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If significant material adverse comments are received by December 17, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule.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, 40l 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 combusion 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 (CO_2). 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.

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

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