



# Federal Register

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**Monday,  
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## **Part II**

# **Environmental Protection Agency**

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**40 CFR Part 62**

**Federal Plan Requirements for Other  
Solid Waste Incineration Units  
Constructed on or Before December 9,  
2004; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 62**

[EPA-HQ-OAR-2006-0364; FRL-8254-9]

RIN 2060-AN43

**Federal Plan Requirements for Other Solid Waste Incineration Units Constructed on or Before December 9, 2004****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** On December 16, 2005, the EPA promulgated emission guidelines (EG) for existing "other" solid waste incineration (OSWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing OSWI units subject to the EG to submit plans to the EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the EG in Indian country. State plans are due from States with OSWI units subject to the EG on December 16, 2006. If a State or Tribe with existing OSWI units does not submit an approvable plan, sections 111(d) and 129 of the CAA require the EPA to develop, implement, and enforce a Federal plan for OSWI units located in that State or Tribal area within 2 years after promulgation of the EG (December 16, 2007). This action proposes a Federal plan to implement EG for OSWI units located in States and Indian country without effective State or Tribal plans. On the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to OSWI units covered by the State or Tribal plan.

**DATES:** Comments must be received on or before February 16, 2007.

**Public Hearing.** If anyone contacts EPA by January 8, 2007 requesting to speak at a public hearing, EPA will hold a public hearing on January 22, 2007. If you are interested in attending the public hearing, contact Ms. Dorothy Apple at (919) 541-4487 to verify that a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0364, by one of the following methods:

**Web site:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

**E-mail:** Send your comments via electronic mail to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Attention: Docket ID No. EPA-HQ-OAR-2006-0364.

**Mail:** Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0364. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

**Hand Delivery:** EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0364. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0364. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Public Hearing:** If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to [www.regulations.gov](http://www.regulations.gov) are not affected by the flooding and will remain the same.

**FOR FURTHER INFORMATION CONTACT:** For information concerning specific aspects of this proposal, contact Ms. Martha Smith, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143-03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2421; e-mail address: [smith.martha@epa.gov](mailto:smith.martha@epa.gov). For technical information, contact Ms. Mary Johnson, Energy Strategies Group, Sector Policies Program Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5025; e-mail address: [johnson.mary@epa.gov](mailto:johnson.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Organization of This Document.** The following outline is provided to aid in locating information in this preamble.

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  - B. Paperwork Reduction Act

- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer Advancement Act

**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially regulated by the proposed rules are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The OSWI Federal plan would affect the following categories of sources:

Category	NAICS* code	Examples of potentially regulated entities
Any State, local, or Tribal Government using a VSMWC unit as defined in the regulations.	562213, 92411	Solid waste combustion units burning municipal waste collected from the general public and from residential, commercial, institutional, and industrial sources.
Institutions using an IWI unit as defined in the regulations	922, 6111, 623, 7121	Correctional institutions, primary and secondary schools, camps and national parks.
Any Federal Government Agency using an OSWI unit as defined in the regulations.	928	Department of Defense (labs, military bases, munitions facilities).
Any college or university using an OSWI unit as defined in the regulations.	6113, 6112	Universities, colleges and community colleges.
Any church or convent using an OSWI unit as defined in the regulations.	8131	Churches and convents.
Any civic or religious organization using an OSWI unit as defined in the regulations.	8134	Civic associations and fraternal associations.

\* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rules. To determine whether your facility would be regulated by the proposed rules, you should examine the applicability criteria in CAA sections 62.15460 through 62.15500 of the proposed Federal plan. If you have any questions regarding the applicability of the proposed rules to a particular entity, contact either of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through [www.regulations.gov](http://www.regulations.gov) or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, c/o OAQPS Document Control Officer (Mail Drop C404-02), U.S. EPA, Research Triangle Park, NC 27711,

Attention Docket ID No. EPA-HQ-OAR-2006-0364. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult either of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

*Docket.* The docket number for the proposed Federal plan (40 CFR part 620, subpart KKK) is Docket ID No. EPA-HQ-OAR-2005-0364.

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

## II. Background Information

### A. What is the regulatory development background for this proposed rule?

Section 129 of the CAA requires EPA to develop emission guidelines for, among other things, unspecified "other categories of solid waste incineration units", herein referenced as OSWI units. The EPA proposed emission guidelines for OSWI units on December 9, 2004, and promulgated them on December 16, 2005 (70 FR 74870), to be codified at 40 CFR part 60, subpart FFFF. In writing Section 129 of the CAA, Congress looked first to the States as the preferred implementers of emission guidelines for existing OSWI units. To make these emission guidelines enforceable, States with existing OSWI units must have submitted to EPA within one year following promulgation of the emission guidelines (by December 16, 2006) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 16, 2007). The EPA sees the Federal plan as an interim measure to ensure that congressionally mandated emission standards are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing OSWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no OSWI units in the State. No plan is required for States that do not have any OSWI units.

As discussed in section VII.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover OSWI units in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no OSWI units are located in the Tribal area. No plan is required for Tribes that do not have any OSWI units. OSWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan becomes approved and effective covering those OSWI units.

This action proposes a Federal plan for OSWI units that are not covered by an approved State or Tribal plan as of December 16, 2006. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing OSWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 16, 2007, for OSWI units). The EPA is proposing this Federal plan now so that a promulgated Federal plan will be in place at the earliest possible date, thus ensuring timely implementation and enforcement of the OSWI emission guidelines. In addition, EPA's timing allows a State or Tribe the opportunity to take delegation of the Federal plan in lieu of writing a State plan.

### B. What associated regulatory activity preceded this proposed rule?

Regulations have been developed for each of the listed categories of solid waste incineration unit except for the "other categories of solid waste incineration units." This notice proposes regulations for these "other" (or OSWI) units. Several previous notices have been published regarding OSWI regulatory development (58 FR 31358, June 2, 1993; 58 FR 58498, November 2, 1993; 65 FR 67367, November 9, 2000). In the November 9, 2000 notice, EPA revised the OSWI regulatory schedule to promulgate regulations by November 2005. This was subsequently incorporated into a consent decree, requiring that EPA propose regulations for the OSWI source category by November 30, 2004, and promulgate by November 30, 2005. We proposed regulations on December 9, 2004. On December 16, 2005, we promulgated EG for OSWI constructed on or before December 9, 2004 (70 FR 74870), which are to be implemented via today's proposed rulemaking.

### C. What impact does the EPA's granting of a request for reconsideration have on this Federal plan?

On February 14, 2006, subsequent to EPA's promulgation of the final rule establishing the New Source Performance Standards (NSPS) and the Emission Guidelines (EG) for OSWI units, the Sierra Club filed a petition for reconsideration, pursuant to section 307(d)(7)(B) of the CAA.<sup>1</sup> On June 28, 2006 (71 FR 36726-36730), EPA granted reconsideration of one issue raised by the Sierra Club. In granting reconsideration on this issue, EPA agreed to undertake further notice and comment proceedings related to whether sewage sludge incinerators should be regulated under CAA section 129.<sup>2</sup> EPA's granting reconsideration on an issue does not stay, vacate or otherwise influence the effective date of the OSWI regulations. Specifically, CAA section 307(d)(7)(B) provides that "reconsideration shall not postpone the effectiveness of the rule," except that "the effectiveness of the rule may be stayed during such reconsideration \* \* \* by the Administrator or the court for a period not to exceed three months." In this case, neither EPA nor the court stayed the effectiveness of the final OSWI regulations in connection with the reconsideration petition. Because the existing OSWI regulations remain in effect, EPA's obligation under CAA section 129(b)(3) to promulgate a Federal Plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.<sup>3</sup> Therefore, EPA is complying with its statutory obligations by issuing today's proposed Federal Plan for OSWI units.

If, after reconsidering any issues raised in the petition for reconsideration, EPA revises the OSWI rules, EPA plans to make corresponding changes to the final Federal Plan. Thus, by this notice, we are informing the public that EPA is reconsidering this same issue (e.g., involving sewage sludge incinerators) as it pertains to the OSWI Federal Plan as well, and if the Federal Plan is finalized after EPA final action on reconsideration, it too will reflect EPA's final decision on the issue.

<sup>1</sup> The Sierra Club also filed a petition for review in the D.C. Circuit, challenging the final OSWI rule. *Sierra Club v. EPA*, No. 06-1066 (D.C. Cir.). That case is being held in abeyance while EPA undertakes its reconsideration proceeding.

<sup>2</sup> EPA will respond to other issues raised in the petition for reconsideration no later than when it takes final action on the sewage sludge issue, which EPA expects to be no later than January 2007.

<sup>3</sup> Similarly, the obligations of States and sources are unaffected by EPA's reconsidering one issue.

### III. Affected Facilities

#### A. What is an OSWI unit?

The term OSWI unit means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in proposed 40 CFR part 62, subpart KKK. Seventeen types of combustion units, which are listed in CAA section 62.15845 of proposed subpart KKK are conditionally exempt from specific provisions of the proposed Federal plan.

#### B. Does the Federal plan apply to me?

The proposed Federal plan will apply to you if you are the owner or operator of an OSWI unit, including any OSWI air curtain incinerator (ACI), not covered by an approved and effective State or Tribal plan as of the date of promulgation of the Federal plan. The Federal plan proposed herein would cover your OSWI unit until EPA should approve a State or Tribal plan that would cover your OSWI unit and that plan should become effective.

If you began the construction of your OSWI unit on or before December 9, 2004, it is considered an existing OSWI unit and could be subject to the Federal plan. If you began the construction of your OSWI unit after December 9, 2004, it is considered a new OSWI unit and is subject to the new source performance standards (NSPS). If you

began reconstruction or modification of your OSWI unit prior to June 16, 2006, it is considered an existing OSWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your OSWI unit on or after June 16, 2006, it is considered a new OSWI unit and is subject to the NSPS.

Your existing OSWI unit would be subject to this Federal plan if on the effective date of the Federal plan, EPA has not approved a State or Tribal Plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in CAA sections 62.15460 through 62.15500 of proposed subpart KKK.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to an OSWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval of the plan.

The EPA's promulgation of an OSWI Federal plan will not preclude States or Tribes from submitting a plan. If a State

or Tribe submits a plan after promulgation of the OSWI Federal plan final rule, EPA will review and approve or disapprove the State or Tribal plan. If EPA approves a plan, then the Federal plan would no longer apply to OSWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. If an OSWI unit were overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual OSWI unit were not covered by an approved and effective State or Tribal plan, the OSWI unit would be subject to this Federal plan.

#### C. How do I determine if my OSWI unit is covered by an approved and effective State or Tribal plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of sections 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, 40 CFR part 62 is updated once per year. Thus, if 40 CFR part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of 40 CFR part 62.

#### EPA REGIONAL CONTACTS FOR OSWI

Region	Contact	Phone/fax	States and protectors
I .....	EPA New England, Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114-2023.	617-918-1650, 617-918-1505 (fax)	CT, ME, MA, NH, RI, VT.
II .....	U.S. EPA Region 2, Air Compliance Branch, 290 Broadway, New York, NY 10007.	212-637-4080, 212-637-3998 (fax)	NJ, NY, Puerto Rico, Virgin Islands.
III .....	U.S. EPA Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103-2029.	215-814-3438, 215-814-2134 (fax)	DE, DC, MD, PA, VA, WV.
IV .....	U.S. EPA Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303-3104.	404-562-9105, 404-562-9095 (fax)	AL, FL, GA, KY, MS, NC, SC, TN.
V .....	U.S. EPA Region 5, Air Enforcement and Compliance Assurance Branch (AR-18J), 77 West Jackson Boulevard, Chicago, IL 60604-3590.	312-353-2088, 312-353-2018 (fax)	IL, IN, MN, OH, WI.
VI .....	U.S. EPA Region 6, Chief, Toxics Enforcement Section (6EN-AT), 1445 Ross Avenue, Dallas, TX 75202-2733.	214-665-7224, 214-665-7446 (fax)	AR, LA, NM, OK, TX.
VII .....	U.S. EPA Region 7, Air Permitting and Compliance Branch (ARTD/APCO-2119F), 901 N. 5th Street, Kansas City, KS 66101.	913-551-7020, 913-551-7844 (fax)	IA, KS, MO, NE.
VIII .....	U.S. EPA Region 8, Air and Radiation Program Air Technical Assistance Unit (Mail Code 8P-AR), 999 18th Street, Suite 200, Denver, CO 80202.	303-312-6526, 303-312-6064 (fax)	CO, MT, ND, SD, UT, WY.
IX .....	U.S. EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415-947-4200, 415-744-1076 (fax)	AZ, CA, HI, NV, American Samoa, Guam.
X .....	U.S. EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	206-553-1602, 206-553-0110 (fax)	AK, ID, OR, WA.

**IV. Elements of the OSWI Federal Plan**

Because EPA is proposing a Federal plan to cover OSWI units located in States and areas of Indian Country where plans are not in effect, EPA has elected to include in this proposal the same elements as are required for State plans: (1) Identification of legal

authority and mechanisms for implementation, (2) inventory of OSWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9)

public hearing, and (10) progress reporting. See 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this proposed OSWI Federal plan. The table below lists each element and identifies where it is located or codified.

**ELEMENTS OF THE OSWI FEDERAL PLAN**

Legal authority and enforcement mechanism .....	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of Affected MWC Units .....	Docket EPA-HQ-OAR-2003-0156.
Inventory of Emissions .....	Docket EPA-HQ-OAR-2003-0156.
Emission Limits .....	40 CFR 62.15575-62.15605.
Compliance Schedules .....	40 CFR 62.15505-62.15515.
Operator Training and Qualification .....	40 CFR 62.15535-62.15570.
Waste Management Plan .....	40 CFR 62.15520-62.15530.
Record of Public Hearings .....	Docket EPA-HQ-OAR-2003-0156.
Testing, Monitoring, Recordkeeping, and Reporting .....	40 CFR 62.15610, 40 CFR 15665-62.15710, 40 CFR 62.15715-62.15780.
Progress Reports .....	Section IV.J. of this preamble.

*A. Legal Authority and Enforcement Mechanism*

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. CAA Section 129(b)(3) requires EPA to develop, implement, and enforce a Federal plan within 2 years after the date the relevant emission guidelines are promulgated (by December 16, 2007). Compliance with the emission guidelines cannot be later than 5 years after the relevant emission guidelines are promulgated (by December 16, 2010 for OSWI units).

2. EPA's Legal Authority in Indian Country

Section 301 of the CAA provides EPA with the authority to administer Federal programs in Indian country. See CAA sections 301 (a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VII.E of this preamble for a more detailed discussion of EPA's authority to administer the OSWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of the CAA to implement the emission guidelines in those States and areas of

Indian country not covered by an approved plan. As discussed in section VII of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when EPA determines that such delegation is appropriate.

*B. Inventory of Affected OSWI Units*

The proposed Federal plan includes an inventory of OSWI units affected by the emission guidelines. (See 40 CFR part 60.25(a).) Docket No. EPA-HQ-OAR-2003-0156 contains an inventory of the OSWI units that may potentially be covered by this proposed Federal plan in the absence of State or Tribal plans. This inventory contains 248 OSWI units in 26 States. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the OSWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the OSWI units listed in the inventory memorandum in Docket No. EPA-HQ-OAR-2003-0156. Any OSWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory. States, Tribes, or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

*C. Inventory of Emissions*

The proposed Federal plan includes an emissions estimate for OSWI units

subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO), and sulfur dioxide (SO<sub>2</sub>). For this proposal, EPA has estimated the emissions from each known OSWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the OSWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the OSWI emission guidelines and the Federal plan. Refer to the inventory memorandum in Docket No. EPA-HQ-OAR-2003-0156 for the complete emissions inventory and details on the emissions calculations.

*D. Emission Limitations*

The proposed Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be "at least as protective as" those in the emission guidelines. The emission limitations in this proposed OSWI Federal plan are the same as those contained in the EG. Section V of this preamble discusses the emission limitations and operating limits. The EG promulgated December 16, 2005, had a technical error which is being corrected through a technical amendment. Due to the uncertainty of the publication date for the amendment, the technical error will not appear in the proposal of this Federal plan. The correct opacity measurement averaging time appears in

this proposal. This possible discrepancy between the EG and Federal Plan is in Table 2 of the rule in the EG and Table 1 of the rule in the Federal Plan.

#### *E. Compliance Schedules*

Typically, State or Federal plans include increments of progress for units that need more than one year from State plan approval to comply, or in the case of the Federal plan, more than one year after promulgation of the final Federal plan. (See 40 CFR part 60.24(e)(1).) The purpose of increments of progress is to ensure that each affected unit needing more time to comply is making progress toward meeting the emission limits.

Section 129(f) of the CAA specifies the dates by which affected facilities must comply with EG. Existing units must be in compliance with the guidelines as expeditiously as practicable after approval of a State plan, but no later than three years after the effective date of State plan approval or five years after promulgation of the guidelines, whichever is earlier. To proceed in an expeditious manner, we are proposing to implement the EG within that same time frame.

For the EG, we are incorporating the full compliance time allowed by CAA section and to include final compliance as the sole increment of progress. The OSWI units are small and are located at small municipalities and institutions that do not always have full-time environmental staff. They will need time to investigate the regulatory, technical, cost, financing, and economic implications of control techniques and alternative waste disposal options available to their facility. The EPA wants to allow sufficient time for owners and operators of OSWI units to investigate, plan, and carry out activities for compliance or, as expected in most cases, a closure of their waste combustion units and an orderly transition to the use of alternative waste disposal methods. Our compliance schedule was developed to allow small sources maximum flexibility in accomplishing final compliance by a date 3 years after publication of a final rule for the Federal plan.

#### *F. Waste Management Plan Requirements*

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than the date sixty days after the

initial performance test. This date is 240 days after the final compliance date.

#### *G. Testing, Monitoring, Recordkeeping, and Reporting*

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR part 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with 40 CFR part 60 subpart FFFF, and assure initial and ongoing compliance.

#### *H. Operator Training and Qualification Requirements*

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. CAA sections 62.15535 through 62.15570 of the proposed subpart KKK contain the operator training and qualification requirements.

#### *I. Record of Public Hearings*

The proposed Federal plan provides opportunity for public participation in adopting the plan. (See 40 CFR part 60.23(c).) If requested to do so, EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket No. EPA-HQ-OAR-2006-0364. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

#### *J. Progress Reports*

Under the Federal plan, the EPA Regional Offices will prepare annual progress reports to show progress of OSWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5)

additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

#### **V. Summary of OSWI Federal Plan**

##### *A. Might the proposed rules apply to me?*

The proposed OSWI Federal rules could apply to you if you own or operate either of the following at a location not subject to an approved State or Tribal plan:

(1) An incineration unit with a capacity less than 35 tpd burning municipal solid waste (MSW) (as defined in CAA sections 129 and 62.15850 of 40 CFR part 62 subpart KKK); or

(2) An incineration unit located at an institutional facility burning institutional waste (as defined in CAA section 62.15850 of 40 CFR part 62 subpart KKK) generated at that facility.

Requirements for air curtain incineration units that would otherwise be VSMWC or IWI units, but for the fact that they burn certain materials, are discussed later in this preamble. If your incineration unit is currently meeting emission limitations and other requirements of another CAA section 129 regulation (i.e., small or large municipal waste combustion (MWC) units; hospital, medical, infectious waste incineration (HMIWI) units; or commercial and industrial solid waste incineration (CISWI) units), the proposed OSWI rules would not apply to you. Likewise, if an institutional combustion unit is covered under the CAA section 112 national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters (boilers NESHAP), it would not be subject to the proposed OSWI rules. Certain types of combustion units listed in CAA section 62.15485 of 40 CFR part 62 subpart KKK also would be excluded from the final OSWI rules.

If you began construction of your incineration unit on or before December 9, 2004, it is considered an existing unit and would be subject to the proposed Federal plan. If you began construction of your incineration unit after December 9, 2004, it is considered a new unit and is subject to the NSPS (40 CFR part 60, subpart EEEE). If you began reconstruction or modification of your incineration unit prior to June 16, 2006, it would be considered an existing unit and subject to the Federal plan. Likewise, if you begin reconstruction or modification of your incineration unit on or after June 16, 2006, it is

considered a new unit and is subject to the NSPS.

*B. What emission limitations would apply?*

As the owner or operator of an existing OSWI unit, you would be

required to meet the proposed emission limitations as specified in the table below. See CAA section V.F of this preamble for a discussion of the compliance schedule.

EMISSION LIMITS FOR EXISTING OSWI UNITS

For these pollutants	You must meet these emission limits <sup>a</sup>	And determine compliance using these methods <sup>b,c</sup>
Cd .....	18 micrograms per dry standard cubic meter (µg/dscm)	EPA Method 29.
CO .....	40.0 parts per million dry volume (ppmdv) .....	EPA Methods 10, 10A or 10B.
Dioxins/Furans (total mass basis) .....	33 nanograms per dry standard cubic meter (ng/dscm)	EPA Method 23.
HCl .....	15.0 ppmdv .....	EPA Method 26A.
Pb .....	226 µg/dscm .....	EPA Method 29.
Hg .....	74 µg/dscm .....	EPA Method 29.
Opacity .....	10% .....	EPA Method 9.
NO <sub>x</sub> .....	103 ppmdv .....	EPA Methods 7, 7A, 7C, 7D, or 7E. <sup>d</sup>
PM .....	0.013 grains per dry standard cubic foot (gr/dscf) .....	EPA Method 5 or 29.
SO <sub>2</sub> .....	3.1 ppmdv .....	EPA Method 6 or 6C. <sup>e</sup>

<sup>a</sup> All emission limits (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

<sup>b</sup> These methods are in 40 CFR part 60, appendix A.

<sup>c</sup> Compliance with the CO emission limit is determined on a 12-hour rolling average basis using continuous emission monitoring system data. Compliance for the other pollutants' emission limits is determined by stack testing.

<sup>d</sup> ASME PTC 19-10-1981—Part 10 is an acceptable alternative to only Methods 7 and 7C.

<sup>e</sup> ASME PTC 19-10-1981—Part 10 is an acceptable alternative to only Method 6.

*C. What operating limits would apply?*

If you use a wet scrubber to comply with the emission limits, you would be required to establish the maximum and minimum site-specific operating limits

indicated in Table 1 of this preamble. You would then be required to operate the OSWI unit so that the charge rate does not exceed the established maximum charge rate. You would be

required to operate the wet scrubber so that the pressure drop or amperage, scrubber liquor flow rate, and scrubber liquor pH do not fall below the minimum established operating limits.

TABLE 1.—OPERATING LIMITS FOR EXISTING OSWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate .....	Maximum charge rate .....	Every hour.
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage .....	Every 15 minutes.
Scrubber liquor flow rate .....	Minimum flow rate .....	Every 15 minutes.
Scrubber liquor pH .....	Minimum pH .....	Every 15 minutes.

**Note:** Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a 24-hour basis.

If you use an air pollution control device other than a wet scrubber to comply with the emission limits, you would be required to petition the EPA for approval of other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The information you must include in your petition is described in 40 CFR 62.15595 of proposed subpart KKK.

*D. What would be the requirements for OSWI air curtain incinerators?*

The final OSWI rules establish opacity limitations for air curtain incineration units that would otherwise meet the definitions of IWI or VSMWC units, but burn only:

- 100 percent wood wastes;

- 100 percent clean lumber;
- 100 percent yard waste; or
- 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

The opacity limit is 10 percent. However, 35 percent opacity is allowed during startup periods that are within the first 30 minutes of operation. Air curtain incinerators burning only these materials must meet the opacity limits and certain monitoring, recordkeeping, and reporting requirements, and must apply for and obtain a title V operating permit.

Air curtain incinerators burning other institutional waste or municipal waste must meet the requirements of the final OSWI rules including all emission limits in table 1 of this preamble and the associated testing, permitting, monitoring, recordkeeping, and reporting requirements.

*E. What other requirements would apply?*

As the owner or operator of an OSWI unit, you would be required to meet the following additional requirements.

*Waste Management Plan:*

- Submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

*Operator Training and Qualification Requirements:*

- Qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course.

*Testing Requirements:*

- Conduct initial performance tests for Cd, CO, dioxins/furans, HCl, Pb, Hg, NO<sub>x</sub>, opacity, PM, and SO<sub>2</sub> and



establish operating limits (i.e., maximum or minimum values for operating parameters).

- Conduct annual performance tests for all nine pollutants and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limits for three consecutive performance tests).

*Monitoring Requirements:*

- Continuously monitor CO emissions.
- If using a wet scrubber to comply with the emission limits, continuously monitor the following operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH.
- If using something other than a wet scrubber to comply with the emission limits, monitor other operating parameters, as approved by the EPA.

*Recordkeeping and Reporting Requirements:*

- Maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, the siting analysis (for new units only), and operator training and qualification. Each record must be kept on site for at least 2 years. The records may be kept off site for the remaining 3 years.

- Submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters.
- Submit annual compliance reports and semiannual reports of any deviations from the emission limits, operating limits, or other requirements.
- Apply for and obtain a title V operating permit.

*F. What is the proposed compliance schedule?*

Each incineration unit will be required to reach final compliance by the date 3 years after publication of the final rule in the **Federal Register**. In addition, the owner or operator will need to comply with the operator training and qualification requirements and inspection requirements by the date 1 year after publication of the final rule in the **Federal Register**, regardless of when the OSWI unit reaches final compliance.

To achieve final compliance, the owner or operator of each OSWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the OSWI unit is brought on line all necessary process changes or air

pollution control equipment will operate as designed.

*G. How did EPA determine the compliance schedule?*

Section 129(f) of the CAA specifies the dates by which affected facilities must comply with the EG. Existing units must be in compliance with the guidelines as expeditiously as practicable after approval of a State plan, but no later than three years after the effective date of State plan approval or five years after promulgation of the guidelines, whichever is earlier.

EPA chose to include the full compliance time allowed by CAA section 129 in the EG and proposes to do the same in the proposed Federal plan for OSWI units. The OSWI units are small and are located at small municipalities and institutions that do not always have full-time environmental staff. They will need time to investigate the regulatory, technical, cost, financing, and economic implications of control techniques and alternative waste disposal options available to their facility. The EPA wants to allow sufficient time for owners and operators of OSWI units to investigate, plan, and carry out activities for compliance or, as expected in most cases, a closure of their waste combustion units and an orderly transition to the use of alternative waste disposal methods.

**VI. OSWI That Have or Will Shut Down**

*A. Units That Plan To Close Rather Than Comply*

If you plan to permanently close your currently operating incineration unit, you must do so by the date three years after publication of the final rule for this Federal plan in the **Federal Register**. If you close your OSWI unit after the date one year after publication of the final rule in the **Federal Register**, but before the date three years after publication of the final rule in the **Federal Register**, then you must comply with the operator training and qualification requirements by the date one year after publication of the final rule in the **Federal Register**. In addition, while still in operation, you are subject to the same requirements for title V operating permits that apply to units that will not shut down.

*B. Inoperable Units*

In cases where an OSWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the OSWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. An OSWI unit that has been rendered inoperable would not be covered by the Federal plan. The

OSWI owner or operator may do the following to render an OSWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

*C. OSWI Units That Have Shut Down*

OSWI units that are known to have already shut down (but are not known to be inoperable) are included in the source inventory for the proposed Federal plan and will be identified in any State or Tribal plan submitted to EPA.

**1. Restarting Before the Final Compliance Date**

If the owner or operator of an inactive incineration unit plans to restart before the final compliance date, the owner or operator must meet any requirements for operator training or obtaining title V operating permits that apply to units planning to meet the final compliance date.

**2. Restarting After the Final Compliance Date**

Before restarting, such OSWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications. Performance testing to demonstrate compliance would be required within 30 days after restarting. An incineration unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

**VII. Implementation of the Federal Plan and Delegation**

*A. Background of Authority*

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are enforceable once EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates OSWI units in a State or Tribal area that does not have an EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. See section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local

agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the OSWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with the intent of Congress.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum ("EPA Indian Policy," signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

#### *B. Delegation of the Federal Plan and Retained Authorities*

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. See generally "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State. The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the

legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or Tribe and EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**; thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

The following authorities are withheld by the EPA Administrator and not transferred to the State or Tribe:

(1) Approval of alternatives to the emission limitations in Table 1 of the proposed rule and operating limits established under 40 CFR 62.15585 and Table 2 of the proposed rule.

(2) Approval of petitions for specific operating limits in 40 CFR 62.15595 the proposed rule.

(3) Approval of major alternatives to test methods.

(4) Approval of major alternatives to monitoring.

(5) Approval of major alternatives to recordkeeping and reporting.

(6) The status report requirements in 40 CFR 62.15570(c)(2) the proposed rule.

#### *C. Mechanisms for Transferring Authority*

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

#### 1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After OSWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the OSWI units covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those OSWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to OSWI units covered by such a plan, and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

#### 2. State or Tribe Takes Delegation of the Federal Plan

EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, OSWI inspections, and preparation of draft notices of violation, but will not include any retained authorities.

EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254), provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, EPA may choose to delegate a partial Federal plan (i.e., to

delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

#### *D. Implementing Authority*

The EPA delegated authority within the Agency to the EPA Regional Administrators to implement the OSWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator.

#### *E. OSWI Federal Plan and Indian Country*

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The OSWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing OSWI units in Indian country. However, eligible Indian tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. See 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the OSWI emission guidelines.

#### 1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (See 40 CFR part 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

- (1) The applicant is an Indian tribe recognized by the Secretary of the Interior;
- (2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;
- (3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and
- (4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (See 40 CFR part 49.6).

#### 2. EPA Implementation

The CAA also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the Tribal Authority Rule. See 63 FR at 7262-7263. As mentioned previously, Tribes may, but are not required to, submit a OSWI plan under section 111(d) of the CAA.

#### 3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with EPA's implementation of the Federal Operating Permits program in Indian country (see 64 FR 8247 (February 19, 1999).)

#### **VIII. Title V Operating Permits**

All existing OSWI units and air curtain incinerators to be regulated by the proposed OSWI Federal plan will have to apply for and obtain a title V operating permit. These title V operating permits assure compliance with all applicable Federal requirements for regulated incineration units, including all applicable CAA section 129 requirements. (See 40 CFR 70.6(a)(1), 40 CFR 70.2, 40 CFR 71.6(a)(1), and 40 CFR 71.2.)

The permit application deadline for a CAA section 129 source applying for a title V operating permit depends on when the source first becomes subject to the relevant title V permits program. If your existing incineration unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted by the earlier of the following dates:

- (1) 12 months after the effective date of any applicable EPA-approved CAA section 111(d)/129 plan (i.e., an approved State or Tribal plan that implements the OSWI emission guidelines);
- (2) 12 months after the effective date of any applicable Federal plan; or
- (3) December 16, 2008.

For any existing incineration unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable CAA section 111(d)/129 plan is approved by EPA and becomes effective. (See CAA sections 129(e), 503(c), 503(d), and 502(a) and 40 CFR parts 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

If your incineration unit is subject to title V as a result of some triggering requirement(s) other than those mentioned above (for example, a unit may be a major source or part of a major source), then you may be required to apply for a title V operating permit for that unit prior to the deadlines specified above. If more than one requirement triggers a source's obligation to apply for a title V operating permit, the 12-month timeframe for filing a title V permit application is triggered by the

requirement which first causes the source to be subject to title V. (See CAA section 503(c) and 40 CFR parts 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

For additional background information on the interface between CAA section 129 and title V, including EPA's interpretation of CAA section 129(e), as well as information on submitting title V permit applications, updating existing title V permit applications and reopening existing title V permits, see the final Federal Plan for Commercial and Industrial Solid Waste Incinerators, October 3, 2003 (68 FR 57518, 57532), as well as the "Summary of Public Comments and Responses" document in EPA's OSWI emission guidelines docket (EPA-HQ-OAR-2003-0156).

#### *Title V and Delegation of a Federal plan*

We have previously stated our position that issuance of a Title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan. Legally, delegation of a standard or requirement results in a delegated State or Tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a Federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.<sup>4</sup> Although a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or Tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or Tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or Tribe.

As mentioned above, a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without

<sup>4</sup> If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, e.g., alternative methods of demonstrating compliance.

first taking delegation of the section 111/129 Federal plan.<sup>5</sup> Some States or Tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or Tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or Tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.<sup>6</sup> In practical terms, without approval of a State or Tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and Tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements, and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or Tribe's part 70 program. As a result, prior to a State or Tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or Tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or Tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to

<sup>5</sup> The EPA interprets the phrase "assure compliance" in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. See definition of "applicable requirement" in 40 CFR 70.2. See also 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

<sup>6</sup> It is important to note that an AG's opinion submitted at the time of initial title V program approval is sufficient if it demonstrates that a State or Tribe has adequate authority to incorporate CAA section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. See the section IV.J. of this preamble titled "Progress Reports".

It is important to note that the EPA is not using its authority under 40 CFR part 70.4(i)(3) to request that all States and Tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or Tribe's authority to incorporate section 111/129 requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

## **IX. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a "significant regulatory action" under terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. However, the information collection requirements in the proposed rules have been previously submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has been assigned OMB control number 2060-0562 for the proposed rule and the emission guideline (ICR No. 2164.02 for 40 CFR part 60 subpart FFFF). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 566-1672.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 16, 2005. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State or Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are

approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The proposed rules contain monitoring, reporting, and recordkeeping requirements. Information specified in the emission guidelines would be used by States or EPA to identify existing units subject to the State or Federal plans that implement the emission guidelines, and to ensure that these units comply with their emission limits and other requirements. Records and reports would be necessary to enable EPA or States to identify waste incineration units that may not be in compliance

with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Average annual hours	Labor costs	Capital costs	O&M costs	Total annual costs
Industry .....	3,803	\$174,703	\$0	\$0	\$174,703
Implementing agency .....	383	17,611	0	0	17,611

EPA expects the emission guidelines to affect a maximum of 248 OSWI units over the first 3 years. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years, because compliance with the emission guidelines is not required until 5 years after promulgation of the emission guidelines (or 3 years after the effective date of approval of a State or Federal plan to implement the guidelines). Costs in the first 3 years include time to review the guidelines and the State or Federal plan. The implementing agency will not incur any capital or start-up costs.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control

numbers for our regulations are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of the proposed rules on small entities, small entity is defined as follows:

1. A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than \$6.5 million (this varies by industry category, ranging up to \$10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards;
2. a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or
3. a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

The economic impacts on small entities will not be significant because the cost of the proposed rules is expected to range from negligible to actual cost savings. EPA expects that the majority of these entities may realize a cost savings under the likely response to the proposed rules.

Alternative waste disposal methods, such as land filling, are available for OSWI units. During development of the underlying EG, our analysis using model plants and a supplemental analysis using site-specific data both supported the idea that the annual cost to landfill waste will typically be less than the annual cost of using an OSWI unit for waste disposal. Thus, the likely response to the proposed Federal implementation plan will be for small entities that own and operate OSWI units to close the units and use an alternative waste disposal method. More detailed information about these analyses is available in the docket for the underlying EG (see Revised Economic Analysis for Other Solid Waste Incineration (OSWI) Units, November 2005; and Impacts of Other Solid Waste Incinerator Rule on Affected Small Entities, November 2005 in Docket ID No. EPA-HQ-OAR-2003-0156).

The Small Business Administration's Office of Advocacy (SBA) expressed concerns that EPA's certification that the proposed emission guidelines would not have a significant economic impact on a substantial number of small entities is not based on an adequate analysis of IWI units operated by small entities. In response to SBA's public comment, we conducted further detailed analyses (as

summarized in this preamble and available in the docket) and sent small entity outreach surveys requesting information regarding the use of solid waste incinerators at schools to eight entities (identified by SBA) associated with schools. All responses from the small entity outreach survey, with one exception, indicate that incinerators are not being used by the respondents. The one exception regards an institution that owns/operates pathological waste incinerators, which are excluded from regulation under the standards and guidelines.

Although the underlying EG rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rules on small entities. The final EG rules provide various exclusions for some sources that may find it unreasonably costly to comply with the rules or utilize alternative disposal options. These exclusions should provide relief for many small entities for which a reasonable disposal alternative is unavailable. In addition, to ensure that affected sources were aware of the proposed rules, EPA sent fact sheets to 361 existing OSWI units in our inventory and an additional 125 fact sheets to trade organizations and interest groups that represented potential OSWI unit owners/operators. The fact sheets explained the proposed regulations, the anticipated costs and impacts to their facilities, and how they could submit comments. None of the facilities or interest groups submitted comments on the proposed OSWI rules or on the cost or other impacts EPA anticipated due to the rulemaking and, in fact, about one-third of the 361 facilities informed us that they no longer own or operate an incineration unit. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the proposed rules. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

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

The EPA has determined that the proposed rules do 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. In the preamble promulgating the emissions guidelines, we presented our expectation that most OSWI units would close and utilize an economical alternative waste disposal method rather than complying with the final rules, rendering the cost impacts negligible. Thus, the final EG, and by extension the proposed Federal plan, are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rules contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulations do not unfairly apply to small governments. Therefore, the proposed rules are not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation 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. Also, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rules will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to the proposed rules.

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

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." The proposed rule does not have Tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed rules.

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

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

EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives EPA considered.

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. The proposed rules are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks. Also, the proposed rules are not "economically significant."

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer Advancement Act*

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

The proposed rules involve technical standards. The EPA proposes to use EPA Methods 1, 2, 3A, 3B, 4, 5, 6 or 6C, 7 or 7A, 7C, 7D, or 7E, 9, 10, 10A or 10B, 23, 26A, and 29 of 40 CFR part 60, appendix A.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7D, 9, and 10A. The search and review results have been documented and are placed in the docket for the OSWI emission guidelines.

One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the proposed rules. The voluntary consensus standard ASME PTC 19-10-1981-Part 10, "Flue and Exhaust Gas Analyses," is cited in the emission guidelines and the proposed rules for its manual methods for measuring the nitrogen oxide, oxygen, and sulfur dioxide content of exhaust gas. These parts of ASME PTC 19-10-1981-Part 10 are acceptable alternatives to Methods 3B, 6, 7, and 7C.

The search for emissions measurement procedures identified 29 voluntary consensus standards applicable to the proposed rules. The EPA determined these 29 standards identified for measuring emissions of Cd, CO, dioxins/furans, HCl, Hg, Pb, PM, NO<sub>x</sub>, and SO<sub>2</sub> subject to the emission limits were impractical alternatives to EPA test methods for the purposes of the proposed rules. Therefore, EPA does not intend to adopt the standards for this purpose. (See Docket ID No. EPA-HQ-OAR-2003-0156 for further information on the methods.)

Four of the 29 voluntary consensus standards identified in this search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; ISO/DIS 12039, "Stationary Source Emissions-Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen-Automated Methods" for EPA Method 3A; and ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury" for EPA Method 29 (portion for Hg only).

Tables 2 and 4 of subpart FFFF of 40 CFR part 60 list the EPA testing methods from the underlying EG that would be included in the proposed rules. Under 40 CFR part 60.8(b) and 60.13(i) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

#### **List of Subjects in 40 CFR Part 62**

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

Dated: December 8, 2006.

**Stephen L. Johnson,**  
*Administrator.*

40 CFR part 62 is proposed to be amended as follows:

#### **PART 62—[AMENDED]**

1. The authority citation for part 62 continues to read as follows:

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

2. Section 62.13 is amended by revising paragraph (e) to read as follows:

#### **§ 62.13 Federal plans.**

\* \* \* \* \*

(e) The substantive requirements of the other solid waste incineration units Federal plan are contained in subpart KKK of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

3. Part 62 is amended by adding a new subpart KKK to read as follows:

#### **Subpart KKK—Federal Plan Requirements for Other Solid Waste Incineration Units That Commenced Construction on or Before December 9, 2004**

Sec.

#### **Introduction**

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62.15455 What are the principal components of this subpart?

#### **Applicability**

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62.15470 Can my OSWI unit be covered by both a State plan and this subpart?

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#### **Compliance Schedule and Increments of Progress**

62.15505 When must I comply with this subpart if I plan to continue operation of my OSWI unit?

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#### **Waste Management Plan**

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#### Performance Testing

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62.15645 By what date must I conduct the annual performance test?

62.15650 May I conduct performance testing less often?

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#### Monitoring

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62.15715 What records must I keep?

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62.15755 What else must I report if I have a deviation from the operating limits or the emission limitations?

62.15760 What must I include in the deviation report?

62.15765 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

62.15770 Are there any other notifications or reports that I must submit?

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62.15780 Can reporting dates be changed?

#### Air Curtain Incinerators That Burn 100 Percent Wood Waste, Clean Lumber and/or Yard Waste

62.15785 What is an air curtain incinerator?

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62.15805 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber and yard waste?

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62.15820 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

#### Title V Operating Permits

62.15825 Am I required to apply for and obtain a title V operating permit for my existing unit?

62.15830 When must I submit a title V permit application for my existing unit?

#### Temporary-Use Incinerators and Air Curtain Incinerators Used In Disaster Recovery

62.15835 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

#### Delegation of Authority

62.15840 What authorities are withheld by the EPA?

#### Equations

62.15845 What equations must I use?

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#### Tables to Subpart KKK of Part 62

Table 1 of Subpart KKK of Part 62—Emission Limitations

Table 2 of Subpart KKK of Part 62—Operating Limits for Incinerators and Wet Scrubbers

Table 3 of Subpart KKK of Part 62—Requirements for Continuous Emission Monitoring Systems (CEMS)

Table 4 of Subpart KKK of Part 62—Summary of Reporting Requirements

#### Subpart KKK—Federal Plan Requirements for Other Solid Waste Incineration Units That Commenced Construction on or Before December 9, 2004

#### Introduction

##### § 62.15450 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from other solid waste incineration (OSWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111 and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, “you” means the owner or operator of an OSWI unit or air curtain incinerator subject to this subpart.

##### § 62.15455 What are the principal components of this subpart?

This subpart contains the twelve major components listed in paragraphs (a) through (l) of this section.

- (a) Compliance schedule.
- (b) Waste management plan.
- (c) Operator training and qualification.
- (d) Emission limitations and operating limits.
- (e) Performance testing.
- (f) Initial compliance requirements.
- (g) Continuous compliance requirements.
- (h) Monitoring.
- (i) Recordkeeping and reporting.
- (j) Definitions.
- (k) Equations
- (l) Tables.



## Applicability

### § 62.15460 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an OSWI unit as defined in § 62.15850, or an air curtain incinerator subject to this subpart as defined in § 62.15785. OSWI units are very small municipal waste combustion units and institutional waste incineration units as defined in § 62.15850. Units subject to this subpart meet the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your incineration unit commenced on or before November December 9, 2004.

(2) Your incineration unit is not exempt under § 62.15485.

(3) Your incineration unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your incineration unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If the owner or operator of an incineration unit subject to this subpart makes changes that meet the definition of modification or reconstruction on or after June 16, 2006, that unit becomes subject to subpart EEEE of 40 CFR part 60 (New Source Performance Standards for Other Solid Waste Incineration Units) and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing incineration unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart EEEE of 40 CFR part 60.

### § 62.15470 Can my OSWI unit be covered by both a State plan and this subpart?

(a) If your OSWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your OSWI unit until the EPA approves a State plan that covers your OSWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your OSWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your OSWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

### § 62.15475 How do I determine if my OSWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with

approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if the EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

### § 62.15480 If my OSWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart are not limited to the inventory of sources listed in Docket No. EPA-HQ-OAR-2006-0364 for the Federal plan. If your incineration unit meets the applicability criteria in § 62.15460, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

### § 62.15485 Can my combustion unit be exempt from this subpart?

This subpart exempts the types of units described in paragraphs (a) through (q) of this section from complying with the requirements of this subpart except for the requirements specified in this section.

(a) *Cement kilns.* The unit is excluded if it is regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(b) *Co-fired combustors.* The unit, that would otherwise be considered a very small municipal waste combustion unit, is excluded if the owner/operator of the unit meets the following five requirements:

(1) Has a Federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) Notifies the Administrator that the unit qualifies for the exclusion.

(3) Provides the Administrator with a copy of the Federally enforceable permit.

(4) Records the weights, each calendar quarter, of municipal solid waste and of all other fuels combusted.

(5) Keeps each report for 5 years. These records must be kept on site for at least 2 years, but may be kept off site for the remaining 3 years.

(c) *Cogeneration facilities.* The unit is excluded if it meets the three requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(d) *Commercial and industrial solid waste incineration units.* The unit is excluded if it is regulated under subparts CCCC or DDDD of part 60 or subpart III of part 62 and is required to meet the emission limitations established in those subparts.

(e) *Hazardous waste combustion units.* The unit is excluded if it meets either of the two criteria specified in paragraph (e)(1) or (2) of this section.

(1) The owner/operator of the unit is required to get a permit for the unit under section 3005 of the Solid Waste Disposal Act.

(2) The unit is regulated under 40 CFR part 63, subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(f) *Hospital/medical/infectious waste incinerators.* The unit is excluded if it is regulated under subparts Ce or Ec of part 60 (New Source Performance Standards and Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators) or subpart HHH of part 62 (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(g) *Incinerators and air curtain incinerators in isolated areas of Alaska.* The incineration unit is excluded if it is used at a solid waste disposal site in Alaska that is classified as a Class II or Class III municipal solid waste landfill, as defined in § 62.15850.

(h) *Rural institutional waste incinerators.* The incineration unit is excluded if it is an institutional waste incinerator, as defined in § 62.15850, and the application for exclusion described in paragraphs (h)(1) and (2) of this section has been approved by the Administrator.

(1) Prior to 1 year before the final compliance date, an application and supporting documentation demonstrating that the institutional waste incineration unit meets the two requirements specified in paragraphs (h)(1)(i) and (ii) of this section must be submitted to the Administrator for approval.

(i) The unit is located more than 50 miles from the boundary of the nearest Metropolitan Statistical Area,

(ii) Alternative disposal options are not available or are economically infeasible,

(2) The application described in paragraph (h)(1) of this section must be revised and resubmitted to the Administrator for approval every 5 years following the initial approval of the exclusion for your unit.

(3) If you re-applied for an exclusion pursuant to paragraph (h)(2) of this section and were denied exclusion by the Administrator, you have 3 years from the expiration date of the current exclusion to comply with the emission limits and all other applicable requirements of this subpart.

(i) *Institutional boilers and process heaters.* The unit is excluded if it is regulated under 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters).

(j) *Laboratory Analysis Units.* The unit is excluded if it burns samples of materials only for the purpose of chemical or physical analysis.

(k) *Materials recovery units.* The unit is excluded if it combusts waste for the primary purpose of recovering metals. Examples include primary and secondary smelters.

(l) *Pathological waste incineration units.* An institutional waste incineration unit or very small municipal waste combustion unit is excluded from this subpart if it burns 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.15850 and the owner/operator of the unit meets the criteria specified in paragraphs (l)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(m) *Small or large municipal waste combustion units.* The unit is excluded if it is regulated under 40 CFR part 60, subparts AAAA, BBBB, Ea, Eb, or Cb, and is required to meet the emission limitations established in those subparts. Also excluded are units regulated under 40 CFR part 62, subparts FFF or JJJ.

(n) *Small power production facilities.* The unit is excluded if it meets the three requirements specified in paragraphs (n)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(o) *Temporary-use incinerators and air curtain incinerators used in disaster recovery.* The incineration unit is excluded if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism and you comply with the requirements in § 62.15835.

(p) *Units that combust contraband or prohibited goods.* The incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.

(q) *Incinerators used for national security.* Your incineration unit is excluded if it meets the requirements specified in either (q)(1) or (2) of this section.

(1) The incineration unit is used solely during military training field exercises to destroy national security materials integral to the field exercises.

(2) The incineration unit is used solely to incinerate national security materials, its use is necessary to safeguard national security, you follow the exclusion request requirements in paragraphs (q)(2)(i) and (ii) of this section, and the Administrator has approved your request for exclusion.

(i) The request for exclusion and supporting documentation must demonstrate both that the incineration unit is used solely to destroy national security materials and that a reliable alternative to incineration that ensures acceptable destruction of national security materials is unavailable, on either a permanent or temporary basis.

(ii) The request for exclusion must be submitted to the Administrator prior to 1 year before the final compliance date.

**§ 62.15495 When must I submit any records required pursuant to an exemption allowed under § 62.15485?**

Owners or operators of sources that qualify for the exemptions in

§ 62.15485(b) and (l) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.15485(b) and (l) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.15485(b) and (l) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.15485(b) and (l) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least five years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

**§ 62.15500 Are air curtain incinerators regulated under this subpart?**

(a) Air curtain incinerators that burn less than 35 tons per day of municipal solid waste or air curtain incinerators located at institutional facilities burning any amount of institutional waste generated at that facility are subject to all requirements of this subpart, including the emission limitations specified in Table 1 of this subpart.

(b) Air curtain incinerators that burn only less than 35 tons per day of the materials listed in paragraphs (b)(1) through (4) of this section collected from the general public and from residential, commercial, institutional, and industrial sources; or, air curtain incinerators located at institutional facilities that burn only the materials listed in paragraphs (b)(1) through (4) of this section generated at that facility, are required to meet only the requirements in §§ 62.15785 through 62.15830 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

### Compliance Schedule and Increments of Progress

#### § 62.15505 When must I comply with this subpart if I plan to continue operation of my OSWI unit?

If you plan to continue operation and come into compliance with the requirements of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], then you must complete the requirements of paragraphs (a) through (f) of this section.

(a) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(b) You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 4 of this subpart.

(c) You must achieve final compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(d) You must conduct the initial performance test no later than [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(e) You must submit an initial test report including the results of the initial performance test no later than 60 days following the initial performance test.

(f) You must submit a notification to the Administrator stating whether final compliance has been achieved, postmarked within 10 business days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 10 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

#### § 62.15510 What must I do if I plan to permanently close my OSWI unit and not restart it?

You must close the unit before the final compliance date on [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(2) While still in operation, your OSWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to an OSWI unit that will not be permanently closing. See §§ 62.15825 and 62.15830.

#### § 62.15515 What must I do if I close my OSWI unit and then restart it?

(a) If you close your OSWI unit but will reopen it prior to [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must meet all the requirements of § 62.15505.

(b) If you close your OSWI unit and restart the unit after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] and resume operation, you must meet all of the requirements of § 62.15505(a), (b), (c), and (e) at the time you restart your OSWI unit. You must conduct the initial performance test within 30 days of restarting your OSWI unit. Upon restarting your OSWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected OSWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

### Waste Management Plan

#### § 62.15520 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

#### § 62.15525 When must I submit my waste management plan?

You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 4 of this subpart

#### § 62.15530 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements

such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

### Operator Training and Qualification

#### § 62.15535 What are the operator training and qualification requirements?

(a) No OSWI unit can be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified OSWI unit operators are temporarily not accessible, you must follow the procedures in § 62.15570.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the 13 subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Methods to monitor pollutants (including monitoring of incinerator and control device operating parameters) and monitoring equipment calibration procedures, where applicable.

(viii) Actions to correct malfunctions or conditions that may lead to malfunction.

(ix) Bottom and fly ash characteristics and handling procedures.

(x) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(xi) Pollution prevention.

(xii) Waste management practices.

(xiii) Recordkeeping requirements.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

**§ 62.15545 When must the operator training course be completed?**

The operator training course must be completed by the latest of the three dates specified in paragraphs (a) through (c) of this section.

(a) The final compliance date specified in § 62.15505.

(b) Six months after your OSWI unit startup.

(c) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

**§ 62.15550 How do I obtain my operator qualification?**

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.15535(c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.15535(c)(2).

**§ 62.15555 How do I maintain my operator qualification?**

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

**§ 62.15560 How do I renew my lapsed operator qualification?**

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.15555.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.15550(a).

**§ 62.15565 What site-specific documentation is required?**

(a) Documentation must be available at the facility and readily accessible for all OSWI unit operators that addresses the nine topics described in paragraphs (a)(1) through (9) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the operating limits established under this subpart.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.15520 through 62.15530.

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the latest of three dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(ii) Six months after your OSWI unit startup.

(iii) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of OSWI unit operators who have

completed review of the information in paragraph (a) of this section as required by paragraph (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 62.15535, met the criteria for qualification under § 62.15550, and maintained or renewed their qualification under § 62.15555 or § 62.15560. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

**§ 62.15570 What if all the qualified operators are temporarily not accessible?**

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the three criteria specified in paragraphs (a) through (c) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed review of the information specified in § 62.15565(a) within the past 12 months. You do not need to notify the Administrator or include this as a deviation in your annual report.

(b) When all qualified operators are not accessible for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed a review of the information specified in § 62.15565(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.15570.

(c) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (c)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the EPA every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the EPA to continue operation of the OSWI unit. You must submit the first status report 4 weeks after you notify the EPA of the deviation under paragraph (c)(1) of this section. If the EPA notifies you that your request to continue operation of the OSWI unit is disapproved, the OSWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.15535(a).

(ii) You notify the EPA that a qualified operator is accessible and that you are resuming operation.

### **Emission Limitations and Operating Limits**

#### **§ 62.15575 What emission limitations must I meet and by when?**

You must meet the emission limitations specified in Table 1 of this subpart on the date the initial performance test is required or completed, whichever is earlier. Section 62.15630 specifies the date by which you are required to conduct your performance test.

#### **§ 62.15585 What operating limits must I meet and by when?**

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraphs (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is the charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter

emission limitations; or minimum amperage to the wet scrubber, which is calculated as the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride and sulfur dioxide emission limitations.

(b) You must meet the operating limits established during the initial performance test beginning on the date [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

#### **§ 62.15595 What if I do not use a wet scrubber to comply with the emission limitations?**

If you use an air pollution control device other than a wet scrubber or limit emissions in some other manner to comply with the emission limitations under § 62.15575, you must petition the EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the EPA. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative

accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

#### **§ 62.15605 What happens during periods of startup, shutdown, and malfunction?**

The emission limitations and operating limits apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

### **Performance Testing**

#### **§ 62.15610 How do I conduct the initial and annual performance test?**

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All performance tests must be conducted using the methods in Table 1 of this subpart.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of appendix A of 40 CFR part 60 must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of 40 CFR part 60 must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of 40 CFR part 60 must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 in § 62.15845(a).

(g) Method 26A of appendix A of 40 CFR part 60 must be used for hydrogen chloride concentration analysis, with the additional requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The probe and filter must be conditioned prior to sampling using the procedure described in paragraphs (g)(1)(i) through (iii) of this section.

(i) Assemble the sampling train(s) and conduct a conditioning run by collecting between 14 liters per minute (0.5 cubic feet per minute) and 30 liters per minute (1.0 cubic feet per minute) of gas over a 1-hour period. Follow the sampling procedures outlined in section 8.1.5 of Method 26A of appendix A of 40 CFR part 60. For the conditioning run, water can be used as the impinger solution.

(ii) Remove the impingers from the sampling train and replace with a fresh impinger train for the sampling run, leaving the probe and filter (and cyclone, if used) in position. Do not

recover the filter or rinse the probe before the first run. Thoroughly rinse the impingers used in the preconditioning run with deionized water and discard these rinses.

(iii) The probe and filter assembly are conditioned by the stack gas and are not recovered or cleaned until the end of testing.

(2) For the duration of sampling, a temperature around the probe and filter (and cyclone, if used) between 120 °C (248 °F) and 134 °C (273 °F) must be maintained.

(3) If water droplets are present in the sample gas stream, the requirements specified in paragraphs (g)(3)(i) and (ii) of this section must be met.

(i) The cyclone described in section 6.1.4 of Method 26A of appendix A of 40 CFR part 60.

(ii) The post-test moisture removal procedure described in section 8.1.6 of Method 26A of appendix A of 40 CFR part 60 must be used.

**§ 62.15615 How are the performance test data used?**

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

**Initial Compliance Requirements**

**§ 62.15620 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?**

You must conduct an initial performance test, as required under section 60.8, to determine compliance with the emission limitations in Table 1 of this subpart of part 62 and to establish operating limits using the procedure in § 62.15585 or § 62.15595. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.15610.

**§ 62.15630 By what date must I conduct the initial performance test?**

The initial performance test must be conducted no later than [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE Federal Register].

**Continuous Compliance Requirements**

**§ 62.15635 How do I demonstrate continuous compliance with the emission limitations and the operating limits?**

(a) You must conduct an annual performance test for all of the pollutants in Table 1 of this subpart for each OSWI unit to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2

of this subpart and the procedures in § 62.15610.

(b) You must continuously monitor carbon monoxide emissions to determine compliance with the carbon monoxide emissions limitation. Twelve-hour rolling average values are used to determine compliance. A 12-hour rolling average value the carbon monoxide emission limit in Table 1 constitutes a deviation from the emission limitation.

(c) You must continuously monitor the operating parameters specified in § 62.15585 or established under § 62.15595. Three-hour rolling average values are used to determine compliance with the operating limits unless a different averaging period is established under § 62.15595. A 3-hour rolling average value (unless a different averaging period is established under § 62.15595) above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Operating limits do not apply during performance tests.

**§ 62.15645 By what date must I conduct the annual performance test?**

You must conduct annual performance tests within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

**§ 62.15650 May I conduct performance testing less often?**

(a) You can test less often for a given pollutant if you have test data for at least three consecutive annual tests, and all performance tests for the pollutant over that period show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your OSWI unit continues to meet the emission limitation for the pollutant, you may choose to conduct performance tests for that pollutant every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for any pollutant, you must conduct annual performance tests for that pollutant until three consecutive annual performance tests for that pollutant all show compliance.

**§ 62.15660 May I conduct a repeat performance test to establish new operating limits?**

Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

**Monitoring**

**§ 62.15665 What continuous emission monitoring systems must I install?**

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. You must monitor the oxygen concentration at each location where you monitor carbon monoxide.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13.

**§ 62.15675 How do I make sure my continuous emission monitoring systems are operating correctly?**

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure carbon monoxide and oxygen.

(b) Complete your initial evaluation of the continuous emission monitoring systems by the date not later than within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE Federal Register]

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your carbon monoxide and oxygen continuous emission monitoring systems. To validate carbon monoxide concentration levels, use EPA Method 10, 10A, or 10B of appendix A of part 60. Use EPA Method 3 or 3A to measure oxygen. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of 40 CFR part 60. Table 3 of this subpart shows the required span values and performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of 40 CFR part 60 for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

**§ 62.15685 What is my schedule for evaluating continuous emission monitoring systems?**

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of 40 CFR part 60.

**§ 62.15690 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?**

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for carbon monoxide are in parts per million by dry volume at 7 percent oxygen. Use the 1-hour averages of oxygen data from your continuous emission monitoring system to determine the actual oxygen level and to calculate emissions at 7 percent oxygen.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you have deviated from the data collection requirement regardless of the emission level monitored.

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations.

(f) If continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements, refer to Table 3 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

**§ 62.15700 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?**

(a) Use Equation 1 in § 62.15845 to calculate emissions at 7 percent oxygen.

(b) Use Equation 2 in § 62.15845 to calculate the 12-hour rolling averages for concentrations of carbon monoxide.

**§ 62.15705 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?**

(a) If you are using a wet scrubber to comply with the emission limitations under § 62.15575, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times.

(b) You must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of any stack that could be used to bypass the control device. The measurement must include the date, time, and duration of the use of the bypass stack.

(c) If you are using a method or air pollution control device other than a wet scrubber to comply with the emission limitations under § 62.15575, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.15595.

**§ 62.15710 Is there a minimum amount of operating parameter monitoring data I must obtain?**

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the OSWI unit is operating.

(b) You must obtain valid monitoring data for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(c) If you do not obtain the minimum data required in paragraphs (a) and (b) of this section, you have deviated from the data collection requirement regardless of the operating parameter level monitored.

(d) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting

the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

**Recordkeeping and Reporting**

**§ 62.15715 What records must I keep?**

You must maintain the 14 items (as applicable) as specified in paragraphs (a) through (n) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (8) of this section.

(1) The OSWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For OSWI units that establish operating limits for controls other than wet scrubbers under § 62.15595, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) All 1-hour average concentrations of carbon monoxide emissions.

(7) All 12-hour rolling average values of carbon monoxide emissions and all 3-hour rolling average values of continuously monitored operating parameters.

(8) Records of the dates, times, and durations of any bypass of the control device.

(c) Identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the pollutant emissions or operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 1 of this subpart or a deviation from the

operating limits in Table 2 of this subpart or a deviation from other operating limits established under § 62.15595 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) Calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §§ 62.15690 and 62.15710.

(g) For carbon monoxide continuous emissions monitoring systems, document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of 40 CFR part 60.

(h) Records of the calibration of any monitoring devices required under § 62.15705.

(i) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations and a description of the types of waste burned during the test.

(j) Records showing the names of OSWI unit operators who have completed review of the information in § 62.15565(a) as required by § 62.15565(b), including the date of the initial review and all subsequent annual reviews.

(k) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 62.15535, met the criteria for qualification under § 62.15550, and maintained or renewed their qualification under § 62.15555 or § 62.15560. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(l) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(m) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(n) The information listed in § 62.15565(a).

**§ 62.15725 Where and in what format must I keep my records?**

(a) You must keep each record on site for at least two years. You may keep the records off site for the remaining three years.

(b) All records must be available in either paper copy or computer-readable

format that can be printed upon request, unless an alternative format is approved by the Administrator.

**§ 62.15730 What reports must I submit?**

See Table 4 of this subpart for a summary of the reporting requirements.

**§ 62.15740 What information must I submit following my initial performance test?**

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.15620, as applicable.

(b) The values for the site-specific operating limits established in § 62.15585 or § 62.15595.

(c) The waste management plan, as specified in §§ 62.15520 through 62.15530.

**§ 62.15745 When must I submit my annual report?**

You must submit an annual report no later than 12 months following the submission of the information in § 62.15740. You must submit subsequent reports no more than 12 months following the previous report.

**§ 62.15750 What information must I include in my annual report?**

The annual report required under § 62.15745 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.15755 through 62.15765.

(a) Company name and address.

(b) Statement by the owner or operator, with their name, title, and signature, certifying the truth, accuracy, and completeness of the report. Such certifications must also comply with the requirements of 40 CFR part 70.5(d) or 40 CFR part 71.5(d).

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.15585 or § 62.15595.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the emission limitations or operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.15715(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.15650(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.15650(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than two weeks.

**§ 62.15755 What else must I report if I have a deviation from the operating limits or the emission limitations?**

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted showed a deviation from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

**§ 62.15760 What must I include in the deviation report?**

In each report required under § 62.15755, for any pollutant or operating parameter that deviated from the emission limitations or operating limits specified in this subpart, include the seven items described in paragraphs (a) through (g) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.



(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(g) The dates, times, and durations of any bypass of the control device.

**§ 62.15765 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?**

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the EPA every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the EPA to continue operation of the OSWI unit.

(b) If your unit was shut down by the EPA, under the provisions of § 62.15570(c)(2), due to a failure to provide an accessible qualified operator, you must notify the EPA that you are resuming operation once a qualified operator is accessible.

**§ 62.15770 Are there any other notifications or reports that I must submit?**

Yes. You must submit notifications as provided by § 60.7.

**§ 62.15775 In what form can I submit my reports?**

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

**§ 62.15780 Can reporting dates be changed?**

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

**Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and/or Yard Waste**

**§ 62.15785 What is an air curtain incinerator?**

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart, air curtain incinerators include both firebox and trench burner units.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (4) of this section are required to meet only the requirements in §§ 62.15785 through 62.15820 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

**§ 62.15790 When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?**

You must achieve compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. You must submit a notification to the Administrator postmarked within 10 business days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

**§ 62.15795 What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?**

(a) If you close your incinerator and re-start it, but will reopen it prior to the final compliance date in your State plan, you must achieve compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(b) If you close your incinerator but will restart it after your final compliance date, you must meet the emission limitations in § 62.15805 on the date your incinerator restarts operation.

**§ 62.15800 What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?**

You must close the unit before [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

**§ 62.15805 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?**

(a) Within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in paragraph (a) of this section apply at all times except during malfunctions.

**§ 62.15810 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?**

(a) Use Method 9 of appendix A of 40 CFR part 60 to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(c) After the initial test for opacity, conduct annual tests no more than 12 months following the date of your previous test.

(d) If the air curtain incinerator has been out of operation for more than 12 months following the date of your previous test, then you must conduct a test for opacity upon startup of the unit.

**§ 62.15815 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?**

(a) Keep records of results of all initial and annual opacity tests in either paper copy or computer-readable format that can be printed upon request, unless the Administrator approves another format, for at least five years. You must keep each record on site for at least two years. You may keep the records off site for the remaining three years.

(b) Make all records available for submittal to the Administrator or for an inspector's review.

(c) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(d) Submit initial and annual opacity test reports as electronic or paper copy

on or before the applicable submittal date.

(e) Keep a copy of the initial and annual reports for a period of five years. You must keep each report on site for at least two years. You may keep the reports off site for the remaining three years.

**§ 62.15820 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?**

Yes. If your air curtain incinerator is subject to this subpart, you are required to apply for and obtain a title V operating permit as specified in §§ 62.15825 and 62.15830.

**Title V Operating Permits**

**§ 62.15825 Am I required to apply for and obtain a title V operating permit for my existing unit?**

Yes. If you are subject to the requirements of this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 62.15485.

**§ 62.15830 When must I submit a title V permit application for my existing unit?**

(a)(1) If your existing unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1)(i) through (iii) of this section. (See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR parts 70.5(a)(1)(i) and 40 CFR part 71.5(a)(1)(i).)

(i) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 State or Tribal plan.

(ii) [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(iii) December 16, 2008.

(2) For any existing incineration unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 State or Tribal plan is approved by the EPA and becomes effective.

(b) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraph (a) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for

a title V permit prior to the deadlines specified in paragraph (a). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR part 70.3(a) and (b), 40 CFR parts 70.5(a)(1)(i), 40 CFR parts 71.3(a) and (b), and 40 CFR parts 71.5(a)(1)(i).)

(c) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR parts 70.5(a)(2) or 40 CFR part 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR parts 70.7(b) and 40 CFR part 71.7(b).)

**Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery**

**§ 62.15835 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?**

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (a) through (c) of this section.

(a) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(b) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the EPA that the temporary-use incinerator or air curtain

incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (b)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(c) If you submitted the notification containing the information in paragraph (b)(2) by the date specified in paragraph (b)(1), you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

**Delegation of Authority****§ 62.15840 What authorities are withheld by the EPA?**

The following authorities are withheld by the EPA and not transferred to the State or Tribe:

(a) Approval of alternatives to the emission limitations in Table 1 of this subpart and operating limits established under § 62.15585 and Table 2 of this subpart.

(b) Approval of petitions submitted pursuant to the requirements of

§ 62.15595 establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(c) Approval of major alternatives to test methods established under § 62.15610 and Table 1 of this subpart.

(d) Approval of major alternatives to monitoring requirements established under §§ 62.15665 through 62.15710 and Table 2 of this subpart.

(e) Approval of major alternatives to recordkeeping and reporting requirements of this subpart.

(f) Approval of requests submitted pursuant to the requirements in § 62.15570(c)(2)}.

**Equations****§ 62.15845 What equations must I use?**

(a) *Percent oxygen.* Adjust all pollutant concentrations to 7 percent oxygen using Equation 1 of this section.

$$C_{\text{adj}} = C_{\text{meas}} * (20.9 - 7) / (20.9 - \%O_2) \quad (\text{Eq. 1})$$

Where:

$C_{\text{adj}}$  = pollutant concentration adjusted to 7 percent oxygen

$C_{\text{meas}}$  = pollutant concentration measured on a dry basis

$(20.9 - 7)$  = 20.9 percent oxygen - 7 percent oxygen (defined oxygen correction basis)

20.9 = oxygen concentration in air, percent  
 $\%O_2$  = oxygen concentration measured on a dry basis, percent

(b) *Capacity of a very small municipal waste combustion unit.* For very small municipal waste combustion units that can operate continuously for 24-hour periods, calculate the unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For very small municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your very small municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your very small municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For very small municipal waste combustion units with a design not based on heat input capacity, use the maximum design charging rate.

(c) *Capacity of a batch very small municipal waste combustion unit.* Calculate the capacity of a batch OSWI unit as the maximum design amount of municipal solid waste it can charge per batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch

requires 16 hours, the OSWI unit can combust 24/16, or 1.5 batches, in 24 hours.

(d) *Carbon monoxide pollutant rate.* When hourly average pollutant rates ( $E_{hj}$ ) are obtained (e.g., CEMS values), compute the rolling average carbon monoxide pollutant rate ( $E_a$ ) for each 12-hour period using the following equation:

$$E_a = \frac{1}{12} \sum_{j=1}^{12} E_{hj} \quad (\text{Eq. 2})$$

Where:

$E_a$  = Average carbon monoxide pollutant rate for the 12-hour period, ppm corrected to 7 percent  $O_2$ .

$E_{hj}$  = Hourly arithmetic average pollutant rate for hour "j," ppm corrected to 7 percent  $O_2$ .

**Definitions****§ 62.15850 What definitions must I know?**

Terms used but not defined in this subpart are defined in the Clean Air Act and 40 CFR part 60, subpart A (General Provisions).

*Administrator* means the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task.

*Air curtain incinerator* means an incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart only, air curtain incinerators include both firebox and trench burner units.

*Auxiliary fuel* means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

*Batch OSWI unit* means an OSWI unit that is designed such that neither waste

charging nor ash removal can occur during combustion.

*Calendar quarter* means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

*Calendar year* means 365 consecutive days starting on January 1 and ending on December 31.

*Chemotherapeutic waste* means waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

*Class II municipal solid waste landfill* means a landfill that meets four criteria:

- (1) Accepts, for incineration or disposal, less than 20 tons per day of municipal solid waste or other solid wastes based on an annual average;
- (2) Is located on a site where there is no evidence of groundwater pollution caused or contributed to by the landfill;
- (3) Is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill; and

(4) Serves a community that meets one of two criteria:

- (i) Experiences for at least three months each year, an interruption in access to surface transportation, preventing access to a Class I municipal solid waste landfill; or
- (ii) Has no practicable waste management alternative, with a landfill located in an area that annually receives 25 inches or less of precipitation.

*Class III municipal solid waste landfill* is a landfill that is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill, and

that accepts, for disposal, either of the following two criteria:

(1) Ash from incinerated municipal waste in quantities less than one ton per day on an annual average, which ash must be free of food scraps that might attract animals; or

(2) Less than five tons per day of municipal solid waste, based on an annual average, and is not located in a place that meets either of the following criteria:

(i) Where public access is restricted, including restrictions on the right to move to the place and reside there; or

(ii) That is provided by an employer and that is populated totally by persons who are required to reside there as a condition of employment and who do not consider the place to be their permanent residence.

*Clean lumber* means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

*Collected from* means the transfer of material from the site at which the material is generated to a separate site where the material is burned.

*Contained gaseous material* means gases that are in a container when that container is combusted.

*Continuous emission monitoring system or CEMS* means a monitoring system for continuously measuring and recording the emissions of a pollutant from an OSWI unit.

*Continuous OSWI unit* means an OSWI unit that is designed to allow waste charging and ash removal during combustion.

*Deviation* means any instance in which a unit that meets the requirements in § 62.15460, or an owner or operator of such source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any unit that meets requirements in § 62.15460 and is required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator

qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart.

*Dioxins/furans* means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

*Energy recovery* means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

*EPA* means the Administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.

*Institutional facility* means a land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

*Institutional waste* means solid waste (as defined in this subpart) that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit: Whose design does not provide for energy recovery (as defined in this subpart); operated without energy recovery (as defined in this subpart); or operated with only waste heat recovery (as defined in this subpart). Institutional waste also means solid waste (as defined in this subpart) combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.

*Institutional waste incineration unit* means any combustion unit that combusts institutional waste (as defined in this subpart), and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste incineration units include field-erected, modular, cyclonic burn barrel, and custom built incineration units operating with starved or excess air, and any air curtain incinerator that is a distinct operating unit of the institutional facility that generated the institutional waste (except those air curtain incinerators listed in § 62.15500(b)).

*Intermittent OSWI unit* means an OSWI unit that is designed to allow waste charging, but not ash removal, during combustion.

*Low-level radioactive waste* means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the

Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

*Malfunction* means 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.

*Metropolitan Statistical Area* means any areas listed as metropolitan statistical areas in OMB Bulletin No. 05-02 entitled "Update of Statistical Area Definitions and Guidance on Their Uses" dated February 22, 2005 (available on the Web at <http://www.whitehouse.gov/omb/bulletins/>).

*Modification or modified unit* means an incineration unit you have changed on or after June 16, 2006 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(2) Any physical change in the OSWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

*Municipal solid waste* means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of this subpart if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste, as determined by § 62.15485(c).

*Municipal waste combustion unit* means, for the purpose of this subpart, any setting or equipment that combusts municipal solid waste (as defined in this subpart) including, but not limited to, field-erected, modular, cyclonic burn barrel, and custom built incineration units (with or without energy recovery) operating with starved or excess air, boilers, furnaces, pyrolysis/combustion units, and air curtain incinerators

(except those air curtain incinerators listed in § 62.15500(b)).

*Other solid waste incineration (OSWI) unit* means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this subpart. Unit types listed in § 62.15485 as being excluded from the subpart are not OSWI units subject to this subpart. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

*Particulate matter* means total particulate matter emitted from OSWI units as measured by Method 5 or Method 29 of appendix A of 40 CFR part 60.

*Pathological waste* means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

*Reconstruction* means rebuilding an incineration unit and meeting two criteria:

(1) The reconstruction begins on or after June 16, 2006.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the unit (not including land) updated to current costs (current dollars). For an OSWI unit, to determine

what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

*Refuse-derived fuel* means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

*Shutdown* means the period of time after all waste has been combusted in the primary chamber. For continuous OSWI, shutdown shall commence no less than 2 hours after the last charge to the incinerator. For intermittent OSWI, shutdown shall commence no less than 4 hours after the last charge to the incinerator. For batch OSWI, shutdown shall commence no less than 5 hours after the high-air phase of combustion has been completed.

*Solid waste* means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

*Standard conditions*, when referring to units of measure, means a temperature of 68° F (20° C) and a pressure of 1 atmosphere (101.3 kilopascals).

*Startup period* means the period of time between the activation of the system and the first charge to the OSWI unit. For batch OSWI, startup means the period of time between activation of the system and ignition of the waste.

*Very small municipal waste combustion unit* means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in § 62.15845.

*Waste heat recovery* means the process of recovering heat from the combustion flue gases by convective heat transfer only.

*Wet scrubber* means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvolatile metals and condensed organics) and/or to absorb and neutralize acid gases.

*Wood waste* means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

(4) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

*Yard waste* means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes.

(2) Clean lumber.

**Tables to Subpart KKK of Part 62**

TABLE 1 OF SUBPART KKK OF PART 62.—EMISSION LIMITATIONS

[As stated in § 62.15575, you must comply with the following]

For the air pollutant	You must meet this emission limitation <sup>a</sup>	Using this averaging time	And determining compliance using this method
1. Cadmium .....	18 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.

TABLE 1 OF SUBPART KKK OF PART 62.—EMISSION LIMITATIONS—Continued  
[As stated in § 62.15575, you must comply with the following]

For the air pollutant	You must meet this emission limitation <sup>a</sup>	Using this averaging time	And determining compliance using this method
2. Carbon monoxide .....	40 parts per million by dry volume	3-run average (1 hour minimum sample time per run during performance test), and 12-hour rolling averages measured using CEMS <sup>b</sup> .	Method 10, 10A, or 10B of appendix A of 40 CFR part 60 and CEMS.
3. Dioxins/furans (total basis) .....	33 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 23 of appendix A of 40 CFR part 60.
4. Hydrogen chloride .....	15 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Method 26A of appendix A of 40 CFR part 60.
5. Lead .....	226 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.
6. Mercury .....	74 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.
7. Opacity .....	10 percent .....	6-minute average (observe over three 1-hour test runs; i.e., thirty 6-minute averages).	Method 9 of appendix A of 40 CFR part 60.
8. Oxides of nitrogen .....	103 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 7, 7A, 7C, 7D, or 7E of appendix A of part 60. ASME PTC 19.10–1981—Part 10 is an acceptable alternative to Method 7 and 7C only (IBR, see § 60.17(h)).
9. Particulate matter .....	0.013 grains per dry standard cubic foot.	3-run average (1 hour minimum sample time per run).	Method 5 or 29 of appendix A of 40 CFR part 60.
10. Sulfur dioxide .....	3.1 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 6 or 6C of appendix A of 40 CFR part 60, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 6 only.

<sup>a</sup> All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

<sup>b</sup> Calculated each hour as the average of the previous 12 operating hours.

TABLE 2 OF SUBPART KKK OF PART 62.—OPERATING LIMITS FOR INCINERATORS AND WET SCRUBBERS  
[As stated in § 62.15585, you must comply with the following]

For these operating parameters	You must establish these operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
1. Charge rate .....	Maximum charge rate .....	Continuous .....	Every hour .....	Daily for batch units. 3-hour rolling for continuous and intermittent units. <sup>a</sup>
2. Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous .....	Every 15 minutes .....	3-hour rolling. <sup>a</sup>
3. Scrubber liquor flow rate	Minimum flow rate .....	Continuous .....	Every 15 minutes .....	3-hour rolling. <sup>a</sup>
4. Scrubber liquor pH .....	Minimum pH .....	Continuous .....	Every 15 minutes .....	3-hour rolling. <sup>a</sup>

<sup>a</sup> Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART KKK OF PART 62.—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)  
[As stated in § 62.15675, you must comply with the following]

For the following pollutants	Use the following span values for your CEMS	Use the following performance specifications (P.S.) in appendix B of 40 CFR part 60 for your CEMS	If needed to meet minimum data requirements, use the following alternate methods in appendix A of 40 CFR part 60 to collect data
1. Carbon Monoxide .....	125 percent of the maximum hourly potential carbon monoxide emissions of the waste combustion unit.	P.S.4A .....	Method 10.
2. Oxygen .....	25 percent oxygen .....	P.S.3 .....	Method 3A or 3B, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 3B only.

TABLE 4 OF SUBPART KKK OF PART 62.—SUMMARY OF REPORTING REQUIREMENTS  
 [As stated in § 62.15730, you must comply with the following]

Report	Due date	Contents	Reference
1. Initial test report .....	a. No later than 60 days following the initial performance test.	i. Complete test report for the initial performance test; and ii. The values for the site-specific operating limits.	§ 62.15740. § 62.15740.
2. Waste management plan .....	a. No later than 60 days following the initial performance test.	i. Reduction or separation of recyclable materials; and ii. Identification of additional waste management measures and how they will be implemented.	§§ 62.15520 through 62.15530. §§ 62.15520 through 62.15530.
3. Annual report .....	a. No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	i. Company Name and address;  ii. Statement and signature by the owner or operator; iii. Date of report; ..... iv. Values for the operating limits; v. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period; vi. Highest and lowest recorded 12-hour averages, as applicable, for carbon monoxide emissions and highest and lowest recorded 3-hour averages, as applicable, for each operating parameter recorded for the calendar year being reported; vii. Information for deviations or malfunctions recorded under § 62.15715(b)(6) and (c) through (e); viii. If a performance test was conducted during the reporting period, the results of the test; ix. If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2934(a) or (b) were met; and x. Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours but less than 2 weeks.	§§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750. §§ 62.15745 through 62.15750. §§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750.  §§ 62.15745 through 62.15750.

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