

6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-xxxx-x]

**Amendment to Standards of Performance for New Stationary  
Sources; Small Industrial-Commercial-Institutional  
Steam Generating Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** Today's action promulgates revisions to the new source performance standards (NSPS) for new, modified, and reconstructed small industrial-commercial-institutional steam generating units (40 CFR part 60, Subpart Dc) that were proposed on November 15, 1995. The revisions exclude certain small steam generating units, when conducting combustion research, from the category of small steam generating units subject to NSPS control requirements for sulfur dioxide (SO<sub>2</sub>) and particulate matter (PM). The NSPS are issued under the authority of section 111 of the Clean Air Act (CAA).

Following promulgation of the NSPS, litigation was filed by Babcock and Wilcox, who repeated a concern they had expressed during the public comment period following proposal of the NSPS. That is, they had requested an exemption from the NSPS for steam generating units of

14.6 MW (50 million Btu/hr) heat input capacity or less used for combustion research based on intermittent and infrequent operation.

Discussions with Babcock and Wilcox made it clear that there is a legitimate concern regarding the ability of experimental, and sometimes unpredictable, air pollution control technology to consistently meet the NSPS. This, coupled with the fact that these steam generating units provide valuable data on both the combustion process and methods of air pollution control which result in improved fuel efficiency, improved air pollution control efficiency, and less expensive air pollution control, led the EPA to provide the exemption in an effort to encourage combustion research.

**EFFECTIVE DATE:** (May 8, 1996)

**ADDRESSES:** Docket. Docket No. A-86-02, containing information used in developing the original NSPS and the revisions, and the comments received during the public comment period, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The docket is

located at the above address in room M-1500, Waterside Mall (ground floor). The materials are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260-7548 or -7549. The FAX number for the Center is (202) 260-4000. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For information concerning specific aspects of this action, contact Mr. Rick Copland, [(919) 541-5265], or Mr. Fred Porter [(919) 541-5251], Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

Today's rule resolves litigation in the case of *Babcock and Wilcox Company v. U.S. EPA*, No. 90-1509 (D.C. Cir.) (See 60 FR 57373, November 15, 1995). The rule applies to any small steam generating unit used for combustion research as long as the heat generated during the conduct of such combustion research is not used for any purpose other than preheating the combustion air for the steam generating unit (i.e., the heat generated is

released to the atmosphere without being used for space heating, process heating, driving pumps, preheating combustion air for other units, generating electricity, or any other purpose).

Five comment letters were received during the public comment period on the November 15, 1995 proposal. All five commentors supported the proposal. One commentor suggested that the EPA extend today's rule to large steam generating units regulated under 40 CFR Part 60, Subpart Db and that the EPA allow the heat generated during the research activity to be used productively. One commentor suggested that all natural gas-fired steam generating units be exempt from the provisions of Subpart Dc, including notification requirements. The comments did not reveal any facilities that conduct combustion research with small steam generating units and that also use the heat generated during periods of combustion research for purposes other than preheating the combustion air for the steam generating unit.

The EPA believes that today's rule already represents a significant exercise of regulatory flexibility which does not warrant further expansion at this time. Accordingly, the EPA believes that the

prohibition on the use of the heat generated during the conduct of combustion research is appropriate in that it allows for the conduct of such research without compromising the EPA's ability to enforce the NSPS for small steam generating units (See 60 FR at 57374). Indeed, this limitation merely reflects the existing operating practice of the Babcock and Wilcox steam generating unit at issue (described below). The EPA believes that this provision is also appropriate for any other steam generating unit that conducts combustion research.

As discussed in the November 15, 1995 proposal, the EPA agreed to revise the applicability of the SO<sub>2</sub> and PM emission control requirements of 40 CFR Part 60, Subpart Dc because of the limited potential impact of combustion research on the environment: Babcock & Wilcox Company, the petitioner which requested the revision of the applicability of the standards of performance, operates a single small steam generating unit occasionally (less than five percent of the unit's operating time) to evaluate the performance of, and to develop, unproven combustion technologies. Significantly, Babcock and Wilcox Company also does not use the heat that the steam

generating unit produces during periods of combustion research for any purpose (such as space heating, process heating, electric generation, etc.) other than preheating the combustion air for the steam generating unit.

Accordingly, in order to minimize the potential for inappropriate claims of combustion research (potentially undermining EPA's ability to enforce the standards of performance for small steam generating units), the EPA has conditioned the exclusion of certain limited combustion research activities from the standards of performance on the requirement that a steam generating unit not use the heat produced during combustion research for purposes other than preheating the combustion air for the steam generating unit.

The comments that recommend expanding today's rule to include large steam generating units regulated under Subpart Db or all natural gas-fired units are not appropriate for consideration within the scope of this limited action. The EPA will consider these comments as a part of the ongoing activity to develop and/or revise standards of performance for industrial steam generating units under CAA sections 111 and 112.

**ECONOMIC AND REGULATORY IMPACTS:**

Today's rule will impose no additional costs on the regulated community or the national economy. It would reduce the costs of compliance for some small steam generating units when conducting combustion research by not requiring them to comply with the NSPS for new, modified, and reconstructed small industrial-commercial-institutional steam generating units. Accordingly, the EPA has determined that today's rule: (1) does not constitute a "significant rule" under Executive Order 12286 (the promulgation would not result in any increase in costs or prices and would not disrupt market competition), (2) does not constitute a substantial revision that would require an economic impact assessment pursuant to CAA section 317, (3) does not constitute a Federal mandate under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, for State, local, or tribal governments or the private sector, (4) does not contain regulatory requirements that might significantly or uniquely affect small governments under Title II of UMRA, and (5) would not affect the public reporting burden for the collection of information required, in compliance with the Paperwork Reduction Act of 1980, under the NSPS for small steam generating units.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that these revisions would not have a significant impact on a substantial number of small entities. Not only would today's rule reduce the regulatory burden on the small steam generating units source category, but it has previously been determined that, even without today's promulgated revisions, the standards would not affect a substantial number of small entities (See 55 FR 37682, September 12, 1990).



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---IDENTIFICATION OF DOCUMENT:

Amendment of Standards of Performance for New Stationary  
Sources--Small Industrial-Commercial-Institutional Steam  
Generating Units

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LIST OF SUBJECTS IN 40 CFR PART 60

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

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Date

Carol M. Browner  
Administrator

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

**PART 60 -- STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

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

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Section 60.40c is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

**§60.40c Applicability and delegation of authority.**

\* \* \* \* \*

(a) Except as provided in paragraph (d) of this section, the affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

\* \* \* \* \*

(c) Steam generating units which meet the applicability requirements in paragraph (a) of this

section are not subject to the sulfur dioxide (SO<sub>2</sub>) or particulate matter (PM) emission limits, performance testing requirements, or monitoring requirements under this subpart (§§ 60.42c, 60.43c, 60.44c, 60.45c, 60.46c, or 60.47c) during periods of combustion research, as defined in §60.41c.

(d) Any temporary change to an existing steam generating unit for the purpose of conducting combustion research is not considered a modification under §60.14.

3. Section 60.41c is amended by adding the following new definition for "Combustion research" in alphabetical order to read as follows:

**§60.41c Definitions**

\* \* \* \* \*

Combustion Research means the experimental firing of any fuel or combination of fuels in a steam generating unit for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions from combustion, provided that, during these periods of research and development, the heat generated is not used for any purpose other than preheating combustion air for use by that steam generating unit (i.e., the heat generated is

released to the atmosphere without being used for space heating, process heating, driving pumps, preheating combustion air for other units, generating electricity, or any other purpose).

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