■ 2. In § 401.2 paragraph (k) is revised to read as follows:

§ 401.2 Interpretation.

* * * * *

(k) *Seaway Station* means a radio station operated by the Corporation or the Manager. (Refer to 401.62. Seaway Stations for the list and location of stations).

* * * * *

■ 3. In § 401.8 paragraph (c) is revised to read as follows:

§ 401.8 Landing booms.

* * * * *

(c) Vessels not equipped with or not using landing booms must use the Seaway's tie-up service at approach walls.

■ 4. Section 401.12 paragraph (a) introductory text is revised to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) Unless otherwise permitted by the officer the minimum requirements in respect of mooring lines, which shall be available for securing on either side of the vessel, winches, and the location of fairleads on vessels are as follows:

* * * * *

■ 5. In § 401.22 paragraph (c) is revised to read as follows:

§ 401.22 Preclearance of vessels.

* * * * *

(c) Unless otherwise permitted by an officer a non-commercial vessel of 300 gross registered tonnage or less cannot apply for preclearance status and must transit as a pleasure craft.

* * * * *

■ 6. § 401.24 is revised as follows:

§ 401.24 Application for preclearance.

The representative of a vessel may, on a preclearance form obtained from the Manager, St. Lambert, Quebec, or downloaded from the St. Lawrence Seaway Web site at *http://www.greatlakes-seaway.com*, apply for preclearance, giving particulars of the ownership, liability insurance and physical characteristics of the vessel and guaranteeing payment of the fees that may be incurred by the vessel.

■ 7. In § 401.40 the section heading is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 401.40 Entering, Exiting or Position in Lock.

* * * * *

(b) No vessel shall depart a lock in such a manner that the stern passes the stop symbol on the lock wall nearest the closed gates.

* * * * *

■ 8. In § 401.58 paragraph (b) is revised to read as follows:

§ 401.58 Pleasure craft scheduling.

* * * * *

(b) Every pleasure craft seeking to transit Canadian Locks shall stop at a pleasure craft dock and arrange for transit by contacting the lock personnel using the direct-line phone and make the lockage fee payment by purchasing a ticket using the automated ticket dispensers.

■ 9. In § 401.68, the section heading and paragraphs (a) introductory text, (b), (c), and (d) are revised to read as follows:

§ 401.68 Explosives Permission Letter.

(a) A Seaway Explosives Permission Letter is required for an explosive vessel in the following cases:

* * * * *

(b) When an explosive vessel is carrying quantities of explosives above the maximum mentioned in paragraph (a) of this section, no Seaway Explosives Permission Letter shall be granted and the vessel shall not transit.

(c) A written application for a Seaway Explosives Permission Letter certifying that the cargo is packed, marked, and stowed in accordance with the Canadian Regulations respecting the Carriage of Dangerous Goods, the United States Regulations under the Dangerous Cargo Act and the International Maritime Dangerous Goods Code may be made to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the St. Lawrence Seaway Management Corporation, 202 Pitt Street, Cornwall, Ontario, K6J 3P7.

(d) A signed copy of a Seaway Explosives Permission Letter and a true copy of any certificate as to the loading of dangerous cargo shall be kept on board every explosive vessel in transit and shall be made available to any officer requiring production of such copies.

* * * * *

■ 10. § 401.70 is revised to read as follows:

§ 401.70 Fendering—explosive and hazardous cargo vessels.

All explosive vessels requiring a Seaway Explosives Permission Letter in accordance with § 401.68 and all tankers carrying cargo with a flashpoint of up to 61 °C, except those carrying such cargo in center tanks with gas free wing tanks, shall be equipped with a sufficient number of non-metallic fenders on each side to prevent any metallic part of the vessel from touching the side of a dock or lock wall.

■ 11. In § 401.72 paragraph (b) is revised to read as follows:

§ 401.72 Reporting—explosive and hazardous cargo vessels.

* * * * *

(b) Every explosive vessel requiring a Seaway Explosives Permission Letter shall, when reporting in, give the number of its Seaway Explosives Permission Letter.

* * * * *

■ 12. In § 401.93 paragraph (b) is revised to read as follows:

§ 401.93 Access to Seaway property.

* * * * *

(b) Except as authorized by an officer or by the Seaway Property Regulations or its successors, no person shall enter upon any land or structure of the Manager or the Corporation or in any Seaway canal or lock area.

Issued at Washington, DC on January 11, 2007.

Saint Lawrence Seaway Development Corporation.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E7–814 Filed 1–19–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2003–0156; FRL–8272–2]

RIN 2060–AN91

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action on reconsideration.

SUMMARY: On December 16, 2005, EPA published final rules entitled, ''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units.'' Following that final action, the Administrator received a petition for reconsideration. In response to the petition, on June 28, 2006, EPA announced our reconsideration of whether SSI should be excluded from the other solid waste incineration units (OSWI) rules and requested comment on

this issue. After carefully considering all of the comments and information received through our reconsideration process, we have concluded that no additional changes are necessary to the final OSWI rules. With respect to all other issues raised by the petitioner, we deny the request for reconsideration.

DATES: This final action is effective on January 22, 2007.

ADDRESSES: *Docket:* EPA has established a docket for this action and the final OSWI new source performance standards (NSPS) (40 CFR part 60, subpart EEEE) and emission guidelines (40 CFR part 60, subpart FFFF) under Docket ID No. EPA–HQ–OAR–2003–0156. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 form. 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 20004. The Public Reading Room is located in the EPA Headquarters Library, Room 3334, and 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.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Smith, U.S. EPA, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–2421, e-mail *smith.martha@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. General Information

A. Does this notice of final action on reconsideration apply to me?

Regulated Entities. This final action on reconsideration potentially affects sewage sludge incinerators (SSI). Although there is not a specific North American Industrial Classification System (NAICS) code for SSI, these units may be operated by municipalities or other entities and the following NAICS codes apply: Non-hazardous incinerators (NAICS 562213); sludge disposal sites (NAICS 562212); and sewage treatment facilities (NAICS 221320). The categories and entities regulated by the final OSWI rules are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The final OSWI emission guidelines and new source performance standards (NSPS) 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, munition 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.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that were regulated by the final OSWI rules.

B. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final OSWI NSPS (40 CFR part 60, subpart EEEE) and emission guidelines (40 CFR part 60, subpart FFFF) is Docket ID No. EPA–HQ–OAR–2003–0156.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of the final rule and the notice of final action on reconsideration are available on the WWW through the Technology Transfer Network Web site (TTN). Following signature, EPA posted a copy of the final rule 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

Section 129 of the Clean Air Act (CAA), entitled ''Solid Waste Combustion,'' requires EPA to develop and adopt NSPS and emission guidelines for solid waste incineration units pursuant to CAA section 111. Section 111(b) of the CAA requires EPA to establish NSPS for new sources, and CAA section 111(d) requires EPA to establish procedures for States to submit plans for implementing emission guidelines for existing sources. Congress specifically added CAA section 129 to the CAA to address concerns about emissions from solid waste combustion units. Section 129(a)(1) of the CAA identifies five categories of solid waste incineration units:

(1) Units with a capacity of greater than 250 tons per day (tpd) combusting municipal waste;

(2) Units with a capacity equal to or less than 250 tpd combusting municipal waste;

(3) Units combusting hospital, medical, and infectious waste;

(4) Units combusting commercial or industrial waste; and

(5) Unspecified ''other categories of solid waste incineration units.''

EPA previously developed regulations for each of the listed categories of solid waste incineration units except for the undefined ''other categories of solid waste incineration units.'' On December 9, 2004 (69 FR 71472), EPA proposed NSPS and emission guidelines for OSWI units. EPA received and considered public comments and promulgated final regulations for OSWI units on December 16, 2005.

Following the promulgation of the final OSWI rule, EPA received a petition for reconsideration from the Sierra Club. On June 28, 2006 (71 FR 36726), we granted reconsideration and requested comment on one issue raised by the petitioner: specifically, whether SSI should be regulated under the OSWI rules.

The public comment period on the reconsideration ended on August 14, 2006. Twenty written public comments were received. The individual comment letters can be found in Docket ID No. EPA–HQ–OAR–2003–0156.

III. Actions We Are Taking

At this time, we are announcing our final action on reconsideration of one issue for which we asked for comment in our June 28, 2006, notice. We are also announcing our final decision on six remaining issues that were raised by petitioners.

A. Issue for Which Reconsideration Was Granted: Sewage Sludge Incinerators

On June 28, 2006 (71 FR 36726), we granted reconsideration of and requested comment on the SSI issue that was raised in the petition for reconsideration. Generally, the petitioner contended that SSI should be regulated as a type of OSWI under CAA section 129. The petitioner noted that the notice of proposal of the OSWI rules did not mention SSI, and claimed that there was no opportunity to comment on EPA's decision not to regulate SSI under OSWI. Moreover, the petitioner argued that EPA's rationale was advanced for the first time in the final rule and supporting documents.

In our June 28, 2006, notice of reconsideration (71 FR 36726), EPA acknowledged that the OSWI proposal notice (69 FR 71472, December 9, 2004) did not specifically mention or request comment on whether SSI should be regulated under the OSWI rules. EPA did publish notices on April 24, 2000 (65 FR 23459), and June 26, 2002 (67 FR 43113), stating that it had decided not to regulate SSI as a category under CAA section 129 and, instead, had listed it as an area source category to be regulated under CAA sections 112(c)(3) and 112(k)(3). These notices, however, did not request public comment on whether SSI should be regulated under CAA section 129 or 112. We decided to grant reconsideration of this issue in the interest of ensuring full opportunity for comment.

A total of 20 unique comments were received on the June 28, 2006, proposal notice including a comment by the petitioner, Sierra Club. Seventeen of the commenters wholly support EPA's proposed decision to regulate SSI under CAA section 112 rather than CAA section 129. One of the supporting commenters is a trade organization for publicly-owned treatment works, which are usually the SSI owners and operators. Sixteen member municipalities submitted separate comment letters endorsing the comments from the trade organization. Aside from the petitioner, two State agencies submitted comments that do not fully support EPA's proposal. All of the comments are addressed in the following discussion.

1. Legal and Record Basis for Decision Not to Regulate SSI Under OSWI Rules

a. EPA's Position in OSWI Final Rule. In promulgating the final OSWI rulemaking, EPA took the position that it was not required to regulate SSI as OSWI under the terms of CAA section 129. Section 129 of the CAA provides, in relevant part:

> Sec. 129. Solid Waste Combustion
> (a) New Source Performance Standards.—
> (1) In general.—
> (A) The Administrator shall establish performance standards and other requirements pursuant to section 111 and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 111(d) and this section) and other requirements applicable to existing units.
> [Subparagraphs (B)–(D) establish schedules for standards applicable to solid waste incineration units combusting municipal waste; hospital waste, medical waste, and infectious waste; and commercial and industrial waste.]
> (E) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish a schedule for the promulgation of standards under section 111 and this section applicable to other categories of solid waste incineration units.

In addition, CAA section 129(h)(2) provides,

> (2) Other authority under this act.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law * * *, except that no solid waste incineration unit subject to performance standards under this section and section 111 shall be subject to standards under section 112(d) of this Act.

In the final OSWI rulemaking, EPA concluded that the provisions of CAA section 129(a)(1) do not mandate that SSI be regulated as OSWI under CAA section 129. Because EPA is in the process of regulating SSI under CAA section 112, EPA relied on CAA section 129(h)(2) as part of its basis for not regulating SSI under CAA section 129 (70 FR 74874–74875, December 16, 2005).

b. Comments. One commenter (EPA–HQ–OAR–2003–0156–0118) claims that EPA's failure to set CAA section 129 standards for SSI contravenes the CAA. The commenter contends that CAA section 129 unambiguously requires EPA to set CAA section 129 standards for *any* facility that combusts *any* solid waste, with the exception of the limited categories of facilities expressly exempt in CAA section 129(g)(1). To support its view, the commenter cites CAA section 129(a)(1)(A) and notes that CAA section 129(g)(1) defines ''solid waste incineration unit'' as ''a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public. * * *''. The commenter adds that EPA recognized that ''sludge generated by publicly owned treatment works (POTWs) is a solid waste from the general public, commercial and industrial establishments'' (62 FR 1869, January 14, 1997) and that EPA admitted that sewage sludge is a solid waste (Unified Agenda, 65 FR 23549–01, April 24, 2000). The commenter concludes that a plain reading of the CAA shows that SSI cannot be exempt from CAA section 129. The commenter claims that emissions from SSI are comparable to other categories of waste incinerators regulated under CAA section 129. The commenter claims that the exclusion of SSI from the OSWI rules contravenes the CAA.[1]

Conversely, another commenter (EPA–HQ–OAR–2003–0156–0127)

[1] The commenter also claims that the exclusion of SSI from the OSWI rules contravenes the consent decree in *Sierra Club* v. *Whitman,* No. 01–1537 (D.D.C.).

asserts that EPA was well within its discretion to exclude SSI from the OSWI rule. The commenter states that CAA section 129 directs EPA to regulate certain categories of incinerators enumerated in CAA section 129(a)(1)(A)–(D), but the statute does not define the categories of ''other'' solid waste incineration units that must be regulated under CAA section 129(a)(1)(E). Therefore, inherent in EPA's implementation of CAA section 129 is the discretion to reasonably define what constitutes the statutorily undefined ''other categories'' and to determine which warrant regulation under CAA section 129. The commenter argues that this conclusion is supported by the fact that the CAA provides firm timelines for the specifically identified categories of incinerators, but states that EPA must publish only a schedule for the statutorily undefined ''other categories.'' The commenter claims that CAA section 129 plainly does not require EPA to promulgate OSWI standards for ''every'' or ''all'' possible categories of solid waste incineration units; if that had been Congress' intent, then Congress would have provided that direction in CAA section 129(a)(1)(E) by stating that EPA should regulate ''all'' or ''every'' other category of solid waste incineration units. The commenter also contends that legislative history shows Congress was focused on municipal waste combustion units, and was also concerned about other specific large incinerators, including medical waste incinerators and industrial incinerators, but that Congress did not once mention POTW sewage sludge or SSI when discussing CAA section 129. Several municipal agencies that operate SSI (EPA–HQ–OAR–2003–0156–0112, –0113, –0114, –0115, –0116, –0117, –0119, –0120, –0121, –0123, –0124, –0125, –0128, –0130, –0131, –0133) support these comments submitted by the commenter (EPA–HQ–OAR–2003–0156–0127), and support EPA's previous decision not to regulate SSI under CAA section 129.

Two commenters (EPA–HQ–OAR–2003–0156–0127, –0120) refer to CAA section 129 language that indicates the same category cannot be regulated under both CAA sections 112 and 129. The commenters state that because area source SSI are going to be regulated under CAA section 112, they cannot be regulated under CAA section 129. One of the commenters (EPA–HQ–OAR–2003–0156–0127) points out that EPA originally listed SSI as a hazardous air pollutants (HAP) source category under CAA section 112, but in 2002 determined that the SSI category did not have any major sources of HAP. Later in 2002, EPA included SSI in a list of area source categories to be regulated under CAA section 112 (67 FR 43112, June 26, 2002). Conversely, another commenter (EPA–HQ–OAR–2003–0156–0126) recommends regulating SSI under the CAA section 129 OSWI rules. A large waste water treatment plant with 14 SSI units is located in the commenter's State.

The commenter contends that these units are poorly controlled with few current applicable regulatory requirements. The commenter states that EPA has not pursued regulation of area source SSI under CAA section 112 in a timely manner. Rather than wait for potential regulations under CAA section 112, the commenter favors including SSI in the OSWI regulations.

c. Response to Comments; Legal and Record Basis for Decision Not to Regulate SSI Under OSWI Rules. EPA has decided not to regulate SSI under the OSWI rules. We are developing regulations for SSI under CAA section 112. For several reasons, we disagree with the petitioner's comment that any incinerator burning any solid waste must be regulated under CAA section 129.[2]

First, the CAA is ambiguous regarding what categories of solid waste incineration units must be regulated under CAA section 129(a)(1)(E). Subparagraph (A) of CAA section 129(a)(1) provides, ''The Administrator shall establish performance standards and other requirements pursuant to section 111 and this section for each category of solid waste incineration units.'' Subparagraphs (B)–(D) discuss timelines for very specific categories of solid waste incinerators (e.g., large and small municipal waste combustors, commercial and industrial waste incinerators, and hospital and medical waste incinerators), while subparagraph (E) states only that EPA must publish a schedule for promulgating standards for ''other categories of solid waste incineration units.'' The directive under subparagraph (A) to regulate ''each category of solid waste incineration units'' should be read in conjunction with subparagraphs (B)–(E), so that the directive refers to the categories of solid waste incineration units that are identified under subparagraphs (B)–(E). Subparagraph (E) does not unambiguously require, as implied by one commenter, that the OSWI standards must apply to every other possible type of incineration unit burning any type of solid waste. If Congress had intended such a clear directive, it could have instructed EPA to regulate ''every other category'' of solid waste incineration unit, instead of, simply, ''other categories.'' Yet Congress did not use such unambiguous language, leaving it to EPA to interpret the CAA in a reasonable manner by determining which other categories to include under subparagraph (E).

Second, the position adopted by this commenter would lead to absurd results. Under the commenter's interpretation, a homeowner burning leaves in a barrel in his or her backyard must be subject to a CAA section 129 rule because the barrel is a unit combusting solid waste material. Congress cannot have intended that EPA regulate such sources under CAA section 129, with all the attendant requirements. The language of CAA section 129 suggests that Congress wanted to focus EPA's attention to specific, larger incineration units (e.g., municipal waste combustion (MWC) units and commercial and industrial solid waste incineration (CISWI) units). Under the commenter's interpretation of CAA section 129, however, EPA would have to establish emission standards[3] for dozens of different types of small incineration units with potentially minimal emissions. As discussed in the final rule (70 FR 74875, December 16, 2005), this interpretation would result in large burdens on these sources, and Congress cannot have intended that result merely by referencing an undefined ''other'' category of incineration units. Thus, the instructions to EPA to promulgate standards for ''other categories'' of solid waste incinerators inherently include the authority for EPA to reasonably delineate those ''other'' categories of solid waste incineration units.

Third, in the proposed and final rules, we also clarified that under CAA section 129(g)(1), certain types of units are not regulated by the OSWI rules. Some of these units are specifically excluded by CAA section 129(g)(1) (e.g., hazardous waste combustion, small power production facilities, cogeneration facilities burning homogenous waste). However, as stated in the final rule, we do not agree that the facilities explicitly described in CAA section 129(g)(1) are the only types of facilities that are

[2] The commenter is also incorrect that excluding SSI units violates the consent decree in *Sierrall Club* v. *Whitman*, No. 01–1537 (D.D.C.). The Consent decree obligates EPA to regulate other categories of solid waste incinerators under CAA section 129(a)(1)(E), but does not identify SSI units as one of those categories.

[3] Under section 129(a)(1), EPA is requird to establish performance standards and other requirements for specified categories of solid waste incineration units.

properly excluded from the OSWI category. That is, we do not read CAA section 129(g)(1) to establish an exclusive list of excluded sources.

Fourth, our interpretation of CAA section 129(a)(1) and (g)(1) is consistent with legislative history. Congress added CAA section 129 as part of the 1990 CAA Amendments. Sen. Durenberger, one of the authors, indicated that he understood the provision to ''require EPA to issue new source performance standards for municipal incinerators, for medical waste incinerators and for incinerators burning commercial and industrial waste.'' S. PRT 103–38, Senate Committee on Environment and Public Works, *A Legislative History of the Clean Air Act Amendments of 1990* (''*Legislative History*'', vol. IV, p. 7052 (statement of Sen. Durenberger during Senate floor debate, April 3, 1990)). Similarly, Sen. Baucus, another of the authors, stated that the provision ''directs EPA to establish one set of standards for municipal incinerators, another set for hospital incinerators and small [municipal] units, and another set for industrial incinerators''. *Id.* at 7054 (statement of Sen. Baucus). Similarly, the Conference Report describes CAA section 129 as ''a provision to control the air emissions from municipal, hospital, and other commercial and industrial incinerators.'' H. Rep. 101–952 at 341, ''Clean Air Act Amendments of 1990, Conference Report to Accompany S. 1630,'' *reprinted in id.*, vol. I, at 1791.

The incinerators identified by these statements are included in subparagraphs (B)–(D) of CAA section 129(a)(1). These statements, and the various other statements in the legislative history of this provision, make no specific reference to any of the ''other categories of solid waste incineration units'' that may be covered under subparagraph (E).[4] Thus, the legislative history suggests that subparagraph (E) should not be read, by its terms, to sweep in all other types of solid waste incinerators. Such an expansive reading would not be consistent with the authors' statements. Thus, we have discretion to determine which categories of units constitute ''other categories of solid waste incineration units.''

Fifth, we indicated in the final OSWI rules that units are not covered under OSWI if they are regulated under other CAA section 129 or CAA section 112 standards (e.g., small and large MWC, hospital, medical and infectious waste incinerators (HMIWI), CISWI, boilers, cement kilns). The language of CAA section 129(h) makes clear the Congressional intent for CAA regulations under CAA section 129 or CAA section 112 to be mutually exclusive (70 FR 24875, December 16, 2005). We reiterated these statements in the recent CISWI final rule amendments, including, among other things, the important policy objective of avoiding duplicative regulation (70 FR 55568, 55574–55575, September 22, 2005). We maintain that we have the discretion to determine which ''other categories'' of solid waste incinerator units to regulate under CAA section 129. This discretion includes the determination of which categories are best regulated under CAA section 112 rather than CAA section 129.

Accordingly, we determined in the final OSWI rules that sources subject to CAA section 112 standards are not OSWI units.[5] Regulation of certain types of units under CAA section 112, rather than CAA section 129, is sensible. From a policy standpoint, regulation under CAA section 112 generally offers EPA more flexibility than regulation under CAA section 129, and thus allows EPA to tailor regulatory requirements more appropriately to the level of HAP emitted by the source. In particular, under CAA section 112(d), EPA has the flexibility to regulate the full range of HAP from area (i.e., non-major) sources based on either maximum achievable control technology (MACT) or ''generally available control technologies or management practices'' (GACT), whereas CAA section 129 would require MACT regardless of the level of emissions from the source. EPA has interpreted CAA section 112(d)(5) to allow consideration of costs in determining GACT. In developing MACT standards, EPA cannot consider cost in setting the floor, which is the minimum level of control required by CAA section 112(d)(3). Thus, CAA section 112(d)(5) offers EPA flexibility to develop standards for area sources that account for some of the unique characteristics of area source categories, including the economic effects of regulation on smaller sources.

Because the SSI category is composed entirely of area sources of HAP, regulating SSI under the CAA section 112 area source program offers the advantage of this flexibility. Specifically, in proposing and promulgating regulations under CAA section 112 covering SSI, EPA will have the opportunity to evaluate cost constraints, which may be particularly important in light of the relatively small size of the units at issue here. EPA may decide, based on the circumstances of the source category, to promulgate GACT, as opposed to MACT, for SSI under CAA section 112. EPA has not yet regulated SSI and thus we cannot predict at this time what the proposed standards for this category will be, but the relevant issue here is that CAA section 112 provides important flexibilities that are absent in CAA section 129. In CAA section 112, Congress specifically recognized the need for providing such flexibilities to area sources.

Moreover, regulating SSI under the CAA section 112 area source program offers the additional flexibility of determining whether to require SSI units to obtain title V permits. By comparison, were EPA to regulate SSI under CAA section 129, SSI sources would be required to obtain title V permits. The cost to small sources, such as SSI units, of the title V permit program would be relatively high, so the flexibility that CAA section 112 provides with respect to title V requirements may be useful in tailoring the overall regulatory scheme.

To summarize, given the statutory provisions of CAA sections 129(a), (g) and (h), as interpreted above, and the legislative history and policy considerations noted above, we maintain that EPA has the discretion to define which categories of combustion units should be subject to regulation under CAA section 129 and hence, to which categories of solid waste combustion units the standards for ''other categories of solid waste incineration units'' apply. Thus, at the outset of the rulemaking process, EPA determined what universe of sources will be subject to the regulations. As

[4] That Congress did not intend for all types of incinerators to be regulated under CAA section 129 is evidenced by the fact that Congress, at the time it enacted CAA section 129, was aware of other categories of solid waste incinerators, but did not discuss those units in the context of CAA section 129. For example, the Senate Committee Report listed SSI among source categories that emit carcinogenic pollutants. S. Rep. 101–228 ''Clean Air Act Amendments of 1989, Report of the Senate Committee on Environment and Public Works,'' at 188, Figure III–7, *reprinted in Legislative History,* vol. V, at 8528. This statement was made as part of a discussion of regulating toxics in general under the authority of CAA section 112, and not in the context of proposed CAA section 129. Similarly, a Statement by Sen. Baucus notes that title III of the 1990 Clean Air Act Amendments covers, among other things, ''sewage treatment plants incinerators.'' Legislative History, vol. 1, at 1028 (statements of Sen. Baucus). This statement was made as part of discussions of regulating toxics in general title III, and not specifically in the context of proposed CAA section 129. Thus, each of these statement is consistent with regulating SSI under CAA section 112, and neither indicates congressional intent that SSi be regulated under CAA section 129.

[5] Absence of current regulations under CAA section 112, however, is not determinative of whether a unit is subject to the final OSWI rules.

explained further in the final rule, in determining the scope of OSWI, EPA collected and analyzed data to identify potential OSWI units. EPA determined that the regulations should focus on two categories of waste combustion units: IWI units and VSMWC units.

SSI are a source category that is being addressed under CAA section 112. EPA acknowledges that earlier notices indicated that SSI would be considered OSWI units (62 FR 1868, January 14, 1997; 63 FR 66087, December 1, 1998). However, as we discussed in the preamble to the final OSWI rules and the response to comment document, later notices conveyed the fact we intended to regulate SSI under CAA section 112, not under CAA section 129.

As early as April 2000, EPA indicated that it no longer intended to regulate SSI under CAA section 129 (Unified Agenda, 65 FR 23459–01, April 24, 2000). In addition, EPA's intent to regulate these sources under CAA section 112 was made clear when SSI were included as an additional area source category listed pursuant to CAA sections 112(c)(3) and 112(k)(3)(B)(ii) in the June 26, 2002 **Federal Register** (67 FR 43113). As discussed previously, source categories regulated by CAA section 112 should not also be subject to a CAA section 129 regulation. In previous regulatory activities, EPA was unable to identify any SSI that were major sources. (See 67 FR 6521, February 12, 2002.) Therefore, the entire SSI source category consists of area sources, and will be addressed by the CAA sections 112(c) and 112(k) regulations. In fact, EPA is under a court-ordered schedule to promulgate standards under CAA section 112(d) for those area source categories listed by EPA pursuant to CAA sections 112(c)(3) and (k)(3)(B). *Sierra Club* v. *Johnson,* No. 1:01CV01537 (D.D.C.) Order (March 31, 2006). EPA must promulgate standards for a specified number of area source categories every 6 months between December 15, 2006 and June 15, 2009. SSI is one of the listed categories, so EPA must promulgate CAA section 112 regulations for SSI no later than June 15, 2009. We believe that CAA section 112, by virtue of offering greater flexibility in allowing consideration of cost to determine the level of control required for area sources and in applying title V requirements is a reasonable vehicle for regulation of SSI, given that the SSI category is composed of area sources. We further believe that, in light of the plan to regulate SSI under CAA section 112, regulation of SSI under CAA section 129 is unnecessary and would be duplicative.

Regarding the comment from a State agency that a specific large SSI in their State is poorly controlled, a State or local agency is free to develop regulations to address a state or local air quality issue if they believe action is necessary prior to EPA's development of CAA section 112 standards for SSI.

2. Other Arguments Advanced by Commenters for Not Regulating SSI Under CAA Section 129

Two commenters (EPA–HQ–OAR–2003–0156–0127, –0122) contend that EPA has no authority to regulate SSI under CAA section 129 for the definitional reasons that, in their view, (i) sludge from POTWs is not ''solid waste'' within the meaning of CAA section 129(g)(6); and (ii) SSI are not ''solid waste incineration unit[s]'' within the meaning of CAA section 129(g)(1). Under CAA section 129(g)(6), ''solid waste'' is given the same definition as the term is given under the Solid Waste Disposal Act. EPA provided a definition in the OSWI final rule (70 FR 74921, December 16, 2005) (40 CFR 60.3078): ''*Solid waste* means any garbage, refuse, sludge from a waste treatment plant * * * But does not include solid or dissolved material in domestic sewage * * *.''

The commenter appears to argue that sludge from a POTW constitutes ''solid or dissolved material in domestic sewage.'' In the April 2000 Unified Agenda, in which EPA announced that it would regulate SSI under CAA section 112, EPA stated that POTW-generated sewage sludge is ''solid waste.'' (65 FR 23459, April 24, 2000). EPA noted that statement in the OSWI final rule, in the context of explaining that EPA had a long-standing policy of regulating SSI under CAA section 112, citing the April 2000 Unified Agenda (70 FR 74880, December 16, 2005). However, because EPA has determined not to regulate SSI as OSWI under CAA section 129 for other reasons, it is not necessary to evaluate the comment that POTW-generated sewage sludge is not ''solid waste.''

Under CAA section 129(g)(1), a ''solid waste incineration unit'' is defined, in relevant part, as a ''unit * * * of any facility which combusts any solid waste material from commercial or industrial establishments or the general public * * *.'' Some commenters argue that POTWs are municipal sources, not the sources described in the definition of ''solid waste incineration unit[s]'', and therefore do not meet that definition.[6]

[6] One commenter (EPA–HQ–OAR–2003–0156–0118) disagreed and argues that SSI do meet the definition of ''solid waste incinceration units.'' The commenter further states that much of the waste burned in MWC and medical waste incinerators comes from municipal sources and that these incinerators are regulated under CAA section 129. The commenter further notes that in any event, some SSI are privately owned.

EPA included a statement to this effect in the April, 2000 Unified Agenda (65 FR 23459, April 24, 2000). EPA cited this statement in the OSWI final rule in the context of explaining that EPA had a long-standing policy of regulating SSI under CAA section 112. As noted above, because EPA has determined not to regulate SSI under CAA section 129 for other reasons, it was not necessary for EPA to determine in the final OSWI rule whether SSI meet the definition of ''solid waste incineration unit[s],'' and for the same reason, it is not necessary to respond to the comments here.

3. Regulatory History

One commenter (EPA–HQ–OAR–2003–0156–0118) dismisses EPA's argument that since April 2000 EPA has indicated it no longer intends to regulate SSI as incinerators under CAA section 129 but intends to regulate them as area sources of HAP under CAA section 112. The commenter says that EPA's announcement of this intent in the April 2000 semiannual regulatory agenda does not alter EPA's statutory obligation under CAA section 129.

As discussed above, we have decided not to regulate SSI under the OSWI regulations. These units will be regulated under a separate CAA section 112 area source regulation currently under development. This reconsideration process cures any defects in the notice-and-comment process that the commenter believes occurred in the past.[7]

4. Impacts

In support of EPA's decision to not regulate SSI under the OSWI rule, several commenters discuss the benefits of incineration and argue that the costs of regulation under CAA section 129 would cause adverse impacts to communities. For example, two commenters point out several benefits provided by incineration of sewage sludge. One commenter (EPA–HQ–OAR–2003–0156–0127) states that incineration of biosolids reduces waste volume, destroys pathogens, and degrades toxic organic compounds and is, therefore, an important, safe, and effective component of biosolids

[7] Another commenter (EPA–HQ–OAR–2003–0156–0127) responds to one of the petitioner's claims by describing the regulatory history and concludes that EPA's decision not to regulate SSI under CAA section 129 was reached after a thorough and complete evaluation of the issues that included opportunities for comment.

management practices used by POTWs. Another commenter (EPA–HQ–OAR–2003–0156–0122) adds that incineration is a viable and important management option for POTWs. The commenter states that incineration gives a municipality greater control of their operation by reducing dependency on others to accept and use biosolids, minimizes onsite and offsite odors, requires a small land area, can be operated continuously in all weather conditions, and can also be a source of energy. According to the commenters, approximately 17 percent of biosolids generated by POTWs are incinerated, and 150 municipalities in the United States use thermal oxidation to turn biosolids into an energy source to produce some or all of the energy they need to operate, provide an extra revenue source, and help reduce energy and transportation costs. One commenter provides references and attachments to demonstrate that EPA has recognized SSI as a viable option for local community management of biosolids. The other commenter attached a brochure on bioenergy from wastewater treatment. Both commenters argue that subjecting SSI to CAA section 129 rules could eliminate SSI as a viable option.

Regarding impacts of regulation under CAA section 129, one commenter (EPA–HQ–OAR–2003–0156–0127) states that including SSI in OSWI would impose substantial costs to SSI operators without corresponding benefits, and the costs that would be imposed on POTW ratepayers could eliminate SSI as a safe, viable, and cost-effective biosolids management option for many communities. The regulatory burden would be substantial without corresponding health or environmental benefits. The commenter is also concerned that limits for NO_X and CO might not be simultaneously achievable. The commenter concludes that cost and regulatory burden of regulating SSI under CAA section 129 would be inconsistent with past EPA declarations that incineration is a safe and acceptable biosolids disposal practice and Congressional intent that EPA provide safe management practices for use and disposal of biosolids and not dictate preferred practices and eliminate others. Another commenter (EPA–HQ–OAR–2003–0156–0122) adds that a technology-based standard imposed by CAA section 129 would require major expenditure whether or not there are any risks to human health and the environment.

A few commenters provided estimates on the cost impacts that a CAA section 129 regulation would have on their SSI. As an example, one commenter (EPA–HQ–OAR–2003–0156–0112) says that incineration is the least costly method of sewage sludge disposal for Anchorage, AK. They haul two dump truck loads of SSI ash to the regional landfill weekly, a 50-mile round trip through residential neighborhoods. If SSI were eliminated because of costly regulations, hauling sludge to the landfill would require 28 more dump truck loads per week at a cost of $90,000 per month, and would increase air pollution from the dump trucks. In another comment, a commenter (EPA–HQ–OAR–2003–0156–0123) operates a POTW that serves a population of 450,000 people and has two multiple hearth SSI. The commenter's preliminary analysis of available technologies to meet CAA section 129 OSWI regulations indicate that those technologies have not been applied to multiple-hearth incinerators, are expensive, and may not provide consistent compliance. The commenter estimates that modification of their existing furnaces could cost over $18 million, and the option of replacing the existing furnaces with new fluidized bed SSI with emission controls that meet CAA section 129 emission limits would be $35 to 40 million. The commenter investigated an alternative to incineration, and estimated the cost to convert to anaerobic digestion with dewatered sludge disposal was $50 million. For this option, a landfill or land application site to dispose of the sludge would need to be found, and 25 to 30 trucks per day would be required to haul the district's sludge, which would be intrusive to neighborhoods and generate emissions.

As we have discussed earlier, we have decided not to regulate SSI under the OSWI regulations. These units will be regulated under a separate CAA section 112 area source regulation currently under development. We agree with the commenters that SSI are an important option for community management of biosolids from POTW that treat sewage sludge, and have environmental benefits. As discussed in section A.1, CAA section 112 allows EPA greater flexibility than CAA section 129 to establish emission limits that serve the overall purpose of protecting public health and the environment while avoiding unreasonable economic impacts and preserving the benefits of SSI cited by the commenters.

5. Carbon Monoxide Limits for SSI

One commenter (EPA–HQ–OAR–2003–0156–0129) says the nine POTWs using SSI in their State have permits under State air rules and title V that include CO and volatile organic compound (VOC) emission limits. The commenter believes that all incinerators should have CO limits and CO continuous emissions monitoring (CEM) requirements because CO is a good indicator of combustion efficiency. The commenter states that current Federal Clean Water Act SSI regulations in 40 CFR part 503 have a hydrocarbon concentration limit, but do not have a CO limit. They recommend that either 40 CFR part 503 be revised to include an emission limit and CEM requirement for CO, or that SSI be subject to the OSWI rules.

As we have discussed fully earlier, we have decided not to regulate SSI under the OSWI regulations. These units will be regulated under a separate CAA section 112 area source regulation currently under development. We are unable to say what the final requirements for SSI will be under these regulations. We encourage all interested parties to provide comments on the CAA section 112 area source regulations for SSI once they are proposed.

6. SSI Are Already Regulated

Two commenters (EPA–HQ–OAR–2003–0156–0127 and EPA–HQ–OAR–2003–0156–0122) say EPA's decision not to regulate SSI under CAA section 129 is reasonable because SSI are already regulated by other regulations that protect public health and the environment. The commenters explain that since 1993, POTWs have been subject to a comprehensive, risk-based program for reducing potential environmental risks of sewage sludge under Clean Water Act (CWA) sections 405 and the implementing regulations in 40 CFR part 503. For disposal of sewage sludge by incineration, 40 CFR part 503, subpart E requires:

- Management practices and general requirements
- Risk-based, site-specific limits for arsenic, cadmium, chromium, lead, and nickel content in biosolids incinerated
- Compliance with national emission standards for hazardous air pollutants (NESHAP) for mercury and beryllium
- Emission limits for total hydrocarbon (THC) or an alternative emission limit for CO
- Monitoring, recordkeeping and reporting.

The commenters note that in developing 40 CFR part 503 rules, EPA also proposed a requirement for dioxin/furan, but decided such requirements were not warranted based on a risk assessment showing risks from dioxin were less than one in one million. The commenters argue that the 40 CFR part 503 standards are protective of health

and the environment, and that the biennial review process in CWA section 405 provides an ample means for EPA to identify and regulate any additional concerns under 40 CFR part 503. Another commenter (EPA–HQ–OAR–2003–0156–0114) adds that the 40 CFR part 503 regulations are risked-based and were set (using conservative assumptions) to ensure protection from cancer risks at a level of 10 − 5 (i.e., one in ten thousand).

The commenters (EPA–HQ–OAR–2003–0156–0127 and EPA–HQ–OAR–2003–0156–0122) state that the mercury NESHAP (40 CFR part 61, subpart E) sets mercury emission limits, testing, and monitoring requirements for sources that incinerate wastewater treatment plant sludge; and the beryllium NESHAP (40 CFR part 61, subpart C) sets limits for incinerators that process beryllium containing waste. SSI constructed or modified since June 11, 1973 are subject to the SSI NSPS (40 CFR part 60, subpart O), which contain particulate matter, opacity, operating, testing and monitoring requirements. One of the commenters (EPA–HQ–OAR–2003–0156–0127) adds that SSI are subject to title V permits if they are major sources and to State and local requirements. Under CWA section 403, POTWs also implement, through local regulatory authority, pretreatment standards that reduce harmful constituents of biosolids. The commenters (EPA–HQ–OAR–2003–0156–0127 and EPA–HQ–OAR–2003–0156–0122) contend that the combination of CWA and CAA regulations address CAA section 129 pollutants that are of concern for SSI, and that further regulation under CAA section 129 is not needed.

Another commenter (EPA–HQ–OAR–2003–0156–0112) stated that their city's SSI is subject to emission limits for PM, opacity, beryllium, and mercury and is required to routinely monitor NO_X and CO emissions. They believe these regulations adequately protect public health and the environment and additional regulation under CAA section 129 is not warranted.

We appreciate commenters' support of our decision to not regulate SSI under the CAA section 129 OSWI regulations. We also acknowledge that various CWA and CAA regulations currently apply to SSI. These other regulations provide some additional support for our decision not to regulate under CAA section 129 because these other regulations provide protection of human health and the environment for many of the pollutants regulated by CAA section 129 regulations. In addition, as discussed earlier, we are currently in the process of developing CAA section 112 regulations for HAP emitted from the SSI source category. At the moment, we are unable to say what the final requirements for SSI will be under these regulations. Therefore, we encourage all interested parties to provide comments on the CAA section 112 area source regulations for SSI once they are proposed.

B. Remaining Issues in Petition for Reconsideration

We denied six issues contained in the petitioner's request for reconsideration because they failed to meet the standard for reconsideration under CAA section 307(d)(7)(B). Specifically, on these issues, the petitioner has failed to show the following: That it was impracticable to raise their objections during the comment period; or that the grounds for their objections arose after the close of the comment period; and/or that their concern is of central relevance to the outcome of the rules. We have concluded that no clarifications to the underlying rules are warranted for these six remaining issues, as described below.

1. Human Crematories

The petitioner objects to the exclusion of human crematories from the OSWI rules. They contend that EPA raised new arguments regarding whether human bodies burned at crematories are solid waste during promulgation of the final OSWI rules.

We do not agree with the petitioner's claim. We took comment on human crematories as OSWI in the notice of proposed rulemaking published on December 9, 2004 (69 FR 71479). In the notice of proposed rulemaking, we made clear that the human body is not considered ''solid waste'' and human crematories are, therefore, not considered solid waste incineration units. Comments were received regarding human bodies and their juxtaposition to the definition of solid waste used in the OSWI rules. In the notice of final rulemaking (70 FR 74881, December 16, 2005), we responded to these comments, but we did not introduce a new definition of solid waste. Rather, in the final rule, we excluded human crematories from the OSWI rules for precisely the same reason as proposed. Therefore, EPA denies the request to reconsider human crematories in the OSWI rules.

2. Incinerators in Isolated Areas of Alaska

The petitioner contends that the policy arguments that EPA advanced at proposal and promulgation of the OSWI rules for exempting incinerators in isolated areas of Alaska are not valid and contravene the requirements of CAA section 129. They further claim that EPA raised new arguments during promulgation of the OSWI rules that commercial/industrial incinerators that burn only municipal-type waste are not subject to the CISWI rules, and they argue that such incinerators should be regulated. An example is an incinerator that is owned by an industrial company, is located in an oil field in Alaska, and burns only household or municipal-type waste.

We deny the petitioner's request for reconsideration on this issue. We proposed and took comment on the exemption of incinerators and air curtain incinerators that are used at solid waste disposal sites operating in isolated areas of Alaska, and that are classified as Class II or Class III facilities under the Alaskan State codes (which, in turn, are authorized under the Solid Waste Disposal Act) (69 FR 71482–71483, December 9, 2004).

We received comments that certain incinerators are used to dispose of household- or municipal-type waste generated at oil fields and oil pipeline pumping stations and the commenters raised the issue of whether these units would be exempt from OSWI regulations. In the preamble to the final OSWI regulations, we noted that the comments did not provide specific enough information about those incinerators. In responding to the comment, we explained that only units that would otherwise be considered VSMWC or IWI could be subject to regulation as OSWIs, and that the Alaska exemption was limited to units that would, absent such exemption, be treated as VSMWC or IWI and, thereby, be subject to regulation as OSWI. Units that would not be treated as VSMWC or IWI would not be regulated as OSWI. We then noted that although the commenters provided insufficient information about the other incinerators, the information they did provide suggests that the incinerators would not qualify as VSMWC or IWI units (70 FR 74878, December 16, 2005). Petitioners have not demonstrated any basis for why this conclusion merits reconsideration and, as a result, we deny the petition for reconsideration on this point.

In the final OSWI rule, we further noted that the incinerators described by the commenters, i.e., those at oil fields and oil pipeline pumping stations, may potentially be considered CISWI units depending on the waste combusted. If they incinerate municipal-type waste, then ''the final CISWI rules do not

currently cover commercial/industrial-owned/operated incinerators that burn only municipal-type waste'' (70 FR 74878, December 16, 2005). We added, ''EPA intends to address regulation of such combustion units under future revisions to the final CISWI rules.'' *Id.* Petitioners object to these statements, and state that the CISWI rules do cover these types of combustors, and further state that if the CISWI rules do not cover these types of combustors, then EPA is unlawfully deferring regulation under CISWI.[8]

We disagree with the petitioners. Although the CISWI regulations promulgated in 2000 regulate incinerators located at commercial or industrial facilities that are used to combust industrial or commercial waste as defined in the CISWI rules, the CISWI regulations do not cover units located at commercial or industrial facilities that are used to combust more than 30 percent municipal-type wastes (e.g., food scraps, packaging, disposable eating utensils, etc.) (40 CFR 60.2020(c) and 40 CFR 60.2555(c)). Our promulgation of those regulations fulfilled our obligations to promulgate CISWI regulations. Continued review of those regulations, as we intend to do, does not amount to unlawful deferral of regulation.

3. Temporary-Use Incinerators

At proposal, EPA exempted temporary-use incinerators used in disaster or emergency recovery efforts from the rule. Based on public comments, EPA narrowed the exemption to limit the potential for abuse. The petitioner contends that EPA did not provide an opportunity to comment on the revised exclusion in the final rule, and that the exclusion still exceeds EPA's authority under CAA section 129.

We are denying this request because we provided adequate opportunity to comment on temporary-use incinerators used in disaster recovery in the notice of proposed rulemaking for OSWI published on December 9, 2004 (69 FR 71483). Commenters pointed out a potential for abuse in the proposed exemption, which could allow incinerators to operate indefinitely in major disaster areas without having to comply with the regulations. To address these comments, as explained in the notice of final rulemaking (70 FR 74879–74880, December 16, 2005), and the response to comments document, EPA narrowed the exemption in the final OSWI regulations to temporary use incinerators in local, State and Federally proclaimed disaster areas; and, in addition, limited the amount of time an incinerator may operate in the recovery effort without seeking approval from EPA for an extension of operating time. Thus, the revisions in the final rule are a logical outgrowth of the proposed rule. Therefore, having taken comment on the issue and responded to those comments during the rulemaking, EPA denies the request to reconsider the exemption for temporary-use incinerators used in disaster recovery in the OSWI rules.

4. Incinerators That Burn National Security Documents

At proposal, EPA requested comments on whether it should provide an exclusion from the OSWI rules for incinerators that burn national security documents. At promulgation, EPA established exclusions for certain incinerators burning national security documents, and the petitioner contends that they did not have an opportunity to comment on the rationale for the exclusion.

We deny the petitioner's request for reconsideration of this issue. In the notice of proposed rulemaking, we took comment on providing an exclusion for ''a subclass of IWI that burn national security documents,'' so that such subclass would not be regulated as an OSWI (69 FR 71478, December 9, 2004). We received comments from both the public and other government agencies for and against the need for such an exclusion. On one hand, some public commenters do not believe that there was sufficient reason to provide an exclusion for these units. On the other hand, some public commenters and government agencies presented cases where sensitive documents must be destroyed quickly and thoroughly, and noted that document shredding and chemical treatment may be unavailable or infeasible. Such is the case for field military readiness training exercises, where it would be infeasible to carry hazardous chemicals and equipment needed to destroy classified documents in the field.

Moreover, the final rule does not provide an outright exclusion from OSWI for incinerators that burn national security documents (70 FR 74880–74881, December 16, 2005). However, to address the comments, we provided a narrow exemption for IWI units used solely during military training field exercises to destroy national security materials integral to the field exercises. In addition, because we realized that there may be particular instances where incineration may be the only viable method of destroying national security materials, we included provisions such that individual IWI sources could apply for this exclusion as necessary. One example arises when chemical/mechanical re-pulping is the primary method of destruction of national security documents; however, a mechanical malfunction prevents use of the system for an extended period of time. In the meantime, there are ongoing national security document destruction needs at the facility that must be met. It may be that a back-up incinerator is the only available alternative to adequately destroy the documents while repairs are being made to the re-pulping system. To operate the incinerator without meeting the requirements of the OSWI rules, the facility must apply for an exclusion for the incinerator and demonstrate that no other alternatives for destruction of the materials are presently available.

The exemptions added in the final rule are a logical outgrowth from the solicitation of comment in the proposed rule. Thus, EPA denies the request to reconsider incinerators used to burn national security documents in the OSWI rules.

5. Cement Kilns

The petitioner states that the proposed OSWI regulations included an exclusion for cement kilns, but this exclusion was not specifically discussed in the preamble to the proposed rule. The petitioner contends that EPA argued for the first time in the final rule that EPA does not need to set standards for cement kilns under CAA section 129 because they are already regulated under CAA section 112. The petitioner disagrees with this rationale.

We note that while the cement kiln exclusion was not discussed per se in the preamble to the proposed rules, the exclusion was clearly presented in the proposed regulatory language. In fact, the petitioner provided comments on the proposed exclusion for cement kilns, to which EPA provided a response in the response to comment document supporting the final OSWI regulations. As we noted in our response, cement kilns have been regulated under a CAA section 112 regulation since 1999, which covers both major and area source cement kilns.

As we discussed in both the proposal (69 FR 71475 and 71477, December 9, 2004) and promulgation preambles (70 FR 74872 and 74875, December 16, 2005), as well as the response to comment document for the OSWI rules, the language of CAA section 129(h) makes clear the Congressional intent for

[8] As noted above, a challenge by the Natural Resources Defense Council to this rule is pending before the D.C. Circuit.

CAA regulations under CAA section 129 or CAA section 112 to be mutually exclusive. At proposal, in addition to submitting comments specifically on cement kilns, the petitioner also submitted comments on our general rationale that EPA has the discretion to determine which categories of incineration units should be regulated under CAA section 112 instead of CAA section 129, and that the same source category cannot be regulated under both sections of the CAA.

Therefore, having received comment on the issue and responding to said comments during the rulemaking, EPA denies the request to reconsider the exclusion of cement kilns from the OSWI rules.

6. Plasma Arcs and Other Incineration Technologies

The petitioner contends that EPA failed to mention plasma arcs and various other combustion technologies in the preamble to the proposed OSWI rules. The petitioner notes that EPA received comments on whether various technologies should be regulated. The petitioner argues that in the final rule, EPA seeks to ''broadly exclude a wide variety of incinerators from regulation as incinerators and-in some cases-from any regulations at all'' and that there was no opportunity to comment on EPA's rationale for such an exclusion.

As the commenter notes, we received, and responded to, comments on this issue in the preamble to the final rules (70 FR 74876–74877, December 16, 2005). It is unrealistic to expect EPA, or the commenter, to know of every available technology that is, or could be, used to function as a VSMWC or IWI. Therefore, the OSWI rules are written such that applicability is not limited to specific combustion technologies. (Although it should be noted that IWI are limited to units without energy recovery or with only waste heat recovery.) As we explained in the preamble to the final rules and in the supporting response to comment documents, if a combustion unit meets the definition of a VSMWC or IWI in the OSWI rules, and is not subject to one of the specific exclusions provided in the OSWI rules, then it would need to meet the requirements of the OSWI rules.

We do not provide specific exclusions in the final OSWI rules for particular combustion technologies,[9] as the petitioner seems to imply. Instead, our response to comments simply provides some examples from real-world applications of the technologies the commenter listed and examples of how these applications would fit into the regulatory boundaries of CAA section 129 and CAA section 112 regulations. As we pointed out in the preamble to the final OSWI rules (70 FR 74877, December 16, 2005), gasification, thermal oxidizers, catalytic cracking, etc. are typically, from what we have seen, used in industrial settings. The OSWI regulations do not apply to industrial combustion units. Furthermore, without further information on the specific design, materials combusted, and function of the other combustion technologies, we are not able to definitively say, as the petitioner requests, that the various combustion units are, or are not, subject to the final OSWI rules. Regardless of the technology, if a unit meets the definition of an IWI or VSMWC unit in the OSWI rules, and is not specifically excluded, then it would be subject to the OSWI rules.

In conclusion, having taken comment on this issue and have responded to said comments during the rulemaking process, we deny the request to reconsider setting standards specific to plasma arcs and other combustion technologies in the OSWI rules.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork as part of this action. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing OSWI rules (40 CFR part 60, subparts EEEE and FFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0563 and EPA ICR No. 2163.02 for subpart EEEE, and OMB control number 2060–0562 and EPA ICR No. 2164.02 for subpart FFFF. A copy of the OMB approved Information Collection Requests (ICR), may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the final 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 $6.0 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (very small municipal waste combustors)), based on Small Business Administration's size standards;

2. A small governmental jurisdiction that is a government of a city, county,

[9] The petitioner also implies that EPA's determination that plasma arcs are non-combustion is factually incorrect. From our understanding of the plasma arc process, organic materials are gasified in reactions at high temperature with steam to produce a synthesis gas that can be used as a fuel while inorganic constituents are simultaneously melted into a vitrified solid product that resists leaching. Unlike combustion processes that generate heat, the plasma arc melting and gasification process absorbs heat and requires an outside heat source. See ''Environmental Technology Verification Report for the Plasma Enhanced Melter'', CERF/IIEC Report #40633, May 2002 for more details on plasma arc technology.

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 impact of this notice of final action on reconsideration on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not propose any changes to the final OSWI rules and will not impose any requirements on small entities. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this reconsideration notice.

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 CAA 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, CAA 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 rule. The provisions of CAA section 205 do not apply when they are inconsistent with applicable law. Moreover, CAA 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 have developed, under CAA section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this notice of final action on reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. We are not revising the final OSWI rule. Thus, this notice of final action on reconsideration is not subject to the requirements of CAA section 202 and 205 of the UMRA. In addition, EPA has determined that the notice of final action on reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the notice of final action on reconsideration is not subject to the requirements of CAA 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 States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government.''

This notice of final action on reconsideration does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The notice of final action on reconsideration will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this notice of final action on reconsideration.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

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

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.

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 CAA section 5–501 of the Executive Order has the potential to influence the regulation. This notice of final action on reconsideration is not subject to Executive Order 13045 because it is not economically significant, and the original OSWI rules are based on technology performance and not on health and safety risks.

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

This notice of final action on reconsideration is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the notice of reconsideration and request for public comment, CAA 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 its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This notice of final action on reconsideration does not involve technical standards. EPA's compliance with CAA section 12(d) of the NTTAA has been addressed in the preamble of the underlying final OSWI rules (70 FR 74891, December 16, 2005).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing the final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the **Federal Register** on December 16, 2005. The final rules are not ''major rules'' as defined by 5 U.S.C. 804(2). The final emission guidelines were effective on February 14, 2006. The final NSPS were effective on June 16, 2006. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**.

List of Subjects in 40 CFR Part 60

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

Dated: January 16, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–820 Filed 1–19–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

RIN 0750–AF56

Defense Federal Acquisition Regulation Supplement; Emergency Acquisitions (DFARS Case 2006–D036)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide a single reference to DoD-unique acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.

DATES: *Effective date:* January 22, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D036, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2006–D036 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Item II of Federal Acquisition Circular 2005–11, published at 71 FR 38247 on July 5, 2006, added Part 18 to the Federal Acquisition Regulation (FAR). FAR Part 18 provides a single reference to Governmentwide acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations. This interim DFARS rule adds a new Part 218 to provide a single reference to the additional acquisition flexibilities available to DoD.

Consistent with the FAR, the flexibilities in DFARS Part 218 are divided into two subparts. The first subpart, entitled ''Available Acquisition Flexibilities'' identifies the DoD flexibilities that may be used anytime and do not require an emergency declaration. The second subpart, entitled ''Emergency Acquisition Flexibilities'' identifies the DoD flexibilities that may be used only after an emergency declaration or designation has been made by the appropriate official. The second subpart is further divided into three sections: Contingency operation; Defense or recovery from certain attacks; and Incidents of national significance, emergency declaration, or major disaster declaration.

DoD would like to hear the views of interested parties on the sufficiency of these provisions. In particular, DoD is interested in receiving input as to whether the provisions sufficiently clarify the existing DFARS flexibilities that can be used in emergency situations or whether more detailed, comprehensive coverage is needed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a compilation of existing authorities, and makes no change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D036.