rule amendments will affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry	221112		Fossil fuel-fired electric utility steam generating units.
Federal Government	22112		Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112		Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150		Fossil fuel-fired electric steam generating units in Indian Country.
Any industrial, commercial, or institutional facility using a boiler as defined in 60.40b or 60.40c.	211	13	Extractors of crude petroleum and natural gas.
	321	24	Manufacturers of lumber and wood products.
	322	26	Pulp and paper mills.
	325	28	Chemical manufacturers.
	324	29	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	30	Manufacturers of rubber and miscellaneous plastic products.
	331	33	Steel works, blast furnaces.
	332	34	Electroplating, plating, polishing, anodizing, and coloring.
	336	37	Manufacturers of motor vehicle parts and accessories.
	221	49	Electric, gas, and sanitary services.
	622	80	Health services.
	611	82	Educational services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be subject to the final rule amendments. To determine whether your facility may be subject to the final rule amendments, you should examine the applicability criteria in 40 CFR part 60, sections 60.40a, 60.40b, or 60.40c. If you have any questions regarding the applicability of the final rule amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action is available on the WWW through the Technology Transfer Network (TTN). Following signature, EPA has posted a copy of today's action on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by April 28, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "if the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20004.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Summary of Final Rule

The final rule amends the emission limits for SO_2, NO_X, and PM for subpart Da, 40 CFR part 60 (electric utility steam generating units) the SO_2 and PM emission limits for subpart Db, 40 CFR part 60 (industrial-commercial-institutional steam generating units), and the SO_2 and PM emission limits for subpart Dc, 40 CFR part 60 (small industrial-commercial-institutional steam generating units). With one exception, only those units that begin construction, modification, or reconstruction after February 28, 2005, will be affected by the final rule. The exception is that the SO_2 standard for industrial-commercial-institutional units presently subject to the NSPS has been amended to reflect the difficulty of units burning fuels with inherently low sulfur emissions from consistently achieving 90 percent reduction. Compliance with the emission limits of the final rule will be determined using similar testing, monitoring, and other compliance provisions set forth in the existing standards.

In addition to the emissions limits contained in the final rule, we also are including several technical clarifications and corrections to existing provisions of the existing amendments, as explained below. We included language to clarify the applicability of subparts Da, Db, and Dc of 40 CFR part 60 to combined cycle power plants. Heat recovery steam generators that are associated with combined cycle and combined heat and power combustion turbines burning less than 75 percent (by heat input) synthetic-coal gas are not subject to subparts Da, Db, or Dc, 40 CFR part 60, if the unit meets the applicability requirements of subpart KKKK, 40 CFR part 60 (Standards of Performance for Stationary Combustion Turbines). Subpart Da of 40 CFR part 60 will apply to combined cycle and combined heat and power combustion turbines and the associated heat recovery units that burn 75 percent or more (by heat input) synthetic-coal gas (e.g., integrated coal gasification combine cycle power plants) and that meet the applicability criteria of the final rule amendments, respectively.

We also made amendments to the definitions for boiler operating day, cogeneration, coal, gross output, and petroleum. The purpose of the final rule amendments is to clarify definitions across the three subparts and to incorporate the most current applicable American Society for Testing and Materials (ASTM) testing method references. Also, we clarified the definition of an "electric utility steam generating unit" as applied to cogeneration units.

A. What are the requirements for new electric utility steam generating units (40 CFR part 60, subpart Da)?

The PM emission limit for new and reconstructed electric utility steam generating units is 6.4 nanograms per joule (ng/J) (0.015 pound per million British thermal units (lb/MMBtu)) heat input or 99.9 percent reduction regardless of the type of fuel burned. The PM emission limit for modified electric utility steam generating units is 6.4 ng/J (0.015 lb/MMBtu) heat input or 99.8 percent reduction regardless of the type of fuel burned. Compliance with this emission limit can be determined using similar testing, monitoring, and other compliance provisions for PM standards set forth in the existing rule. While not required, PM CEMS may be used as an alternative method to demonstrate continuous compliance

and as an alternative to opacity and parameter monitoring requirements.

The SO_2 emission limit for new electric utility steam generating units is 180 ng/J (1.4 pound per megawatt hour (lb/MWh)) gross energy output or 95 percent reduction regardless of the type of fuel burned with one exception. The SO_2 emission limit for new electric utility steam generating units that burn over 75 percent coal refuse (by heat input) is 180 ng/J (1.4 lb/MWh) gross energy output or 94 percent reduction. The SO_2 emission limit for reconstructed and modified electric utility steam generating units burning any fuel except over 75 percent coal refuse (by heat input) is 65 ng/J (0.15 lb/MMBtu) heat input or 95 percent reduction and 65 ng/J (0.15 lb/MMBtu) heat input or 90 percent reduction, respectively. The SO_2 emission limit for reconstructed and modified electric utility steam generating units burning over 75 percent coal refuse (by heat input) is 65 ng/J (0.15 lb/MMBtu) or 94 percent reduction and 65 ng/J (0.15 lb/MMBtu) or 90 percent reduction, respectively. Compliance with the SO_2 emission limit is determined on a 30-day rolling average basis using a CEMS to measure SO_2 emissions as discharged to the atmosphere and following the compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997.

The NO_X emission limit for new electric utility steam generating units is 130 ng/J (1.0 lb NO_X/MWh) gross energy output regardless of the type of fuel burned in the unit. Compliance with this emission limit is determined on a 30-day rolling average basis using similar testing, monitoring, and other compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997. The NO_X limit for reconstructed and modified electric utility steam generating units is 47 ng/J (0.11 lb/MMBtu) heat input and 65 ng/J (0.15 lb/MMBtu) heat input, respectively.

B. What are the requirements for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db)?

The PM emission limit for new and reconstructed industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels. The PM emission limit for modified industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input or 99.8 percent reduction [with a maximum emission limit of 22 ng/J (0.051 lb/MMBtu) heat input] for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels with two exceptions. The standard for modified wood-fired units with a maximum heat input less than or equal to 250 MMBtu/h is 43 ng/J (0.10 lb/MMBtu) heat input and 37 ng/J (0.085 lb/MMBtu) heat input for larger modified wood-fired boilers. While not required, PM CEMS may be used as an alternative method to demonstrate continuous compliance and as an alternative to opacity monitoring requirements.

Units burning only oil, that contains no more than 0.3 weight percent sulfur, or liquid or gaseous fuels with a potential sulfur dioxide emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input, may demonstrate compliance with the PM standard by maintaining certification of the fuels burned. Such units are not required to conduct PM compliance tests, conduct continuous monitoring, or comply with any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

The SO_2 emission limit for new and reconstructed industrial-commercial-institutional steam generating units is 87 ng/J (0.20 lb/MMBtu) heat input, or 92 percent reduction with a maximum emission rate of 520 ng/J (1.2 lb/MMBtu). Compliance with the SO_2 emission limits is determined following similar procedures as in the existing NSPS.

Units burning only oil that contains no more than 0.3 weight percent sulfur or any individual fuel that, when combusted without SO_2 emission control, have an SO_2 emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input are exempt from other SO_2 emission limits and may demonstrate compliance with the SO_2 standard by maintaining certification of the fuels burned. Such units are not required to conduct SO_2 compliance tests, conduct continuous monitoring, or comply with any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

An alternate numerical SO_2 limit of 87 ng/J (0.20 lb/MMBtu) heat input has been added both for units presently subject to the NSPS and for modified units. The alternative limit has been made available to units presently subject to the NSPS as well as modified units in recognition of the technical difficulties of facilities firing inherently low sulfur fuels to achieve 90 percent reduction.

C. What are the requirements for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc)?

The PM emission limit for new and reconstructed small industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels. The PM emission limit for modified industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input or 99.8 percent reduction for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels with one exception. The standard for modified wood-fired industrial-commercial-institutional steam generating units is 43 ng/J (0.10 lb/MMBtu) heat input. These limits apply to units between 8.7 MW and 29 MW (30 to 100 MMBtu/h) heat input. While not required, PM CEMS may be used as an alternate method to demonstrate continuous compliance and as an alternative to opacity monitoring.

Units burning only oil that contains no more than 0.5 weight percent sulfur or liquid or gaseous fuels that, when combusted without SO_2 emission control, have a SO_2 emission rate equal to or less than 230 ng/J (0.54 lb/MMBtu) heat input, may demonstrate compliance with the PM standard by maintaining certification of the fuels burned. Such units are not required to conduct PM compliance tests, conduct continuous monitoring, or any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

II. Background Information

A. What is the statutory authority for the final rule?

New source performance standards implement CAA section 111(b), and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emissions reductions which (taking into consideration the cost of achieving such emissions reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What is the regulatory authority for the final rule?

The current standards for steam generating units are contained in the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da), industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db), and small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc).

The NSPS for electric utility steam generating units (40 CFR part 60, subpart Da) were originally promulgated on June 11, 1979 (44 FR 33580) and apply to units capable of firing more than 73 megawatts (MW) (250 MMBtu/h) heat input of fossil fuel that commenced construction, reconstruction, or modification after September 18, 1978. The NSPS also apply to industrial-commercial-institutional cogeneration units that sell more than 25 MW and more than one-third of their potential output capacity to any utility power distribution system. The most recent amendments to emission standards under subpart Da, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Da, 40 CFR part 60, units. Furthermore, in the 1998 amendments, the use of output-based emission limits was incorporated.

The NSPS for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db) apply to units for which construction, modification, or reconstruction commenced after June 19, 1984, that have a heat input capacity greater than 29 MW (100 MMBtu/h). Those standards were originally promulgated on November 25, 1986 (51 FR 42768) and also have been amended since the original promulgation to reflect changes in BDT for these sources. The most recent amendments to emission standards under subpart Db, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Db, 40 CFR part 60, units.

The NSPS for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc) were originally promulgated on September 12, 1990, (55 FR 37674) and apply to units with a maximum heat input capacity greater than or equal to 2.9 MW (10 MMBtu/h) but less than 29 MW (100 MMBtu/h). Those standards apply to units that commenced construction, reconstruction, or modification after June 9, 1989.

III. Responses to Public Comments

The proposed rule was published February 28, 2005 (70 FR 9706).

A. Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da)

Greenhouse Gases

Comment: One group of commenters state that CAA section 111 requires EPA to set standards of performance for each pollutant emitted by a source category that causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The commenters presented an argument to support their conclusion that carbon dioxide (CO_2) and other greenhouse gases emitted by steam generating units are "reasonably anticipated to endanger public health or welfare." Thus, EPA must set NSPS for greenhouse gases emitted from steam generating units.

One commenter states that the electricity sector includes the nation's largest sources of CO_2 emissions, and it is essential that EPA utilize its authority to limit CO_2 emissions under CAA section 111. The commenter states that, in the preamble, EPA alludes to the importance of controlling greenhouse gases, and that EPA revised its earlier position that it did have authority to regulate CO_2; the commenter notes that this position is currently under judicial review. The commenter summarizes the public health dangers from rising CO_2 levels and provides supporting attachments to its submittal. The commenter states that technologies, e.g., integrated gasification combine cycle (IGCC) technology and others, are available to the electric utility industry to reduce CO_2 emissions that were not available in 1979 when the power plant NSPS were promulgated. The commenter attached supporting information on the available technology for lowering CO_2 emissions. For existing sources, the commenter recommends that EPA require States to implement standards of performance for CO_2 from existing sources. According to the commenter, CAA section 111(d) provides that EPA require States to implement standards of performance for existing sources when the pollutant is not regulated as a criteria pollutant. A program of trading CO_2 emission credits is an effective way of regulating CO_2 emissions from existing sources.

One commenter recommends that EPA set CO_2 emission limits as minimum thermal efficiency levels for boilers.

Response: EPA's statutory authority for establishing NSPS to control air pollutants from stationary sources is under CAA section 111. EPA has concluded that it does not presently have the authority to set NSPS to regulate CO_2 or other greenhouse gases that contribute to global climate change.

Selection of NO_X Emission Level

Comment: One group of commenters state that to meet the requirements of CAA section 111, EPA must establish a NO_X limit of no more than 0.5 lb/MWh for electric utility steam generating units. The commenters present information and data references to support their selection of a NO_X emission level for the NSPS.

One commenter states that a lower NO_X emission standard of 0.7 or 0.8 lb/MWh is justified based on existing demonstrated technology and is consistent with the mandate in section 111 of the CAA. The commenter cites two fluidized bed boilers that began operating in the late 1980s and have been retrofitted with selective non-catalytic reduction (SNCR) and have actual NO_X emission rates between 0.12 and 0.13 lb/MMBtu.

One commenter states that the standards for NO_X are insufficiently stringent and do no reflect the best system of emission reduction as required by CAA section 111. The commenter provides the following supporting rationale for their view: The 1.0 lb/MWh standard is based on an input-based level of 0.11 lb/MMBtu, which is well above the levels being achieved with recent selective catalytic reduction (SCR) installations. The commenter attached 2003 data showing at least 62 coal-fired plant units achieving a rate of 0.100 lb/MMBtu or below and 37 units emitted at a rate at or below 0.080 lb/MMBtu. New plants should be able to do better. EPA acknowledges that SCR can reduce NO_X emissions by at least 90 percent. Because most existing facilities subject to the final rule are meeting rates of 0.30–0.60 lb/MMBtu without SCR, units with SCR should readily achieve these levels. Even though EPA recognizes that SCR is BDT, it is proposing a less stringent standard based on fluidized beds and advanced combustion controls as an alternative to SCR or SNCR. This contravenes section 111. EPA uses efficiency data for existing plants rather than higher efficiency levels achievable by new plants using either SCR or IGCC technology. A standard closer to the lower end of the range being considered is appropriate.

One commenter states that new coal-fired units can achieve NO_X emission limits of less than 0.500 lb/MWh through the implementation of low NO_X burners and SCR technologies.

One commenter reviewed recent BACT determinations in new source permits for electric utility steam-generating units of more than 250 MMBtu/h (combusting bituminous, subbituminous, anthracite and lignite coal) from EPA's Clean Air Technology Center RACT/BACT/LAER Clearinghouse (RBLC) and examined the five most recent permitting decisions. The commenter included RBLC data showing that the permitted NO_X emission limits for all five were 0.07 or 0.08 lb/MMBtu. The commenter states that, as reflected in the RBLC, a limit of 0.08 lb/MMBtu is achievable using SCR and low NO_X burners, and notes that EPA cites SCR as the basis for its proposed limit of 1.0 lb/MWh (equivalent to 0.11 lb/MMBtu). The commenter recommends an output-based standard equivalent to a heat-input based standard between 0.07 and 0.08 lb/MMBtu.

Response: EPA disagrees that the amended NSPS are inappropriate. EPA acknowledges that boiler types and control configurations are technically capable of achieving lower NO_X emissions. EPA has concluded that with advanced combustion controls, coal-fired electric utility steam-generating units are able to achieve a NO_X emissions rate of 1.0 lb/MWh (0.11 lb/MMBtu). The incremental cost of requiring SCR for reduction to 0.7 lb/MWh (0.08 lb/MMBtu) is approximately $5,000 per ton. The final NO_X standard is based on the best demonstrated technology taking into account costs, other environmental impacts, and additional energy requirements. Requiring SCR in addition to advanced combustion controls not only increases costs and decreases the net efficiency of the unit, but leads to ammonia emissions and catalyst disposal concerns. States and BACT permitting process are still capable of requiring additional controls as appropriate.

NO_X Control for Lignite-Fired Steam-Generating Units

Comment: Several commenters disagree with EPA's assessment of the feasibility of meeting the proposed NO_X limit for lignite-fired boilers. The commenters disagree with EPA's assessment that units burning lignite can meet the proposed NO_X limit with either SCR or fluidized bed combustors and SNCR because EPA is specifying a boiler design that has never been built larger than 300 MW and is generally no larger than 100 MW. According to the commenter, this violates CAA section 111(b)(5) which prohibits setting a standard based upon a particular technology. One commenter states that information was provided to EPA prior to proposal suggesting that pore pluggage of SCR catalysts makes the proposed limit of 1.0 lb/MWh unachievable at lignite units. According to the commenter, there were no commercial applications of SCR (retrofit or new unit applications) for either northern or southern lignite. One commenter cites published research showing SCR technology ineffective for NO_X reduction from lignite-fired steam-generating units and states that it is unlikely that any new pulverized coal units using Fort Union lignite would install SCR technology to reduce NO_X emissions. The commenter also states that combustion controls, the only effective means to reduce NO_X emissions at some lignite-fired units, have been problematic for Fort Union lignite. The commenter recommends retaining the current NSPS of 1.6 lb/MWh for units burning Fort Union lignite.

Response: EPA disagrees that lignite-fired steam-generating units would not be able to achieve the amended NSPS. While there are no existing lignite-fired electric utility steam-generating units with SCR in the United States, there is considerable experience in the industry to show that use of SCR on lignite is technically feasible. EPA has concluded that the primary reason that no pulverized lignite-fired units are equipped with SCR is because no new pulverized lignite unit has been built in the United States since 1986.

The Electric Power Research Institute testing of SCR catalyst in a slipstream at the Martin Lake Power plant showed acceptable results from Gulf Coast lignite. In addition, two recent permit applications for pulverized lignite-fired utility units in Texas (Twin Oaks 3 and Oak Grove facilities) propose to use SCR to control NO_X emissions to 0.07 and 0.10 lb/MMBtu, respectively. Finally, technology suppliers report that SCR has been successfully used on lignite and brown coal boilers in Europe. EPA has concluded that SCR can be used on lignite boilers in the United States and catalyst suppliers have indicated that they will offer performance guarantees on these applications.

Pore plugging and binding of a catalyst is a common problem experienced by pilot test facilities. In full scale installations, this concern is addressed during the SCR design stage. The methods used to avoid this problem include duct design to promote ash fallout prior to the SCR, catalyst reactor design to avoid ash buildup, and on-line cleaning methods (soot blowers and sonic horns).

In addition, the use of SCR is not required to comply with the amended NO_X standard. The existing Big Brown facility in Texas burns pulverized Gulf Coast lignite and is able to achieve 0.15 lb NO_X/MMBtu with combustion controls alone. EPA has concluded that new lignite-fired units would either be able to achieve the amended standards without the use of any backend controls or could use SNCR to comply. Existing units at 0.15 lb/MMBtu would only need 30 percent NO_X reduction to comply with the amended NO_X standard. This level of control has been demonstrated for existing pulverized coal (PC) units retrofit with SNCR, and new units could achieve even better results.

Fluidized bed combustion and gasification are also options for new lignite units. The proposed permits for the Westmoreland and South Heart facilities in North Dakota both propose to burn Fort Union lignite in fluidized beds and use SNCR to achieve a NO_X emissions limit of 0.09 lb/MMBtu. With regard to size, Foster Wheeler recently designed a 460 MW supercritical fluidized bed.

Selection of SO_2 Emission Limit

Comment: One group of commenters state that EPA's proposed SO_2 standard for electric utility steam-generating units violates CAA section 111 because it does not reflect BDT for this source category. EPA also did not consider foreign experience or advanced scrubber designs, which indicate lower SO_2 limits have been achieved and are achievable. The processes that have demonstrated greater than 98 percent SO_2 removal and for which vendors offer guarantees greater than 98 percent are the magnesium-enhanced lime ("MEL") flue gas desulfurization (FGD) process, the Chiyoda CT–121 bubbling jet reactor, and circulating fluidized bed scrubbers. Further, design enhancements and additives are available that can increase SO_2 removal efficiencies above 98 percent for other technologies within this general class. Also, EPA did not consider the use of coal washing in its determination.

Response: EPA has concluded that 98 percent control is possible with certain control and boiler configurations under ideal conditions. The amended SO_2 standard is based on a 30-day average that includes the variability that occurs from non-ideal operating conditions. The best long-term SO_2 control performance data that EPA has available

are for the Harrison, Conemaugh, Northside, Clover, and similar facilities. The amended standards are based on operational data from these facilities. EPA has concluded that this level of control is achievable for a broad range of coal and boiler types.

Comment: One group of commenters state that to meet the requirements of CAA section 111, EPA must establish a SO_2 limit of no more than 0.9 lb/MWh for all utility steam-generating units. Alternatively, if EPA finds that this standard would be cost-prohibitive for high sulfur coal, then it should either set emissions limits on a sliding scale that reflects BDT for coals of increasing sulfur content, or establish both stringent emissions limits and stringent percentage reduction requirements that would apply simultaneously. The commenters' review of proposed and final emission limits in recent permits and permit applications for 32 recent coal-fired steam-generating unit projects found 9 units with emissions limits of 0.10 lb/MMBtu or lower (0.95 lb/MWh or lower, assuming 36 percent efficiency) and 22 units with emission limits of 0.13 lb/MMBtu or lower (1.2 lb/MWh or lower).

One commenter states that the standard for SO_2 is insufficiently stringent and does not reflect the best system of emission reduction as required by CAA section 111. The commenter provides the following supporting rationale:

- About 70 percent of coals in use can meet the proposed limit with add-on controls. The data before EPA supports a limit at the low end of the range being considered by EPA (0.90–2.0 lb/MWh) rather than the proposed level (2.0 lb/MWh), which is at the top of the range.
- All coals currently in use can meet a more stringent standard, e.g., 88 percent of coals currently in use can meet 1.1 lb/MWh without pretreatment and using wet lime FGD that consistently achieves a 97 percent reduction; EPA has determined that reductions greater than 98 percent are demonstrated.
- For high sulfur coals, other technologies are available, e.g., IGCC technology which is capable of reductions of over 99 percent. The highest sulfur coals (uncontrolled level of 7.92 lb/MMBtu) can meet 1.1 lb/MWh using technologies that reduce sulfur levels by 99 percent. Other options for meeting more stringent standards include coal washing and blending with low sulfur coals.
- Actual 2003 emissions data show 25 plants with scrubbers achieving emissions at or below 0.10 lb/MMBtu (data attached to commenter's submittal). EPA's BACT/LAER clearinghouse establishes permitted levels for new scrubbers below the proposed standard and as low as 0.06 lb/MMBtu; IGCC units show even lower permitted levels, 0.03 and 0.032 lb/MMBtu.
- Vendors of scrubber report removal efficiencies of 99.5 percent of sulfur from high sulfur coal (as high as 4 percent) achieving SO_2 emission rates of 0.04 lb/MMBtu. The commenter attached a supporting report by a vendor of scrubber equipment.
- New Source Review (NSR) enforcement settlements reflect better emission rates than 0.21 lb/MMBtu even at existing plants. EPA routinely obtains commitments for FGD retrofits to meet rates of 0.100 to 0.130 lb/MMBtu. The commenter attached supporting consent decrees.
- EPA's proposed standards rely on an estimate that new plants will operate at a 36 percent gross efficiency even though the top 10 percent of existing units operate at 38 percent. This is unreasonable given that the standards will govern new PC plants, with new supercritical plants able to achieve a net efficiency of 45 percent and a gross efficiency of 40 percent.

One commenter states that new coal-fired units can achieve SO_2 emission limits of 0.500 to 1.5 lb/MWh depending on sulfur content. The commenter supports lower SO_2 limits for lower sulfur coal and suggests that this can be done by maintaining a percent reduction requirement or setting a range of SO_2 limits based on sulfur content of coal. The commenter recommends that where a percent reduction limit is used, it should be in addition to the emission rate limit.

One commenter recommends an output-based limit equivalent to a heat-input based limit of 0.10 lb/MMBtu. Based on a survey of EPA's RBLC for recent permitting decisions, permitted SO_2 levels of 0.022 to 0.12 lb/MMBtu, are common State requirements. EPA's argument for a higher limit to account for the highest-sulfur coal is flawed because industry can use lower sulfur coal or use technologies to reduce SO_2 emissions beyond the proposed level.

Response: EPA acknowledges that certain boiler and coal configurations are technically capable of achieving SO_2 emissions rates of 1.0 lb/MWh. The NSPS are based on limits that can be achieved on a consistent basis for a broad range of boiler and coal types. High sulfur coals are an important part of the United States energy resources, and spray dryers for SO_2 control are important in locations with limited water resources. EPA has concluded that it is vital that the amended NSPS preserve the use of both high sulfur coals and spray dryers. Therefore, EPA is amending the SO_2 standard to allow units greater flexibility in complying with the final SO_2 standard. The amended SO_2 standard is either 1.4 lb/MWh or 95 percent reduction on a 30-day rolling average. The numerical limit is aggressive, but preserves the ability of approximately half the coals presently used in the United States to use spray dryers. The percent maximum reduction requirement is similarly aggressive, but preserves the ability of units to burn high sulfur coals. Based on the sulfur content of coals presently being burned in the United States, EPA has concluded that the majority of new units will comply with the 1.4 lb/MWh standard, but has provided the maximum percent reduction requirement to address the concerns of users of high sulfur coals. The BACT permitting process and states requirements are able to require additional controls as appropriate.

Comment: One commenter states that many scrubbers used for high sulfur coals—3 to 4 percent sulfur—will be unable to meet the proposed SO_2 limit of 2.0 lb/MWh on a consistent basis. According to the commenter, EPA has based their decision on a single, high performance magnesium-enhanced lime scrubber, i.e., the Harrison facility in Pennsylvania. The commenter states that the specialty agent used at the unit may not be broadly available and brings into question whether the SO_2 levels being attained at this plant can be sustained long term. The commenter also states that EPA's use of a scrubber at a single facility as the basis for the SO_2 limit is in conflict with CAA section 111(b)(5), which prohibits setting a standard based upon a particular technology.

The commenter continues by stating that there is considerable uncertainty that the high removal efficiency that would be required for high sulfur coals can consistently and broadly be achieved. According to the commenter, coals with sulfur content exceeding 2.5 percent would require removal efficiencies of up to 98 percent; for these coals, wet scrubbers are the sole option and uncertainties in meeting the NSPS may dissuade some from using such coals.

Response: The final rule amendments allow units to either comply with an output-based limit of 1.4 lb/MWh or demonstrate 95 percent reduction. The maximum percent reduction requirement is achievable for multiple boiler and control configurations and addresses concerns of the use of high sulfur fuels.

Particulate Matter Emission Limit

Comment: One commenter states that fabric filters, the technology on which the proposed PM emission standard is based, is problematic with coals whose sulfur content exceeds 1.5 percent. With only 134 of 1,250 U.S. coal-fired power plants using fabric filters, the commenter notes that with the exception of a limited number of applications on small atypical boilers, there are no fabric filters in operation on plants firing sulfur greater than 2.0 percent by weight. The commenter cites an example of a plant that encountered problems after installing a fabric filter on a unit burning medium-or high-sulfur coal. For this reason, the commenter states that EPA's proposed PM standard is neither achievable nor adequately demonstrated for all coals.

Response: In general, EPA disagrees with the comment that the use of fabric filters to control PM emissions is problematic for electric utility steam generating units firing coals with sulfur contents exceeding 1.5 percent. The example cited by the commenter is for a retrofit application of a fabric filter at an existing facility for which the temperature of the flue gas in the fabric filter unit was not maintained above the acid dew point. Consequently, acid mist formed in the flue gas, condensed on the bags and internal components of the unit, and adversely impacted the performance of the control device. Based on discussions with fabric filter equipment suppliers, EPA has concluded that a similar problem should not occur in fabric filters installed on new and reconstructed facilities because of the capability at these sites to incorporate design options that will maintain the temperature of the flue gas passing through the fabric filter at levels above the acid dew point of the flue gas. These options include use of high temperature bags and injection of hydrated lime to lower the acid dew point of the flue gas. The Department of Energy sponsored two demonstration projects (SNOX Flue Gas Cleaning Demonstration Project (SNOX) and SO_X-NO_X-RO_X-Box Flue Gas Cleanup Demonstration Project (SNRB) projects) that successfully used fabric filters for PM control for electric utility steam generating units burning high sulfur coal, potential SO_2 emissions of 5 and 6 lb/MMBtu, respectively. In addition, two recent permit applications propose to use fabric filters for PM control while burning relatively high sulfur coals. The Longview power plant in West Virginia is proposing to burn 2.5 percent sulfur coal, and the Elm Road plant is proposing to burn coal with potential SO_2 emissions of 4 lb/MMBtu.

EPA recognizes that in certain site-specific situations where an existing electric utility steam generating unit becomes subject to the NSPS because of modifications to the unit, replacement of an electrostatic precipitator (ESP) with a fabric filter could be problematic. Not all locations may be able to cost-effectively maintain the temperature of the flue gas in a fabric filter above the acid dew point of the flue gas because of existing site conditions and space constraints. Therefore, EPA decided it is appropriate to establish a separate PM standard for modified sources subject to subpart Da, 40 CFR part 60. Owners and operators of modified electric utility steam generating units subject to the NSPS are given the option of meeting either a 0.015 lb/MMBtu or 99.8 percent reduction standard. ESPs can be modified to cost-effectively achieve this level of control.

Comment: One commenter takes issue with EPA's proposed input-based standard for PM emissions. According to the commenter, although EPA determined that ESPs and fabric filters are the best demonstrated technology for controlling filterable particulate matter, EPA's justification for the revised PM limit is based on three plants where fabric filtration is used. The commenter also states that of the three plants, two use fluidized bed boilers, which use limestone as an active bed material, significantly altering the nature of the PM generated for collection. The commenter states that the record does not support the proposed NSPS for PM for ESPs or that fluidized bed combustors are appropriate units on which to base PM standards for pulverized coal steam generating units, which are projected to make up the majority of new units.

Response: EPA has gathered additional stack test data that indicates an ESP could be used by the majority of coal types to comply with the final rule amendments. Based on ESP cost models, they are often less expensive than fabric filters for high sulfur applications. Additional information is available in the PM control cost memorandum.

Comment: One group of commenters state that the proposed opacity limit does not reflect BDT because the proposed rule retains the existing opacity limit of 20 percent. The commenters state that this limit is over 20 years old, and is not based on the performance of modern baghouse control systems. Because EPA has acknowledged in the proposed rule that the former 0.03 lb/MMBtu PM limit should at least be halved to 0.015 lb/MMBtu, there should be a proportionate halving of the opacity limit, from 20 percent to 10 percent. Ten percent opacity can be easily and continuously attained by subpart Da, 40 CFR part 60, facilities using appropriate control technology. There are existing power plants around the country with BACT limits of 10 percent for opacity, including the Sevier Power Company—Sigurd plant in Utah, Intermountain Power in Utah, and Plum Point Energy in Arkansas.

Response: Since opacity is used as an indication on PM emissions, EPA has provided sources with two options to demonstrate continuous compliance with the amended PM standard. Sources may elect to install and operate PM CEMS and demonstrate compliance each boiler operating day. For these units, opacity monitoring shall no longer be required. Units that do not install PM CEMS shall perform stack tests to demonstrate compliance and shall still be subject to the existing 6-minute opacity limit. In addition, sources shall use bag leak detectors or monitor ESP parameters in addition to developing a site-specific opacity trigger level that is based on the opacity during the stack test. Sources that deviate from this opacity or other parameter are required to perform a stack test within 60 days of the deviation. Stack opacity characteristics are different for fabric filters and ESP. Therefore, EPA has concluded that a site-specific opacity trigger is the best approach to monitor continuous compliance.

B. Industrial-Commercial-Institutional and Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subparts Db and Dc)

Comment: Several commenters opposed both the proposed single SO_2 limit of 0.24 lb/MMBtu heat input and the limit of either 0.15 lb/MMBtu heat input or 95 percent reduction for a variety of reasons. Several commenters believed that these approaches would discourage the use of high sulfur coals found in the Midwest and would be difficult to meet consistently for circulating fluidized bed boilers and boilers burning low sulfur coal. They also stated that industrial boilers cannot routinely achieve high percent reductions of 95 percent or more, as would be required to meet these standards, because of variations in coal quality and operational variations due to fluctuations in steam demand. Also, meeting 95 percent reduction would not be feasible for existing units that are modified. Three of the commenters recommended adopting the same SO_2

standard as subpart Da, 40 CFR part 60 (90 percent reduction with a 70 percent reduction for units that demonstrate emissions below 0.20 lb/MMBtu heat input). Two commenters recommended retaining the current 90 percent SO_2 reduction requirement with an alternative emission limit of 0.24 lb/MMBtu heat input. One commenter supported EPA's decision that the current SO_2 emission limits in subparts Db and Dc of 40 CFR part 60 should not be amended because option 1 and 2 would impose unacceptable compliance costs and are not warranted. One commenter also opposed reducing the SO_2 limit for units with heat input capacities of 10–75 MMBtu/h.

Several commenters maintained that the changes to the SO_2 limit to remove the percent reduction requirement should apply to existing units as well as new units. Excluding existing units from the change would provide a disincentive to use low sulfur coal and would not provide relief for existing compliance problems. Many existing boilers were designed to achieve 90 percent reduction using high sulfur coals. An existing unit that wanted to switch to low sulfur coal would have difficulty in meeting a 90 percent requirement using existing control equipment. Also, circulating fluidized bed (CFB) boilers that use low sulfur coal have had difficulty in achieving a 90 percent reduction consistently. The technical impossibility of measuring uncontrolled SO_2 emissions at a CFB unit creates an inherent difficulty in adjusting limestone injection rate to accommodate short-term variations in coal sulfur content. One such unit that burns low sulfur coal has been cited for short-term violations of the NSPS even though average emissions were in the range of 0.13 lb/MMBtu (0106).

Response: After considering all the comments and additional information provided by commenters, we have decided to provide industrial units the following options. Units presently subject to the NSPS and modified units may reduce SO_2 emissions by 90 percent or meet an SO_2 emission limit of 0.20 lb/MMBtu heat input. New and reconstructed units that become subject to the NSPS after February 28, 2005, may reduce SO_2 emissions by 92 percent or meet an SO_2 emission limit of 0.20 lb/MMBtu heat input. This approach will be more stringent than the existing subpart Db, 40 CFR part 60, requirements, and at the same time allow units with difficulty in achieving high levels of SO_2 control to overcome compliance demonstrations problems by burning low sulfur fuels.

IV. Impacts of the Final Rule?

A. What are the impacts for electric utility steam generating units (40 CFR part 60, subpart Da)?

We estimate that 5 new electric utility steam generating units will be installed in the United States over the next 5 years and affected by the final rule. All of these units will need to install add-on controls to meet the PM, SO_2, and NO_X limits required under the final rule. However, these boilers will already be required to install add-on PM, SO_2, and NO_X controls to meet the reduction requirements of the existing NSPS. Compared to the existing NSPS, the incremental PM, SO_2, and NO_X reductions resulting from the final rule will be 530 tons of PM, 8,400 tons of SO_2, and 1,400 tons of NO_X. Using this comparison, the annualized cost of the final utility amendments are $4.4 million.

Using this comparison, we expect the final rule to result in an increase in electrical supply generated by unaffected sources (e.g., existing electric utility steam generating units), we have concluded that this will not result in higher NO_X, SO_2, and PM emissions from these sources. Other emission control programs such as the Clean Air Interstate Rule (CAIR), the Clean Air Mercury Rule (CAMR), and PSD/NSR already promote or require emission controls that would effectively prevent emissions from increasing. All the emissions reductions estimates and assumptions have been documented in the docket to the final rule.

A more accurate assessment of the emissions reductions and annualized costs of the final utility amendments include other regulatory programs that are presently requiring controls beyond what is required by the existing NSPS. The BACT permitting process requires new sources to install controls at or beyond what the final NSPS amendments require. In addition, the recently finalized CAIR and CAMR rules, along with the proposed revisions to ambient particulate matter standards, will push permits even lower. The amended NSPS reflect the levels of control presently being required by these other programs. Therefore, the actual environmental benefits and cost impacts of the final rule are essentially zero. A more detailed discussion of the cost and emissions impacts of the amended NSPS is available in the docket.

B. What are the impacts for industrial-commercial-institutional boilers (40 CFR part 60, subparts Db and Dc)?

We estimate that approximately 186 new industrial-commercial-institutional boilers will be installed in the United States over the next 5 years and affected by the final rule. All of these units will need to install add-on controls to meet the PM and SO_2 limits required under the final rule. However, these new boilers will already be required to install add-on PM and SO_2 controls to meet the existing NSPS. The new source requirements under the maximum achievable control technology (MACT) program and PSD/NSR require new units presently to install controls beyond what is required by the existing NSPS.

Wood-fired boilers are the only industrial sources that could potentially use the alternative compliance limit in the boiler MACT and would not be required to meet the new source MACT limit. We estimate that 17 new wood-fired boilers will be installed in the United States over the next 5 years and affected by the final rule. Using the existing NSPS as a baseline, the additional annualized costs are $2.2 million, and the PM emissions reductions are 930 tons. EPA has concluded that new wood-fired units will not use the compliance alternatives available in the boiler MACT and that they will comply with the new source PM limit of 0.025 lb/MMBtu. Due to PSD/NSR and the limited applicability of the alternate compliance limit to new units, it will primarily only be used by existing wood-fired boilers. Thus, we concluded that the PM and SO_2 reductions and costs resulting from the final rule will essentially be zero.

C. What are the economic impacts?

Even though actual costs and benefits are essentially zero, EPA prepared an economic impact analysis comparing the existing NSPS with the amended NSPS to evaluate the impacts the final rule will have on electric utilities and consumers of goods and services produced by electric utilities. The analysis showed minimal changes in prices and output for products made by the industries affected by the final rule. The price increase for affected output is less than 0.003 percent, and the reduction in output is less than 0.003 percent for each affected industry. Estimates of impacts on fuel markets show price increases of less than 0.01 percent for petroleum products and natural gas, and price increases of 0.04 and 0.06 percent for base-load and peak-load electricity, respectively. The price

of coal is expected to decline by about 0.002 percent, and that is due to a small reduction in demand for this fuel type. Reductions in output are expected to be less than 0.02 percent for each energy type, including base-load and peak-load electricity.

D. What are the social costs and benefits?

The social costs of the final rule are estimated at $0.4 million (2002 dollars). Social costs include the compliance costs, but also include those costs that reflect changes in the national economy due to changes in consumer and producer behavior in response to the compliance costs associated with a regulation. For the final rule, changes in energy use among both consumers and producers to reduce the impact of the regulatory requirements of the rule lead to the estimated social costs being less than the total annualized compliance cost estimate of $6.5 million. The primary reason for the lower social cost estimate is the increase in electricity supply generated by unaffected sources (*e.g.*, existing electric utility steam generating units), which offsets mostly the impact of increased electricity prices to consumers. The social cost estimates discussed above do not account for any benefits from emission reductions associated with the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers the final rule amendments a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The final rule amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final rule amendments result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. The OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts Da, Db, and Dc) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). The OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. Copies of the information collection request document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the final rules on small entities, small entity is defined as follows: (1) A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than $6.5 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, we conclude that this action will not have a significant economic impact on a substantial number of small entities. We have determined for electric utility steam generating units, based on the existing inventory for the corresponding NAICS code and presuming the percentage of entities that are small in that inventory (estimated to be 3 percent) is representative of the percentage of small entities owning new utility boilers in the 5th year after promulgation, that at most, one entity out of five new entities in the industry may be small entities and thus affected by the final rule amendments.

We have determined for industrial-commercial steam generating units,

based on the existing industrial boilers inventory for the corresponding NAICS codes and presuming the percentage of small entities in that inventory is representative of the percentage of small entities owning new wood-fueled industrial boilers in the 5th year after promulgation, that between two and three entities out of 17 in the industry with NAICS code 321 and 322 may be small entities, and thus affected by the final rule amendments.

Based on the boiler size definitions for the affected industries (subpart Db of 40 CFR part 60: greater than or equal to 100 MMBtu/h; subpart Dc of 40 CFR part 60: 10–100 MMBtu/h), EPA determined that the firms being affected were likely to fall under the subpart Dc of 40 CFR part 60 boiler category. These two or three affected small entities are estimated to have annual compliance costs between $70 and $105 thousand which represents less than 5 percent of the total compliance cost for all affected wood-fired industrial boilers. Based on the average employment per facility data from the U.S. Census Bureau, for the corresponding NAICS codes under the subpart Db of 40 CFR part 60 and subpart Dc of 40 CFR part 60 categories, the compliance cost of these facilities is expected to be less than 1 percent of their estimated sales. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule amendments on small entities. In the final rule amendments, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. This provision should reduce the size of small entity impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, EPA must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, we determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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."

The final rule amendments do not have federalism implications. They will 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. The final rule amendments will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 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 relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

The final rule amendments do not have tribal implications, as specified in Executive Order 13175. They 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 the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (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, EPA 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 EPA considered.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety

risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action," as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or energy use. Further, we concluded that this action is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to today's action.

J. Congressional Review Act

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 today's action 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 final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective February 27, 2006.

List of Subjects in 40 CFR Part 60

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

Dated: February 9, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart Da—[Amended]

■ 2. Section 60.40Da is amended by revising paragraph (b) to read as follows:

§ 60.40Da Applicability and designation of affected facility.

* * * * *

(b) Heat recovery steam generators that are associated with stationary combustion turbines burning fuels other than 75 percent (by heat input) or more synthetic-coal gas on a 12-month rolling average and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. Heat recovery steam generators and the associated stationary combustion turbine(s) burning fuels containing 75 percent (by heat input) or more synthetic-coal gas on a 12-month rolling average are subject to this part and are not subject to subpart KKKK of this part. This subpart will continue to apply to all other electric utility combined cycle gas turbines that are capable of combusting more than 73 MW (250 MMBtu/h) heat input of fossil fuel in the heat recovery steam generator. If the heat recovery steam generator is subject to this subpart and the combined cycle gas turbine burn fuels other than synthetic-coal gas, only emissions resulting from combustion of fuels in the steam-generating unit are subject to this subpart. (The combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

* * * * *

■ 3. Section 60.41Da is amended by revising the definitions of "Boiler operating day," "Cogeneration," "Electric utility steam-generating unit," and "Gross output" and by adding in alphabetical order the definitions of "ISO conditions" and "Petroleum" to read as follows:

§ 60.41Da Definitions.

* * * * *

Boiler operating day for units constructed, reconstructed, or modified on or before February 28, 2005, means a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, *boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

* * * * *

Cogeneration, also known as "combined heat and power," means a steam-generating unit that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Electric utility steam-generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. For the purpose of this subpart, net-electric output is the gross electric sales to the utility power distribution system minus purchased power on a 12-month rolling average. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Gross output means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (i.e., steam delivered to an industrial process).

* * * * *

ISO conditions means a temperature of 288 Kelvin, a relative humidity of 60

percent, and a pressure of 101.3 kilopascals.

* * * * *

Petroleum means crude oil or petroleum or a fuel derived from crude oil or petroleum, including distillate, residual oil, and petroleum coke.

* * * * *

■ 4. Section 60.42Da is amended by revising the introductory text in paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.42Da Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain particulate matter in excess of:

* * * * *

(c) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification is commenced after February 28, 2005, except for modified affected facilities meeting the requirements of paragraph (d) of this section, any gases that contain particulate matter in excess of either:

(1) 18 ng/J (0.14 lb/MWh) gross energy output; or

(2) 6.4 ng/J (0.015 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel.

(d) As an alternative to meeting the requirements of paragraph (c) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel, and

(2) 0.1 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.9 percent reduction) for an affected facility for which construction or reconstruction commenced after February 28, 2005 when combusting solid fuel or solid-derived fuel, or

(3) 0.2 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.8 percent reduction) for an affected facility for which modification commenced after February 28, 2005 when combusting solid fuel or solid-derived fuel.

■ 5. Section 60.43Da is amended by revising the introductory text in paragraphs (a) and (b) and adding paragraphs (i), (j), and (k) to read as follows:

§ 60.43Da Standard for sulfur dioxide.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases that contain sulfur dioxide in excess of:

* * * * *

(b) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section) and for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain sulfur dioxide in excess of:

* * * * *

(i) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, except as provided for under paragraphs (j) or (k) of this section, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (i)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(j) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (j)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that

contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(k) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, and that is located in a noncontinental area, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (k)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/MMBtu) heat input on a 30-day rolling average basis.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of if the affected facility or 230 ng/J (0.54 lb/MMBtu) heat input on a 30-day rolling average basis.

■ 6. Section 60.44Da is amended by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 60.44Da Standard for nitrogen oxides.

* * * * *

(d)(1) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction commenced after July 9, 1997, but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, based on a 30-day rolling average, except as provided under § 60.48Da(k).

(2) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no existing source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which reconstruction commenced after July 9, 1997, but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 65 ng/J (0.15 lb/MMBtu) heat input, based on a 30-day rolling average.

(e) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, except for an IGCC meeting the requirements of paragraph (f) of this section, any gases that contain nitrogen oxides (expressed as NO_2) in excess of the applicable emission limitation specified in paragraphs (e)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) For an affected facility for which reconstruction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 47 ng/J (0.11 lb/MMBtu) heat input on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis.

(f) On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator of an IGCC subject to the provisions of this subpart that burns liquid fuel as a supplemental fuel and for which construction, reconstruction, or modification commenced after February 28, 2005, shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided for in paragraphs (f)(2) and (3) of this section.

(2) When burning liquid fuel exclusively or in combination with synthetic gas derived from coal such that the liquid fuel contributes 50 percent or more of the total heat input to the combined cycle combustion turbine, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 190 ng/J (1.5 lb/MWh) gross energy output on a 30-day rolling average basis.

(3) In cases when during a 30-day rolling average compliance period liquid fuel is burned in such a manner to meet the conditions in paragraph (f)(2) of this section for only a portion of the 30-day period, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of the computed weighted-average emissions limit based on the proportion of gross energy output (in MWh) generated during the compliance period for each of emissions limits in paragraphs (f)(1) and (2) of this section.

■ 7. Section 60.48Da is amended by revising paragraphs (g), (i), (k) introductory text, (k)(1) introductory text, (k)(1)(iv), (k)(2) introductory text, and adding paragraphs (m), (n), (o), and (p) to read as follows:

§ 60.48Da Compliance provisions.

* * * * *

(g) The owner or operator of an affected facility subject to emission limitations in this subpart shall determine compliance as follows:

(1) Compliance with applicable 30-day rolling average SO_2 and NO_X emission limitations is determined by calculating the arithmetic average of all hourly emission rates for SO_2 and NO_X for the 30 successive boiler operating days, except for data obtained during

startup, shutdown, malfunction (NO_X only), or emergency conditions (SO_2) only.

(2) Compliance with applicable SO_2 percentage reduction requirements is determined based on the average inlet and outlet SO_2 emission rates for the 30 successive boiler operating days.

(3) Compliance with applicable daily average particulate matter emission limitations is determined by calculating the arithmetic average of all hourly emission rates for particulate matter each boiler operating day, except for data obtained during startup, shutdown, and malfunction.

* * * * *

(i) *Compliance provisions for sources subject to § 60.44Da(d)(1), (e)(1), or (f).* The owner or operator of an affected facility subject to § 60.44Da(d)(1) or (e)(1) shall calculate NO_X emissions by multiplying the average hourly NO_X output concentration, measured according to the provisions of § 60.49Da(c), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and dividing by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

* * * * *

(k) *Compliance provisions for duct burners subject to § 60.44Da(d)(1) or (e)(1).* To determine compliance with the emission limitation for NO_X required by § 60.44Da(d)(1) or (e)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the applicable NO_X emission limitation in §60.44Da(d)(1) or (e)(1) as follows:

* * * * *

(iv) Compliance with the applicable NO_X emission limitation in § 60.44Da(d)(1) or (e)(1) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the applicable NO_X emission limitation in § 60.44Da(d)(1) or (e)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

* * * * *

(m) *Compliance provisions for sources subject to § 60.43Da(i)(1)(i) or (j)(1)(i).* The owner or operator of an affected facility subject to § 60.43Da(i)(1)(i) or (j)(1)(i) shall calculate SO_2 emissions by multiplying the average hourly SO_2 output concentration, measured according to the provisions of § 60.49Da(b), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

(n) *Compliance provisions for sources subject to § 60.42Da(c)(1).* The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate particulate matter emissions by multiplying the average hourly particulate matter output concentration, measured according to the provisions of § 60.49Da(t), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k). Compliance with the emission limit is determined by calculating the arithmetic average of the hourly emission rates computed for each boiler operating day.

(o) *Compliance provisions for sources subject to § 60.42Da(c)(2) or (d).* Except as provided for in paragraph (p) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, shall demonstrate compliance with each applicable emission limit according to the requirements in paragraphs (o)(1) through (o)(5) of this section.

(1) Conduct an initial performance test according to the requirements in § 60.50Da to demonstrate compliance by the applicable date specified in § 60.8(a) and, thereafter, conduct the performance test annually, and

(2) An owner or operator must use opacity monitoring equipment as an indicator of continuous particulate matter control device performance and demonstrate compliance with § 60.42Da(b). In addition, baseline parameters shall be established as the highest hourly opacity average measured during the performance test. If any hourly average opacity measurement is more than 110 percent of the baseline level, the owner or operator will conduct another performance test within 60 days to demonstrate compliance. A new baseline is established during each stack test. The new baseline shall not exceed the opacity limit specified in § 60.42Da(b), and

(3) An owner or operator using an ESP to comply with the applicable emission limits shall use voltage and secondary current monitoring equipment to measure voltage and secondary current to the ESP. Baseline parameters shall be established as average rates measured during the performance test. If a 3-hour average voltage and secondary current average deviates more than 10 percent from the baseline level, the owner or operator will conduct another performance test within 60 days to demonstrate compliance. A new baseline is established during each stack test, and

(4) An owner or operator using a fabric filter to comply with the applicable emission limits shall install, calibrate, maintain, and continuously operate a bag leak detection system according to paragraphs (o)(4)(i) through (viii) of this section.

(i) Install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(ii) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(iv) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel. Corrective actions must be initiated within 1 hour of a bag leak detection system alarm. If the alarm is engaged for more than 5 percent of the total operating time on a 30-day rolling average, a performance test must be performed within 60 days to demonstrate compliance.

(vii) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(viii) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors, and

(5) An owner or operator of a modified affected source electing to meet the emission limitations in

§ 60.42Da(d) shall determine the percent reduction in particulate matter by using the emission rate for particulate matter determined by the performance test conducted according to the requirements in paragraph (o)(1) of this section and the ash content on a mass basis of the fuel burned during each performance test run as determined by analysis of the fuel as fired.

(p) As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner or operator may elect to install, certify, maintain, and operate a continuous emission monitoring system measuring particulate matter emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section.

(1) The owner or operator shall submit a written notification to the Administrator of intent to demonstrate compliance with this subpart by using a continuous monitoring system measuring particulate matter. This notification shall be sent at least 30 calendar days before the initial startup of the monitor for compliance determination purposes. The owner or operator may discontinue operation of the monitor and instead return to demonstration of compliance with this subpart according to the requirements in paragraph (o) of this section by submitting written notification to the Administrator of such intent at least 30 calendar days before shutdown of the monitor for compliance determination purposes.

(2) Each continuous emission monitor shall be installed, certified, operated, and maintained according to the requirements in § 60.49Da(v).

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of the date of notification to the Administrator required under paragraph (p)(1) of this section, whichever is later.

(4) Compliance with the applicable emissions limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emissions concentrations using the continuous monitoring system outlet data. The 24-hour block arithmetic average emission concentration shall be calculated using EPA Reference Method 19, section 4.1.

(5) At a minimum, valid continuous monitoring system hourly averages shall be obtained for 90 percent of all operating hours on a 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(6) The 1-hour arithmetic averages required shall be expressed in ng/J, MMBtu/h, or lb/MWh and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(7) All valid continuous monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (j)(5) of this section are not met.

(8) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 90 percent of all operating hours per 30-day rolling average.

■ 8. Section 60.49Da is amended by revising paragraphs (a), (b)(2), (f), (k)(3), (l), and (o), and adding paragraphs (t), (u), and (v) to read as follows:

§ 60.49Da Emission monitoring.

(a) Except as provided for in paragraphs (t) and (u) of this section, the owner or operator of an affected facility, shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere, except where gaseous fuel is the only fuel combusted. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the sulfur dioxide control system), alternate parameters indicative of the particulate matter control system's performance are monitored (subject to the approval of the Administrator).

(b) * * *

(2) For a facility that qualifies under the numerical limit provisions of § 60.43Da(d), (i), (j), or (k) sulfur dioxide emissions are only monitored as discharged to the atmosphere.

* * * * *

(f)(1) For units that began construction, reconstruction, or modification on or before February 28, 2005, the owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(2) For units that began construction, reconstruction, or modification after February 28, 2005, the owner or operator shall obtain emission data for at least 90 percent of all operating hours for each 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

* * * * *

(k) * * *

(3) For affected facilities generating process steam in combination with electrical generation, the gross energy output is determined from the gross electrical output measured in accordance with paragraph (k)(1) of this section plus 75 percent of the gross thermal output (measured relative to ISO conditions) of the process steam measured in accordance with paragraph (k)(2) of this section.

* * * * *

(l) The owner or operator of an affected facility demonstrating compliance with an output-based standard under § 60.42Da, § 60.43Da, § 60.44Da, or § 60.45Da shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B and procedure 1 of appendix F of this subpart, and record the output of the system, for measuring the flow of exhaust gases discharged to the atmosphere; or

* * * * *

(o) The owner or operator of a duct burner, as described in § 60.41Da, which is subject to the NO_x standards of § 60.44Da(a)(1), (d)(1), or (e)(1) is not required to install or operate a continuous emissions monitoring system to measure NO_x emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to

measure the flow of exhaust gases discharged to the atmosphere.

* * * * *

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da(c)(1) shall install, certify, operate, and maintain a continuous monitoring system for measuring particulate matter emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected source demonstrating compliance with the input-based emission limitation under § 60.42Da(c)(2) may install, certify, operate, and maintain a continuous monitoring system for measuring particulate matter emissions according to the requirements of paragraph (v) of this section in lieu of the requirements in § 60.48Da(o).

(u) An owner or operator of an affected source that meets the conditions in either paragraph (u)(1) or (2) of this section is exempted from the continuous opacity monitoring system requirements in paragraph (a) of this section and the monitoring requirements in § 60.48Da(o).

(1) A continuous monitoring system for measuring particulate matter emissions is used to demonstrate continuous compliance on a boiler operating day average with the emissions limitations under § 60.42Da(a)(1) or § 60.42Da(c)(2) and is installed, certified, operated, and maintained on the affected source according to the requirements of paragraph (v) of this section.

(2) The affected source burns only oil that contains no more than 0.15 weight percent sulfur or liquid or gaseous fuels that when combusted without sulfur dioxide emission control, have a sulfur dioxide emissions rate equal to or less than or equal to 65 ng/J (0.15 lb/MMBtu) heat input.

(v) The owner or operator of an affected facility using a continuous emission monitoring system measuring particulate matter emissions to meet requirements of this subpart shall install, certify, operate, and maintain the continuous monitoring system as specified in paragraphs (v)(1) through (v)(3).

(1) The owner or operator shall conduct a performance evaluation of the continuous monitoring system according to the applicable requirements of § 60.13, Performance Specification 11 in appendix B of this part, and procedure 2 in appendix F of this part.

(2) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and conducting performance tests using the following test methods.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, as applicable shall be used.

(3) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

■ 9. Section 60.50Da is amended by revising paragraph (g)(2) to read as follows:

§ 60.50Da Compliance determination procedures and methods.

* * * * *

(g) * * *

(2) Use the Equation 1 of this section to determine the cogeneration Hg emission rate over a specific compliance period.

$$ER_{cogen} = \frac{M}{\left(V_{grid} + 0.75 \times V_{process}\right)} \quad \text{(Eq. 1)}$$

Where:

ER_{cogen} = Cogeneration Hg emission rate over a compliance period in lb/MWh;

E = Mass of Hg emitted from the stack over the same compliance period (lb);

V_{grid} = Amount of energy sent to the grid over the same compliance period (MWh); and

$V_{process}$ = Amount of energy converted to steam for process use over the same compliance period (MWh).

* * * * *

Subpart Db—[Amended]

■ 10. Section 60.40b is amended by revising paragraph (i) and adding paragraphs (k) and (l) to read as follows:

§ 60.40b Applicability and delegation of authority.

* * * * *

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than 29 MW (100 MMBtu/h) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part.)

* * * * *

(k) Any facility covered by subpart Eb or subpart AAAA of this part is not covered by this subpart.

(l) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart Cb or subpart BBBB of this part is not covered by this subpart.

■ 11. Section 60.41b is amended by adding the definition of "Cogeneration" in alphabetical order and revising the definition of "Very low sulfur oil" to read as follows:

§ 60.41b Definitions.

* * * * *

Cogeneration, also known as combined heat and power, means a facility that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Very low sulfur oil for units constructed, reconstructed, or modified on or before February 28, 2005, means an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 215 ng/J (0.5 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005, *very low sulfur oil* means an oil that contains no more than 0.3 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input.

* * * * *

■ 12. Section 60.42b is amended by revising paragraphs (a) introductory text, (b), (d) introductory text, and (d)(3) and by adding paragraphs (d)(4) and (k) to read as follows:

§ 60.42b Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), (d), (j), or (k) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that commenced construction,

reconstruction, or modification on or before February 28, 2005, that combusts coal or oil shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) or 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and the emission limit determined according to the following formula:

* * * * *

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) or 20 percent (0.20) of the potential sulfur dioxide emission rate (80 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input. If coal or oil is fired with coal refuse, the affected facility is subject to paragraph (a) or (d) of this section, as applicable.

* * * * *

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever comes first, no owner or operator of an affected facility listed in paragraphs (d)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/million Btu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under paragraphs (d)(1), (2), (3) or (4).

* * * * *

(3) Affected facilities combusting coal or oil, alone or in combination with any fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat input to the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat input to the steam generating unit is from the exhaust gases entering the duct burner; or

(4) The affected facility burns coke oven gas alone or in combination with any other gaseous fuels.

* * * * *

(k) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction or reconstruction after February 28, 2005, and that combusts coal, oil, gas, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 8 percent (0.08) of the potential sulfur dioxide emission rate (92 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input, except as provided in paragraphs (k)(1) or (k)(2). Affected facilities subject to this paragraph are also subject to paragraphs (e) through (g) of this section.

(1) Units firing only oil that contains no more than 0.3 weight percent sulfur or any individual fuel with a potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less are exempt from all other sulfur dioxide emission limits in this paragraph.

(2) Units that are located in a noncontinental area and that combust coal or oil shall not discharge any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 230 ng/J (0.54 lb/MMBtu) heat input if the affected facility combusts oil.

■ 13. Section 60.43b is amended by adding paragraph (h) to read as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(h)(1) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5).

(2) As an alternative to meeting the requirements of paragraph (h)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels, and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity of 73 MW (250 MMBtu/h) or less shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity greater than 73 MW (250 MMBtu/h) shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 37 ng/J (0.085 lb/MMBtu) heat input.

(5) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.3 weight percent sulfur or other liquid or gaseous fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less is not subject to the PM or opacity limits in this section.

■ 14. Section 60.44b is amended by adding paragraph (l)(3) to read as follows:

§ 60.44b Standard for nitrogen oxides.

* * * * *

(l) * * *

(3) After February 27, 2006, units may comply with an optional limit of 270 ng/J (2.1 lb/MWh) gross energy output, based on a 30-day rolling average. Units complying with this output-based limit must demonstrate compliance according to the procedures of § 60.46a (i)(1), and must monitor emissions according to § 60.47a(c)(1), (c)(2), (k), and (l).

■ 15. Section 60.45b is amended by revising the introductory text in paragraph (c) and adding paragraph (k) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(c) The owner or operator of an affected facility shall conduct performance tests to determine compliance with the percent of potential sulfur dioxide emission rate (% P_s) and the sulfur dioxide emission rate (E_s) pursuant to § 60.42b following the procedures listed below, except as provided under paragraph (d) and (k) of this section.

* * * * *

(k) Units that burn only oil that contains no more than 0.3 weight percent sulfur or fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less may demonstrate compliance by maintaining records of fuel supplier certifications of sulfur content of the fuels burned.

■ 16. Section 60.46b is amended by revising paragraphs (a) and (b) and adding paragraphs (i) and (j) to read as follows:

* * * * *

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

(a) The particulate matter emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction, and as specified in paragraphs (i) and (j) of this section. The nitrogen oxides emission standards under § 60.44b apply at all times.

(b) Compliance with the particulate matter emission standards under § 60.43b shall be determined through performance testing as described in paragraph (d) of this section, except as provided in paragraph (i) and (j).

* * * * *

(i) Units burning only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with a potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less may demonstrate compliance by maintaining fuel supplier certifications of the sulfur content of the fuels burned.

(j) In place of particulate matter testing with EPA Reference Method 5, 5B, or 17, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 shall comply with the requirements specified in paragraphs (j)(1) through (j)(13) of this section.

(1) Notify the Administrator one month before starting use of the system.

(2) Notify the Administrator one month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5, 5B, or 17 performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under § 60.8 of subpart A of this part. Compliance with the particulate matter emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (j) of this section to measure particulate matter and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(6) Compliance with the particulate matter emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraphs (j)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(8) The 1-hour arithmetic averages required under paragraph (j)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (j)(7) of this section are not met.

(10) The continuous emission monitoring system shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the continuous emission monitoring system required by Performance Specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (j)(7)(i) of this section.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA reference Method 3, 3A, or 3B, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours per 30-day rolling average.

■ 17. Section § 60.47b is amended by revising paragraphs (a) and (d), and adding paragraph (g) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraphs (b),(f), and (g) of this section, the owner or operator of an affected facility subject to the sulfur dioxide standards under § 60.42b shall install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS)

for measuring sulfur dioxide concentrations and either oxygen (O_2) or carbon dioxide (CO_2) concentrations and shall record the output of the systems. The sulfur dioxide and either oxygen or carbon dioxide concentrations shall both be monitored at the inlet and outlet of the sulfur dioxide control device.

* * * * *

(d) The 1-hour average sulfur dioxide emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) is expressed in ng/J or lb/MMBtu heat input and is used to calculate the average emission rates under § 60.42(b). Each 1-hour average sulfur dioxide emission rate must be based on 30 or more minutes of steam generating unit operation. The hourly averages shall be calculated according to § 60.13(h)(2). Hourly sulfur dioxide emission rates are not calculated if the affected facility is operated less than 30 minutes in a given clock hour and are not counted toward determination of a steam generating unit operating day.

* * * * *

(g) Units burning any fuel with a potential sulfur dioxide emission rate of 140 ng/J (0.32 lb/MMBtu) heat input or less are not required to conduct emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

■ 18. Section 60.48b is amended by revising paragraphs (a), (b) introductory text, (d), and adding paragraphs (j) and (k) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) The owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system, except as provided in paragraphs (j) and (k) of this section.

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a nitrogen oxides standard under § 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.

* * * * *

(d) The 1-hour average nitrogen oxides emission rates measured by the continuous nitrogen oxides monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(h)(2).

* * * * *

(j) Units that burn only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less are not required to conduct PM emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(k) Owners or operators complying with the PM emission limit by using a PM CEMs monitor instead of monitoring opacity must calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.46b(j). The continuous monitoring systems specified in paragraph § 60.46b(j) shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

Subpart Dc—[Amended]

■ 19. Section 60.40c is amended by adding paragraphs (e), (f), and (g) to read as follows:

§ 60.40c Applicability and delegation of authority.

* * * * *

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than or equal to 2.9 MW (10 MMBtu/h) heat input of fossil fuel but less than or equal to 29 MW (100 MMBtu/h) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(f) Any facility covered by subpart AAAA of this part is not covered by this subpart.

(g) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not covered by this subpart.

■ 20. Section 60.41c is amended by revising the definition of coal to read as follows:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank (IBR—see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

* * * * *

■ 21. Section 60.42c is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither: Cause to be discharged into the atmosphere from the affected facility any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in this paragraph and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts only coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 20 percent (0.20) of the potential SO_2 emission rate (80 percent reduction), nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is fired with coal refuse, the affected facility subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in paragraph (a) of this section and the emission limit is determined pursuant to paragraph (e)(2) of this section.

* * * * *

■ 22. Section 60.43c is amended by adding paragraph (e) to read as follows:

§ 60.43c Standard for particulate matter.

* * * * *

(e)(1) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/h) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (e)(2) and (e)(3) of this section. Affected facilities subject to this paragraph, are also subject to the requirements of paragraphs (c) and (d) of this section.

(2) As an alternative to meeting the requirements of paragraph (e)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels, and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a heat input capacity of 8.7 MW (30 MMBtu/h) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

■ 23. Section 60.45c is amended by revising the introductory text in paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods, except as specified in paragraph (c) and (d) of this section.

* * * * *

(c) Units that burn only oil containing no more than 0.5 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 230 ng/J (0.54 lb/MMBtu) heat input or less are not required to conduct emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(d) In place of particulate matter testing with EPA Reference Method 5, 5B, or 17, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 shall install, calibrate, maintain, and operate a continuous emission monitoring system and shall comply with the requirements specified in paragraphs (d)(1) through (d)(13) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5, 5B, or 17 performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under § 60.8 of subpart A of this part. Compliance with the particulate matter emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (d) of this section to measure particulate matter and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(6) Compliance with the particulate matter emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraph (d)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(8) The 1-hour arithmetic averages required under paragraph (d)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (d)(7) of this section are not met.

(10) The continuous emission monitoring system shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the continuous emission monitoring system required by Performance Specification 11 in

appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraph (d)(7)(i) of this section.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA reference Method 3, 3A, or 3B, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours on a 30-day rolling average.

■ 24. Section 60.47c is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, oil, gas, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a COMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system, except as specified in paragraphs (c) and (d) of this section.

* * * * *

(c) Units that burn only oil that contains no more than 0.5 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 230 ng/J (0.54 lb/MMBtu) heat input or less are not required to conduct PM emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(d) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.45c(d). The continuous monitoring systems specified in paragraph § 60.45c(d) shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

■ 25. Section 60.48c is amended by revising paragraph (g) to read as follows:

§ 60.48c Reporting and recordkeeping requirements.

* * * * *

(g) The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day. The owner or operator of an affected facility that only burns very low sulfur fuel oil or other liquid or gaseous fuels with potential sulfur dioxide emissions rate of 140 ng/J (0.32 lb/MMBtu) heat input or less shall record and maintain records of the fuels combusted during each calendar month.

* * * * *

[FR Doc. 06–1460 Filed 2–24–06; 8:45 am]
BILLING CODE 6560–50–P

Unfunded Mandates Reform Act

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 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

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.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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.

Paperwork Reduction Act

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.*).

Congressional Review Act

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. section 804(2).

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 July 31, 2006. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: May 19, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 KK—Ohio

■ 2. Section 52.1887 is amended by adding paragraph (e) to read as follows:

§ 52.1887 Control strategy: Carbon monoxide.

* * * * *

(e) Approval—On October 20, 2005, Ohio submitted a State Implementation Plan (SIP) revision of the Cuyahoga County carbon monoxide (CO) maintenance plan. The CO maintenance plan revision is an update to the current approved maintenance plan and continues to demonstrate maintenance of the CO National Ambient Air Quality Standard (NAAQS) for an additional 10 years. The maintenance plan revision is submitted as a limited maintenance plan for the Cuyahoga County, Ohio carbon monoxide area and provides an unlimited motor vehicle emissions budget as long as the ambient CO levels remain below the 7.65 parts per million design value specified as the criterion for the limited maintenance plan.

[FR Doc. 06–5013 Filed 5–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–91–07; FRL–8176–8]

RIN 2060–AG22

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA issued a final rule on August 10, 2000, that revised the monitoring requirements in Performance Specification 1 (PS–1). The revisions updated requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. The revisions also updated design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in PS–1. In addition to changes to PS–1, the final rule established differences between gaseous continuous emissions monitoring systems (CEMS) and COMS. The final rule contained a minor error in wording. This action is intended to correct this error. All other preamble and regulatory text printed in the August 10, 2000, final rule is correct.

DATES: This correction is effective June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Rima Howell, Measurement Technology Group, Air Quality Assessment Division (E–143–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0443; fax number (919) 541–0516; electronic mail (e-mail) address *howell.rima@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA promulgated revisions to the Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources, PS–1 (40 CFR part 60, Appendix B) and revised § 60.13(d)(1) in the **Federal Register** (65 FR 48914) on August 10, 2000. Following the promulgation of these sections, Phelps Dodge Miami, Inc., requested that we issue a correction to § 60.13(d)(1). Their request pointed out that the Agency had inadvertently modified a requirement for CEMS, thus adding a requirement to obtain calibration data automatically. The Agency agrees that the automatic data gathering requirement was only intended to address COMS systems, not CEMS, and has agreed to address this issue.

II. Summary of Amendment

The EPA issued a final rule on August 10, 2000, (65 FR 48914) that revised the monitoring requirements in Performance Specification 1 (PS–1) of Appendix B of part 60. The revisions updated requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. The revisions also updated design and performance validation requirements for COMS equipment in PS–1. In addition to changes to PS–1, the final rule revised § 60.13(d)(1) to distinguish between CEMS and COMS. The final rule contained a minor error in the revised § 60.13(d)(1). This action is intended to correct this error.

The incorrect wording is found in the first sentence of § 60.13(d)(1), which erroneously requires that owners and operators of CEMS must "automatically" check the zero and span calibration drifts at least once daily in accordance with a written procedure. The word "automatically" was not intended to be a requirement for CEMS, while it is a requirement for COMS. The word "automatically" was used in reference to CEMS by mistake, and is being removed.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (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 ("OMB"). This action is not a "major rule" as defined by 5 U.S.C. 804(2). The correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, 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 [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 the UMRA.

The correction does not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical correction also is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant.

The correction is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the change to the rule corrects an error, is noncontroversial, and is consistent with the technical basis of the rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to rulemaking under section 307(d) of the CAA).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes relieve an unintended requirement, we find good cause to make these technical corrections effective immediately.

The correction action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by SBREFA 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 U.S. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on June 1, 2006.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: May 23, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Amend § 60.13 by revising the first sentence of paragraph (d)(1) as follows:

§ 60.13 Monitoring requirements.

* * * * *

(d)(1) Owners and operators of a CEMS installed in accordance with the provisions of this part, must check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure. * * *

* * * * *

[FR Doc. E6–8397 Filed 5–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0088; FRL–8060–5]

Zoxamide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 26, 2001, concerning a tolerance for combined re

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

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2006 JUN -7 P 4:36

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Dept. of Environmental Protection, Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Standards of Performance for New Stationary Sources ~~Pursuant to 40 CFR Part 60~~

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: Monday, July 10, 2006 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection
Dolly Sods Conference Room (Room 1125)
601 57th Street, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

John A. Benedict, Director
Division of Air Quality
WV Dept. of Environmental Protection
601 57th Street, S. E.
Charleston, WV 25304

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Legislative Rule Making Review
JUN 07 2006
Committee

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Stephanie R. Timmermeyer
Authorized Signature

ORIGINAL

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of: PROPOSED REVISIONS TO 45CSR16 - STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Transcript of proceedings had at a public hearing in the above-styled matter taken by Jo Ann Wilson, Court Reporter, at the West Virginia Department of Environmental Protection, Division of Air Quality, Dolly Sods Conference Room, 601 57th Street, S.E. Charleston, West Virginia, commencing at 6:25 p.m., on the 10th day of July 2006, pursuant to notice.

MISSY L. YOUNG, C.C.R.
ATTENDING REPORTER: JO ANN WILSON
POST OFFICE BOX 1322
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

PROCEEDINGS

MS. CHANDLER: The purpose of this public hearing is to accept comments on the proposed revisions to 45CSR16 - Standards of Performance for New Stationary Sources.

This rule establishes, and adopts, national standards of performance for new stationary sources, and other regulatory requirements promulgated by the U.S. Environmental Protection Agency pursuant to section 111(b) of the Federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule, also, adopts associated appendices, reference methods, performance specifications, and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs, or operates an affected facility after the effective date of any New Source Performance Standard under 40 CFR part 60 must comply with the applicable NSPS and this rule.

Upon authorization and promulgation of revisions to 45CSR16, the DAQ will submit the final rule to the U.S. Environmental Protection Agency for approval as a

part of West Virginia's program delegation of the Federal New Source Performance Standards.

The floor is now open for comments. Please state your name and any affiliation.

MR. TWEDDLE: I'm here, primarily, representing the West Virginia Council, but I'm on several other environment boards. I should, also, state I am on the Public Energy Authority, at the pleasure of the Governor. So, I'm very involved in this arena.

I do have, as an engineer, over 40 years of experience dealing with air quality issues in my native Canada, in California, and then, here. I have experienced, and see, distinctive rollback attempts at the federal level by the EPA. It's very discouraging.

So, I'm standing up to every opportunity I can to say there's no reason why West Virginia should roll back any air quality rule, at all. I've never seen economic justification for doing so. There's no need to do it. The statutes, clearly, say that the state of West Virginia can be more stringent than the feds - - Federal EPA.

So, there is no - - It's not a cast-in-stone requirement that DEP roll back, always adjust and

change, to what the feds say, unless it's administrative, or legal, or language, or things like that. In terms of air quality standards, my posture is that I do not want to see us roll back any rule in terms of emissions, or air quality.

MS. CHANDLER: There being nothing further, this public hearing for the proposed revisions to 45CSR16 is concluded.

(WHEREUPON, the hearing was concluded at 6:27 p.m.)

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, reported by Jo Ann Wilson, as directed my me, to the best of her skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 20th day of July 2006.

Missy L. Young, C.C.R.

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

dep

west virginia department of environmental protection

Proposed Revisions to DAQ Legislative Rules
DEP's Dolly Sods Conference Room
601 57th Street, SE, Charleston
July 10, 2006 6:00 p.m.

Sign-In

NAME (Please Print)	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	COMMENT YES/NO
Gail Holley	PO Box 2613 Charleston WV 25329				NO
Jon Mason	WVDEP				"
Allan Tweddle	self, WEC				
Jim Kotcon	414 Monroe Avery Rd. Morgantown WV 26508	WV Sierra Club	594-3722	jkotcon@wvu.edu	YES
Vicki Jo Kennedy Sims	1509 Dixie St P.O Box 5153 CHS.	Concerned Mamma	444 3370	———	yes

WEST VIRGINIA CHAMBER OF COMMERCE
The Voice of Business in West Virginia

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments to the June 9, 2006 Revisions to Existing Legislative Rules: 8, 16, 18, 25, 34, 39, 40 and 41.

Dear Mr. Benedict:

These comments are filed on behalf of the West Virginia Chamber of Commerce ("the Chamber"). The Chamber is the largest, most influential general business organization, representing all business sectors in every region of the state. Members range from small business enterprises to mid-size manufacturers to tourism destinations to energy companies to Fortune 500 corporations. However, small businesses are the core of our membership -- making up 95 percent of the West Virginia Chamber's companies and firms.

The proposed regulatory amendments to Rules 6, 8, 16, 18, 25, 34, 39, 40 and 41 are of interest to our membership and we offer the following comments.

Rule 6 – Control of Air Pollution from Combustion of Refuse The Chamber supports both the general clean up of the language of this rule and the substantive changes that concern temporary air curtain incinerators and emergencies and natural disasters.

Rule 8 – Ambient Air Quality Standards The Chamber applauds the decision to place all ambient air quality standards within one rule. There appears to be a minor error concerning the carbon monoxide standards in that the reference should be to milligrams rather than micrograms, which should be corrected in the final rule.

Rule 16 – Standards of Performance for New Stationary Sources The Chamber supports the modification of this rule to appropriately reflect the federal program.

Rule 18 – Control Air Pollution from Combustion of Solid Waste As stated previously, the Chamber supports the consolidation of Rule 24 and Rule 18.

Rule 25 – Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal The Chamber supports the modification of this rule to appropriately reflect the federal program.

P.O. Box 2789, Charleston, West Virginia 25330-2789 • VOICE: 304/342-1115 • FACSIMILE: 304/342-1130 • ForJobs@wvchamber.com

Rule 34 – Emission Standards for Hazardous Air Pollutants The Chamber supports the consolidation of Rule 15 with Rule 34 and the modification of this rule to appropriately reflect the federal program.

Rules 39, 40 and 41 – Interstate Transport Rules The Chamber supports the modification of this rule to appropriately reflect the federal program. As noted in comments filed to this rule package by others, the Chamber agrees that it would be appropriate for the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the opportunity to provide these comments and the efforts of the agency to maintain an up-to-date regulatory program.

Sincerely,

Thomas M. Boggs
Vice President
West Virginia Chamber of Commerce

cc: Stephen G. Roberts, President
Larry Emerson, Chair, Environmental Committee

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments on Proposed Amendments to Rules 6, 8, 16, 18, 25, 34, 39, 40 and 41

Dear Director Benedict:

These comments are submitted by the West Virginia Manufacturers Association (WVMA) on behalf of its members. The WVMA represents the core of the manufacturing sources and their associates in this state, virtually all of whom are affected by the DAQ's air quality control rules. We appreciate the opportunity to present the following comments on the pending rule changes:

Rule 6

The WVMA endorses the exemption from permitting for temporary air curtain incinerators. These units are highly efficient, clean-burning and mobile. They provide an important tool for small, transient disposal operations, including the possibility of using them to address emergency needs such as flood debris destruction. We also endorse the proposed provisions for the burning of poultry and other animal wastes in the case of an emergency such as for bird flu or other pathogenic animal disease as we recognize that burning or incineration is a very effective means of destroying pathogens. We also agree that it makes sense to move the requirements for other air curtain incinerators to Rule 18 along with other standards for solid waste combustion units.

However, as to section 4.2, we believe that it is not appropriate to take away the exemption on hours of operation for industrial incinerators. These units and flares are operating in almost all cases as air pollution control devices, not as commercial units. As such they are also almost always required by permit to be operated at all times the associated process is in operation for air quality control. We do not believe that the DAQ intends for such sources to shut down their processes as a result of this proposed rule change. Therefore, we request that the exemption for industrial incinerators be maintained. On a related note, we also believe that it is not necessary to require the posting of operating instructions at the location of industrial incinerators under subsection 4.9 as these units are subject to operating standards that are contained in the rules DAQ is adopting by reference and to detailed permit conditions. Such a requirement does not exist for other types of industrial processes and controls.

Rule 8

The WMVA endorses the consolidation of ambient air quality standards into Rule 8. Putting them all in one, easily-identified rule is most helpful to the regulated community and the public.

However, we believe that the introductory text to each standard is misstated. Ambient standards are not emissions limits. They are free-standing air quality levels that must be achieved and maintained. Therefore, in sections 4.1, 4.2, 4.3, 4.4, 4.7, and 4.8,

the phrase: "No person shall allow emissions of...." must be deleted. Sources are obligated not to cause or contribute to a violation of an ambient standard. That does not equate the standard to an emission limit, nor have the standards ever been so applied. The introductory text in each of those subsections should simply say that the following ambient standards are established for the listed pollutants. No reference to emissions should be included. The text should be conformed to that of 40 CFR Part 50.

Also, there are errors in subsections 4.3.a. and 4.3.b. for carbon monoxide standards. They should both be stated in milligrams not micrograms. See 40 CFR §50.8.

Rule 16

The WVMA supports the annual update of these standards for new sources; however, we continue to believe the State rules should be keyed to the federal rules as of July 1 each year in order to synchronize them with the annual republication of the Code of Federal Regulations Title 40.

Rule 18

The WVMA endorses the consolidation of Rule 24 within this Rule and the addition of the provisions for non-temporary air curtain incinerators. We suggest that the wording in section 10 on permits for units as described in subsection 10.1 and 10.3 is awkward at best. These subsections should be amended to clarify their intent since they now refer to past dates in the present tense. The same problem exists in section 12 on compliance dates which are being newly added to the rule but which are already long

past. Also, for all of the subsections in section 1.1, we suggest that the text be modified to add the words "subject to standards" before the words "promulgated by" for clarity.

Rule 25

The WVMA endorses the updating of the standards, but we believe the incorporation by reference date should be July 1, 2006, consistent with Title 40 CFR republication cycle.

Rule 34

The WVMA endorses the consolidation of Rule 15 with Rule 34. We believe that the updated incorporation by reference should be as of July 1, 2006 to correspond to the Title 40 CFR republication date for the ease of reference by regulated sources and the public.

Rules 39, 40 and 41

The WVMA endorses the updating of the CAIR – related series of rules to conform to EPA counterpart rules. As to Rule 40, we urge the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the efforts of the DAQ to keep all of these rules updated and the move to consolidate clearly-related rules as appropriate. This benefits both the regulated

sources and other users of these rules. Thank you for your consideration of these comments.

Sincerely,

John K. Pitner
WVMA Air Team Leader
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25304
(304) 342-2123

Cc: Karen S. Price, President, WVMA
WVMA Air Team

45CSR16

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

RESPONSE TO COMMENTS

On June 9, 2006, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 10, 2006 to accept oral comments on proposed revision to legislative rule 45CSR16. Written comments were also accepted through 6:00 PM on Monday, July 10, 2006. Two commenters submitted written comments regarding proposed revisions to rule 45CSR16, and one commenter provided verbal comments. DAQ addresses the written comments below. The verbal comment received did not specifically address any revision in the proposed rule.

I. **COMMENTER: West Virginia Chamber of Commerce**

COMMENT A. The commenter states, *"The Chamber supports the modification of this rule to appropriately reflect the federal program."*

RESPONSE A. No response required.

II. **COMMENTER: West Virginia Manufacturer's Association**

COMMENT A. The commenter states, *"The WVMA supports the annual update of these standards for new sources; however, we continue to believe the State rules should be keyed to the federal rules as of July 1 each year in order to synchronize them with the annual republication of the Code of Federal Regulations Title 40."*

RESPONSE A. DAQ notes that the statutory deadline for filing with the Legislative Rule-Making Review Committee and public notice requirements require the Department of Environmental Protection's divisions to begin their public notice period about mid-June of each year. Proposed legislative rules cannot incorporate by reference a Federal Register final rule (or Code of Federal Regulations) which was not yet published at the beginning of the public comment period. Moreover, while the revision date for the Title 40 CFR is indeed July 1 of each year, the date the publication is available is typically after the following October, four months later. This date is well after the proposed rules have been filed for public comment with the Secretary of State. Therefore, it is not possible for DAQ to accommodate the commenter's suggestion.

III. **COMMENTER: Allan Tweddle**

COMMENT A. The commenter asked about the nature of the rule and inquired as to whether the revisions would reduce or allow lower standards of air emissions. An agency representative at the hearing responded that it would not. The commenter expressed his opinion that the agency should not *"roll back any rule in terms of emissions, or air quality."*

RESPONSE A. DAQ notes the purpose of 45CSR16 is to incorporate by reference federal new source performance standards on an annual basis, and no proposed revision to the rule is intended to diminish air quality. The federal standards primarily add requirements or source categories which are not regulated, or were previously regulated with less stringent requirements. Therefore, the agency views these revisions as being more stringent than previous versions of this rule.