

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[AD-FRL-5879-4]

RIN 2016-AD04

Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the emission guidelines (subpart Cb) and the standards of performance (subpart Eb) for municipal waste combustion (MWC) units. These amendments are companion amendments to the court-ordered remand amendments published elsewhere in this **Federal Register**. These amendments are being made to improve the clarity of subparts Cb and Eb, and to make technical corrections that have been brought to EPA's attention since the December 19, 1995 promulgation.

DATES: These amendments to the guidelines (subpart Cb) and standards (subpart Eb) are effective October 24, 1997 unless significant material adverse comments are received by September 24, 1997. If significant material adverse comments are received on the amendments to either the guidelines or the standards, the direct final rule receiving comment will be withdrawn. In addition, the effective date for amendments for §§ 60.17, 60.23, 60.24, 60.30, and subpart Ca in a final rule published on December 19, 1995 at 60 FR 65387 is established as December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541-5264, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: A companion proposal to this direct final rule is being published in today's **Federal Register** and is identical to this direct final rule. Any comments on the amendments should address that proposal. If significant material adverse comments are received on the proposed amendments by the date specified in the proposed amendments, this direct final rule will be withdrawn and the comments on the proposed amendments will be addressed by EPA in a subsequent final rule. If no significant

material adverse comments are received on any provision of the companion proposal, then no further action will be taken on the proposal and these amendments will become effective October 24, 1997.

Also being published in today's **Federal Register** are a separate direct final rule and proposal amending the guidelines and standards in response to specific court-mandated changes, consistent with the decision of the U.S. Court of Appeals in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997), and the court's vacatur order issued on April 8, 1997. Refer to the separate court-related direct final rule for more background information regarding the history of these subparts and the court opinion.

The amendments contained herein provide additional clarification to the language of the subparts beyond the clarifications included in the separate court-related amendments. In addition, these amendments include corrections to cross-references and typographical errors in the December 19, 1995 promulgation, and make technical corrections that have been brought to EPA's attention since 1995.

I. Summary of Amendments

The amendments in this direct final rule are primarily to improve the readability of the guidelines and standards reflecting revisions related to the court's opinion. These modifications include overall changes to the language used, changes to the definition section, the inclusion of Method 3A in the performance testing options, the addition of a refuse-derived fuel heating value, clarification of the fugitive ash annual testing requirements, and other miscellaneous amendments.

A. Clarification of Language

To reflect the change in applicability from a plant basis to unit basis as a result of the *Davis* decision and subsequent vacatur order, references to small and large plants are removed throughout the rules. In some cases, this change entails removing and reserving entire paragraphs if the entire paragraph addressed small plants.

The lower size cut-off has been revised from 35 megagrams per day plant capacity to 250 tons per day unit capacity. In addition, all capacity designations have been changed to "tons per day" instead of "megagrams per day" to be consistent with the 250 tons per day lower size cut-off specified by the court for large MWC units.

B. Definitions

Several definitions are no longer needed and have been removed, including the definitions of municipal waste combustor plant capacity, large municipal waste combustor plant, and small municipal waste combustor plant. These changes are included in § 60.51b.

C. Performance Test Methods

It was intended that EPA Test Methods 3, 3A, or 3B, as applicable, be specified for use in measuring diluent gas during performance testing or with continuous monitoring systems. The 1995 rule only listed Method 3 for some pollutants and listed Methods 3A or 3B for other pollutants. This change is included in § 60.58b.

D. Refuse-Derived Fuel Heating Value

To correct an oversight in the 1995 rules, a separate heating value for combustors firing refuse-derived fuel (RDF) has been added to take into consideration the greater specific heat of RDF. The heating value promulgated in 1995 remains the same for non-RDF.

E. Fugitive Ash Annual Test Requirements

To clarify that fugitive emissions from ash handling must be tested on an annual basis, a new paragraph has been added to § 60.58b, and cross references have been corrected, consistent with EPA's intent that testing be done annually (see 60 FR 65394 and 65400).

F. Miscellaneous Changes

The remaining changes have been made to correct typographical errors, to clarify, and to improve readability.

II. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by these amendments only is available on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the Clean Air Act, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the Clean Air Act, 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. Public comments on the notice proposing these amendments must be submitted to docket A-90-45/Section VIII-E (see **DATES, ADDRESSES, and SUPPLEMENTARY INFORMATION** of

the proposal notice published elsewhere in today's **Federal Register** for more details). As discussed under the SUPPLEMENTARY INFORMATION section of this direct final promulgation notice and the proposal notice, if significant material adverse comments are received on the companion proposal, this direct final rule will be withdrawn and the comments received on the proposal will be addressed in a separate rulemaking.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material. The docket number for this rulemaking is A-90-45. Docket No. A-89-08 also includes background information for this rulemaking and supported the proposal and promulgation of the subpart Ca guidelines and subpart Ea standards. Docket No. A-89-08 has been incorporated by reference. Refer to the companion proposal in this **Federal Register** for docket address information.

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0210 (EPA ICR 1506.07). Copies of the ICR document(s) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260-2740. Include the ICR and/or OMB number in any correspondence.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1995 guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405). The amendments issued today do not result in any additional

control requirements and this regulatory action is considered "not significant" under Executive Order 12866.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be \$100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405 to 65412).

The EPA has determined that these amendments do not include any new Federal mandates. Therefore, the requirements of the Unfunded Mandates Act do not apply to this direct final rule.

E. Regulatory Flexibility Act

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The rules as amended today would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

F. Submission to Congress and the Comptroller General

Under 5 U.S.C. § 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, EPA submitted a report containing these amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of these rules in today's **Federal Register**. These amendments are not a "major rule" as defined by 5 U.S.C. 804(2) and a SBREFA analysis is not required.

IV. Other Information

In addition to the amendment of subparts Cb and Eb, this **Federal**

Register document addresses an omission in the 1995 promulgation notice. On December 19, 1995 at 60 FR 65387 EPA published a final rule which inadvertently left out an effective date for amendments 2., 3., 4., 5., and 5a. for sections 60.17, 60.23, 60.24, 60.30, and subpart Ca. Consistent with EPA's intent that those amendments be effective immediately (see 60 FR 65387, 65390, and 65414), the effective date was December 19, 1995.

List of Subjects in 40 CFR Part 60

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

Dated: August 15, 1997.

Carol M. Browner,
Administrator.

For reasons set out in the preamble, title 40, chapter I, 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, 7411, 7414, 7416, 7429, and 7601.

§ 60.31 [Amended]

2. Amend § 60.31b to remove the definition for "Municipal waste combustor plant capacity".

§ 60.32 [Amended]

3. In § 60.32b paragraphs (b)(1), (d), (e), (f)(1), and (i)(1) remove the word "Administrator" and add, in its place, the words "EPA Administrator".

§ 60.33 [Amended]

4. In § 60.33b(a)(3) remove the phrase "(an 85-percent reduction by weight)" and add in its place the phrase "(85-percent reduction by weight)";

§ 60.34 [Amended]

5. In § 60.34b amend table 3, referenced in paragraph (a), to add the superscript "b" to the end of the heading of the third column, and add the footnote "b Averaging times are 4-hour or 24-hour block averages."

§ 60.39 [Amended]

6. In § 60.39b(c)(4)(iii)(B) remove the phrase "The owner or operator may request that the Administrator" and add, in its place, the phrase "The owner or operator of a designated facility may request that the EPA Administrator".

§ 60.50 [Amended]

7. Amend § 60.50b as follows:
a. In paragraphs (b)(1), (e), (f), (g)(1), and (j)(1) remove the word

“Administrator” and add, in its place, the words “EPA Administrator”; and
 b. In paragraph (j) introductory text remove the phrase “located at a plant”.

§ 60.51 [Amended]

8. Amend § 60.51b as follows:
 a. Remove the definitions of “Large municipal waste combustor plant”, “Municipal waste combustor plant capacity”, and “Small municipal waste combustor plant”;
 b. In the definition of “Municipal waste combustor unit capacity” remove the word “megagrams” and add, in its place, the word “tons”; and
 c. Correct the definition title *Refuse-derived/fuel* to read *Refuse-derived fuel*.

§ 60.52 [Amended]

9. Amend § 60.52b as follows:
 a. In paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), and (c)(2) remove the phrase “located within a small or large municipal waste combustor plant”; and
 b. In paragraphs (d)(1) and (d)(2) remove the phrase “located within a large municipal waste combustor plant”.

§ 60.53 [Amended]

10. Amend § 60.53b as follows:
 a. In paragraphs (a) introductory text, (b) introductory text, and (c) introductory text remove the phrase “located within a small or large municipal waste combustor plant”; and
 b. In table 1, referenced in paragraph (a) introductory text, add the superscript “^b” to the end of the heading of the third column, and add the footnote “^b Averaging times are 4-hour or 24-hour block averages.”.

§ 60.54 [Amended]

11. Amend § 60.54b as follows:
 a. In paragraphs (a), (b), (c) introductory text, (d), (e) introductory text, and (f) introductory text remove the phrase “located within a small or large municipal waste combustor plant”; and
 b. Redesignate paragraphs (c)(i) and (c)(ii) as (c)(1) and (c)(2), respectively.

§ 60.55 [Amended]

12. In § 60.55b(a) remove the phrase “located within a small or large municipal waste combustor plant”.

§ 60.56 [Amended]

13. In § 60.56b remove the phrase “located at a plant with a plant capacity to combust greater than 35 megagrams” and add, in its place, the phrase “with the capacity to combust greater than 250 tons”.

§ 60.57 [Amended]

14. In § 60.57b (a) introductory text, (b) introductory text, and (c) remove the phrase “located within a small or large municipal waste combustor plant.”.

§ 60.58 [Amended]

15. Amend § 60.58b as follows:
 a. In paragraph (b) introductory text remove the phrase “operator of a small or large municipal waste combustor plant shall” and add, in its place, the phrase “operator of an affected facility shall”;
 b. In paragraph (b)(3) remove the phrase “startup of the municipal waste combustor” and add, in its place, the phrase “startup of the affected facility”;
 c. In paragraph (b)(6)(i) remove the words “The emission rate correction factor and the integrated bag sampling and analysis procedure of EPA Reference Method 3B shall” and add, in their place, the words “The fuel factor equation in Method 3B shall be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3, 3A, or 3B, as applicable, shall”;
 d. In paragraphs (c)(2), (d)(1)(ii), (d)(2)(ii), and (g)(2) remove the words “Method 3” and add, in their place, the words “Method 3, 3A, or 3B, as applicable.”;
 e. In paragraphs (c)(4), (d)(1)(v), (d)(2)(vii), (e)(3), (f)(4), (g)(8), (h)(2), (i)(5) remove the phrase “An owner or operator may request” and add, in its place, the phrase “The owner or operator of an affected facility may request”;
 f. In paragraphs (c)(7), (c)(11), and (d)(2)(viii) remove the phrase “located within a small or large municipal waste combustor plant”;
 g. In paragraphs (c)(9), (d)(1)(vii), (d)(2)(ix), (f)(7), (h)(3), and (h)(4) remove the phrase “located within a large municipal waste combustor plant”;
 h. Remove and reserve paragraphs (c)(10), (d)(1)(viii), (d)(1)(ix), (d)(2)(x), (f)(8), and (g)(5)(ii);
 i. In paragraphs (e)(12)(i)(B), (h)(10)(i)(B), and (i)(3)(ii)(B) remove the words “Method 3A or 3B” and add, in their place, the words “Method 3, 3A, or 3B, as applicable”;
 j. In paragraphs (g)(5) introductory text and (g)(5)(i) remove the phrase “located within small and large municipal waste combustor plants”;
 k. In paragraphs (h)(10) introductory text and (m)(3) introductory text remove the phrase “The owner or operator shall” and add, in its place, the phrase “The owner or operator of an affected facility shall”;
 l. In paragraphs (j)(1) introductory text and (j)(2) remove the phrase “, in

megagrams per day of municipal solid waste combusted,” and in paragraph (j)(2) remove the phrase “in megagrams per day of municipal solid waste”;
 m. In paragraph (j)(1)(i) remove the words “10,500 kilojoules per kilogram” and add, in their place, the words “12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel”;
 n. In paragraph (j)(2) remove the words “10,500 kilojoules per kilogram for all municipal solid waste” and add, in their place, the words “12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel”; and
 o. Revise paragraph (b)(7), the first sentence of paragraph (g)(5)(iii), paragraph (h) introductory text, paragraph (k) introductory text, and add paragraph (k)(4) to read as follows:

§ 60.58b Compliance and performance testing.

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- (b) * * *
- (7) The relationship between carbon dioxide and oxygen concentrations that is established in accordance with paragraph (b)(6) of this section shall be submitted to the EPA Administrator as part of the initial performance test report and, if applicable, as part of the annual test report if the relationship is reestablished during the annual performance test.
- * * * * *
- (g) * * *
- (5) * * *
- (iii) Where all performance tests over a 2-year period indicate that dioxin/furan emissions are less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant.
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- * * * * *
- (h) The procedures and test methods specified in paragraphs (h)(1) through (h)(12) of this section shall be used to determine compliance with the nitrogen oxides emission limit for affected facilities under § 60.52b(d).
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- (k) The procedures specified in paragraphs (k)(1) through (k)(4) of this

section shall be used for determining compliance with the fugitive ash emission limit under § 60.55b.

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(4) Following the date that the initial performance test for fugitive ash emissions is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility, the owner or operator shall conduct a performance test for fugitive ash emissions on an annual basis (no more than 12 calendar months following the previous performance test).

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§ 60.59 [Amended]

16. Amend § 60.59b as follows:

a. In paragraph (b)(4) remove the phrase “, municipal waste combustion plant capacity.”;

b. In paragraph (d) introductory text remove the phrase “located within a small or large municipal waste combustor plant and”;

c. In paragraphs (d)(2)(i)(C), (d)(2)(ii)(B), and (d)(6)(ii) remove the phrase “(large municipal waste combustor plants only)”;

d. In paragraph (d)(3) remove the phrase “(d)(2)(ii)(A) through (d)(2)(ii)(E)” and add, in its place the phrase “(d)(2)(ii)(A) through (d)(2)(ii)(D)”;

e. In paragraph (d)(8) remove the phrase “(large municipal waste combustors only)”;

f. In paragraph (d)(11) remove “municipal waste combustor” and add, in its place, “affected facility”;

g. In paragraph (d)(12)(ii) remove the phrase “as required by § 60.54b(a)” and add, in its place, the phrase “as required by § 60.54b(b)”;

h. In paragraphs (f) introductory text, (g) introductory text, and (h) introductory text remove the phrase “located within a small or large municipal waste combustor plant”;

i. In paragraph (l) remove the phrase “If an owner or operator would prefer to select” and add, in its place, “If the owner or operator of an affected facility would prefer”;

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