

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0156; FRL XXXX-X]

RIN 2060-AN95

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; technical correction.

SUMMARY: EPA is taking direct final action to make a technical correction to the emission guidelines and new source performance standards (NSPS) for other solid waste incineration (OSWI) units. We are correcting the averaging time for measuring opacity.

DATES: The direct final rule technical correction is effective on [INSERT THE DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] unless EPA receives significant material adverse comments by [INSERT THE DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives significant adverse comments, EPA will publish a timely withdrawal of the direct final rule in the Federal Register.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0156, by one of the following methods:

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

E-mail: Send your comments via electronic mail to and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2003-0156.

Mail: Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2003-0156.

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-2003-0156. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0156. 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.regulation.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.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Smith, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2421; e-mail: smith.martha@epa.gov.

SUPPLEMENTARY INFORMATION:

EPA is publishing the direct final rule without prior proposal because EPA views this correction as non-controversial and does not anticipate adverse comments. However, in the Proposed Rules section of this Federal Register, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If an adverse comment applies to this technical correction, EPA will publish a timely withdrawal of the direct final rule in the Federal Register. If EPA receives no significant adverse comments, we will take no further action.

Judicial Review. Under CAA section 307(b)(1), judicial review of the technical correction is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT THE DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Under CAA section 307(d)(7)(B), only an objection to the final technical correction that was raised

with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by the technical correction may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding FOR FURTHER INFORMATION CONTACT section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20004.

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

- I. General Information
 - A. Does the technical correction apply to me?
- II. Summary of the Technical Correction
 - A. Correct Averaging Time for Opacity Measurements
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer Advancement Act
 - J. Congressional Review Act

I. General Information

- A. Does the technical correction apply to me?

Regulated Entities. Categories and entities potentially regulated by the direct final rule are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The final OSWI emission guidelines and NSPS potentially affect the following categories of sources:

Category	NAICS Code	Examples of potentially regulated entities
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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 likely to be regulated by the direct final rule. To determine whether your facility is regulated by the direct final rule, you should examine the applicability criteria in 40 CFR 60.2885 through 60.2888 of subpart EEEE, and in the emission guidelines for existing sources located at 40

CFR 60.2991 through 60.2994 of subpart FFFF. If you have any questions regarding the applicability of the direct final rule to a particular entity, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the direct final rule technical correction to the 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. The OSWI NSPS and emission guidelines docket is incorporated by reference (Docket ID No. EPA-HQ-OAR-2003-0156). The docket includes background information and supported the proposal and promulgation of the NSPS and emission guidelines.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this direct final rule is available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA will post a copy of the direct 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. Summary of the Technical Correction

A. Correct Averaging Time for Opacity Measurements

On December 16, 2005, we promulgated standards of performance (70 FR 74892) and emissions guidelines (70 FR 74907) for OSWI units. These standards and guidelines establish maximum achievable control technology (MACT) emission limits for nine pollutants and opacity. Table 1 to subpart EEEE and Table 2 to subpart FFFF of part 60 contain the emission limits, averaging time, and test method for each of the pollutants and opacity. This final rule corrects an inadvertent error to the opacity test averaging time presented in these tables to the December 16, 2005, final rules.

Compliance with the opacity limits is measured using EPA Method 9. EPA Method 9 specifies some minimum requirements for consecutive observations and the length of time that averages must be calculated over. Observations are made every 15 seconds for a minimum of 24 consecutive observations (i.e., 6 minutes). According to EPA Method 9, rule developers have the discretion to apply whichever averaging time they choose; "If an applicable standard specifies an averaging time requiring more than 24 observations, calculate the average for all observations made during the specified averaging period." The final OSWI rules require opacity be measured as a 6-run average (1-hour minimum sample time per run). Our intent, however, was to apply an averaging and test run time that is consistent with

other CAA section 129 source category NSPS and emission guidelines. Therefore, the intended opacity averaging time, which has become the Agency standard under NSPS and emission guidelines using EPA Method 9, was a 6-minute average, observed over three 1-hour test runs (i.e., thirty 6-minute averages). Our intent to use 6-minute averages is further evidenced by the text in 40 CFR Sections 60.2971 and 60.2973 in Subpart EEEE and 40 CFR Sections 60.3066 and 60.3068 in Subpart FFFF, which specifically refer to an opacity limit using a "6-minute average". Therefore, we are correcting Tables 1 and 2 to reflect this averaging time.

III. 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 (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

We have determined that the direct final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB because the direct final rule will not have an annual effect on the economy of \$100 million or more and does not impose any additional control requirements above the other solid waste incineration unit NSPS or emission guidelines. The 2005 NSPS and emission guidelines

rulemaking (which included requirements for new and existing very small MWC units and requirements for new and existing institutional waste incineration units) was considered "significant" and was reviewed by OMB (see 70 FR 74888, December 16, 2005).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The amendments contained in the direct final rule result 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 during the development of the NSPS and emission guidelines. Therefore, the information collection requests have not been revised. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing NSPS (40 CFR part 60, subpart EEEE) and existing emission guidelines (40 CFR part 60, subpart FFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060-0563 (EPA ICR 2163.02) to the NSPS and OMB control number 2060-0562 (EPA ICR 2164.02) to the emission guidelines. Copies of the ICR document(s)

may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (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 (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as follows:

(1) A small business in the regulated industry that has a gross annual revenue less than \$6 million (this varies by industry category, ranging up to \$10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards;

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or

(3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impact of this direct final rule 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 rule, in which we determined that the final rule would not have a significant economic impact on a substantial number of small entities.

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 the Administrator 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, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small Governments, enabling officials of affected small Governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small Governments on compliance with the regulatory requirements.

EPA has determined that the direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal

Governments, in the aggregate, or the private sector in any one year. The direct final rule does not change the burden of the original OSWI rules, which were determined to result in expenditures of less than \$100 million (70 FR 74890, December 16, 2005). Thus, the direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the direct final rule contains no regulatory requirements that might significantly or uniquely affect small Governments because the burden is small and the regulation does not unfairly apply to small Governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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 direct final rule 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 direct final rule.

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 section 5-501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to

Executive Order 13045 because it is not economically significant, and the original OSWI rules were based on technology performance and not on health and safety risks.

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

This direct final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and 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

CAA section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their 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 annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. EPA's compliance with section 12(d) of the NTTAA

has been addressed in the preamble of the underlying final OSWI rule (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 will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [INSERT THE DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 40 CFR Part 60

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

Dated:

Stephen L. Johnson,
Administrator.

For reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60--[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart EEEE--[AMENDED]

2. Table 1 to subpart EEEE of part 60 is amended by revising entry 7 for opacity to read as follows:

As stated in §60.2915, you must comply with the following:

Table 1 to Subpart EEEE of Part 60—Emission Limitations

For the air pollutant	You must meet this emission limitation \a\	Using this averaging time	And determining compliance with this method
*	*	*	*
7. Opacity.	10 percent.	6-minute average (observe over three 1-hour test runs; i.e., thirty 6-minute averages).	Method 9 of appendix A of this part.
*	*	*	*

Subpart FFFF--[AMENDED]

3. Table 2 to subpart FFFF of part 60 is amended by revising entry 7 for opacity to read as follows:

As stated in §60.3022, you must comply with the following:

Table 2 to Subpart FFFF of Part 60—Model Rule—Emission Limitations

For the air pollutant	You must meet this emission limitation \a\	Using this averaging time	And determining compliance with this method
*	*	*	*
7. Opacity.	10 percent.	6-minute average (observe over three 1-hour test runs; i.e., thirty 6-minute averages).	Method 9 of appendix A of this part.
*	*	*	*