

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* 8-Hour Ozone Maintenance plan for the Montgomery County, Tennessee area.	* Montgomery County	* 08/10/2005	* 09/22/2005 [Insert first page of publication]	*

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*
 ■ 2. In § 81.318, the table entitled “Tennessee-Ozone (8-Hour Standard)” is amended by revising the entry for

“Clarksville-Hopkinsville, TN-KY; Montgomery County” to read as follows:

§ 81.343 Tennessee.
 * * * * *

TENNESSEE—OZONE
 [8-Hour Standard]

Designated area	Designation ^a		Category/Classification	
	Date ^b	Type	Date ^b	Type
* Clarksville-Hopkinsville, TN-KY Area: Montgomery County	* October 24, 2005	* Attainment.	* 	*

^a Includes Indian Country located in each county or area, except as otherwise specified.
^b This date is June 15, 2004, unless otherwise noted.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR-2003-0119; FRL-7971-9]

RIN 2060-AN31

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA has completed its reconsideration of certain regulatory definitions that determine the type of sources subject to EPA’s new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the Clean Air Act (CAA). With this action, EPA is promulgating revised definitions for the terms “solid waste,” “commercial or industrial waste,” and “commercial and industrial solid waste

incineration unit.” The final CISWI definitions of these terms promulgated today are consistent with EPA’s February 2004 reconsideration proposal in that EPA will continue to identify CISWI units based on whether such units combust waste without energy recovery. However, the revised definitions promulgated today do not include certain regulatory language proposed in February 2004 to include units with only waste heat recovery in the CISWI source category. In a subsequent rulemaking action, EPA intends to propose additional regulatory language to address units with only waste heat recovery and assess the impacts of the inclusion of these units in the CISWI source category. As a result of our action today on the CISWI definitions, it is not necessary to make any corresponding revisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters.

DATES: The final rule is effective September 22, 2005.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. OAR-2003-0119. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some

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

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shrager, Combustion Group, Emission Standards Division (C439-01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-7689; e-mail address: shrager.brian@epa.gov.

SUPPLEMENTARY INFORMATION:
Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by November 21, 2005. Under section 307(d)(7)(B) of the CAA, only an

objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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 Action Apply to Me?

Regulated Entities. The CISWI rules potentially affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	335	36	Manufacturers of electronic equipment.
	421	50	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities that could be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, or business organization is regulated by this action, you should examine the final definitions of "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration unit" in this action and the applicability criteria in 40 CFR 60.2010 through 60.2025, subpart CCCC, and 40 CFR 60.2505 and 60.2550 through 60.2558, subpart DDDD.

Docket. The docket number for this action is OAR-2003-0119.

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

II. Summary of Final Action

By this action, EPA concludes the reconsideration process on the December 2000 final CISWI rules that it

initiated in February 2004, in response to a petition for reconsideration submitted pursuant to section 307(d)(7)(B) of the CAA. Specifically, the EPA has concluded its reconsideration of several definitions that determine which types of sources are subject to the NSPS and EG for CISWI units under section 129 of the CAA.

EPA promulgated the definitions in the final rules for CISWI units on December 1, 2000. Subsequent to promulgation of the final CISWI rules, the Agency granted a petition for reconsideration related to the definitions of "commercial and industrial waste" and "commercial and industrial solid waste incineration unit" in the CISWI final rules. EPA solicited public comments on revised definitions for these terms and the definition of "solid waste" in a notice published in the **Federal Register** on February 17, 2004. (See 69 FR 7390.) In that notice, we requested comments on the approach we used in the December 2000 final rules to identify CISWI units based on whether the unit was combusting solid waste without energy recovery. We also proposed to include units with only waste heat recovery in the CISWI source category to fill a gap between our CISWI rules and our NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters promulgated under CAA section 112.

In addition, after promulgation of the final CISWI rules in 2000, EPA accepted

a voluntary remand, without vacature, in response to a petition for review challenging the rules. Because the final rules were not vacated, the requirements of the final CISWI rules remain in effect during the remand. In a future rulemaking action on the remand, we will reconsider the emissions limitations for CISWI units in accordance with guidelines set forth in a related court decision pertaining to hazardous waste combustors which was issued after we promulgated the final CISWI rules. However, before we may complete the rulemaking action on remand, it is necessary to resolve the issues raised in the petition for reconsideration that potentially affect the scope of the CISWI source category. This is because EPA must consider the emissions of the best performing sources in the source category to determine the applicable emissions limitations. Thus, we are announcing today our final decision after reconsidering the definitions that determine the scope of the CISWI source category so that we may focus on the relevant sources in our rulemaking action on the remand. Today's action amends the final rules to incorporate new definitions of "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration unit." In the discussion below, we set forth and explain the language in the new definitions.

The definitions we are promulgating today are nearly the same as those

proposed on February 17, 2004. (See 69 FR 7396.) However, in response to comments received, we clarified the proposed definition of “commercial or industrial waste” and made editorial changes to other definitions to reduce repetition among the definitions and to better express our intent.

In addition, we removed the term “waste heat recovery” from the proposed definition of “commercial or industrial waste” and are not adopting a final definition of “waste heat recovery” at this time. We intend to propose additional language to address units with only waste heat recovery and to assess the impacts of including such sources in the CISWI source category during completion of our rulemaking action in response to the voluntary remand. At that time, EPA will also address several other issues relevant to the remand, such as the emissions limitations for the CISWI source category.

The revisions to the definitions adopted today are not intended to change the existing scope¹ of the CISWI source category. After further review on reconsideration, EPA continues to believe that the key consideration in determining whether a unit is burning commercial or industrial waste is the primary function of the combustion unit and that the primary indicator of function is whether or not a unit is designed and operated for energy recovery. We define energy recovery as the recovery of heat (thermal energy) for a useful purpose. Thus, we are not amending the definition of “energy recovery” that we promulgated in the December 2000 final CISWI rules.

Today’s action also addresses a related question of whether EPA should amend regulations that determine the scope of the NESHAP for the Industrial, Commercial, and Institutional Boilers and Process Heaters source category (boilers NESHAP). Those regulations (40 CFR part 63, subpart DDDDD) were promulgated under CAA section 112. (See 69 FR 55218, September 13, 2004.) We determined that conforming amendments to the boilers NESHAP are not necessary because the definitions of “boilers” and “process” heaters in that rule are consistent with the CISWI definitions we are announcing today.

¹ The inclusion of waste heat recovery sources would change the scope of the CISWI source category if we take final action to include such sources in the CISWI source category in our response to the voluntary remand.

III. Background Information

A. Statutory Background

Section 129 of the CAA, entitled “Solid Waste Combustion,” requires EPA to promulgate emissions standards and other requirements for “each category of solid waste incineration units” (42 U.S.C. 7429(a)(1)). 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 combusting municipal waste;

(2) Units with a capacity equal to or less than 250 tons per day 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.”

For each category of incineration unit identified under CAA section 129, EPA must establish numerical emission limits for at least nine specified pollutants (particulate matter (PM), sulfur dioxide (SO₂), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins and dibenzofurans) and for opacity as appropriate. Section 129 provides EPA with the discretion to establish emissions limitations for other pollutants as well.

Section 129 of the CAA directs EPA to set maximum achievable control technology (MACT) type standards for incinerators. EPA’s standards under section 129 must “reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) (identified above) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category.” (See CAA section 129(a)(2).) However, the standards for new units must not be “less stringent than the emissions control that is achieved in practice by the best controlled similar unit,” and the standards for existing sources must not be “less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category.” (See CAA section 129(a)(2).)

In addition, the statute provides some guidance on which units EPA should and should not regulate under CAA section 129. However, the statute does not define “commercial or industrial

waste.” Section 129(g)(1) of the CAA defines the term “solid waste incineration unit” as a unit “which combusts any solid waste material from commercial or industrial establishments or the general public.” Section 129(g)(1) also identifies several types of units that are not solid waste incineration units, including units required to have a permit under section 3005 of the Solid Waste Disposal Act (SWDA); materials recovery facilities; certain qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste; and certain air curtain incinerators that meet opacity limitations established by EPA.

Furthermore, CAA section 129(g)(6) states that the term “solid waste * * * shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act.” Finally, CAA section 129(h) states 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.”

B. Regulatory Background

One important part of EPA’s rulemaking process is determining what universe of sources will be subject to regulation. With regard to CISWI units, the statutory provisions of CAA sections 129(a), (g) and (h) collectively provide that EPA must determine, as a part of the regulatory process, which combustion units should be subject to regulation under section 129. Section 129 does not resolve this question, but it does provide some important guiding principles. For example, section 129(g)(1) provides that a solid waste incineration unit does not include incinerators or other units required to have a permit under section 3005 of the SWDA, which includes any units burning hazardous solid wastes. This statutory language effectively limits the scope of EPA’s authority under section 129 to the regulation of solid waste incineration units that burn nonhazardous solid waste. Similarly, the language of section 129(h) makes clear the Congressional intent for EPA to regulate nonhazardous combustion sources under either section 129 or section 112, but not both. Thus, for the CISWI source category, in particular, EPA must determine which sources are commercial and industrial solid waste incineration units under section 129, and which combustion units are subject to section 112, such as boilers and process heaters.

The EPA proposed regulations for CISWI units on November 30, 1999. (See 64 FR 67092.) The proposal included

emissions limitations and a detailed definition of "solid waste" that was intended to distinguish between nonhazardous solid wastes and other materials (e.g., hazardous solid waste and fuel) burned in combustion units at commercial or industrial facilities. The definition served to identify those units that would be considered commercial and industrial nonhazardous solid waste incineration units, and, therefore, subject to the proposed regulations. In addition, consistent with CAA section 129(h), these definitions also helped to identify those units which would not be subject to emission standards under CAA section 112.

After receiving public comment, EPA determined that the 1999 proposed definition of "solid waste" was unworkable for purposes of identifying CISWI units. Instead of adopting the proposed definition of "solid waste," EPA adopted a general definition of "solid waste" that closely mirrored the definition of solid waste found at section 6903(27) of the SWDA and in several places in EPA's regulations under that statute. (See 65 FR 75338, December 1, 2000.) EPA also adopted more specific definitions of "commercial and industrial waste" and "commercial and industrial solid waste incineration unit," to identify more precisely those units at commercial and industrial facilities covered by the final CISWI rules.

Under the December 2000 final CISWI rules, a material burned at a commercial or industrial facility in a combustion unit without energy recovery is a commercial or industrial waste, and the unit is subject to the CISWI rules. However, a material burned at a commercial or industrial facility in a combustion unit with energy recovery is not considered a commercial and industrial waste, nor is the combustion unit considered a commercial and industrial solid waste incineration unit for purposes of the CISWI rules.²

² In addition, EPA adopted a number of specific exemptions and additional definitions in the final CISWI rules, to ensure that the emissions limitations did not apply to units that should not be considered commercial and industrial solid waste incineration units. These exemptions and definitions served to identify and exempt: (1) Pathological solid waste incineration units; (2) agricultural solid waste incineration units; (3) municipal solid waste incineration units; (4) hospital, medical and infectious solid waste incineration units; (5) qualifying small power production facilities; (6) qualifying cogeneration facilities; (7) hazardous solid waste incineration units; (8) material recovery units; (9) certain air curtain incinerators; (10) cyclonic barrel burners; (11) rack, part, and drum reclamation units; (12) cement kilns; (13) sewage sludge incinerators; (14) chemical recovery units; and (15) laboratory analysis units.

After promulgation of the final CISWI rules, EPA received a petition for reconsideration of the final rules. The petition argued that the final rules were procedurally defective because EPA had failed to provide adequate notice and an opportunity to comment on the definitions adopted in the final rulemaking. Additionally, an environmental organization filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit. Furthermore, after promulgation of the final CISWI rules, the D.C. Circuit issued its decision in *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001). In this decision, the Court rejected certain common elements of EPA's MACT methodology. As a result, EPA requested a voluntary remand of the final CISWI rules, in order to address concerns related to the issues that the Court had raised in the *Cement Kiln* decision.

The EPA granted the petition for reconsideration on the definitional issues. On February 17, 2004 (69 FR 7390), EPA initiated proceedings on the definitional issues by publishing a notice to solicit comments on revisions to the definitions of "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration unit" and a new definition of the term "waste heat recovery." The February 17, 2004 notice proposed the following definitions:

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

Commercial or industrial waste means solid waste (as defined in this subpart) combusted for reasons that do not include the recovery of heat for a useful purpose, or combusted without heat recovery or with only waste heat recovery (i.e., no heat recovery in the combustion firebox), in an enclosed unit using controlled flame combustion that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air); or solid waste combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in section 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

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

These definitions were similar to the definitions in the December 1, 2000 final CISWI rules, except that we proposed that materials combusted at commercial or industrial facilities in units with only waste heat recovery would be considered commercial or industrial waste and that such units would become subject to the CISWI rules. This proposed change addressed an unintended regulatory gap where units with only waste heat recovery were not covered by CAA section 112 boilers NESHAP or by the CISWI rules. The statutory and regulatory background and rationale for the proposed changes to the definitions are fully described in the February 17, 2004 notice of proposed rule and solicitation of comments. (See 69 FR 7390.)

The action published today summarizes and responds to public comments received in response to the February 17, 2004 notice and announces EPA's final decisions on the definitions of "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration (CISWI) unit" for the CISWI rules. The specific wording of the final definitions

is printed later in this action. EPA is amending the CISWI rules such that the final definitions will take effect immediately. EPA is not taking final action today, however, on the February 2004 proposed addition of certain regulatory language concerning waste heat recovery units. EPA currently intends to propose additional language to amend the CISWI rules to cover units with only waste heat recovery when we take final action in response to the voluntary remand of the CISWI rules.

C. Significance of the Definitions

The definitions of “solid waste,” “commercial or industrial waste,” and “commercial and industrial solid waste incineration unit” define the scope of applicability of the final CISWI rules. Since any unit regulated under CAA section 129 cannot be subject to any rule developed under CAA section 112, these definitions also help to clarify the scope of applicability of certain other rules that EPA has or will develop for other types of combustion units.

In this case, combustion units that are not covered by the final CISWI rules may be subject to regulation, for example, under the boilers NESHAP (40 CFR part 63, subpart DDDDD).³ Many of the combustion units at commercial or industrial facilities (e.g., boilers or steam generating units, process heaters, furnaces, and incinerators) burn “solid” materials. If the solid materials in question are covered by the definition of “commercial or industrial waste,” the units will be regulated as CISWI units under CAA section 129. Conversely, if the materials are not covered by the definition of “commercial or industrial waste” or if these materials are hazardous solid waste or solid materials burned for chemical or material recovery, the units will be regulated under CAA section 112 or other statutory authority.

The process of determining the regulatory dividing line between different rules is not unique to CISWI. Nor does the identification of the scope of one rule necessarily define the scope of another or preclude EPA from

adjusting the regulatory division in a subsequent rule.

IV. Final Definitions for the CISWI Rules

For purposes of the CISWI rules, we are amending the definitions of the terms “solid waste,” “commercial or industrial waste,” and “commercial and industrial solid waste incineration (CISWI) unit” as follows:

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

Commercial or industrial waste means solid waste (as defined in this subpart) that is combusted at any commercial or industrial facility using controlled flame combustion in an enclosed, distinct operating unit: (1) Whose design does not provide for energy recovery (as defined in this subpart); or (2) operated without energy recovery (as defined in this subpart). Commercial or industrial waste also means solid waste (as defined in this subpart) combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash

handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in section 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

The EPA will continue to define the term “energy recovery” as follows:

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

The major differences between the definitions we are promulgating today for the CISWI rules and those proposed on February 17, 2004 (69 FR 7396), are that we have removed the language in the proposed definition of “commercial or industrial waste” that served to include units with only waste heat recovery in the CISWI source category, and we are not promulgating the definition of “waste heat recovery” at this time. We are not taking final action today on these changes because we have not yet had an opportunity to assess the impacts of including units with waste heat recovery in the CISWI rules. An impacts assessment is necessary, but is best done when we respond to the CISWI remand and can perform comprehensive analyses that address the addition of waste heat recovery units, any questions on the applicability of the CISWI rules raised by promulgation of the CAA section 129 rules for the other solid waste incineration (OSWI) source category, and the remand issues regarding determination of the MACT floor and emission limits. When we respond to the remand of the CISWI rules, we currently plan to propose additional regulatory language to address units with only waste heat recovery and to provide opportunity for additional comment on the inclusion of these units in the CISWI source category.

Otherwise, as explained further below, we made editorial changes to the definition of “commercial or industrial waste” and other definitions to reduce repetition among the definitions and better express our intent. For example, we use the term “energy recovery” in the final definition of “commercial or industrial waste” to incorporate our existing definition rather than repeating the words “recovery of heat for a useful purpose.”

V. Response to Public Comments and Significant Changes

Twelve public comment letters were received from a wide variety of sources, consisting mainly of government agencies, environmental organizations, industry and utility associations, and owner/operators of incinerators and

³ Alternatively, such units might be subject to regulation under any number of other EPA regulations, including, for example, regulations promulgated pursuant to CAA section 112(c)(3) and (k) to control emissions from industrial, commercial and institutional boilers that are area sources and various other regulations developed under section 112 which cover combustion units burning solid materials to recover their chemical or other material constituents (e.g., black liquor boilers or furnaces at kraft pulp mills covered under the national emission standards for hazardous air pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills).

other types of facilities. The most significant comments are summarized and addressed below. Other significant comments are summarized and addressed in a comment and response document contained in the docket.

A. General Comments on Definitions

Comment: One commenter stated that EPA's attempts to fabricate ambiguity in CAA section 129 are without merit. The commenter stated that, regardless of whether EPA has discretion to draw the line between different types of solid waste combustion units, the agency does not have the discretion to exempt any such units from regulation under section 129 (except for those expressly enumerated in section 129(g)(1)). The commenter added that, contrary to EPA's claim, the critical question is not whether a unit "is designed and operated to recover heat for a useful purpose," but, rather, "does the unit combust solid waste?" Finally, the commenter added that, read as a whole, section 129 requires that the CISWI rules must apply to all combustion units that burn waste from commercial and industrial facilities. The commenter contended that EPA's narrow definitions of "commercial or industrial waste" and "commercial and industrial solid waste incineration unit" unlawfully exempt the majority of CISWI units from regulation under section 129. The commenter also pointed out that most CISWI units fall below the major source threshold established in CAA section 112(a). The commenter viewed EPA's definitions in the CISWI rules as an attempt to regulate many sources under section 112 instead of regulating all sources under section 129. Section 112 requires emissions standards based on generally available control technology (GACT) for non-major sources.

Response: EPA disagrees with the commenter. Contrary to the commenter's assertion, CAA section 129 is ambiguous because it does not contain definitions of certain terms. The EPA has reasonably interpreted section 129 in establishing the regulatory definitions described in this action. The statutory provisions of sections 129(a), (g), and (h) of the CAA collectively call for EPA to determine, as part of the regulatory process, which combustion units should be subject to regulation under section 129. Section 129 of the CAA directs EPA to promulgate standards under section 111 applicable to "solid waste incineration units combusting commercial or industrial waste". (See 42 U.S.C. 7429(a)(1)(D).) However, section 129 does not define commercial or industrial waste.

Inherent in EPA's implementation of this statutory provision is the discretion to reasonably define what constitutes this undefined type of solid waste. Furthermore, CAA section 129(h) provides that nonhazardous combustion sources shall not be regulated under both section 129 and section 112. Thus, for the CISWI rules, EPA must determine which types of sources are included in the CISWI source category.

The distinction between CISWI units and non-CISWI combustion units is not readily apparent. For example, there is general agreement that burning coal in a coal-fired boiler is not commercial or industrial waste, because coal is commonly thought of as a fuel. However, there are many other materials that are burned in commercial and industrial boilers for energy recovery. Such materials include wood, other biomass, bagasse burned in boilers at sugar plants to produce the heat needed to refine sugar from sugar cane, and many other materials generated as part of commercial or manufacturing activities. When these materials are burned in a boiler to recover heat for a useful purpose, it is reasonable to consider these materials, like coal, to be a fuel and distinct from commercial and industrial solid waste. Combustion of such materials, when burned in a boiler that recovers energy for a useful purpose, is not considered waste combustion and is appropriately addressed under CAA section 112 regulations for boilers (e.g., the boilers NESHAP and area source boilers standards). On the other hand, if materials were burned in a combustion unit without heat recovery, the combustion would serve no useful purpose other than destruction or disposal of an unwanted material, and EPA would then consider it appropriate to identify the material as a commercial or industrial waste and regulate the combustion unit under CAA section 129 as a CISWI unit.

In addition, many units that are designed and operated for energy recovery and predominantly burn materials that are widely considered fuels will occasionally fire small amounts of other materials in these units that could be considered waste in some circumstances. However, these units continue to recover energy from the combustion of these additional materials. Thus, it is not immediately clear how EPA should classify such units that are designed and operated for energy recovery but occasionally combust waste-like materials.

EPA has determined that for purposes of the final CISWI rules, the critical consideration in determining whether

the unit is burning commercial or industrial waste is the primary function of the combustion unit; and the primary indicator of function is whether or not a unit is designed and operated to recover energy for a useful purpose. Accordingly, we are promulgating definitions of "commercial or industrial waste" and "CISWI unit" to include in the CISWI rules units whose design does not provide for energy recovery or that are operated without energy recovery. We continue to define energy recovery as the recovery of heat (thermal energy) for a useful purpose. The revised definition of "commercial or industrial waste" does not change the existing scope of the CISWI source category, but contains editorial revisions to more clearly express our intent, as described further below.

The determination that units (such as boilers) that recover energy for a useful purpose are not subject to the final CISWI rules does not exclude them from regulation. As noted earlier, EPA has already regulated commercial and industrial boilers and process heaters located at major sources under 40 CFR part 63, subpart DDDDD (the boilers NESHAP). EPA is addressing commercial and institutional boilers and process heaters located at area sources under the CAA section 112 area source boilers standards, currently under development. Additionally, other categories of specialty combustion units, such as hazardous waste combustors and cement kilns are regulated under separate section 112 NESHAP. Section 112 addresses hazardous air pollutants such as hazardous metals, organic compounds, and HCl.

Comment: One commenter pointed out that despite EPA's claim that it has "considerable discretion to regulate a variety of sources as solid waste incinerators," CAA section 129(a)(1) requires EPA to "establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units." (See 42 U.S.C. 7429(a)(1)(A) (emphasis added).) The commenter believes these categories are very broad, based on language in section 129(g)(1), which defines "solid waste incineration unit" to mean "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments." (See 42 U.S.C. 7429(g)(1).) The commenter also argued that the text of section 129 shows that Congress expressly considered the issue of whether to regulate heat recovery units under section 129 by providing only limited, specific exemptions. Thus, according to the commenter's

interpretation of the statute, EPA must set section 129 standards for any unit that combusts any solid waste, with the narrow exception of the categories of energy recovery units specifically enumerated in section 129(g)(1). The commenter also asserts that EPA acknowledged this position in the hospital, medical, and infectious waste incinerator (HMIWI) rules, by stating the following:

The EPA disagrees with commenters that contend EPA has no authority to regulate cement kilns under section 129. Section 129(a)(1)(A) requires the Administrator to establish performance standards and other requirements for each category of solid waste incineration units. Congress specifically listed in section 129 various categories of solid waste incineration units that EPA must regulate. Section 129(g)(1) broadly defines solid waste incineration unit as “a distinct operating unit of any facility which combusts any solid waste material * * *” This definition clearly indicates Congress’ intent to regulate more than just incinerators because the definition sweeps within its scope any facility that is combusting any solid waste.

Response: Inherent in EPA’s implementation of CAA section 129 is the discretion to identify the types of sources covered by the statutorily undefined category of commercial or industrial solid waste incineration units. Considered as a whole, the statutory provisions of section 129(a), (g), and (h) require that EPA determine, as part of the regulatory process, which combustion units should be subject to regulation under section 129. For example, as explained in the previous response, EPA has determined that boilers combusting materials for energy recovery are subject to section 112 and hence, are not subject to section 129.

The commenter relies on the statutory definition of solid waste incineration unit to argue that any unit combusting any solid waste at any time should be covered under CISWI. However, we do not agree with this broad interpretation of the definition of “solid waste incineration unit” based on the use of the modifier “any.” We believe the word “any” should be interpreted within the broader frame of reference of its statutory context, consistent with observations of the Supreme Court in *Nixon v. Missouri Municipal League*, 541 U.S. 125, 124 S. Ct. 1555 (2004). In this recent opinion, the Court observed that Congress’s understanding of “any” can differ depending on the statutory setting. (See 124 S. Ct. at 1561.) *Nixon* and a related line of cases support looking for indications in the statute that suggest a more limited meaning of the modified term is possible or intended. (See 70 FR 33838, 33842 (June

10, 2005).) Indications of a more limited meaning can be found within the definition of solid waste incineration unit in CAA section 129(g)(1) and CAA section 129(h).

The commenter argues that EPA should stop reading the definition of “solid waste incineration unit” in CAA section 129(g)(1) after the phrase “any solid waste material.” Thus, according to the commenter, a CISWI unit must include “any facility which combusts any solid waste material.” However, the commenter fails to give meaning to the remainder of the sentence in section 129(g)(1), which provides that a solid waste incineration unit under section 129 includes a facility that combusts “any solid waste material from commercial or industrial establishments.” There is a distinction between “any solid waste material” and “any solid waste material from commercial or industrial establishments.” In order to identify solid waste material from commercial and industrial establishments, we have promulgated a definition of “commercial or industrial waste” which incorporates the broader definition of “solid waste.” As discussed in the earlier response, because it is sometimes not obvious whether a commercial and industrial establishment treats material as a waste or as a fuel, we have developed the definition of commercial or industrial waste to identify solid waste from commercial and industrial establishments based on whether the waste is burned without energy recovery.

Moreover, we do not agree that the “small power production facilities” or “qualifying cogeneration facilities” described in CAA section 129(g)(1) are the only types of energy recovery facilities that are properly excluded from the CISWI source category. To the extent that another type of energy recovery facility is not considered to be combusting solid waste from a commercial and industrial establishment, that facility should also be excluded from the CISWI source category. We do not read section 129(g)(1) to establish an exclusive list of excluded sources. See *National Wildlife Federation v. Gorsuch*, 693 F.2d 156, 172 (D.C. Cir. 1982) (use of the term “includes” allows for additional, unstated meanings); *Chemehuevi Indian Tribe v. California St. Bd. of Equalization*, 757 F.2d 1047, 1054 (9th Cir. 1985), rev’d on different grounds, 106 S. Ct. 289 (1985) (“includes” is a term of enlargement, not of limitation); *United States v. Huber*, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 100 S. Ct. 1312 (1980) (use of the word

“includes,” rather than a more restrictive term such as “means,” indicates that the list is not exhaustive but merely illustrative).

Furthermore, the definition of “solid waste incineration unit” applies to all categories of units subject to CAA section 129. The enumerated exclusions in CAA section 129(g)(1) ensure that specific types of facilities are not included in any category under section 129. Thus, we do not read these exclusions to be an exclusive list of energy recovery facilities that are not included in the CISWI source category.

Furthermore, CAA section 129(h)(2) states that any unit subject to a section 129 standard cannot also be subject to a CAA section 112(d) standard. The rules of logic support the position that the contrapositive of that statement is equally true—any unit subject to a section 112(d) standard cannot also be subject to a section 129 standard. This indicates a Congressional intent not to give the word “any” the broad meaning suggested by the commenter because it would require that EPA periodically address units regulated by section 112 under section 129 at times when such units combust solid waste material, even if such units are designed and operated for energy recovery.

The quote cited by the commenter regarding cement kilns expressed EPA’s position that we have the authority to regulate units under CAA section 129 based on their primary function. Thus, we indicated that if we determined that a unit, that might be called a cement kiln was actually functioning more like an incinerator, we would have the authority to regulate that unit under section 129 even though it was not identified as an incinerator. However, we did not make a finding at that time that we were required to regulate cement kilns under section 129 because they functioned as incinerators. In addition, it appears from the quote that we focused at that time only on the phrase “any solid waste material” without considering the additional language “from commercial or industrial establishments” that is relevant to the CISWI source category.

Ultimately, we determined that cement kilns should not be regulated in the final HMIWI rules, but instead should be regulated under CAA section 112. Cement kilns, including those burning nonhazardous solid waste for purposes of energy recovery, have been regulated since 1999 under the portland cement manufacturing industry NESHAP, which is based on MACT. The NESHAP regulates both major and area sources, and its requirements reduce emissions of PM, multiple metals,

dioxins/furans, and total hydrocarbons (which are a surrogate for other organic HAP including polycyclic organic matter (POM), benzene, toluene, and formaldehyde). The final rule has already been implemented and sources are complying with it. As discussed above, CAA section 129(h)(2) is clear that regulations under sections 129 and 112 are mutually exclusive. Accordingly, sources such as cement kilns, boilers and process heaters that are subject to section 112 standards are not CISWI units.

Comment: One commenter believes that electric steam generating units that are already subject to NSPS controls under 40 CFR part 60, subparts Da or Db, should not be subject to regulation under CAA section 129. The commenter stated that EPA did not consider electric utilities that co-combust solid waste with fuel in its rulemaking activities, and, therefore, EPA's regulatory impact analysis did not account for such units. The commenter urged EPA to clarify that the definitions of "commercial or industrial waste" and "commercial and industrial solid waste incineration (CISWI) unit" do not inadvertently result in the CAA section 129 program regulating electric utility boilers, including circumstances where such boilers co-combust very small amounts of nonhazardous solid waste with fuel during the production of power. An example is periodic boiler cleaning, when deposits that accumulate on the interior of boiler tube walls are removed with a cleaning agent. The resulting material is combusted in the boiler with fuel while the boiler is being operated to recover energy and produce power. Combustion is a highly effective method of destroying such materials. The commenter pointed out that EPA agreed with their comment on the November 1999 CISWI proposal that the regulatory text swept too broadly by potentially capturing the episodic circumstances in which electric utilities combust small amounts of such nonhazardous solid waste with fuel. The commenter also stated that the legislative history makes clear that Congress intended section 129 to apply only to units dedicated to solid waste combustion and cited specific legislative history supporting this point. The commenter further stated that application of section 129 to electric utility boilers would be at odds with CAA section 112, and the language of the CAA makes clear Congress's intent for EPA to regulate nonhazardous waste combustion sources under either CAA section 129 or CAA section 112, but not both.

Response: We agree that electric utility boilers should not be covered by

the final CISWI rules because they are designed and operated for purposes of energy recovery and do not function as incinerators. We addressed this issue in the November 2000 CISWI comment response document (EPA-453/R-00-008). Electric utility boilers are regulated under authorities other than CAA section 129. Furthermore, the wording of CAA section 129(h) makes clear the Congressional intent for CAA regulations under CAA section 112 or section 129 to be mutually exclusive. In section 112(n)(1)(A), Congress set forth the limited circumstances under which EPA could regulate electric utility boilers under section 112. First Congress instructed EPA to complete a study of the hazards to public health reasonably expected to occur as a result of emissions by electric utility steam generating units of pollutants listed in section 112 after imposition of the requirements of the CAA. Then it required EPA to regulate electric utility steam generating units under section 112 if the Administrator finds such regulation is appropriate and necessary considering the results of the study required by section 112(n). EPA recently determined that it was neither appropriate nor necessary to regulate electric utility boilers under Section 112. (See 70 FR 15994, March 29, 2005.) The fact that the CAA specifically addressed electric utilities under section 112 indicates that Congress did not intend them to be regulated under section 129. Similarly, since promulgation of the final CISWI rules, EPA promulgated section 112 regulations for industrial, commercial and institutional boilers (40 CFR part 63, subpart DDDDD). That final rule applies to some electric steam generating units (e.g., independent power producers). The language of CAA section 112(h) makes clear the Congressional intent for CAA regulation under section 129 or section 112 to be mutually exclusive. Accordingly, sources subject to section 112 standards are not CISWI units. We are making minor adjustments to the definition of "commercial or industrial waste" to clarify our intent that boilers operated for energy recovery are not subject to CISWI, even if such units combust, along with other fuels, a small amount of material that might, under some circumstances, be considered waste. The revised definition clarifies that the critical consideration in determining whether a unit is burning commercial or industrial waste is the function of the combustion unit, and the primary indicator of function is whether or not

the unit is designed and operated to recover energy for a useful purpose.

The reference definition of energy recovery, which has not been changed, incorporates the concept of recovering thermal energy for "useful purposes." The revised definition of "commercial or industrial" waste excludes from CISWI units (such as boilers) whose design provides for energy recovery and that are operated for energy recovery. However, units designed and operated without energy recovery remain subject to the CISWI rules. Thus, we believe the revised definition of "commercial or industrial waste" is sufficiently clear to exclude utility steam generating units from the CISWI rules.

Comment: One commenter strongly believes that a unit that incinerates solid waste at a rate of less than 1,000 pounds per hour (lb/hr) and recovers heat from the outside of the burn chamber of the unit for useful purposes should be exempt from the final CISWI rules. The commenter believes that such units are necessary in remote locations in northern climates for disposal of small volumes of solid waste and to generate heat as a useful resource.

Response: The commenter has not provided any specific data to support the technical or legal basis for a size cutoff. However, at this time, waste heat recovery units are not covered under CISWI because we have not assessed the impacts of including such units in the final CISWI rules. An impacts assessment is necessary, but is best done when we respond to the CISWI remand and can perform comprehensive analyses that address the addition of waste heat recovery units, any questions on the applicability of the CISWI rules that may be raised by promulgation of rules for the OSWI source category, and remand issues regarding determination of the MACT floor and emission limits. In a subsequent rulemaking action in response to the CISWI remand, we intend to propose additional regulatory language to address units with only waste heat recovery and assess the impacts of the inclusion of these units in the CISWI source category.

Comment: One commenter strongly supports EPA's approach of not specifying a particular level of British thermal units per pound (Btu/lb) as a regulatory threshold. The commenter also included a discussion of the 5,000 Btu/lb threshold that EPA had previously proposed in the CISWI rules, and pointed out that valid energy recovery could be obtained from materials with lower Btu values. The commenter indicated (in attached comments submitted in response to previous rulemakings) that valid energy

recovery from the cement kiln process has been obtained with materials with heating values between 996 and 1,948 Btu/lb, but recommended that, if EPA does adopt a Btu threshold, a threshold of 3,000 Btu/lb is appropriate and conservatively high.

Response: The EPA agrees that a Btu threshold is not needed for reasons described in the February 2004 notice and the 2000 CISWI promulgation preamble. In the preamble to the December 1, 2000 final CISWI rules (65 FR 75342), EPA summarized commenters' statements that " * * * the universe of materials burned for energy recovery is much broader than those defined as "fuels." For example, several of today's combustion technologies and some new emerging technologies can burn materials for energy recovery having heat values less than the proposed 5,000 Btu/lb threshold for considering a material a fuel." The EPA responded that " * * * we agree that several of today's combustion technologies, including some emerging technologies, may be capable of burning materials with a heat value of less than 5,000 Btu/lb to recover energy. Therefore, we have deleted the requirement from the definition of solid waste in the final NSPS and EG." We still maintain this position. In addition to the information submitted by the commenter stating that cement kilns can recover heat from materials in the 1,000 to 2,000 Btu/lb range, EPA found examples of fluidized bed combustion units and other technologies, used at pulp and paper mills and for other utility, industrial, or commercial uses, that recover useful energy from sludges and other materials with low Btu contents (e.g., in the range of 1,000 to 3,800 Btu/lb). There is no bright-line Btu value that can be used to distinguish if a material is a fuel burned for energy recovery or a waste disposed of for purposes other than energy recovery. The approach taken in the February 2004 proposed definition is more workable than a Btu/lb cutoff.

B. Comments on the Definition of CISWI Unit

Comment: One commenter supports the definition of "CISWI unit," but suggested various clarifications to better express the intent of the definitions.

Response: Although we did not adopt any specific language provided by the commenter, we amended the definitions to remove redundant language and to better express our intent. For example, we are removing the following phrase from the definition of "commercial or industrial waste": "(including field erected, modular, and custom built

incineration units operating with starved or excess air)." This language is already contained within the definition of "CISWI unit" and need not be included in the definition of the waste.

C. Comments on the Definition of Commercial or Industrial Waste

Comment: One commenter supports EPA's definition of "commercial or industrial waste." The commenter agrees that, considering high energy costs, materials burned for heat recovery should not be considered solid waste. The commenter also agrees that materials burned without heat recovery for a useful purpose should be regulated as commercial and industrial solid waste.

Response: We are promulgating the definition proposed in the February 17, 2004 **Federal Register** notice, with minor clarifications, and, as described elsewhere in this preamble, we are not including units with waste heat recovery in the final CISWI rules at this time.

Comment: One commenter agrees with the proposed definition of "commercial or industrial waste," but suggested some rewording for clarity.

Response: We agree with the commenter that there is room to improve the clarity of the proposed definition and have made some modifications to the definitions of "commercial or industrial waste" with this in mind. However, we have reorganized the proposed definition in a different manner than suggested by the commenter. We believe our modified definition is clearer than the reworded definition of commercial or industrial waste provided by the commenter. The commenter's definition does not reflect our decision to omit the phrase "combusted for reasons that do not include the recovery of heat for a useful purpose" and insert the phrase "whose design does not provide for energy recovery (as defined in this subpart)" to better reflect the key principal that we discussed in the preamble of the proposed rule. Furthermore, EPA's revised definition reflects our decision not to regulate units with only waste heat recovery at this time, but to propose to regulate such units when we respond to the remand of the final CISWI rules.

D. Comments on the Definition of Solid Waste

Comments: One commenter stated that EPA's arguments about the definition of solid waste are irrelevant and without merit. Pointing to section 129(g)(6) of the CAA, which provides that solid waste shall have the meanings

established by EPA pursuant to the SWDA, the commenter argues that EPA has established only one "comprehensive definition" of solid waste under the SWDA: the definition in 40 CFR 261.2. (See 69 FR 7395/2.) Furthermore, the commenter asserts that this definition was the only comprehensive definition that existed when Congress enacted section 129, which, in the commenter's view, indicates that Congress intended EPA to use that definition. The commenter made this point in an attempt to refute EPA's argument that because section 261.2 "defines solid waste specifically for purposes of identifying hazardous solid waste [it] could not serve as a regulatory definition for purposes of identifying nonhazardous solid waste under CAA section 129." The commenter pointed out that EPA has not provided a reason that this definition is unusable for identifying nonhazardous solid waste, and the refusal to use the definition is arbitrary, capricious, and unlawful. Finally, the commenter added that even if EPA were not compelled to use the definition provided in 40 CFR 261.2, EPA's attempt to provide a new definition solely for the purpose of the CISWI regulation is unlawful because the CAA provides that "solid waste" shall have the meanings established by EPA "pursuant to the Solid Waste Disposal Act."

Response: We disagree with the commenter. Section 129(g)(6) of the CAA states that "solid waste * * * shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act." Section 129(g) also states that the term "solid waste incineration unit" does not include units required to have a permit under section 3005 of the SWDA. This reference to section 3005 of the SWDA refers to the hazardous waste regulatory program authorized under the SWDA. This language effectively limits the scope of EPA's authority under section 129 to units that burn nonhazardous solid waste.

However, the definition of "solid waste" in section 261.2 cited by the commenter applies only to hazardous wastes, whereas the final CISWI rules apply only to nonhazardous solid wastes. To develop and implement the hazardous waste regulatory program authorized by the SWDA, EPA adopted a definition of hazardous waste pursuant to the SWDA. This definition is found in 40 CFR part 261. In defining hazardous waste, 40 CFR part 261 also defines solid waste. In doing so, 40 CFR 261.1(b)(1) states that this definition of solid waste applies only to wastes that

are hazardous for purposes of implementing subtitle C of the Resource Conservation and Recovery Act (RCRA). Section 261.1(b)(2) indicates that the 40 CFR part 261 definition identifies only some of the wastes that are considered solid wastes under other sections of RCRA.

Much of the complexity and specificity of the 40 CFR part 261 definition was unique to hazardous waste and was needed to assure that hazardous waste is properly identified, tracked, transported, and disposed of, and is not inappropriately discarded or abandoned. One U.S. Appeals Court has recognized that the words of the RCRA statute contemplate that EPA refine and narrow the definition of solid waste for the sole purpose of Subchapter C of RCRA. *Connecticut Coast Fisherman's Ass'n v. Remington Arms Co., Inc.*, 989 F.2d 1305, 1315 (2d Cir. 1993). This court recognized that the RCRA statute contemplated more than one definition for the term "solid waste." *Id.*

Consequently, we looked to the definition of solid waste in the SWDA and to other regulatory definitions of solid waste adopted by EPA under the authority of that statute that also apply to various types of nonhazardous solid wastes (*i.e.*, definitions found in 40 CFR part 240 through 40 CFR part 259). These definitions reflect the general definition of solid waste found in the SWDA (42 U.S.C. 6903), but they each vary slightly depending on the particular regulatory circumstances. Furthermore, these solid waste definitions found in the rules for nonhazardous solid wastes do not contain the extensive detail found in the definition of solid waste in the 40 CFR part 261 hazardous waste rules.

The fact that the language of the individual regulatory definitions of solid waste vary from definition to definition indicates that the Administrator has not adopted a single authoritative definition to identify nonhazardous solid waste under the SWDA. Because the Administrator has not adopted a single authoritative definition of nonhazardous solid waste, it is reasonable for EPA to adopt an appropriate definition for purposes of the final CISWI rules so long as it is not inconsistent with the SWDA. As described in previous **Federal Register** actions pertaining to the final CISWI rules (64 FR 67104, November 30, 1999 and 65 FR 75342, December 1, 2000) EPA has adopted, under the joint authority of the CAA and RCRA, a definition of solid waste that is used solely to identify nonhazardous solid waste for the regulatory programs authorized by CAA section 129, such as

the final CISWI rules. The definition proposed in the February 2004 CISWI notice is the same as the definition previously adopted for the final CISWI rules, and we consider the definition of solid waste in the final rules to be consistent with the SWDA.

Comment: Several commenters support the proposed definition of "solid waste," which is the same as that already contained in 40 CFR 60.2265. One of these commenters stated that, to implement this (CISWI) rule, EPA should continue to use definitions designed to address the particular regulatory problems that it poses in the context of the CAA as a whole, rather than being bound by definitions under RCRA that were designed to serve completely different purposes. The commenters stated that, since EPA has never established a single, all-purpose definition of solid waste under RCRA, EPA was authorized to establish a definition of "solid waste" to implement CISWI, as long as that definition was consistent with RCRA. The commenter added that EPA's definition of "commercial or industrial waste" under CISWI is fully consistent with RCRA. The statute, § 1004(27), defines solid waste as discarded material. Since materials from which useful energy or raw materials are recovered are not discarded, the final CISWI rule definition fully implements the statute. The commenter added that units excluded from CISWI were not excluded from regulation under the CAA, but would instead be subject to similar standards under CAA section 112. The fact that units will be regulated should broaden EPA's discretion. The commenter supports the major aspects of the proposal.

Response: We agree that the proposed definition of solid waste is appropriate for the reasons set forth in our prior response. We agree that EPA has never established a single, all-purpose definition of solid waste under RCRA and that we have the authority to establish a definition of solid waste for purposes of the CISWI rules.

E. Comments on the Rulemaking Process

Comment: One commenter challenged the rulemaking process, arguing that EPA committed to convene further proceedings to allow for additional public comment on the CISWI definitions, but then finalized the boiler NESHAP under CAA section 112. In the commenter's view, this series of events rendered the reconsideration proceeding on the CISWI definitions meaningless since EPA had already decided which

units would be covered under the final boiler NESHAP.

Response: In order to comply with a deadline established in a Consent Decree (which was negotiated and signed by counsel for the commenter), EPA was required to finalize the boilers NESHAP under CAA section 112 by February 27, 2004. As a result of this deadline, EPA did not have the ability to wait to finalize the boiler NESHAP until the conclusion of EPA's reconsideration of the CISWI definitions. The notice of proposed rulemaking on the CISWI definitions was signed by the Assistant Administrator for Air and Radiation on February 10, 2004 and published in the **Federal Register** on February 17, 2004. The Administrator signed the final boiler NESHAP on February 26, 2004, and EPA published the final rule in the **Federal Register** on September 14, 2004 after an unforeseen delay.

Because these actions occurred contemporaneously, we acknowledged in the Response to Comments document for the final boiler NESHAP that we were soliciting further comment on the CISWI definitions. See "Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP" (Boilers RTC). In that document, we stated that "[c]hanges made to the CISWI rule in the promulgated rule that affect boilers and process heaters will be dealt with after the promulgation of the boiler MACT standards." (See Boilers RTC at 167.) Thus, we informed the public that we would take further action to address the scope of the boilers NESHAP if it was necessary after our reconsideration of the CISWI definitions.

Our final action in the boilers NESHAP on February 26, 2004 was informed by the definitions that we had proposed on February 17, 2004 in the CISWI reconsideration action. Thus, at that time, we had intended for the scope of the final boilers NESHAP to be consistent with the proposed scope of the final CISWI rules. Our rationale for the action in the final boilers NESHAP was based on what EPA proposed in the reconsideration action on the CISWI definitions. However, as shown by the statements described above, we continued to recognize that it might be necessary to make changes to the CISWI definitions and final boilers NESHAP based on public comments received on this reconsideration. We made clear that our final action in the boilers NESHAP did not preclude the possibility of further action to amend the scope of the boilers NESHAP after receiving public

comments on the scope of the CISWI definitions.

VI. Relationship to NESHAP for Boilers and Process Heaters

Based on our conclusions in this reconsideration action for CISWI, we do not believe it is necessary to take any action to amend our NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD). The definitions in the Boilers and Process Heaters NESHAP that define the scope of the source category are consistent with our definitions for the CISWI source category. In 40 CFR part 63, subpart DDDDD, we define a boiler as “an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.” (See 40 CFR 63.7575.) In addition, we define a process heater as “an enclosed device using controlled flame, that is not a boiler, and the unit’s primary purpose is to transfer heat indirectly to a process material (liquid, gas, solid) or to heat transfer material for use in a process unit, instead of generating steam.” (See 40 CFR 63.7575.) The NESHAP apply to industrial, commercial, or institutional boilers and process heaters. (See 40 CFR 63.7485.)

VII. Impacts of the Final Rules

Today’s final amendments to the definitions do not change the scope of the CISWI rules or the requirements of the rules. The amendments to the definitions are meant to clarify the intent of the definitions that were finalized as part of the December 1, 2000 final CISWI rules. Therefore, today’s action does not change the economic, environmental, or other impacts of the existing CISWI rules.

The definitions as proposed in the February 17, 2004 notice would have changed the scope of the rules to include units with only waste heat recovery. While we currently intend to propose to cover these units under CISWI in the future when we conduct additional rulemaking proceedings in response to the remand, we have not performed analyses of the environmental and economic impacts associated with covering these sources under CISWI. Therefore, we are not taking final action concerning these units at this time. During the development of our response to the CISWI remand, we intend to analyze the environmental, cost, and economic impacts of requiring waste heat recovery units to comply with emission limits and other CISWI requirements, and to

propose broadening the scope of the final CISWI rules to cover these sources. We will provide notice and opportunity to comment on the estimated impacts, including impacts on small entities, in our proposed response to the remand.

VIII. Future Actions on the Final CISWI Rules

The final amendments to the definitions announced in this action will take effect immediately. As explained above, in our action on remand, we intend to propose additional changes that would cover units with only waste heat recovery in the CISWI source category, as discussed earlier. In addition, the remand action will also address such issues as the MACT floor determination, emission limits, and other questions on the applicability of the December 2000 CISWI rules and the interface with the rules for OSWI units. To properly address these issues, we will need to perform additional analyses to determine the changes that will occur to the CISWI rules and the associated impacts of these changes. To completely assess the impacts, these analyses are best performed when we are addressing all of the issues involved with the CISWI remand including, among other things, potential changes to the number of regulated units (*e.g.*, by the addition of units with only waste heat recovery) and the control techniques used in the newly expanded CISWI source category. Therefore, when we propose our response to the remand, we will take public comments on any proposed changes and their associated impacts, and then promulgate final rules.

IX. Statutory and Executive Order Reviews

The statutory and executive order reviews described in this section reflect the fact that the final definitions contained in the CISWI rule amendments do not change the scope of the rules or the requirements of the rules. The amendments are meant to clarify the intent of the definitions that were finalized as part of the December 1, 2000, CISWI rules. In the future, we will propose any additional changes to the CISWI rules that we determine are necessary to respond to the remand. At that time, EPA will consider the combined effects of all of the regulatory changes that we will propose as part of the CISWI remand.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action

is “significant” and, therefore, subject to review by OMB and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action does not constitute a “significant regulatory action” because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 60 CFR part CCCC and 60 CFR part DDDD under the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq. Information Collection Request (ICR) documents were previously prepared for the CISWI NSPS and the CISWI EG when they were promulgated in 2000. Both ICRs were approved by OMB and assigned OMB control numbers (OMB 2060–0450/ICR No. 1926.02 for subpart CCCC of 40 CFR part 60 and OMB 2060–0451/ICR No. 1927.02 for subpart DDDD of 40 CFR part 60). A copy of the ICR documents may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

The final definitions contained in the amendments to the final CISWI rules do not impact the burden estimates previously made because the definitions do not change the scope of the CISWI

rules or the requirements of the CISWI rules. Consequently, the ICRs 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 EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as follows:

(1) A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than \$6.5 million (this varies by industry category, ranging up to \$10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards;

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

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

After considering the economic impacts of the amendments to the final CISWI rules on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The EPA previously determined that the final CISWI rules will not have a significant economic impact on a substantial number of small entities (65 FR 75348, December 1, 2000), and, therefore, determined that it was not

necessary to prepare a regulatory flexibility analysis in connection with the December 1, 2000 final rules. The revised definitions contained in the final amendments to the CISWI rules do not change the scope or stringency of the CISWI rules or cause additional units to become subject to the rules. Therefore, the previous conclusion that the CISWI rules will not have a significant impact on a substantial number of small entities remains valid.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the 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 develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA previously determined that the final CISWI rules do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments,

in the aggregate, or the private sector in any 1 year (65 FR 75348, December 1, 2000). Thus, the CISWI rules are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA previously determined that the final CISWI rules contained no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulations do not unfairly apply to small governments. Therefore, the CISWI rules were not subject to the requirements of section 203 of the UMRA. The revised definitions contained in the final amendments to the CISWI rules do not change the scope or stringency of the CISWI rules, and therefore, do not change our previous determinations. Therefore, we have determined that the amendments to the CISWI rules are not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Also, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The final CISWI rules, including the revised definitions contained in these amendments, do not have federalism implications. The final rules 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 final rules will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” “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.”

The final CISWI rules, including the revised definitions contained in these amendments, do not have Tribal implications, as specified in Executive Order 13175. The rules 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 the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rules, including these amendments to the definitions, are not subject to Executive Order 13045 because they 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 action 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 No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The EPA previously completed an NTTAA analysis for the final CISWI rules (65 FR 75349, December 1, 2000). The revised definitions contained in the amendments to the final CISWI rules do not involve any technical standards; thus, the requirements of section 12(d) of the NTTAA do not apply to these amendments.

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. The EPA will submit a report containing the notice of final rules including the revised definitions for the CISWI 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 notice of final rules 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). These rules will be effective immediately upon 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: September 14, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, 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 CCCC—[AMENDED]

- 2. Section 60.2265 is amended by:
- a. Removing the definition of “commercial and industrial waste”;
 - b. Adding the definition of “commercial or industrial waste” in alphabetical order; and
 - c. Revising the definitions of “commercial and industrial solid waste incineration (CISWI) unit” and “solid waste” to read as follows:

§ 60.2265 What definitions must I know?

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion

chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in § 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

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

* * * * *

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

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Subpart DDDD—[AMENDED]

- 3. Section 60.2875 is amended by:
- a. Removing the definition of “commercial and industrial waste”;
- b. Adding the definition of “commercial or industrial waste” in alphabetical order; and
- c. Revising the definitions of “commercial and industrial solid waste incineration (CISWI) unit” and “solid waste” to read as follows:

§ 60.2875 What definitions must I know?

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts

commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in § 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

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

* * * * *

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage,

or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

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[FR Doc. 05-18825 Filed 9-21-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD-2004-18489]

RIN 2133-AB62

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule revises and adopts as final the interim final rule published in the **Federal Register** on July 20, 2004. The Maritime Administration (MARAD) is issuing this final rule to implement provisions of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a new Maritime Security Program (MSP) that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping.

DATES: Effective Date: This final rule is effective November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Maritime Administration, Telephone 202-366-2323. For legal questions, call Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration, 202-366-5320.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1996, the President signed the Maritime Security Act of 1996 establishing the Maritime Security Program (MSP) for FYs 1996 through 2005 to provide financial assistance of up to \$2.1 million per vessel per year to operators of U.S.-flag vessels with approved MSP Operating Agreements. The MSP is funded at \$98.7 million per year for each year from FY 1996 through