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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 "eddinge.jim@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/t3pfpr.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/J₁ (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/J₁ (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.

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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