

Form #3

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JUL 26 PM 4:50
U.S. DEPT. OF STATE


Authorized Signature

Authorized Signature _____

SCANNED

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 26, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Air Quality
7012 MacCorkle Avenue, Southeast
Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: 45CSR16 - "Standards of Performance for New Stationary Sources
Pursuant to 40 CFR Part 60"

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 12, 2002

b. What other notice, including advertising, did you give of the hearing?
Class I legal advertisement; Charleston Daily Mail & Charleston Gazette
Sent a copy of the Public Notice to our agency mailing list
Public Notice placed on Division's web site

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Hearing - July 15 2002 Public Comment Period Ended - July 15, 2002

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 26, 2002

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

John A. Benedict, Deputy Director

7012 MacCorkle Avenue, SE

Charleston, WV 25304

Phone: (304) 926-3647

Fax: (304) 926-3637

jbenedict@mail.dep.state.wv.us

- g. **IF DIFFERENT 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)

See "f" above

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

BRIEFING DOCUMENT

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

This rule establishes and adopts 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). It is the intent of the Secretary to adopt by reference New Source Performance Standards (NSPS) promulgated as of June 1, 2002. It is also the intent of the Secretary to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. The rule codifies general procedures and criteria to implement standards of performance for new stationary sources. Any person who constructs, modifies, or reconstructs 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 NSPS standards promulgated as of June 1, 2002: 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, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996 and Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed On or Before September 20, 1994, Amendments for Testing and Monitoring Provisions; Removal of a Provision for Opacity Monitoring, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, and Standards of Performance for Large Municipal Waste Combustors.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This rule codifies general provisions and emission standards for New Source Performance Standard (NSPS) and other regulatory requirements promulgated by the U.S. Environmental Protection Agency (USEPA) as of June 1, 2002, pursuant to section 111(b) of the federal CAA. Promulgation of this rule will enable the State to continue to be the primary enforcement authority for NSPS subparts promulgated by U.S. EPA. Promulgation

of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA.

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 §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 June 5, 2002 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, June 5, 2002

DMR Conference Room - 10 McJunkin Road, Nitro, WV

ATTENDEES:

Advisory Council Members:

Larry Harris
Bill Samples
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

Bill Adams
Lewis Halstead
James Martin
Brett Loflin
Allyn Turner
Charles Sturey

Ken Ellison
Bill Brannon
Mike Zeto
Greg Adolfson
Jim Mason
Karen Watson

Citizens:

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

Welcome/Opening Remarks - Bill Adams

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his regrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council

members, an explanation of what group or interest each member represents.

PRESENTATION OF PROPOSED RULES

Division of Mining and Reclamation

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council.

Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

Division of Water Resources

Bill Brannon presented rule 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$700 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a \$300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

Office of Innovation

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

Division of Waste Management

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council.

Mr. Ellison explained that these two rules are now identical to the federal regulations.

Environmental Enforcement

Mike Zeto presented rule 33CSR8 to the Council.

Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

Office of Oil and Gas

James Martin was introduced as the Chief of the Office of Oil and Gas.

Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

Division of Air Quality

Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.

Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

OTHER BUSINESS

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave

little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 60 as of June 1, 2002 will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, for which full program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

3. Objectives of These Rules:

This rule adopts standards of performance for new stationary sources promulgated by the U.S. Environmental Protection Agency under the Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

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

C. Economic Impact on Citizens/Public at Large.

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

Date: _____

Signature of Agency Head or Authorized Representative:

FILED

2002 JUL 26 P 4:50

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

COMMONWEALTH OF VIRGINIA
SECRETARY OF STATE

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

§45-16-1. General.

1.1. Scope. -- This rule 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). ~~It is the intent of the~~ The Secretary to adopt hereby adopts these standards by reference. ~~It is also the intent of the~~ The Secretary to adopt also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- ~~April 16, 2002.~~

1.4. Effective Date. -- ~~July 1, 2002.~~

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, effective ~~July 1, 2000~~ July 1, 2001, as amended by the Federal Register through ~~June 11, 2001~~ June 1, 2002.

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 ~~June 8, 2001~~ April 16, 2002, and which became effective ~~July 1, 2001~~ July 1,

2002.**§45-16-2. Requirements.**

2.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, 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.

§45-16-3. Definitions.

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

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

3.3. "Secretary" means the ~~secretary~~ Secretary of the ~~department of environmental protection~~ Department of Environmental Protection or such other person to whom the ~~secretary~~ Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

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

§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 ~~July 1, 2000~~ July 1, 2001, as amended by the Federal Register through ~~June 11, 2001~~ June 1, 2002, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

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

4.1.b. Subparts B, C, Ca, Cb, Cc, Ce, Ea, Ec, WWW and CCCC of 40 CFR Part 60 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 shall retain authority and not transfer such authority to the State;

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 shall be construed or inferred to mean that permit requirements in accordance with applicable rules 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 existing rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

ORIGINAL

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

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 16 "Standards of Performance for New
Stationary Sources Pursuant to 40 CFR Part
60".

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Missy L.
Young, Certified Court Reporter and Commissioner in and
for the State of West Virginia, at the West Virginia
Division of Environmental Protection, Office of Air
Quality, Conference Room, 7012 MacCorkle Avenue, S.E.,
Charleston, West Virginia, commencing at 6:02 p.m., on the
15th day of July, 2002, pursuant to notice.



P R O C E E D I N G S

MS. WELSH: We will now open the public hearing for 45CSR16. Standards of performance for new stationary sources pursuant to 40 CFR Part 60.

This rule establishes and adopts 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. The rule revisions adopt by reference New Source Performance Standards (NSPS) promulgated as of June 1, 2002.

It is now your opportunity to comment on 45CSR16. Are there any comments?

MR. SAMPSON: Yes. Fred Sampson, Clay County. 46161-1, it says in the middle of the paragraph that it's "... intent of the secretary to adopt these standards". I would like that to be revised to say the secretary hereby adopts these standards. That's my only comment.

MS. WELSH: Are there any other comments on 45CSR16? If not, we will now close the public hearing for 45CSR16.

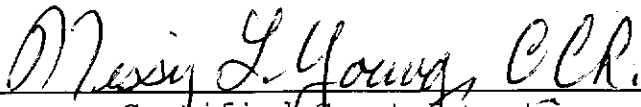
(WHEREUPON, the public hearing was concluded.)

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

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 is, to the
best of my 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
19th day of July, 2002.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943
Telephone Number: (304) 926-3647
Fax Number: (304) 926-3637

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Cabinet Secretary

Sign -In

NAME	ADDRESS	ORGANIZATION	COMMENT YES	COMMENT NO
K.B. Poland	P.O. Box 1791 Charleston, WV 25326	Robinson & McElwee PUC		X
Fred Sampson	HC-68, BOX-25 FUYSALE, WV 25113	CITIZEN	✓	
STEVE HANNAH	WV DEP Capitol Campus	WVDA	✓	
Joe Dawley	P.O. BOX 273 Charleston WV	IOGA	✓	
Connie Greenleaf	2206 Washington St E Charleston WV 25311	WVEC	✓	
TAM NIXON	HANFORD St.	WV DEP-O&A		X



West Virginia Department
of Environmental Protection

"Promoting a healthy environment."



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

July 15, 2002

Stephanie Timmermeyer, Director
Division of Air Quality
Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: Comments on Updated Air Regulations,
Incorporation by Reference

Dear Director Timmermeyer:

The West Virginia Manufacturers Association ("WVMA") appreciates the diligence of the Division of Air Quality in undertaking to incorporate updated sections of the Code of Federal Regulations ("CFR") in 45 CSR 16, 25, 33 and 34.

Please note that the proposed Section 4.1 of 45 CSR 33 (Acid Rain Provisions and Permits) fails to change the effective dates of incorporated CFR sections and Federal Registers from July 1, 2000 and June 13, 2001, respectively, to July 1, 2001 and June 14, 2002, respectively. It appears that this failure to include the more recent provisions is a mere oversight, since proposed Section 1.5 includes the July 1, 2001 and June 14, 2002 dates of incorporation. Nevertheless, the WVMA encourages the Division of Air Quality to explicitly incorporate all relevant CFR provisions through July 1, 2001, as amended by the Federal Register through June 14, 2002, by including these dates in Section 4.1.

We do note that this method of incorporation always means that the CFR referenced will be at least one year out of date from the federal compilation of Title 40 which is republished every year as of July 1, which creates a need for regulated entities and others to research to see what provisions truly applied as of the last Federal Register date incorporated by reference in the state rules. That requires an electronic search at best, and a trip through the library's hard copies at worst. For that reason, we would encourage the DAQ to adopt a protocol for incorporation by reference of the CFR to July 1 of the current year, not the prior year. That compilation will always be a known entity either before or during any comment period, and certainly before the agency files its final rules with the Legislature for approval to promulgate. It will help to assure that regulated sources can more easily identify all applicable requirements.

Respectfully,

John K. Pitner
WVMA Air Team Leader

cc: Karen S. Price, President, WVMA
WVMA Air Team Members

Board of Directors

Allegheny Energy
Ashland Chemical, Inc.
Aventis CropScience
BASF Corporation
Bowles Rice McDavid Graff & Love
Capitol Cement Corporation

Cytec Industries, Inc.
Dean Company (The)
The Dow Chemical Company
Downard Hydraulics, Inc.
DuPont
Eagle Manufacturing Co.

Elkem Metals Company
Flexsys
FMC Corporation
Georgia-Pacific Corporation
GE Plastics
Kanawha Manufacturing Co.

Kingsford Manufacturing Co.
Koppers Industries, Inc.
Marble King, Inc.
Mylan Pharmaceuticals, Inc.
Pechiney Rolled Products, LLC
Phillips Machine Service, Inc.

Pilgrim's Pride Corporation
PPG Industries, Inc.
Special Metals Corporation
Toyota
W.M. Cramer Lumber Co.
Weirton Steel Corporation

JUL 17 2002

July 15, 2002

WVA Dept. of Environmental Protection
West Virginia Dept. of Air Quality
7012 MacCorkle Ave., SE
Charleston, WV 25304-2943
Attn Stephanie Timmermeyer, Director.
Subj: Comments to Legislative Rules, WVA Code 22-5-4.

**45CSR 34 "Emission Standards for Hazardous Air
Pollutants For Source Categories Pursuant to 40CFR 63"**

**45-34-1, 1.1, The last two sentences state: "It is the intent of the
Secretary to adopt..." , "It is also the intent of the Secretary to adopt"
I request this be changed to state:"the Secretary hereby adopts... ", in
both sentences.**

**45-34-2, 2.3: Revise the last sentence to read: "...unless the Secretary,
after public comment is received, determines that the".**

45CSR33- "Acid rain provisions and permits":

45-33-1, 1-1:

Midway thru paragraph, Add after "amended" a date, for clarification.

**Last sentence: Revise to read as follows: " The Secretary hereby adopts
associated reference methods, performance specifications and other test
methods which are appended to these standards".**

**45CSR16 "Standards of performance for New
Stationary Sources Pursuant to 40CFR Part 60:**

45-16-1, 1-1:

**Rewrite to say: "Secretary hereby adopts" to agree with 45-16-4, 4.1.
This will remove the word "intent".**

45CSR30 "Requirements for operating permits":

**45-30-2, 2.6.j : Take out the last part of the sentence after: "... Clean
Air Act"**

2.26.b.8. Remove "Municipal Incinerators" , "solid waste incinerators", Medical waste incinerators and ban Incineration of any waste material.. When you MIX AND BURN garbage, you create new deadly chemicals like "DIOXIN", which is a deadly cancer causing material. Please ban and do not issue any permits for incineration of Garbage, medical waste or and other types of incineration. If you do not have a complete chemical analysis of what you are burning, you cannot tell what the output into our air will be.

45-30-3, Para: 3.2a

Delete: "may be deferred by the Secretary", after the Clean Air Act, and delete the last sentence as no longer needed.

45-30-4, 4.3.g

Delete this complete paragraph and delete any other reference to "EMISSION TRADING"

Emission trading, in all of the scenarios existing to date, is only allowing those willing and able to meet the requirements to make money by polluting their neighbors worse than themselves and is discriminatory and in my opinion a tracking and enforcement nightmare. Please do not allow EMISSION TRADING.

5.1.a.3. Page 15;

Add to end of paragraph: "... and will not allow more emission than the standard"

5.1.d.1, 5.1.d.2, 5.1.d.3.

Revise to delete any pollution allowances, however and whenever obtained. There cannot be any allowances without discrimination and we will all suffer from dirtier air should this be allowed

5.1.h. and 5.1.j., 5.8.b, 5.8.d, 6.5.a.1.B,

Rewrite to delete any and all methods of EMISSION TRADING, (see comments on 4.3.g.

**45CSR25 "To prevent and Control Air Pollution from
Hazardous Waste Treatment, Storage, or disposal Facilities"**

Paragraph 4.1.3.

**DO NOT ALLOW HAZARDOUS|WASTE INCINERATORS. (see
comments above).**

4.14 e.3

Change the word : "brief" to "complete".

Paragraph 4.1.5.

Pathological Waste Incinerators.???

**I take strong exception to allowing this type of incineration as what is
going to be incinerated, or how much is allowed or just what is this.
DO NOT ALLOW.**

**45CSR13 "Permits for Construction, Modification,
Relocation and Operation of Stationary Sources of Air Pollutants,
Notification Requirements, Administrative Updates, Temporary
Permits, General Permits and Procedures for Evaluation.**

45-13-6, Page 11:

**6.1. Revise the end of the paragraph after "or other tests" to read as
follows:**

**"... the Secretary specifies shall be conducted to determine
compliance".**

6.2: Revise the first part of this Paragraph to read as follows:

"For Cause, the Secretary shall request..."

45-13-11, Page 14.

11.1.

Mid paragraph, Revise to read as follows:

**"....and other temporary purposes for periods of time not to exceed 90
days without applying for a construction permit..."**

45-13-15, Page 16;

15.1, 15.1.a, 15.1.b, 15.1.c, 15.1.d, 15.2, 15.3.:

Revise these paragraphs so that ANY Hazardous Air Pollutant is: Recognized, acknowledged, and that they shall be limited to controls that will protect Public Health for those who handle, ship, move, touch or breath the hazardous pollutant.

Revise last sentence in 15.3. to read as follows:

"15.3. Any source or source category that has been the subject of an analysis pursuant to Section 112(n) of the Federal Clean Air Act is subject to all limitations and controls on hazardous air pollutants that is required to protect the health and safety of those coming in contact with the air pollutant. This section is applicable to all 112(n) source or sources. The secretary will provide the requirements upon receipt of an application that fully identifies the hazardous air pollutant.

45-13B

Item 12????

Describe "Mobile Sources".???

Item 25:

Delete "incinerators" Do not allow incineration as a method of getting rid of this waste!!!.

45CSR26 "Nox Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units".

2.46. "NOx Budget trading Program"

I take full exception to this program ; "... as a means of mitigating interstate transport of ozone and nitrogen oxides, an ozone precursor".

This program will allow polluters to keep right on polluting in excess of what the codes and regulations and is a smoke screen that allows such pollution to continue which plagues the health, safety and welfare of the U.S.A.citizens.

I strongly oppose this trading program becoming any part of W.Va. rules and regulations, and ask that it be deleted from our regulations.

Page 5

It is a regulatory nightmare, fraught with possibility of fraud, illegal trades, etc.

2.54, page 7:

I question the listed "33%" of a units maximum design heat input. Efficiency must be a part of this calculation???

2.56, Page 7:

Do not allow the MOVEMENT of any allowances, allocations, transfers or deductions. If a UNIT produces it, that unit must be reworked, re-manufactured, repaired, upgraded or whatever is necessary to come into compliance or be shut down, PERIOD!!!. No exceptions allowed.

2.63, Page 7:

Why only 48 States?????. Who is excluded and why???

4.1.a., and 4.1.b, page 9:

Delete the following from the last sentence of both paragraphs:

"and produced electricity for sale under a firm contract to the electric grid".

45-26-55, Page 32:

Delete NOX allowance Banking and do not allow this as a practice or as part of the regulations. This also allows greed, fraud, regulatory nightmare and limited accountability.

45-26-57:

57.1. Delete and do NOT allow: "Allowance transfers".

57.2 Delete and do NOT allow: "allowance transfers".

60.1, 60.1.a., 60.1.b., 60.1.c. and complete section 45-26-61 on pages 33 and 34 must be deleted and allowance transfers stopped. They are discriminatory and must not be allowed.

45-26-71.

Paragraphs 71.1. and 71.2.

These paragraphs do not give the reasons or requirements that will allow one to know if the units are or are not subject to an: "acid rain limitation". More description of the requirements needed.

74.4:

74.4.b.2.A. Page 41:

Delete any allowance for any owner/operator to apply for "early reduction credits".

74.4.d.

Revise the first part of this paragraph to read as follows:

"The NOx authorized account representative shall submit to the Administrator and the Secretary compliance certification..."

45CSR1 – "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"

General Comment

NOx and OZONE have been a problem for years and it seems that EPA is trying to do something about this in this rule. It is very confusing and wordy and has a myriad of requirements, but, I do not see how this will in any way REDUCE either NOx or ozone .

The implementation of this program seems too far down the road before any reporting with any certainty that can be measured and I see NO accountability prior to then.

This recommended program allows :

trading of credits, banking of credits, transfer of credits, ,allocation of credits, set-asides of credits, exemptions for meeting requirements, early reduction of credits, deadlines for transfer of credits, compliance accounts for credits, overdraft accounts for credits and general accounts for credits and different requirements for the ozone season.

Talk about a nightmare for regulators to administer. If this program was designed to make more work for the already overworked regulators, I think it will be successful, However, I cannot see any thing this program offers that is going to reduce pollution of our Air.

There are some good guidelines for required reporting and with the full responsibility falling upon, not the owners or operators, but, squarely on the NOx account representative, Who will take the job, Who would want the job. How are you ever going to make this work????

Therefore, I recommend that DEP, delete all of the trading , banking, set-asides, transfers, deadlines, compliance accounts, overdraft accounts and general accounts for credits and therefore, completely scrap this program and rewrite it with enforcement of the requirements as #1 and make clear what the requirements are.

Also, start enforcing immediately the requirements that are already in the rules.

I see no reason for waiting 2-3 more years to start having better air for us West Virginians to breathe and I see no benefit to having new rules that allow others to trade on credits that can only make the problem worse.

Thanks for the opportunity to comment.


Fred Sampson

HC-68, Box 25

Ivydale, WV 25113

304-286-2204

E-mail: gsd01785@mail.wvnet.edu



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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JUL 17 2 12

JUL 12 2002

Ms. Stephanie R. Timmermeyer, Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle, S.E.
Charleston, WV 25304

Dear Ms. Timmermeyer:

Stephanie

The purpose of this letter is to respond to your June 11, 2002 request for the U.S. Environmental Protection Agency's (EPA) comments regarding proposed revisions to the following West Virginia air quality regulations: 45CSR1, 45CSR13, 45CSR16, 45CSR25, 45CSR26, 45CSR30, 45CSR33, and 45CSR34. Based on our review, we have no comments on the proposed changes to the aforementioned regulations. Once finalized, the proposed revisions must be formally submitted to EPA as a revision to the West Virginia State Implementation Plan. EPA would like to thank the State of West Virginia for the opportunity to comment on its proposed amendments.

If you should have any questions, please feel free to contact me, or Walter K. Wilkie, Deputy Chief, Air Quality Planning & Information Services Branch, at 215- 814-2150.

Sincerely,

Judith M. Katz, Director
Air Protection Division



JACKSON & KELLY PLLC

ATTORNEYS AT LAW

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MEMBER OF LEX MUNDI,
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS.

July 15, 2002

kbeckett@jacksonkelly.com

(304) 340-1019

Stephanie R. Timmermeyer, Esq.
Director, Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: 2002 Proposed Regulatory Changes.

Dear Director Timmermeyer:

The following comments are provided on behalf of the West Virginia Chamber of Commerce to the draft rulemaking package the Division of Air Quality has recently circulated. One general comment that would enhance the commenting process would be for the agency to provide a preamble or rationale document explaining the agency's proposals. This would especially be useful in light of the agency's recent position that no further communication may be had with the public once a proposal has been published. Having read the changes, it is very natural to want to understand the issue the agency is attempting to address.

1. 45 CSR 1 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
2. 45 CSR 13 –

Modification Thresholds - It is proposed that the term "modification" be revised to require a permit for modifications that result in emissions of six pounds per hour "and" 10 tons per year or more and also for emissions that results in "more than 144 pounds per calendar day." Although the Chamber supports the inclusion of the "and" in the

definition, we question to need for the addition of the 144 pounds per calendar day threshold. The DAQ has not provided any rationale for this limitation in relation to the regulated pollutants. It would be well for the agency to provide additional discussion concerning this proposed change in order to educate the commentors as to the purpose served by this revision.

General Permits – In general, the Chamber supports the concept of creating a program for enhancing the usefulness of the state general permit program. It appears that the DAQ is attempting to modify the general permit program with a view toward that goal. The Chamber supports the creation of a modified fee structure for general permits. It would be well for the agency to provide additional discussion concerning these proposed changes in order to educate the commentors as to the intended result of these modifications.

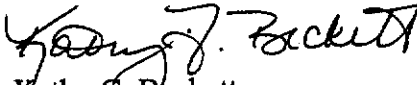
Public Notice Requirements – The Chamber is appreciative of the modifications to Section 8.4.a and 8.5.a, in that they represent changes designed to address the need to clarify the existing regulation. The Chamber supports the DAQ's proposed removal of Section 8.7 as unnecessary.

Temporary Permits – The DAQ has proposed removal of the timeframe within which the agency would review the request for a temporary permit. Understanding the very nature of such permits, it appears that all would be well served by maintaining a limitation on review time. Perhaps had the agency provided a rationale for this change we would better understand the agency's concerns with the last sentence of Section 11.2.a. The Chamber does not support this modification.

3. 45 CSR 16 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
4. 45 CSR 25 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
5. 45 CSR 26 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
6. 45 CSR 30 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
7. 45 CSR 33 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

8. 45 CSR 34 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

Very truly yours,


Kathy G. Beckett

45CSR16

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

RESPONSE TO COMMENTS

On June 12, 2002, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 15, 2002 to accept oral comments on the proposed rule, 45CSR16. Written comments were also accepted through 6:00 PM on Monday, July 15, 2002. One person verbally commented at the public hearing concerning proposed rule 45CSR16. Four commenters submitted written comments on proposed rule 45CSR16. DAQ addresses these comments below.

I. COMMENTER: West Virginia Manufacturers Association

COMMENT A. *The commenter states that it appreciates the DAQ's diligence in undertaking to incorporate updated federal regulations, but also states that this method of incorporation always means that the CFR referenced will be at least one year out of date from the federal compilation of Title 40 which is republished every year as of July 1. This creates a need for regulated entities and others to research to see what provisions truly applied as of the last Federal Register date incorporated by reference in the state rules. That requires an electronic search at best, and a trip through the library's hard copies at worst. For that reason, the commenter encourages the DAQ to adopt a protocol for incorporation by reference of the CFR to July of the current year, not the prior year. That compilation will always be a known entity either before or during any comment period, and certainly before the agency files its final rules with the Legislature for approval to promulgate. It will help to assure that regulated sources can more easily identify all applicable requirements.*

RESPONSE A. The current method of incorporation by reference (IBR) is used by DAQ because referenced documents attached to agency proposed rules must be final, published regulations in effect at the time the proposed rule is filed with the Secretary of State for public notice. See 153CSR §6-8.1. Since the DAQ generally must file its proposed rules before July 1 every year (in order to meet the statutory deadline for filing with the Legislative Rulemaking Review Committee) the DAQ has found that the most efficient method of incorporating the latest federal regulations, i.e. those legally effective at the time a proposed rule is filed for notice, is to reference the previous year's Code of Federal Regulations (CFR) and to reference all regulations published in the Federal Register since that date. 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.

II. COMMENTER: Fred Sampson

COMMENT A. *The commenter suggests that 45-16-1, 1-1 be rewritten to say: "Secretary hereby adopts" to agree with 45-16-4, 4.1. This will remove the word "intent."*

RESPONSE A. DAQ agrees and has revised the subsection accordingly.

III. COMMENTER: U.S. Environmental Protection Agency

COMMENT A. *The commenter states that it has no comments on the proposed changes to the rule.*

RESPONSE A. No response required.

IV. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. *The commenter states that it supports the revisions to the rule in that they are consistent with EPA guidance.*

RESPONSE A. No response required.

that the autologous donor should not donate in the future; and

(iii) The results of tests for evidence of infection due to communicable disease agent(s), that were a basis for deferral under § 610.41 of this chapter, including results of supplemental (i.e., additional, more specific) tests as required in § 610.40(e) of this chapter.

(2) You must make reasonable attempts to notify the autologous donor's referring physician within 8 weeks after determining that the autologous donor is deferred as described in paragraph (a) of this section. You must document that you have successfully notified the autologous donor's referring physician or when you are unsuccessful that you have made reasonable attempts to notify the physician.

Dated: June 1, 2001.

Bernard A. Schwetz,
Acting Principal Deputy Commissioner.
[FR Doc. 01-14409 Filed 6-8-01; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

RIN 0701-AA56

Environmental Impact Analysis Process (EIAP); Correction

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule; correction.

SUMMARY: The Department of the Air Force published in the **Federal Register** of March 28, 2001, a document concerning correcting amendments. This document corrects the inadvertent change to correcting amendment 45.

DATES: Effective on July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bush (HQ USAF/ILEB), 1260 Air Force Pentagon, Washington, DC 20330-1260, (703) 604-0553.

SUPPLEMENTARY INFORMATION: In 32 CFR part 989, FR Doc. 01-7671 published on March 28, 2001 (66 FR 16868) make the following correction. On page 16869, correcting amendment 45, Appendix C, paragraph A3.1.3, last sentence, correct "USAF/ILEVP" to read "HQ USAF/ILEVP."

Dated: May 31, 2001.

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 01-14681 Filed 6-8-01; 8:45 am]
BILLING CODE 5001-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-6995-2]

RIN 2060-AE56

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to relevant adverse comment, the EPA is withdrawing two provisions from the direct final rule published on April 10, 2001 for Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units (66 FR 18546). These provisions deal with the revised definition of "boiler operating day" and the data substitution requirement for missing data.

DATES: This rule is effective June 11, 2001. As of June 11, 2001, the EPA withdraws the revised definition of "boiler operating day" in 40 CFR § 60.41a and 60.46a(j)(2) published on April 10, 2001 (66 FR 18546). The remaining provisions published on April 10, 2001 will be effective June 11, 2001 as stated in the April 10, 2001 direct final rule. The addition of 40 CFR 60.46a(j)(2), which deletes the data substitution requirement for missing data, is effective June 11, 2001.

ADDRESSES: Docket number A-92-71, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Combustion Group, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle

Park, NC 27711, telephone number (919) 541-5426, electronic mail address: eddinger.jim@epa.gov.

SUPPLEMENTARY INFORMATION: Because EPA received relevant adverse comment, we are withdrawing two of the provisions included in the direct final rule for compliance and monitoring requirements for duct burners used in combined cycle systems. We published the direct final rule (66 FR 18546) and a notice of proposed rulemaking (66 FR 18579) intended to amend the emissions monitoring and compliance provisions for duct burners contained in subparts Da and Db on April 10, 2001.

We stated in that **Federal Register** that if we received relevant adverse comment by May 10, 2001 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**. We subsequently received relevant adverse comment on two of the provisions: the revised definition of "boiler operating day" in 40 CFR 60.41a and the data substitution requirement contained in 40 CFR 60.46a(j)(2).

The adverse comments stated that the revised definition of "boiler operating day" and the inclusion of the 40 CFR part 75 data substitution requirement are independent of the amendments addressing the compliance procedures for duct burners. The commenters stated that these provisions are inconsistent with existing subpart Da procedures and their potential impacts were not analyzed or discussed in the proposal. On reviewing the relevant adverse comments, we agreed with their conclusion that these provisions are inconsistent with existing provisions in subpart Da and independent of the provisions addressing the compliance procedures for duct burners. Section 60.47a(c)(2) states that, although 40 CFR part 75 monitors can be used for subpart Da compliance, 40 CFR part 75 missing data and bias adjustment procedures shall not be used. As for the revised definition of "boiler operating day," § 60.47a(f) requires data to be collected for at least 18 hours in a "boiler operating day." The proposed revised definition of a "boiler operating day" is inconsistent with this requirement. Therefore, we are withdrawing the revised definition of "boiler operating day" and § 60.46a(j)(2) which contained the requirement for substituting data under 40 CFR part 75.

Based on the adverse comment received, we are amending subpart Da to add a revised § 60.46a(j)(2) which will become effective on June 11, 2001 as

provided in the April 10, 2001 direct final rule (66 FR 18546), as appears at the end of this document. This revised § 60.46a(j)(2) differs from the § 60.46a(j)(2) that is being withdrawn from the direct final rule by the deletion of the following statement:

This includes data substituted according to 40 CFR 75.21(i) for invalid data and 40 CFR 75.30 for missing data or data adjusted for negative bias as required by 40 CFR 75.23(d).

Based on our review of the comments received, we will, therefore, not address the comments on the withdrawn provisions in a subsequent final action on the parallel proposal published at 66 FR 18579.

The provisions for which we did not receive relevant adverse comment, as well as the revised § 60.46a(j)(2), will become effective on June 11, 2001 as provided in the April 10, 2001 direct final rule (66 FR 18546).

Dated: June 5, 2001.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

For reasons set out 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 60.46a is amended by adding paragraph (j)(2) to read as follows:

§ 60.46a Compliance provisions.

* * * * *

(j) * * *

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the continuous emission monitoring system specified under § 60.47a for measuring NO_x and oxygen and meet the requirements of § 60.47a. Data from a CEMS certified (or recertified) according to the provisions of 40 CFR 75.20, meeting the QA and QC requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used. The sampling site shall be located at the outlet from the steam generating unit. The NO_x emission rate at the outlet from the steam generating unit shall constitute the NO_x emission rate from

the duct burner of the combined cycle system.

* * * * *

[FR Doc. 01-14618 Filed 6-8-01; 8:45 am]

BILLING CODE 5560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433, 435, 436, and 457

[HCFA-2006-F3]

RIN 0938-AI28

State Child Health; Implementing Regulations for the State Children's Health Insurance Program: Further Delay of Effective Date

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; Further delay of effective date.

SUMMARY: This final rule temporarily delays the effective date of the final rule entitled "State Child Health; Implementing Regulations for the State Children's Health Insurance Program" published in the January 11, 2001 *Federal Register* (66 FR 2490). That final rule implements provisions of the Balanced Budget Act of 1997 (BBA) related to the State Children's Health Insurance Program (CHIP). Specifically, the final rule includes provisions related to State plan requirements and plan administration, coverage and benefits, eligibility and enrollment, enrollee financial responsibility, strategic planning, substitution of coverage, program integrity, certain allowable waivers, and applicant and enrollee protections. It also implements the provisions of sections 4911 and 4912 of the BBA, which amended title XIX of the Social Security Act to expand State options for coverage of children under the Medicaid program. In addition, the final rule makes technical corrections to subparts B and F of 42 CFR part 457.

On February 26, 2001, we initially delayed the effective date of the final rule from April 11, 2001 until June 11, 2001. The temporary 60-day delay in the effective date was necessary to give Department officials the opportunity for further review and consideration of new regulations.

We have decided to further delay the effective date of the final rule because we have determined that a short additional period is required to properly consider and promulgate necessary

revisions. To the extent that 5 U.S.C. section 553 applies to this action, this action is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b) (A). Alternatively, HCFA's delay of implementation of this rule without opportunity for public comment, effective immediately upon publication today in the *Federal Register*, is based on the good cause exceptions in 5 U.S.C. sections 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary, and contrary to the public interest. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical because the time available before the effective date is too short for meaningful comment. Moreover, to the extent that seeking public comment would preclude this delay, it would be contrary to the public interest in the orderly promulgation and implementation of regulations in light of the development of necessary revisions. The immediate delay is necessary to prevent application of inconsistent standards while we issue the necessary revisions.

DATES: The effective date of the final rule amending 42 CFR parts 431, 433, 435, 436 and 457, published in the *Federal Register* on January 11, 2001, at 66 FR 2490 and delayed on February 26, 2001 at 66 FR 11547 until June 11, 2001 is further delayed until June 25, 2001.

FOR FURTHER INFORMATION CONTACT: Regina Fletcher (410) 786-3293.

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: June 7, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

Approved: June 7, 2001.

Tommy G. Thompson,
Secretary.

[FR Doc. 01-14733 Filed 6-8-01; 8:45 am]
BILLING CODE 4120-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7763]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 60**

[AD-FRL-7010-3]

RIN A2060-AJ51

**Standards of Performance for Large
Municipal Waste Combustors for
Which Construction is Commenced
After September 20, 1994 or for Which
Modification or Reconstruction is
Commenced After June 19, 1996 and
Emission Guidelines and Compliance
Times for Large Municipal Waste
Combustors That are Constructed On
or Before September 20, 1994****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Direct final rule; amendment.

SUMMARY: We are amending the standards of performance for large municipal waste combustors by expanding the definition of mass burn rotary waterwall municipal waste combustors (MWC) to include mass burn tumbling-tile grate waterwall municipal waste combustors. This change ensures that the same emission limit is established for both types of MWC designs since they exhibit similar combustion characteristics. Since the emissions guidelines for large municipal waste combustors reference the definitions included in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

DATES: This direct final rule will be effective on September 10, 2001, without further notice, unless significant adverse comments are received by August 13, 2001.

If significant material adverse comments are received by August 13, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposal. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on September 10, 2001.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-45, Subcategory IX-D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-45, Subcategory IX-D, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5251, e-mail: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION: *Comments.* We are publishing this direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that

will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A-90-45, Subcategory IX-D.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS Codes	SIC Codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine

the applicability criteria in §§ 60.50b and 60.32b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the action taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of

Columbia Circuit by September 10, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or

public hearing may be raised during judicial review.

I. Background

On December 19, 1995, we promulgated standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) for large municipal waste combustors. These standards and guidelines establish maximum achievable control technology (MACT) emission limits for nine pollutants for all design types of municipal waste combustors. The emission control technology upon which these MACT emission limits are based varies somewhat, depending on the specific emission limit. For carbon monoxide (CO), the emission control technology upon which the MACT emission limits are based is good combustion. As outlined in the proposed and final standards and guidelines, good combustion consists of several elements: trained operators, waste feed control, combustion air control, combustion air preheat, and the use of auxiliary fuel burners.

The magnitude of CO emissions from a combustor are determined primarily by the combustion conditions which exist within the combustor. While good combustion minimizes CO emissions, it cannot achieve the same level of emission reductions for each type of combustor design since combustion conditions inherently vary from one type of combustor design to another. As a result, the MACT CO emission limits in the standards and guidelines vary by type of combustor design.

The MACT CO emission limits for mass burn rotary waterwall combustors, for example, are different (i.e., less stringent) than those for mass burn waterwall combustors. A mass burn rotary waterwall combustor is essentially an inclined rotating waterwall cylinder. Waste enters at the elevated end of the cylinder, ignites, and then slowly moves down the cylinder as it rotates. As the municipal waste burns, the rotation of the cylinder tends to carry the waste partially up the wall in the direction of rotation, until it tumbles and falls over on itself. When this happens, a large amount of fresh, unburned surface area is suddenly exposed to combustion, and this leads to substantial fluctuations in CO emission levels.

Most mass burn waterwall municipal waste combustors do not use an inclined rotating cylinder, but use an inclined reciprocating grate to burn the municipal waste. Viewed from the side, this inclined grate looks like a long set of stair steps. In most cases, every other grate step can move back and forth or

reciprocate. The waste enters on the top step, ignites, and then is slowly pushed down the grate, from one step to another, by the reciprocating steps. While the action of moving from step to step serves to expose some fresh, unburned surface area to combustion, the transition is smoother and less abrupt than that in a rotary combustor. As a result, the fluctuations in CO emission levels are less extreme and, as mentioned above, the MACT emission limits in the standards and guidelines for CO are more stringent for mass burn waterwall combustors than for mass burn rotary waterwall combustors.

Recently, we have learned that there is one other type of mass burn waterwall municipal waste combustor design, which is referred to as a tumbling-tile grate combustor. Only one large municipal waste combustor of this type of design exists in the United States (i.e., Savannah Energy Systems located in Savannah, Georgia) and, until the owner/operator of this combustor brought this to our attention, we were not aware of it. This type of combustor design uses a grate to burn municipal waste but, because of the unique design of the grate, the combustion conditions within the combustor are similar to those within a mass burn rotary waterwall combustor.

When viewed from the side, the grate within this combustor looks like a long set of stair steps. However, every third step, which is referred to as a "tumbling-tile," is hinged at one end with the other end attached to a vertical ram beneath the step. As waste moves down the grate, the ram rises, rotating the step around the hinged end. This action causes the waste to tumble and fall over on itself exposing a large amount of fresh, unburned surface area to combustion.

The overall effect creates combustion conditions similar to those which exist within a rotating combustor. As the waste burns, periodically a large amount of fresh, unburned surface area is suddenly and abruptly exposed to combustion, and this leads to substantial fluctuations in CO emission levels. Good combustion reduces CO emission levels from a tumbling-tile grate waterwall combustor to the level achieved at rotary waterwall combustors, but cannot reduce CO emissions to the level achieved at mass burn waterwall combustors. Thus, the MACT emission limits for CO for mass burn tumbling-tile grate waterwall combustors and mass burn rotary waterwall combustors should be the same.

This direct final rule amendment, therefore, expands the definition of

mass burn rotary waterwall municipal waste combustor to include mass burn tumbling-tile grate waterwall municipal waste combustor. This action ensures that the same MACT CO emission limit is established for both types of municipal waste combustor designs since they exhibit similar combustion conditions.

All terms used but not defined in the guidelines (Subpart Cb—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994) have the meaning given them in the standards (Subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996). As a result, this action has the effect of amending both the standards and the guidelines by amending the definition of mass burn rotary waterwall municipal waste combustor in the standards.

II. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the 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 this direct final rule does not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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

This direct final rule 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, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

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

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

responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this direct final rule.

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

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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 considered by EPA.

The 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. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Also, this direct final rule is not "economically significant."

E. Unfunded Mandates Reform Act of 1995

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 to State, local, and tribal governments, in the aggregate, or to 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.

The EPA has determined that this direct final rule does not contain a Federal mandate 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, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 today's direct final rule on small entities, small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than \$6 million; (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 direct final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

G. Paperwork Reduction Act

The Office of Management and Budget had previously approved the information collection requirements contained in the standards and guidelines for large municipal waste combustors under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on December 19, 1995.

The amendment contained in this direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

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 and 40 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This direct final rule amendment does not involve technical standards. The EPA's compliance with the NTTAA has

been addressed in the preamble of the standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) promulgated on December 19, 1995.

I. 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. The EPA will submit a report containing this direct final 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 this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

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

Dated: July 3, 2001.

Christine Todd Whitman,
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:

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

Subpart Eb—[Amended]

2. Section 60.51b is amended by revising the definition of *Mass burn rotary waterwall municipal waste combustor* and adding the definition of *Tumbling-tile* as follows:

§ 60.51b Definitions.

* * * * *

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace or on a tumbling-tile grate.

* * * * *

Tumbling-tile means a grate tile hinged at one end and attached to a ram at the other end. When the ram extends,

the grate tile rotates around the hinged end.

* * * * *

[FR Doc. 01-17330 Filed 7-11-01; 8:45 am]

BILLING CODE 6580-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket#: AK-01-002; FRL-7010-6]

Finding of Attainment for Carbon Monoxide (CO); Anchorage CO Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO by the deadline required by the Clean Air Act (CAA), December 31, 2000.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT:

Connie Robinson, Office of Air Quality Mail Code OAQ-107, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553-1086.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" is used we mean EPA.

I. Background

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. In this case the EPA was required to make determinations concerning whether serious CO nonattainment areas attained the NAAQS by their December 31, 2000, attainment date. Pursuant to the CAA, the EPA is required to make attainment determinations for these areas by June 30, 2001, no later than six months following the attainment date for the areas. This proposal was based on all available, quality-assured data collected from the CO monitoring sites, which has been entered into the Aerometric Information Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990.

* * * * *

[FR Doc. 01-20257 Filed 8-13-01; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-7033-8]

RIN 2060-AJ22

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; removal of provisions.

SUMMARY: This action removes certain provisions of the nitrogen oxides (NO_x) emission standards for new electric utility steam generating units and industrial-commercial-institutional steam generating units, which were promulgated on September 16, 1998. Specifically, we are removing the provisions of the final rules applicable to electric utility steam generating units and industrial-commercial-institutional steam generating units for which modification was commenced after July 9, 1997. The removal of the provisions is based on the issuance of an order by the United States Court of Appeals for the District of Columbia Circuit in *Lignite Energy Council, et al., v. Environmental Protection Agency*, No. 98-1525 (and consolidated cases) on September 21, 1999, granting summary vacatur of the provisions. 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. The EPA has determined that there is good cause for removal of these provisions without prior proposal and opportunity for comment because the changes to the rules are minor, noncontroversial in nature, and do not substantively change the requirements of the revised NO_x NSPS. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

EFFECTIVE DATE: August 14, 2001.

ADDRESSES: Docket number A-92-71, containing supporting information used in the development of the rulemaking is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (excluding Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460; telephone number (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Combustion Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5426; facsimile number (919) 541-5450; electronic mail address "eddingejim@epa.gov".

SUPPLEMENTARY INFORMATION: *Docket.* The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of the standards. The docket is a dynamic file because material is added throughout the rulemaking process. The principal purposes of the docket are to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and to serve as the record in case of judicial review.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry * * *	Electric utility steam generating units, industrial steam generating units, commercial steam generating units and institutional steam generating units.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 60.40a and 60.40b of the rules. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this nationally applicable final action is available only by filing a petition for review in the U.S.

Court of Appeals for the District of Columbia Circuit by October 15, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to this action may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available through the Technology Transfer Network (TTN). Following promulgation, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules (<http://www.epa.gov/ttn/oarpg/t3pfr.html>). The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

I. Why Are We Taking This Action?

Acting in accordance with sections 407(c) and 111 of the CAA, the EPA published proposed revisions to the emission standards for NO_x contained in the standards of performance for new electric utility steam generating units and industrial-commercial-institutional steam generating units, 40 CFR part 60, subparts Da and Db, respectively, at 62 FR 36948 on July 9, 1997. Under section 111(a)(2) of the CAA, any stationary source, as identified in a proposed new source performance standard (NSPS), on which construction, modification or reconstruction is commenced after the date of proposal of that NSPS is subject to any final standards promulgated by EPA. See *United States of America v. City of Painesville, Ohio*, 644 F.2d 1186 (6th Cir. 1981). Thus, any affected facility, as defined in the proposed rule, on which construction, modification or reconstruction was or is commenced after July 9, 1997, would normally be subject to the standards of performance as promulgated. Modification means "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." (see CAA section 111(a)(4)). See also 40 CFR 60.14, "a physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act."

On September 16, 1998 (63 FR 49553), we published final rules revising the nitrogen oxides emission standards in subparts Da and Db. Following

promulgation of the final rules, a number of industry groups (Petitioners) filed petitions for review pursuant to CAA section 307(b) in the United States Court of Appeals for the District of Columbia Circuit. Those petitions were subsequently consolidated by the court; *Lignite Energy Council, et al., v. United States Environmental Protection Agency*, No. 98-1525 and consolidated cases. Petitioners filed their initial brief in the case on May 28, 1999. We filed our initial brief on July 30, 1999. At the same time we filed our initial brief, we also filed a motion for partial voluntary remand that requested that the court remand the standards, as applied to modified or reconstructed boilers, to EPA for further consideration and explanation. In our motion, we explained that in light of issues raised in the Petitioners' brief, we recognized that in the final rules we provided an inadequate explanation of the standards as applied to modified or reconstructed boilers. We further informed the court that we believed that a remand of the standards, as applied to modified or reconstructed boilers, was appropriate to allow us to further consider the matter and articulate more fully the basis for our action. In response to our motion, the Petitioners filed a motion for partial summary vacatur of the standards as applied to modified boilers. On September 21, 1999, the court issued an order granting the Petitioners' motion for summary vacatur of the provisions of the final rules pertaining to modified boilers, thereby vacating the provisions of the final rules applicable to boilers modified after July 9, 1997.

We are taking today's action pursuant to our general rulemaking authority under section 301(a) of the CAA, 42 U.S.C. 7601(a). Section 301(a) grants the Administrator of EPA the authority "to prescribe such regulations as are necessary to carry out [her] functions under this Act."

II. What Is the Legal Authority for Promulgating an Immediately Effective Final Rule Without Prior Notice and Opportunity for Public Comment?

Section 307(d) of the CAA generally requires that we provide notice of our intent to revise standards of performance and an opportunity for interested persons to comment thereon before promulgating such revisions. Section 307(d) expressly does not apply in circumstances where we make a good cause determination under 5 U.S.C. 553(b), which authorizes an agency to forego the otherwise applicable requirement for providing notice of proposed rulemaking in the **Federal**

Register and an opportunity for interested persons to comment on the proposed rulemaking "when the agency for good cause finds (and incorporates the finding and a brief statement of the reason therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Section 111(b)(1)(B) of the CAA expressly makes revisions to standards of performance "effective upon promulgation." (see 42 U.S.C. 7411(b)(1)(B)).

We believe that there is good cause for not providing notice and an opportunity for comment for the following reason. As a matter of law, the order issued by the United States Court of Appeals for the District of Columbia Circuit on September 21, 1999 vacated the provisions of the final rules applicable to modified boilers thereby making them not binding and unenforceable. It is, therefore, unnecessary to provide notice and an opportunity for comment on this action which merely carries out the court's order.

As indicated above, section 111(b)(1)(B) of the CAA expressly provides that revisions to standards of performance become effective upon promulgation, in this case publication in the **Federal Register**.

III. What Does the Final Rule Withdrawal of Provisions Do and What Are Its Consequences?

A. To Whom Does the Final Rule Withdrawal of Provisions Apply?

This final rule withdrawal of provisions applies only to the owners and operators of electric utility steam generating units and industrial-commercial-institutional steam generating units on which modification is commenced after July 9, 1997. We plan to further consider the issues associated with modified boilers and will develop standards as appropriate in the future. It does not affect 40 CFR part 60, subparts Da and Db, as they apply to the owners and operators of new and reconstructed electric utility steam generating units and industrial-commercial-institutional steam generating units on which construction or reconstruction is commenced after July 9, 1997.

B. What Standards Are Being Withdrawn?

Section 60.44a(d)(2) of 40 CFR is amended by removing the language relating to modified boilers. Section 60.44b(l) of 40 CFR is amended by removing the language relating to modified boilers.

C. Are There Any Other Impacts on Affected Facilities on Which Modification Is Commenced After July 9, 1997?

Owners and operators of electric utility steam generating units on which modification is commenced after July 9, 1997 will be required to comply with the applicable NO_x emission limits specified in the pre-existing NSPS (40 CFR 60.44a(a) and (c)). Similarly, owners and operators of industrial-commercial-institutional steam generating units on which modification is commenced after July 9, 1997 will be required to comply with the applicable NO_x emission limits specified in the pre-existing NSPS (40 CFR 60.44b(a), (b), (c), (d) and (e)). Each of the cited subsections contains different requirements. The subsection that applies to a particular affected facility is determined based on the type or combination of fuel being used.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, 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) (Public Law 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. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This action also does not involve special consideration of environmental justice related issues as

required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the taking implications of these rule withdrawal of provisions in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 16, 1998 **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of August 14, 2001. The 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 technical correction in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Electric power plants.

Dated: August 7, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter 1, 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 60.44a is amended by revising paragraph (d)(2) to read as follows:

§ 60.44a Standard for nitrogen oxides.

* * * * *

(d)(1) * * *

(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 any gases which contain nitrogen oxides (expressed as NO₂) in excess of 65 ng/J_i (0.15 pounds per million Btu) heat input, based on a 30-day rolling average.

Subpart Db—[Amended]

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

§ 60.44b Standard for nitrogen oxides.

* * * * *

(l) On and 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 which commenced construction or reconstruction after July 9, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (expressed as NO₂) in excess of the following limits:

(1) If the affected facility combusts coal, oil, or natural gas, or a mixture of these fuels, or with any other fuels: A limit of 86 ng/J_i (0.20 lb/million Btu) heat input unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, and natural gas; or

(2) If the affected facility has a low heat release rate and combusts natural gas or distillate oil in excess of 30 percent of the heat input from the combustion of all fuels, a limit determined by use of the following formula:

$$E_n = [(0.10 * H_{go}) + (0.20 * H_r)] / (H_{go} + H_r)$$

Where:

E_n is the NO_x emission limit, (lb/million Btu).

H_{go} is the heat input from combustion of natural gas or distillate oil, and

H_r is the heat input from combustion of any other fuel.

[FR Doc. 01-20260 Filed 8-13-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7033-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Tronic Plating Co., Inc. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the direct final notice of deletion of the Tronic Plating Co., Inc. Superfund Site (Site) from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New York through the New York State Department of Environmental Conservation (NYSDEC) because EPA has determined that all appropriate response actions under CERCLA have been completed, and therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 15, 2001 unless EPA receives adverse comments by September 13, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Gloria M. Sosa, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II 290

(2) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rules 900, 901, 902, 903, and 904 (now replaced by Rule 238).

(3) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rules 905, 906, 907, 908, 910, 911, and 912 (now replaced by Rule 244).

(4) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rule 909 (now replaced by a Negative Declaration adopted on April 3, 2001).

(5) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted without replacement Rule 913.

(6) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rule 914 (now replaced by Rule 501).

* * * * *

(281) New and amended regulations for the following APCDs were submitted on May 23, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(1) Rules 238, 244, and 245, adopted on March 27, 2001.

* * * * *

3. Section 52.222 is amended by adding paragraph (a)(7)(i) to read as follows:

§ 52.222 Negative Declarations.

* * * * *

(a) * * *

(7) El Dorado County Air Pollution Control District.

(i) Bulk Terminal Facilities or External or Internal Floating Roof Tank Sources was submitted on May 23, 2001 and adopted on April 3, 2001.

* * * * *

[FR Doc. 01-21438 Filed 8-24-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-7039-2]

Amendments for Testing and Monitoring Provisions; Removal of a Provision for Opacity Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are taking direct final action to remove an amendment

published as part of a final rule entitled "Amendments for Testing and Monitoring Provisions" on October 17, 2000 (65 FR 61744). We are removing this provision because it inadvertently established substantive new requirements for facilities that are subject to the New Source Performance Standards requiring the installation of continuous opacity monitors on effluent streams, although the amendments were explicitly intended to be minor in nature and not substantive.

DATES: Effective Date. This final rule amendment is effective on October 11, 2001 without further notice, unless we receive adverse comments on this direct final rule by September 26, 2001. If we receive timely adverse comments or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing you, the public, that this direct final rule will not take effect.

ADDRESSES: *Comments.* You may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A-97-12 at the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460.

Docket. A docket containing supporting information used in developing this direct final rule amendment is available for public inspection and copying at our docket office located at the above address in Room M-1500, Waterside Mall (ground floor). You are encouraged to phone in advance to review docket materials. To schedule an appointment, call the Air Docket Office at (202) 260-7548. Refer to Docket No. A-97-12. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Foston Curtis, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1063, e-mail: curtis.foston@epa.gov, facsimile 919/541-1039.

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. Background

II. Authority

III. Administrative Requirements

- A. Executive Order 12866: "Significant Regulatory Action Determination"
- B. Regulatory Flexibility
- C. Paperwork Reduction Act
- D. Unfunded Mandates Reform Act
- E. Docket
- F. Executive Order 13132: Federalism
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

I. Submission to Congress and the General Accounting Office

J. National Technology Transfer and Advancement Act

K. Executive Order 13211 (Energy Effects)

I. Background

On October 17, 2000 (65 FR 61744), we published a notice of final rulemaking to adopt a number of changes to the test methods listed in 40 CFR parts 60, 61, and 63. As the preamble to the final rule explained, these changes were largely intended to be minor, nonsubstantive revisions and represented, in effect, a "housekeeping" effort to correct typographical and technical errors, and eliminate obsolete or no longer applicable material. In addition, we promulgated Performance Specification 15, which contains criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy, and we changed the outline of the test methods and CEMS performance specifications already listed in parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council. The editorial changes and technical corrections were intended to update the rules and help maintain their original intent.

The amendment made to § 60.13(g) which is affected by today's action applies to facilities that are subject to New Source Performance Standards (NSPS) and are required to install continuous opacity monitors on effluent streams. Specifically, the amendment provides that when the effluents from two or more affected facilities subject to the same opacity standard are combined into a single stack, and if opacity is monitored on each stream, a combiner system comprised of opacity and flow monitoring systems must be installed. In this case, gas flow rates from the individual streams must be known to correct the measured opacity to the exit stack dimensions and therefore must be measured. By contrast, preamended § 60.13(g) only implied, but did not explicitly require, that flow measurements from the individual streams were necessary. The intent of the amendment was to explicitly require such flow measurements and to identify what we perceived to be the most commonly used method of doing that (namely, the use of flow monitors). However, during the public comment period, some members of the utility industry objected to our specifying flow monitors as the only option and suggested that other indicators of flow

rate they had traditionally employed (e.g., unit load, fan motor ampere readings, damper settings, etc.) should continue to be allowed. Because we did not anticipate the industry having to make substantive changes from its current practices to implement the amendments, we promulgated the amended § 60.13(g) without fully responding to the industry's comments in the preamble to the final rule. After further consideration, we have concluded that the amendment constitutes a substantive change in the original rule since it requires subject facilities to install flow monitors instead of allowing them to continue to use flow indicator methods. Moreover, we did not raise the question of adequacy of such methods in the previous rulemaking and no commenter has presented information indicating that they do not provide adequate measurements of flow rates for the purposes of the NSPS monitoring requirements. This removal of the amendment will reinstate the old § 60.13(g) provision which allowed subject facilities to use flow measuring techniques besides flow monitors.

II. Authority

The statutory authority for this action is 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

III. Administrative Requirements

A. Executive Order 12866: "Significant Regulatory Action Determination"

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 in 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 entitlement, grants, user fees, or loan programs of 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.
- Because this rule merely removes an amendment to, and reinstates the prior

provisions of 40 CFR 60.13(g), EPA has determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited and remedial scope of this amendment, we consider 30 days to be sufficient in providing a meaningful public comment period, if requested, for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) requires us to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA has determined that removing the 40 CFR 60.13(g) amendment will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not necessary in connection with this action.

C. Paperwork Reduction Act

Because this action does not include or create any information collection activities subject to the Paperwork Reduction Act, the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, does not apply.

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, we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us 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 us 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 of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not contain a Federal mandate 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 one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Docket

The docket includes an organized and complete file of all the information upon which we relied in taking this direct final action. The docketing system is intended to allow you to identify and locate documents readily so that you can participate effectively in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (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" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. The rule 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. Today's action does not create a mandate on State, local or tribal governments. This action does not impose any new or additional enforceable duties on these entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13045 applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This removal action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and the action does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with

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

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 Congress and to the Comptroller General of the United States. We 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 before it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 11, 2001.

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (March 7, 1996), we are required to use voluntary consensus standards in our 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, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTAA

requires us to provide Congress, through OMB, an explanation of the reasons for not using such standards. This action does not involve technical standards. The purpose of today's action is to remove portions of a rule, reinstating previous provisions, and not to impose new substantive requirements or to adopt new technical standards. Consequently, the requirements of NTTAA do not apply.

K. Executive Order 13211 (Energy Effects)

This rule 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.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitors.

Dated: August 14, 2001.
Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, The Environmental Protection Agency amends title 40, chapter I of the Code of Federal Regulations 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, 7411, 7413, 7414, 7416, 7601, and 7602.

§ 60.13 [Amended]

2. Section 60.13 is amended by revising paragraph (g) to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(g) When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system on each separate effluent unless the installation

of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system.

* * * * *

[FR Doc. 01-21440 Filed 8-24-01; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Parts 57 and 58

RIN: 0906-AA53

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships and Student Loans and Grants for Training of Public Health and Allied Health Personnel

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule rescinds and removes various Public Health Service (PHS) health professions, nursing, public health, and allied health training grant regulations from the Code of Federal Regulations (CFR) at 42 CFR parts 57 and 58. (The student loan program regulations in part 57 at subparts C and D are not to be affected.)

EFFECTIVE DATE: This rule is effective August 27, 2001.

FOR FURTHER INFORMATION CONTACT:

Marilyn Biviano, Director, Office of Planning and Program Development, Bureau of Health Professions, Health Resources and Services Administration, Room 8-67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443-9792.

SUPPLEMENTARY INFORMATION: On October 6, 1999, the Health Resources and Services Administration published in the *Federal Register* (64 FR 54263) a Notice of Intent to remove by technical amendment (final rule) various Agency health professions, nursing, public health, and allied health training grant program regulations under 42 CFR parts 57 and 58 of the Code of Federal Regulations. The Department received no comments response from the public on the Notice of Intent. The statutory authorities of these regulations have been extensively amended since their issuance. Consequently, the regulations no longer reflect the current law.

Therefore, the Department is removing the following 19 training grant program regulations from the Code of Federal Regulations:

Part 57—Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships and Student Loans

Subpart F—Grants for Nurse Anesthetist

Subpart H—Grants for Physician Assistant Training Programs

Subpart I—Programs for the Training of Physician Assistants

Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

Subpart R—Grants for the Establishment of Departments of Family Medicine

Subpart S—Educational Assistance to Individuals from Disadvantaged Backgrounds

Subpart V—Grants for Centers of Excellence

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

Subpart Z—Grants for Advanced Nurse Education Programs

Subpart CC—Scholarships for Students of Exceptional Financial Need

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

Subpart EE—Grants for Residency Training in Preventive Medicine

Subpart FF—Grants for Residency Training and Faculty Development in General Internal

Medicine and/or General Pediatrics

Subpart MM—Area Health Education

Subpart OO—Grants for Geriatric Education Centers

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Part 58—Grants for Training of Public Health and Allied Health Personnel

Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs

Subpart D—Grants for Health Administration Traineeships and Special Projects Program

Program specific guidance and information for preparing applications for the current program authorities under Pub. L. 105-392 are now provided in the grant application materials. Further, current program information is announced in the HRSA

Preview and published in the *Federal Register* semi-annually. The HRSA Preview provides the general public with a single source of program and application information related to the Agency's competitive grant reviews and is designed to replace multiple *Federal Register* notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. The most recent edition of the HRSA Preview was published in the *Federal Register* on July 7, 2000 (Part III, 65 FR 42190-42331).

Justification for Omitting Notice of Proposed Rulemaking

This final rule rescinds and removes various Public Health Service health professions, nursing, public health, and allied health training grant regulations from title 42 of the CFR, parts 57 and 58. The existing training grant regulations are fundamentally and extensively inconsistent with present statutes as set out in titles VII and VIII of the Public Health Service Act, particularly as most recently amended by the Health Professions Education Partnerships Act of 1998 (Pub. L. 105-392), enacted November 13, 1998. The general focus of that legislation was to consolidate a myriad of small, highly categorical Federal training grant programs into seven general categories of authorities. These categories are designed to support the training of health personnel most likely to enter practice in rural and other medically underserved areas, and to provide flexibility to program managers in adapting the training supported to changing needs. We have concluded, based on our experience in carrying out the revised programs over the past two years, that this flexibility is best exercised through program-specific guidance and information provided in annual grant application materials. Because statutes always take precedence over regulations, and the existing regulations are inconsistent with the interdisciplinary approach of the current law, the regulations are largely irrelevant and certainly confusing. For these reasons, and in accordance with the October 6, 1999, Notice of Intent referred to above, the Secretary has determined, under 5 U.S.C. 553, that it is unnecessary, impractical, and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these amendments to parts 57 and 58.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

download by the filers through the EDGAR Filing Web site.

There also have been other enhancements to the EDGARLink Templates 1, 2 and 3. We have updated various fields on the template screens, such as a save icon, to make them clearer and easier to use. Several fields have been relocated to improve the fit of the templates on the filer's monitor. EDGAR now will automatically assign file numbers to new registrants on amendments, when "new" is typed in the File Number field of the new co-registrant. We have also removed fields that were incorrectly displaying for certain form types. Fields now required for particular form types, such as the new fee fields for fee bearing filings and the File Number field for the U-3A-2/A form, will be displayed. A number of form types will now only allow single registrants: 24F-2NT, all OPUR form types, N-6F, N-6F/A, N-54A, N-54A/A, N-54C and N-54C/A. Co-registrant fields for these form types will not be displayed. The form types N-6C9 and N-6C9/A have been removed from EDGAR.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-0102. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <<http://www.sec.gov/info/edgar/filermanual.htm>>. You may also obtain copies from Thomson Financial Corp, the paper and microfiche contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).⁵ It follows that the requirements of the Regulatory Flexibility Act⁶ do not apply.

The effective date for the updated Filer Manual and the rule amendments is October 1, 2001. In accordance with the APA,⁷ we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to

Release 8.0 is scheduled to occur on September 24, 2001. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act,⁸ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,⁹ Section 20 of the Public Utility Holding Company Act of 1935,¹⁰ Section 319 of the Trust Indenture Act of 1939,¹¹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹²

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78f, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for filers using modernized EDGARLink are set forth in EDGAR Filer Manual (Release 8.0), Volume I—Modernized EDGARLink, dated September 2001. Additional provisions applicable to Form N-SAR filers are set forth in EDGAR Filer Manual (Release 7.0), Volume II—N-SAR Supplement, dated July 2001. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5

U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549-0102 or by calling Thomson Financial Corp at (800) 638-8241. Electronic format copies are available on the Commission's Web Site. The address for the Filer Manual is <<http://www.sec.gov/info/edgar/filerman.htm>>. You can also photocopy the document at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Dated: September 24, 2001.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24328 Filed 9-28-01; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

22 CFR Part 41

Visas: Documentation of nonimmigrants under the Immigration and Nationality Act, as amended

CFR Correction

In title 22 of the Code of Federal Regulations, parts 1 to 299, revised as of April 1, 2001, part 41 is amended on page 195 by removing the second § 41.57.

[FR Doc. 01-55531 Filed 9-28-01; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-7066-4]

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are amending the current provisions in the standards of performance for industrial-commercial-institutional steam generating units which permit owners and operators of new steam generating units located at chemical manufacturing plants and petroleum refineries burning high-nitrogen byproduct/wastes to petition

⁵ 5 U.S.C. 553(b).

⁶ 5 U.S.C. 601-612.

⁷ 5 U.S.C. 553(d)(3).

⁸ 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

⁹ 15 U.S.C. 78c, 78f, 78m, 78n, 78o, 78w and 78ll.

¹⁰ 15 U.S.C. 79i.

¹¹ 15 U.S.C. 77sss.

¹² 15 U.S.C. 80a-8, 80a-29, 80a-30 and 80a-37.

the Administrator for a site specific nitrogen oxides (NO_x) emission limit. The amendment extends the provisions to owners and operators of new steam generating units located at pulp and paper mills.

DATES: This direct final rule will be effective on November 30, 2001 without further notice, unless significant adverse comments are received by October 31, 2001.

If significant material adverse comments are received by October 31, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on November 30, 2001.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-2001-18, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-2001-18, U.S. EPA, 401 M Street, SW.,

Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5251, e-mail: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION: Comments. We are publishing this direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in developing this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A-2001-18.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS codes	SIC codes	Examples of potentially regulated entities
Pulp and Paper	322	26	Pulp and Paper Mills.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 60.41b of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the action taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 30, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject

to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review.

I. Background

On November 25, 1986 (51 FR 42768), we promulgated standards of performance to limit NO_x emissions from new industrial-commercial-institutional steam generating units. Within the chemical manufacturing industry and the petroleum refining industry, byproduct/waste gases or liquids are often co-fired with natural gas or oil in steam generating units. Although new steam generating units co-firing byproduct/wastes with natural gas or oil must comply with the same NO_x emission limits as units firing only natural gas or oil, in most cases, that presents no problems.

Nitrogen oxides emissions, however, are influenced by the presence of nitrogen in the materials burned, and as we discussed in the **Federal Register** notices proposing and promulgating the standards, co-firing high-nitrogen byproduct/wastes can lead to a significant increase in NO_x emission levels. As a result, to ensure that the NO_x emission limits were not unreasonable, we included provisions in the standards for petitioning the Administrator for a site specific NO_x emission limit for a new steam generating unit located at a chemical plant or petroleum refinery where it could be shown that co-firing specific byproduct/wastes containing nitrogen prevents compliance with the NO_x emission limits.

The provisions require that an owner or operator petitioning the Administrator present sufficient evidence to demonstrate that the unit is able to comply with the NO_x emission limits when firing natural gas or oil, but unable to comply when co-firing

byproduct/waste under the same conditions. Thus, the owner or operator must first measure NO_x emissions when firing only natural gas or oil and demonstrate compliance with the NO_x emission limits. Excess air levels and other operating conditions must be recorded, and the owner or operator must then measure NO_x emissions while co-firing the byproduct/waste with natural gas or oil under these same conditions.

Emissions measured when co-firing the byproduct/waste serve as the basis for establishing a site specific NO_x emission limit applicable only during those periods when byproduct/waste is co-fired in the steam generating unit. During periods when byproduct/waste is not co-fired, the unit must comply with the NO_x emission limits in the standards.

As mentioned, co-firing most byproduct/wastes does not present a problem with respect to compliance with the NO_x emission limits. As a result, in the 15 years since adoption of the standards, only three site specific NO_x emission limits have been proposed and promulgated for new steam generating units located at chemical plants or petroleum refineries.

On April 15, 1998 (63 FR 18504), we promulgated national emission standards for hazardous air pollutants (NESHAP) to limit emissions of hazardous air pollutants (HAP) from pulp and paper mills. The standards require control of HAP waste gases from certain pulp vents. One alternative to control the HAP waste gases is to co-fire them in a steam generating unit.

Recently, it has come to our attention that the most reasonable alternative at one pulp and paper mill subject to the NESHAP is to co-fire the HAP waste gases in a steam generating unit subject to the standards of performance for industrial-commercial-institutional steam generating units. The HAP waste gases, however, contain nitrogen compounds and, as a result, the steam generating unit may not comply with the emission limit for NO_x emissions.

Other alternatives, such as installing a dedicated incinerator to burn the HAP waste gases, are substantially more costly and, in addition, could result in greater NO_x emissions. If the steam generating unit were located at a chemical plant or a petroleum refinery, the owners and operators could petition the Administrator for a site specific NO_x emission limit. Because the steam generating unit is located at a pulp and paper mill, however, as the standards now exist, that is not possible.

In retrospect, the provisions to petition the Administrator for a site

specific NO_x emission limit were included in the standards for steam generating units located at chemical plants or petroleum refineries only because those were the only two industries which demonstrated a need for that type of flexibility in the standards at the time they were developed. With development of the NESHAP for pulp and paper mills, as illustrated by the example outlined above, it is clear that the pulp and paper industry also needs that flexibility. Consequently, we are amending the standards of performance for industrial-commercial-institutional steam generating units to extend the provisions to petition the Administrator for a site specific NO_x emission limit to owners and operators of new steam generating units located at pulp and paper mills which co-fire byproduct/wastes.

II. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the 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 this direct final rule does not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule is not subject to Executive Order 13211 (66 FR 28355,

May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (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."

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

This direct final rule 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, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires us 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" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this direct final rule.

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

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that 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 considered.

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. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Also, this direct final rule is not "economically significant."

F. Unfunded Mandates Reform Act of 1995

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, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this direct final rule does not contain a Federal mandate 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, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have also determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 this direct final rule on small entities, small entity is defined as (1) A small business in the regulated industry which has less than 750 employees; (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 this direct final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

H. Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements contained in the standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on November 25, 1986.

The amendment contained in this direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

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 our regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, § 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This direct final rule amendment does not involve technical standards. Therefore, it is not subject to NTTAA.

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. We will submit a report containing this direct final 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 this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

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

Dated: September 20, 2001.

Christine Todd Whitman,
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 Db—[Amended]

2. Section 60.41b is amended by revising the definition of *Byproduct/waste* and adding a definition of *Pulp and paper mills* to read as follows:

§ 60.41b Definitions.

Byproduct/waste means any liquid or gaseous substance produced at chemical manufacturing plants, petroleum refineries, or pulp and paper mills (except natural gas, distillate oil, or residual oil) and combusted in a steam generating unit for heat recovery or for disposal. Gaseous substances with carbon dioxide levels greater than 50 percent or carbon monoxide levels greater than 10 percent are not byproduct/waste for the purpose of this subpart.

Pulp and paper mills means industrial plants which are classified by the Department of Commerce under North American Industry Classification

System (NAICS) Code 322 or Standard Industrial Classification (SIC) Code 26.

* * * * *

[FR Doc. 01-24075 Filed 9-28-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX-128-1-7466a; FRL-7067-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Texas: Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving the Texas 111(d) Plan submitted by the Governor of Texas on June 2, 2000, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The EG requires States to develop plans to reduce toxic air emissions from all HMIWIs. This action also corrects an error in the list of designated facilities in the identification of the Texas 111(d) plan.

DATES: This rule is effective on November 30, 2001 without further notice, unless EPA receives adverse comment by October 31, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever

"we," "us," or "our" is used, we mean the EPA.

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- I. What Action Is Being Taken by EPA Today?
- II. Why Do We Need To Regulate HMIWI Emissions?
- III. What Is a State Plan?
- IV. What Does the Texas State Plan Contain?
- V. Is My HMIWI Subject to These Regulations?
- VI. What Steps Do I Need To Take?
- VII. Correction to Identification of Texas 111(d) Plan
- VIII. Final Action
- IX. Administrative Requirements

I. What Action Is Being Taken by EPA Today?

The EPA is approving the Texas State Plan, as submitted on June 2, 2000, for the control of air emissions from HMIWIs. When we developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. See 62 FR 48348-48391, September 15, 1997. The Texas Natural Resource Conservation Commission (TNRCC) developed a State Plan, as required by section 111(d) of the Federal Clean Air Act (the Act), to incorporate the EG requirements into its body of regulations, and we are acting today to approve the State's Plan.

II. Why Do We Need To Regulate HMIWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occurs mainly through the ingestion of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing



Federal Register

Friday,
November 16, 2001

Part III

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for Large
Municipal Waste Combustors; Final Rule
and Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 60****[AD-FRL-7100-8]****RIN 2060-AJ52****Standards of Performance for Large
Municipal Waste Combustors for
Which Construction Is Commenced
After September 20, 1994 or for Which
Modification or Reconstruction Is
Commenced After June 19, 1996 and
Emission Guidelines and Compliance
Times for Large Municipal Waste
Combustors That Are Constructed on
or Before September 20, 1994****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Direct final rule; amendment.

SUMMARY: We are amending the standards of performance for large municipal waste combustors (MWC) by extending the time during which such units will be excused from compliance with the emission limits for carbon monoxide due to certain types of malfunctions. Since the compliance and performance testing provisions in the emissions guidelines for large MWC reference the compliance and performance testing provisions in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

DATES: This direct final rule will be effective on January 15, 2002 without further notice, unless significant adverse comments are received by December 17, 2001.

If significant material adverse comments are received by December 17, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on January 15, 2002.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-45, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-45, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5251, e-mail: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:
Comments. We are publishing this direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in developing this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A-90-45.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page: <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS codes	SIC codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.50b and 60.32b of 40 CFR part 60, subparts

Cb and Eb. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the action taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 15, 2002. Under section 307(b)(2) of the CAA, the requirements that are subject to this

action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review.

I. Background

On December 19, 1995, we promulgated final new source performance standards (60 FR 65382)

and emission guidelines (60 FR 65387) for large MWC. The standards and guidelines contain a provision requiring large MWC to comply with the emission limits in the standards at all times, except during periods of startup, shutdown, and malfunction. Periods of startup, shutdown, and malfunction are limited to 3 hours per occurrence. If it takes longer than 3 hours for startup or shutdown, or if a malfunction continues for longer than 3 hours, a large MWC is required to comply with the emission limits in the standards during those periods of time which exceed 3 hours.

It often takes longer than 3 hours for a large MWC to shutdown. Frequently, it can require 4 to 8 hours and, if complications arise, it can take as long as 10 to 15 hours. Except as noted below, that does not present a problem with respect to compliance with the emission limits since continued operation of the emission control systems permits the MWC to maintain compliance.

Recently, it has been brought to our attention that there are two general types of malfunctions which may occur, during which it is not possible to comply with the emission limit for carbon monoxide (CO). The first is loss of boiler water level control, and the second is loss of combustion air control.

Loss of Boiler Water Level Control

Large MWC boiler tube metal temperatures must be kept below 800° F or so to prevent damage or burn-out. If water levels in the tubes should fall, tube metal temperatures will increase well beyond that point. Consequently, a malfunction resulting from a loss of boiler water level control, as a result of failure of a boiler tube for example, requires shutdown of a large MWC to avoid serious damage to the remaining boiler tubes.

During any shutdown of a large MWC, it is difficult to maintain the proper balance between combustion air and waste to ensure complete combustion. As a result, CO emissions tend to increase.

Normally, the tendency for CO emissions to increase is overcome through the use of auxiliary fuel burners. The burners ensure complete combustion of CO to carbon dioxide (CO₂). Thus, even though the shutdown of a large MWC may take longer than 3 hours and there is a tendency for CO emissions to increase, the use of the auxiliary fuel burners overcomes any problem with respect to compliance with the CO emission limits.

During a malfunction and shutdown of a large MWC resulting from a loss of boiler water level control, however, full

use of auxiliary fuel burners is contrary to the immediate objective. The immediate objective is to lower combustion temperatures to protect the boiler tubes from exposure to high temperatures. In fact, the National Fire Protection Association fire code for boilers does not allow auxiliary fuel burners to be fired when boiler water levels drop too low for that very reason.

Although the immediate objective is to lower combustion temperatures, combustion temperatures must be lowered in a controlled and deliberate manner to prevent damage to the boiler from heat stresses. Without the full use of auxiliary fuel burners, however, it is not possible for a large MWC to comply with the CO emission limits. Consequently, relief from the CO emission limits is appropriate during a malfunction resulting from a loss of boiler water level control.

Loss of Combustion Air Control

As with the loss of boiler water level control, the loss of combustion air control also necessitates shutdown of a large MWC. In addition, as with loss of boiler water level control, this type of malfunction also precludes full use of auxiliary fuel burners during shutdown.

Loss of combustion air control, as a result of loss of a combustion air fan, an induced draft fan, or failure of the grate system, can be very serious in a large MWC. Lack of sufficient air for complete combustion or improper distribution of combustion air (which leads to a lack of sufficient air for combustion within an area of the MWC) can present a significant risk of explosion. As a result, a malfunction resulting from a loss of combustion air control necessitates shutdown of a large MWC.

With a lack of sufficient air for complete combustion, CO emissions increase. As indicated above, during a normal shutdown, the tendency for CO emissions to increase can be overcome through the use of auxiliary fuel burners. However, full use of auxiliary fuel burners can exacerbate the fundamental problem, which is not enough air for complete combustion. In that situation, adding additional fuel through the use of auxiliary fuel burners can make the problem worse and increase, not decrease, the risk of explosion.

As with loss of boiler water level control, the National Fire Protection Association fire code does not allow use of auxiliary fuel burners in such situations. Indeed, in light of the potential increase in the risk of explosion, interlocks are often in place which prevent the use of auxiliary fuel

burners if control of combustion air is lost.

Without full use of auxiliary fuel burners, it is not possible to comply with the CO emission limits as a large MWC is shutdown. Consequently, relief from the CO emission limits is appropriate during a malfunction resulting from a loss of combustion air control.

This amendment, therefore, extends the period of time from 3 hours to 15 hours during which a large MWC is exempt from compliance with the CO emission limits in the standards for the two types of malfunctions. As with all periods of malfunction, the extension in the period of time for the two types of malfunctions does not relieve the owner or operator from the requirement in § 60.11(d) of the General Provisions in 40 CFR part 60 which requires:

At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the maximum extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

As a result, owners and operators of large MWC which may experience the two types of malfunctions must continue to take steps during the malfunctions to minimize emissions, consistent with the proper and safe operation of a large MWC.

In addition, the extension in the period of time during which a large MWC is exempt from compliance with the CO emission limits for the two types of malfunctions does not alter the definition of a malfunction included in § 60.2 of the General Provisions in 40 CFR part 60. A malfunction is defined as:

* * * any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

As a result, owners and operators of large MWC must continue to develop and implement operation and maintenance programs to ensure that any failure, such as a loss of boiler water level control or a loss of combustion air control, which leads to emissions in excess of the emission limits in the standards is solely the result of a sudden and unavoidable occurrence and, thus, qualifies as a malfunction.

The compliance and performance testing provisions included in the guidelines (Subpart Cb—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors

That are Constructed On or Before September 20, 1994) reference the corresponding compliance and performance testing provisions included in the standards (Subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction Is Commenced After September 20, 1994 or for Which Modification or Reconstruction Is Commenced After June 19, 1996). As a result, this action amending the standards has the effect of amending both the standards and the guidelines.

II. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the 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.

We have determined that this direct final rule does not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (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" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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

This direct final rule 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, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and

Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this direct final rule.

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

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that 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 considered.

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. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Also, this direct final rule is not "economically significant."

F. Unfunded Mandates Reform Act of 1995

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, generally we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires that we 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 us 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 we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this direct final rule does not contain a Federal mandate 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, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have also determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 this direct final rule on small entities, small entity is defined as (1) A small business in the regulated industry that has a gross annual revenue less than \$6 million; (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 this direct final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial

number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

H. Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements contained in the standards and guidelines for large municipal waste combustors under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., at the time the rules were promulgated on December 19, 1995.

The amendment contained in this direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

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 our regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, § 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This direct final rule amendment does not involve technical standards. Compliance with the NTTAA was addressed in the preamble of the standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) promulgated on December 19, 1995.

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. We will submit a report containing this direct final 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 this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

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

Dated: November 1, 2001.

Christine Todd Whitman,
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:

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

Subpart Eb—[Amended]

2. Section 60.58b is amended by revising paragraph (a)(1) introductory text and adding paragraph (a)(1)(iii) to read as follows:

§ 60.58b Compliance and performance testing.

(a) * * *

(1) Except as provided by § 60.56b, the standards under this subpart apply at all times except during periods of startup, shutdown, and malfunction. Duration of startup, shutdown, or malfunction periods are limited to 3 hours per occurrence, except as provided in paragraph (a)(1)(iii) of this section.

* * * * *

(iii) For the purpose of compliance with the carbon monoxide emission limits in § 60.53b(a), if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction, the

duration of the malfunction period is
limited to 15 hours per occurrence.

* * * * *

[FR Doc. 01-28084 Filed 11-15-01; 8:45 am]

BILLING CODE 6560-50-P