

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2005-0117; FRL-8289-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule.

SUMMARY: On May 10, 2006, EPA published a final rule entitled, "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors." Following that final action, the Administrator received a petition for reconsideration. In response to the petition, EPA is announcing its reconsideration of three aspects of the rule: operator stand-in provisions, data requirements for continuous monitors, and the status of operating parameters during the 2 weeks prior to mercury and dioxin/furan testing.

DATES: Comments. Comments must be received on or before [INSERT THE DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], 30 days after publication in the Federal Register. Because of the need to resolve the issues raised in this action in a timely manner, EPA will not grant requests for extensions beyond this date. If, however, a public hearing is held, the comment period will remain open until [INSERT THE DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Public Hearing. If anyone contacts EPA by [INSERT THE DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] requesting to speak at a public hearing, EPA will hold a public hearing on [INSERT THE DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If you are interested in attending the public hearing, contact Pamela Garrett at (919) 541-7966 to verify that a hearing will be held.

ADDRESSES: Comments. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0117, by one of the following methods.

Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

E-mail: Send your comments via electronic mail to a-and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Facsimile: Fax your comments to (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Mail: Send your comments to: EPA Docket Center (EPA/DC), EPA, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2005-0117.

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2005-0117. Such deliveries are accepted only during the Docket's 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-2005-0117. 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 and 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 requested, 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. If no one contacts Pamela Garrett by [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] requesting to speak at a public hearing, we will not hold a hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the reconsideration. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of rebuttal and supplementary information.

Docket. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., 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, Room 3334, 1301 Constitution Ave., NW, Washington, DC. This Docket facility and the Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket 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: Mr. Walt Stevenson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5264, e-mail stevenson.walt@epa.gov. For questions about the public hearing, contact Pamela Garrett (919) 541-7966.

SUPPLEMENTARY INFORMATION:

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

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I. General Information

- A. Does this notice of reconsideration apply to me?
 - 1. Regulated Entities

Categories and entities potentially affected by this

reconsideration notice are municipal waste combustion units with a design combustion capacity of greater than 250 tons per day (tpd). The New Source Performance Standards (NSPS) and emission guidelines for municipal waste combustors affect the following categories of sources:

Category	NAICS Code	Examples of potentially regulated entities
Industry, Federal government, and State/local/tribal governments.	562213, 92411	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal solid waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal solid waste) and do not recover energy from the waste combustion.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are regulated by the final large municipal waste combustors (MWC) rules. You should consult the applicability provisions of the NSPS and emission guidelines to determine if you are subject to the rule.

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

Docket. The docket number for this action and the final large MWC NSPS (40 CFR part 60, subpart Eb) and emission guidelines (40 CFR part 60, subpart Cb) is Docket ID No. EPA-HQ-OAR-2005-0117.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of the final rule and this notice of reconsideration are available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of this notice 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 for new units and emission guidelines for existing units for solid waste incineration units pursuant to CAA sections 111 and 129. Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of the NSPS and emissions guidelines and, in accordance with sections 129 and 111, revise the NSPS and emission guidelines. EPA undertook and completed that review. On December 19, 2005 (70 FR 75348), EPA proposed amendments to the NSPS and emission guidelines to reflect the revisions EPA believes are appropriate. EPA carefully considered comments received on the proposal and promulgated the amendments on May 10, 2006.

Following the promulgation of the final amendments to the large MWC rule, EPA received a petition for reconsideration from Earthjustice. The purpose of today's notice is to initiate a process for responding to issues raised in the petition.

III. Actions We Are Taking

We are granting reconsideration of, and requesting comment on, three of the four issues raised in the petition for reconsideration: (1) the provisions to allow provisionally-certified control room operators to perform the duties of a certified chief facility operator or certified shift operator; (2) the data availability requirements for continuous emissions monitoring systems (CEMS); and (3) the status of operating parameters during the 2 weeks prior to mercury and dioxin/furan testing. EPA is not proposing any rule changes as a result of this reconsideration.

We are seeking public comment only on the three issues specifically identified in this notice. We will not respond to any comments addressing other aspects of the large MWC rule or any related rulemakings.

Our final decision on reconsideration of the issue raised by the petitioner for which we are not granting reconsideration will be issued no later than the date by which we take final action on the issues discussed in this action.

IV. Discussion of Issues for Reconsideration

This section of the preamble contains EPA's basis for our proposed response to the issues identified in the petition for reconsideration.

A. Operator Stand-in Provisions

Earthjustice, in their petition of July 7, 2006, states "EPA

must reconsider its decision to allow untrained employees to perform the duties of a certified chief facility operator or certified shift operator." Below, EPA presents its rationale for the training and certification requirements contained in the final rule for large MWC units. This presentation includes a review of (1) requirements under CAA section 129(d); (2) requirements under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA); (3) training and certification requirements adopted for large MWC units in 1995 under 40 CFR part 60, subpart Eb; (4) implementation guidance issued in 1998; (5) revisions proposed for large MWC units in December 2005; (6) public comments received on the proposed operator certification requirements; and (7) operator "stand-in" requirements contained in the final May 2006 rule.

Under CAA section 129(d), EPA "shall develop and promote a model State program for the training and certification of solid waste incineration unit operators It shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this section." Additionally, under section 12(d) of the NTTAA, EPA is directed to incorporate readily available voluntary consensus standards into its regulations unless to do so would be inconsistent with applicable law or otherwise impractical.

In the 1995 rule for MWC units, EPA addressed both the training requirements and certification requirements. The rule addresses the training requirements in two ways. First, to promote and assist State air pollution control offices, EPA developed and distributed an MWC training program. The 1995 rule required all control room operators, shift supervisors, and chief facility operators to complete the training. Second, the 1995 rule required MWC owners and operators to develop a site-specific operating manual that included: (1) a summary of the 1995 MWC rule; (2) description of the basic combustion theory applicable to the MWC; (3) procedures for receiving, handling, and feeding municipal solid waste to the MWC; (4) procedures for start-up, shutdown, and malfunction at the MWC; (5) procedures for maintaining proper combustion air supply to the MWC; (6) procedures for operating within the requirements of the 1995 MWC rule; (7) procedures for responding to periodic upset or off-specification conditions; (8) procedures for minimizing particulate matter carryover; (9) procedures for ash handling; (10) procedures for monitoring emissions from the MWC; and (11) a review of reporting and recordkeeping requirements. The 1995 rule required the manual to be used to train a wide range of individuals at the MWC. Not only did the 1995 rule require training of the control room operators, shift supervisors, and chief facility operator, but it also required training of the crane/load handlers, ash handlers, maintenance personnel, as well

as any other person at the MWC with responsibilities affecting the operation of MWC. The 1995 MWC rule required initial training of these individuals and an annual review of the manual.

The 1995 rule required that a copy of the manual be kept in a location readily accessible by these personnel. These requirements ensure that individuals working at an MWC are well trained and know how the plant is to be operated.

Relative to CAA certification requirements, EPA considered development of a certification program. However, as a first step, consistent with NTTAA requirements, EPA conducted a review to see if such standards or techniques were already developed and available. EPA identified the availability of the national MWC operator certification program that had been developed and implemented by the American Society of Mechanical Engineers (ASME). The ASME program satisfied EPA's needs. The program was titled "Standards for the Qualification and Certification of Resource Recovery Facility Operators (QRO)-1989." The ASME/QRO certification is MWC plant-specific and ASME certifies only the supervisory positions of chief facility operator and shift supervisor. As the first step toward certification, the individual must obtain an ASME provisional certification. Next, the individual must "document 6 months of satisfactory employment at the level of chief facility operator or shift supervisor in that resource recovery facility." After completing the 6-month employment, the individual may apply for MWC site-specific

certification testing. A control room operator can also obtain ASME provisional certification, but cannot take the ASME test for full certification until the control room operator elevates to the level of chief facility operator or shift supervisor.

The 1995 MWC rule requires that during all periods of MWC operations, one of the following people must be on site: A fully-certified chief facility operator, a provisionally-certified chief facility operator scheduled to take the ASME/QRO full certification test, a fully-certified shift supervisor, or a provisionally-certified shift supervisor scheduled to take the ASME/QRO full certification. If these individuals must leave the MWC plant during their operating shift, a provisionally-certified control room operator may stand in. Shortly after adopting the MWC rule in 1995, questions arose about the control room operator "stand-in" provisions. The basic question was: could a provisionally-certified control room operator stand in for longer than a partial operating shift? For example, if the chief facility operator was out of the State at a meeting, and the shift supervisor became sick and was out for a number of days, what should be done? Should the MWC plant stop operations until a certified individual returns, while hundreds of tons of municipal solid waste were being received daily? Should the waste be diverted to some other location?

To address these issues, an enforcement guidance memorandum was issued by EPA on May 14, 1998 ("John Seitz memo"). The

guidance memorandum addresses what to do for periods up to 12 hours, up to 2 weeks, and greater than 2 weeks. Such periods could occur during vacations, training, administrative activities, or sickness. If both the certified chief facility operator and shift supervisor would be away from the MWC for more than 2 weeks, the guidance memorandum requires the MWC owner or operator to notify EPA of what actions were being taken to address the absence of certified personnel and to submit supplemental monthly reports until the certified personnel returned or was replaced. Such extended period could occur if a certified individual was transferred to another MWC, the certified individual discontinued employment at the MWC, or the certified individual was dismissed. The 1998 guidance memo has been used for the past 9 years for implementation of the operator stand-in provisions.

On December 19, 2005, EPA proposed revisions to the 1995 MWC rule. One of the proposed revisions was to incorporate the provisions of the 1998 guidance memorandum into the MWC rule. These same provisions had already been incorporated into the small MWC rules (subparts AAAA and BBBB, 40 CFR part 60) on December 6, 2000. EPA received a number of comments on the 2005 proposal, including one comment on the proposed control room operator stand-in provisions. The commenter supported the proposal, but noted that the stand-in/certification provisions should be expanded to address a recent issue being faced by the

MWC industry: the turnover of certified chief facility operators and certified shift supervisors has increased due to the growing employment opportunities in the power generation and industrial boiler industries. The commenter noted that it was not uncommon to lose one or more certified individuals from an MWC plant in the same year. The commenter also noted that when an employee (the control room operator in most cases) was promoted to the shift supervisor position (or chief facility operator provision), the employee would have to act in that capacity for 6 months before the employee could apply for ASME/QRO testing. Since this activity would take more than 2 weeks, under the 1998 guidance memo the owner or operator of the MWC would be required to notify EPA of this activity and provide monthly reports.

EPA carefully considered the comment, noting that the request limited the focus of the exemption to provisionally-certified control room operators. EPA considered CAA requirements, NTTAA requirements, training requirements in the rule, ASME/QRO requirements, and the 1998 guidance memo. Under the May 10, 2006 rule, all control room operators will have already completed the EPA training course, will have completed initial training and annual review of a site-specific MWC operating manual, and under this exemption will already have achieved provisional certification by the ASME/QRO program. In its evaluation, EPA concluded this limited exemption did not undermine the MWC regulation, did not allow untrained individuals

to operate the MWC, and would, in fact, improve the efficiency of the regulation by reducing unnecessary reporting and paperwork requirements. The final rule adopted on May 10, 2006, added text at 40 CFR 60.54b(c)(3) that says: "A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion unit may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Administrator for up to 6 months before taking the ASME QRO certification exam."

For the reasons discussed above, EPA continues to believe that this provision is appropriate and, therefore, is not proposing to change it. The EPA is, however, soliciting comment on the appropriateness of the provision from interested parties and will make a final decision on the issue after fully considering any such comments.

B. Data Requirements for Continuous Monitors

The second issue addressed by this notice of reconsideration is the data availability requirements for CEMS. Earthjustice in their petition states "EPA must reconsider its CEMS data availability requirements." Earthjustice suggests the final CEMS data requirements are inadequate. In particular, Earthjustice took exception to the elimination of a "requirement that operators obtain CEMS data for 75 percent of the operating hours per day before the data is counted toward the CEMS data are

availability requirements." In this section, EPA presents its rationale for the CEMS data availability requirements contained in the final rule. This includes a review of (1) the progression of CEMS data requirements from 1979 thru 1995, (2) proposed 2005 CEMS data requirements for large MWC units, (3) public comments on proposed requirements, and (4) final 2006 data requirements.

In development of NSPS under CAA section 111, EPA has constantly pushed for increased CEMS application and improvements. Relative to boiler standards, the first NSPS to use CEMS as a continuous compliance test method was the 1979 NSPS for electric utility boilers (40 CFR part 60, subpart Da). This was followed with identical CEMS requirements under the subpart Db, 40 CFR part 60, NSPS (1987) for industrial boilers and the subpart Dc, 40 CFR part 60, NSPS (1990) for commercial boilers. This was followed with revised, but similar, CEMS requirements under the subpart Ea, 40 CFR part 60, NSPS (1991) and the subpart Eb, 40 CFR part 60, NSPS (1995) for large MWC units. CEMS technology has continued to improve, and EPA has continued to increase requirements.

CEMS data availability requirements, and the format of those requirements, have been refined and revised over time. The CEMS data requirements under the 1979 subpart Da NSPS for electric utility boilers includes a minimum CEMS data generation rate of 75 percent of the operating hours per day for 22 days in each 30 day period. This minimum data collection requirement equates to

55 percent CEMS data availability ($0.75 \times (22/30) = 0.55$). This same requirement was incorporated into the 1987 subpart Db for industrial boilers and the 1990 subpart Dc for commercial boilers. EPA reformatted these requirements slightly, and in the 1991 subpart Ea NSPS for MWC units, included a minimum data requirement of 75 percent of the operating hours per day for 75 percent of the operating days per month. This minimum data collection requirement equates to 56 percent data availability ($0.75 \times 0.75 = 0.56$).

Under section 129 of the CAA amendments of 1990, EPA was required to upgrade the subpart Ea requirements to be based on the use of maximum available control technology (MACT). An upgraded subpart Eb was adopted in 1995. The upgrade to subpart Eb included increased CEMS data requirements. Under the 1995 subpart Eb, the minimum data availability requirement was 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. This minimum data requirement equates to a minimum of 68 percent data availability ($0.75 \times 0.90 = 0.68$).

Acting in accordance with the requirements of CAA section 129(a)(5), EPA initiated a review of the 1995 subpart Eb rule for large MWC units, which included a review of CEMS data availability requirements. As described in the December 19, 2005 proposal, EPA obtained calendar year 2003 CEMS data from a large MWC plant. The data included CEMS information on six parameters

(sulfur dioxide, oxygen, nitrogen oxides, carbon monoxide, hydrogen chloride, opacity, and flue gas temperature at the inlet to the particulate matter control device), for each of the three MWC units at the plant, and for all four quarters of operation in 2003. Overall, this data base contained 72 calendar quarters of CEMS data (6x3x4=72). For all quarters and all parameters, the CEMS data availability level was more than 99 percent. This information had been formatted differently than EPA's 1995 rule. The data statistics presented were in hours of valid CEMS data generated per quarter divided by the hours of MWC operation per quarter. It did not consider a 75 percent daily data requirement. Because of the differences of data formats, EPA made conservative assumptions and proposed to increase the minimum data requirement to 75 percent of the operating hours per day for 95 percent of the operating days per calendar quarter. This proposed requirement equates to a minimum data requirement of 72 percent CEMS data availability ($0.75 \times 0.95 = 0.72$).

On December 19, 2005, EPA proposed these more stringent requirements for subpart Eb. EPA received a number of comments on the proposal including comments on the CEMS data availability requirements. The most relevant comment regarding CEMS data availability was that the CEMS data availability analysis used by EPA had not been adjusted to include the proposed 75 percent daily data requirement. The commenter suggested this adjustment would have reduced the 99 percent data availability level shown

by the analysis. Rather than adjust the analysis, EPA elected to revise the format of the CEMS data availability requirements to match the analysis. This would also eliminate the need for the conservative assumptions made in adjusting from one format to the other. CEMS data availability would be based simply on actual hours of MWC operation.

The percent of operation format is becoming common for reporting CEMS data availability generally. Under EPA's acid rain control program, more than 1,000 electric utility boilers report information on CEMS data generation to EPA. The hourly data submitted is compiled by EPA as the ratio (percent) of hours of CEMS data generation relative to hours of boiler operation per calendar quarter. The 75 percent daily data requirement is not used. EPA recently upgraded the subpart Da NSPS for new electric utility boilers and in that action revised the CEMS data requirements to be based on the percent of boiler operating hours. The 75 percent daily data requirement was dropped from subpart Da. The percent of operation format is a superior metric for CEMS performance. It does not credit data as being available for a full 24-hour day unless it is available for a full 24 hours. Data is credited on an hour-by-hour basis. Under the earlier 75 percent daily data format, a day was counted as a full day if more than 75 percent (18 hours) of data were generated.

In the May 10, 2006, large MWC rule, EPA revised the CEMS data availability requirements to be based on the hours of MWC

operation. Also, in consideration of public comments on the potential need for back-up CEMS, EPA revised the data requirement to 90 percent on a calendar quarter basis and 95 percent on a calendar year basis. The final requirement equates to a minimum data requirement of 90 percent CEMS data availability on a calendar quarter basis and 95 percent on an annual basis.

The final rule adopted on May 10, 2006, contains revised text at 40 CFR 60.58b(e)(7) to read as follows: "At a minimum, valid continuous monitoring system hourly averages shall be obtained... for 90 percent of the operating hours per calendar quarter and for 95 percent of the operating hours per calendar year that the affected facility is combusting municipal waste."

In summary, EPA has continued to upgrade CEMS data requirements. The final requirements are superior to the proposed requirements and earlier requirements. As shown in Table 1 of this preamble, on a calendar quarter basis, the proposed requirements would have required a minimum of 1,539 hours of CEMS data generation (71 percent) per calendar quarter as opposed to the final requirements with a minimum of 1,944 hours of CEMS data generation (90 percent) per calendar quarter.

Table 1. Minimum CEMS Data Requirements
Under 40 CFR Part 60, Subpart Eb^a

Data Required (per Calendar Quarter)	1995 Rule	2005 Proposal	2006 Final
Hours	1,458 ^b	1,539 ^c	1,944 ^d
Percent	68%	71%	90%

(a) Table based on the assumption that an MWC operated for 24 hours per day for a 90 day calendar quarter: $(24 \times 90 = 2,160$ hrs of MWC operation)

(b) CEMS data for 75 percent of the operating hours per day for 90 percent of the days per quarter: $(0.75 \times 24)(0.90 \times 90) = 1,458$ hours of data

(c) CEMS data for 75 percent of the operating hours per day for 95 percent of the days per quarter: $(0.75 \times 24)(0.95 \times 90) = 1,539$ hours of data

(d) CEMS data for 90 percent of the MWC operating hours per quarter: $(0.90)(90 \times 24) = 1,944$ hours of data

For the reasons discussed above, EPA believes that the data availability requirements contained in the final rule, including the elimination of the requirement to obtain data for 75 percent of the operating hours per day, is the preferred approach. The EPA is, therefore, not proposing to change the requirement. The EPA is, however, soliciting comment on the issue from interested parties and will make a final decision on the issue after fully considering any such comments.

C. Status of Operating Parameters During the 2 Weeks Prior to Mercury and Dioxin/Furan Testing

The third issue addressed by this notice of reconsideration is the operating parameter testing for activated carbon injection (ACI) rate. Earthjustice in their petition says "EPA must reconsider its operating parameter requirements... EPA's rule now allows MWC to avoid meeting mass carbon feed rate limits for dioxin/furan testing, as well as mercury testing, and increases to more than 4 weeks per year the total amount of time that MWC

can avoid meeting mass carbon feed rate limits." Below, EPA presents its rationale for the mass carbon feed rate alternatives in the final rule. This presentation includes a review of the following: (1) the requirements in the 1994 proposed and 1995 final large MWC rules, (2) requirements in the 2005 proposed amendments to the large MWC rule, (3) public comments received on proposed amendments, and (4) requirements in the final 2006 large MWC rule.

First, it is useful to briefly review MWC control systems. MWC units use either spray dryer/fabric filter (SD/FF) scrubbing systems or spray dryer/electrostatic precipitator (SD/ESP) scrubbing systems as the basic component of their MACT control system. Other technologies are used to supplement this primary control system. ACI is one technology used to supplement dioxin/furan control and mercury control. Of the 167 large MWC units, 120 MWC units use ACI for supplemental control. The supplemental use of ACI reduces mercury emissions by about 90 percent from the level achieved by the scrubbing system alone and reduces dioxin/furan emissions by about 75 percent from the level achieved by the scrubbing system alone.

In 1995, dioxin/furan emissions at MWC units were stack tested. CEMS to measure dioxin/furan were unavailable. To supplement the annual dioxin/furan test, various operating parameters are measured continuously. The rule requires the continuous monitoring of the following site-specific operating

parameters: (1) MWC load level (steam generation rate), (2) flue gas temperatures at the inlet to the particulate matter control device, and (3) ACI injection rate (mass carbon feed rate). The allowable rate for these parameters is established during the dioxin/furan stack test and is site-specific for each MWC unit. Relative to mercury testing, the 1995 rule requires measurement of ACI mass flow rate during both the dioxin/furan stack test and the mercury stack test, with the more restrictive of the two flow rates applied. For all three operating parameters, the site-specific limits are applied on a continuous basis until the next annual stack test when new parameters are established.

The site-specific parameters discussed above adequately addressed operating parameters for the initial MACT compliance test (December 2000). Owners and operators of the MWC units would have had adequate time following control device retrofits for pre-testing and adjusting the control system before the initial MACT compliance test. However, there remained the question of what should be done for subsequent compliance tests.

The 1995 MWC rule answered that question by providing the following at 40 CFR 60.53b(b): "During the annual dioxin/furan performance test and 2 weeks preceding... the municipal waste combustor load limit may be waived in accordance with permission granted by the Administrator... for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the

purpose of improving facility performance... ." An identical 2-week waiver is provided in 40 CFR 60.53b(c) for establishing the site-specific operating parameter for flue gas temperature at the inlet to the particulate matter control device during dioxin/furan testing. Optimizing ACI rate was not addressed.

In the 2005 proposal, 40 CFR 60.53b(b) and (c) were proposed to be revised to allow waiver of municipal waste combustor load limit and flue gas temperature at the inlet to the particulate matter control device during either dioxin/furan testing or mercury testing. Previously, optimization testing for these two parameters was allowed during only dioxin/furan testing. Additionally, companion text was added in 40 CFR 60.58b(m) to allow optimization testing for ACI injection rate before mercury testing. The 2005 proposal also required the testing waiver be a written document. The proposal did not propose to add optimization testing for ACI injection rate before dioxin/furan testing.

One comment received on the 2005 proposal indicated EPA should revise the rule to make it clear that all three operating parameters are waived for up to 2 weeks prior to testing for either dioxin/furan or mercury. This would assure consistency, since all three parameters affect both dioxin/furan emissions and mercury emissions. The text in the final 2006 rule allows a 2-week waiver for optimization of the three operating parameters, whether testing for dioxin/furan or mercury.

The optimization tests are expected to be relatively short. In most cases, the optimization testing for dioxin/furan and mercury will be conducted during the same test period. This is an economic reality: the duration of the test program significantly affects the cost of testing. To illustrate this, EPA randomly selected and compiled dioxin/furan and mercury testing dates that occurred at 27 MWC units during their initial compliance tests. EPA noted the date the testing was started and the date it was completed, and calculated the duration from start to finish (including time that existed between dioxin/furan and mercury tests). The most common test duration for dioxin/furan and mercury testing for the 27 MWC units was 2 days. The average test duration was 3.6 days. All test programs took less than 8 days. Clearly, optimization testing for dioxin/furan and mercury is expected to be coordinated and completed in 2 weeks or less. The only exception envisioned is for an exceptionally well operated MWC plant that under 40 CFR 60.58(g)(5)(iii) is not required to conduct dioxin/furan tests on all units each year. In such cases, it is possible that only mercury emissions will be optimized and tested. This should occur in limited circumstances because the operating parameters optimized for mercury control would be of little utility if the previous parameters determined from dioxin/furan testing were more stringent and were controlling. In any case, a test period of up to 2 weeks is judged to be adequate for dioxin/furan and mercury optimization

testing, with the period allowed by the Administrator determined on a case-by-case basis.

In summary, the procedure for establishing operating parameters has been refined for consistency over time. The application for a waiver prior to testing must now be made in writing to the Administrator. The testing duration schedule, as determined by the Administrator, is expected to be 2 weeks or less.

For the reasons discussed above, EPA believes that the provision for optimization testing for ACI injection before dioxin/furan testing contained in the final rule is appropriate and, therefore, is not proposing to change it. The EPA is, however, soliciting comment on the issue from interested parties and will make a final decision on the issue after fully considering any such comments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This notice of reconsideration 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 notice of reconsideration does not impose any new information collection burden. The Office of Management and Budget previously approved the information collection

requirements contained in the NSPS and emission guidelines for large MWC units under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., at the time the NSPS and emission guidelines were promulgated on December 19, 1995 and subsequent recertifications. The information collection request has been assigned OMB Control Number 2060-0210 (EPA ICR No. 1506.10).

This action results in no changes to the information collection requirements of the NSPS or emission guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB. Therefore, the information collection requests have not been revised.

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 large MWC rules on small entities, small entity is defined as follows: (1) A small business in the regulated industry that has gross annual revenues of less than \$6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this notice of reconsideration on small entities, I certify that this action

will not have a significant economic impact on a substantial number of small entities. This notice of reconsideration will not impose any requirements on any entities because it does not impose any additional regulatory requirements. We continue to be interested in the potential impacts of this action 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 one 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 rule. 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 have developed, under 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 reconsideration contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This notice of reconsideration imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this notice of reconsideration is not subject to the requirements of sections 202 and 205 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 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. This notice of 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 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." This notice of 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 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, the Agency 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 considered by the Agency.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This notice of reconsideration is not subject to Executive Order 13045 because the large MWC final rule is based on technology performance. Also, this notice of reconsideration is not "economically significant."

H. Executive Order 13211: Actions That Significantly Affect

Energy Supply, Distribution or Use

This notice of 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

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 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) that are 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.

EPA is not proposing to make any changes to the regulatory requirements in the large MWC final rule in this action, including requirements that involve technical standards. As a

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result, the NTTAA discussion set forth in the May 10, 2006, final rule remains valid. The requirements of NTTAA, therefore, do not apply to this action.

List of Subjects in 40 CFR Parts 60, 61, 63, 65

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

Dated: March 14, 2007.

Stephen L. Johnson,
Administrator