

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[AD-FRL-7408-1]

RIN 2060-AJ28

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: On December 1, 2000, EPA adopted emission guidelines for existing commercial and industrial solid waste incineration (CISWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing CISWI units subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans are due from States with CISWI units subject to the emission guidelines on December 1, 2001. If a State or Tribe with existing CISWI units does not submit an approvable plan, sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for CISWI units located in that State or Tribal area within 2 years after promulgation of the emission guidelines (December 1, 2002). This action proposes a Federal plan to implement emission guidelines for CISWI units located in States and Indian country without effective State or Tribal plans. On the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan.

DATES: *Comments.* Comments on the proposed CISWI Federal plan must be received on or before January 24, 2003.

Public hearing. The EPA will hold a public hearing if requests to speak are received by December 10, 2002. For additional information on the public hearing and requesting to speak, see the Supplementary Information section of this preamble. If requested, the hearing would take place on December 30, 2002 and would begin at 10 a.m.

ADDRESSES: *Comments.* Submit written comments (in duplicate, if possible) to the following address: Air and Radiation Docket and Information Center (MC-6102T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Attention

Docket No. A-2000-52. The EPA requests that a separate copy also be sent to the contact person listed below. For additional information on the docket and electronic availability, see Supplementary Information.

Public hearing. If timely requests to speak at a public hearing are received, a public hearing will be held at EPA's New RTP Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC. Were one to be held, a hearing would be held in the auditorium of the main facility.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Mr. David Painter at (919) 541-5515, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143-02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: painter.david@epa.gov. For technical information, contact Mr. Fred Porter at (919) 541-5251, Combustion Group, Emission Standards Division (C439-01), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, email: porter.fred@epa.gov. For information regarding implementation of this proposed rule, contact the appropriate Regional Office (table 1) as shown in Supplementary Information.

SUPPLEMENTARY INFORMATION: *Comment Information.* Comments may be submitted electronically via electronic mail (e-mail) or on disk. Electronic comments on this proposed rule may be filed via e-mail at most Federal Depository Libraries. E-mail submittals should be sent to: "A-and-R-Docket@epa.gov". Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or encryption. Comments and data will also be accepted on disks or as an e-mail attachment in WordPerfect or Corel "wpd" file format, Microsoft Word format, or ASCII file format. All comments and data for this proposed rule, whether in paper form or electronic forms such as through e-mail or on diskette, must be identified by docket number A-2000-52.

Persons wishing to submit proprietary information for consideration must clearly distinguish such information from other comments by clearly labeling it "Confidential Business Information" (CBI). To ensure that proprietary information is not inadvertently placed in the docket, submit CBI directly to the following address, and not the public docket: Mr. Roberto Morales, OAQPS

Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality is made with the submission, the submission may be made available to the public without further notice. No confidential business information should be submitted through e-mail.

Public hearing information. Persons wishing to speak at a public hearing should notify Ms. Christine Adams at (919) 541-5590. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

Related information. Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for CISWI units. The address is <http://www.epa.gov/ttn/atw/129/ciwi/ciwiwp.html>. The CISWI website references other websites for closely related rules, such as large and small municipal waste combustors (MWC), hazardous waste, and hospital/medical/infectious waste incinerators (HMIWI). The large MWC and HMIWI sites contain the respective State plan guidance documents.

Docket. Docket numbers A-2000-52 and A-94-63 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing CISWI units, respectively. Docket A-2000-52 incorporates all of the information in Docket A-94-63. The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at the OAR Docket in the EPA Docket Center (EPA/DC), 1301 Constitution Avenue, NW., Washington, DC 20460, or by calling (202) 566-1744. The docket is located in Room B102, (basement of EPA West Building). The fax number for the Center is (202) 566-1749 and the E-mail address is <http://www.epa.gov/edocket>. A reasonable fee may be charged for copying.

Regulated entities. The proposed Federal plan would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

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.
	325	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA expects to be regulated by this proposed rule. This table lists examples of the types of entities that could be affected by this proposed rule. Other types of entities not listed could also be affected.

To determine whether your facility, company, business organization, etc., is regulated by this action, carefully examine the applicability criteria in 40 CFR 62.14510 through 62.14530 of subpart III. If you have any questions regarding the applicability of this action to your solid waste incineration unit,

refer to the **FOR FURTHER INFORMATION CONTACT** section.

EPA Regional Office Contacts. Table 1 lists EPA Regional Offices that can answer questions regarding implementation of this proposed rule.

TABLE 1.—EPA REGIONAL CONTACTS FOR CISWI

Region	Contact	Phone/Fax	States and Protectorates
I	EPA New England Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114-2023.	617-918-1650, 617-918-1505 (fax).	CT, ME, MA, NH, RI, VT
II	U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007.	212-637-4080, 212-637-3998 (fax).	NJ, NY, Puerto Rico, Virgin Islands
III	U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103-2029.	215-814-3438, 215-814-2134 (fax).	DE, DC, MD, PA, VA, WV
IV	U.S. EPA—Region 4, Air and Radiation, Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303-3104.	404-562-9105, 404-562-9095 (fax).	AL, FL, GA, KY, MS, NC, SC, TN
V	U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch, (AR-18J), 77 West Jackson Boulevard, Chicago, IL 60604-3590.	312-353-2211, 312-886-8289 (fax).	IL, IN, MN, OH, WI
VI	U.S. EPA—Region 6, Chief, Toxics Enforcement, Section (6EN-AT), 1445 Ross Avenue, Dallas, TX 75202-2733.	214-665-7224, 214-665-7446 (fax).	AR, LA, NM, OK, TX
VII	U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101	913-551-7020, 913-551-7844 (fax).	IA, KS, MO, NE
VIII	U.S. EPA—Region 8, Air Program Technical Unit, (Mail Code 8P-AR), 999 18th Street Suite 500, Denver, CO 80202.	303-312-6007, 303-312-6064 (fax).	CO, MT, ND, SD, UT, WY
IX	U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415-744-1219, 415-744-1076 (fax).	AZ, CA, HI, NV, American Samoa, Guam
X	U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	(206) 553-4273, (206) 553-0110 (fax).	

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

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I. Background Information

A. What Is the Regulatory Development Background for This Proposed Rule?

Section 129 of the CAA requires EPA to develop emission guidelines for existing "solid waste incineration units combusting commercial or industrial waste." The EPA refers to these units as "commercial and industrial solid waste incineration" (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999 and promulgated them on December 1, 2000 (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the Clean Air Act, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees the Federal plan as an interim measure to ensure that Congressionally mandated emission standards are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VI.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for Tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to

the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Today's action proposes a Federal plan for CISWI units that are not covered by an approved State or Tribal plan as of December 1, 2002. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002 for CISWI units). The EPA is proposing this Federal plan now so that a promulgated Federal plan will be in place at the earliest possible date, thus ensuring timely implementation and enforcement of the CISWI emission guidelines. In addition, EPA's timing allows a State or Tribe the opportunity to take delegation of the Federal plan in lieu of writing a State plan.

B. What Impact Does the U.S. Appeals Court Remand and EPA's Granting of a Request for Reconsideration Have on This Federal Plan?

Subsequent to EPA's promulgation of the final rule establishing the NSPS and EG for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001 EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of "commercial and industrial solid waste incineration unit" in EPA's CISWI rulemaking. In granting this petition for reconsideration, EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting EPA's motion for a voluntary remand of the CISWI rule without vacature. EPA's request for a voluntary remand of the final CISWI rule was intended to allow the Agency to address concerns related to the Agency's procedures for establishing MACT floors for CISWI units in light of the D.C. Circuit Court's decision in *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001).

Neither EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section

307(d)(7)(B) of the Act provides that "reconsideration shall not postpone the effectiveness of the rule," except that "[t]he effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months." In this case, neither EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the D.C. Circuit granted EPA's motion for a remand without vacature, therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, EPA's obligation under section 129(b)(3) of the Act to promulgate a Federal Plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.¹ Therefore, EPA is complying with its statutory obligations by issuing today's proposed Federal Plan for CISWI units.

To the extent that EPA might take action in the future that results in changes in the underlying CISWI rule—in response to the petition for reconsideration or in response to the voluntary remand—EPA will simultaneously amend this Federal Plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and EPA will reasonably accommodate the concerns of commenters as appropriate.

II. Affected Facilities

A. What Is a CISWI Unit?

A CISWI unit means any combustion device that combusts commercial and industrial waste, as defined in proposed 40 CFR part 62, subpart III. Commercial and industrial waste, as defined in proposed subpart III, is solid waste combusted in an enclosed device using controlled flame combustion without energy recovery 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 without energy recovery that is a distinct operating unit of any commercial or industrial facility. Fifteen types of combustion units, which are listed in § 62.14525 of subpart III are

¹ Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.

conditionally exempt from the Federal plan.

B. Does the Federal Plan Apply to Me?

The proposed Federal plan will apply to you if you are the owner or operator of a combustion device that combusts commercial and industrial waste (as defined in subpart III) and the device is not covered by an approved and effective State or Tribal plan as of December 1, 2002. The proposed Federal plan covers your CISWI unit until EPA approves a State or Tribal plan that covers your CISWI unit and that plan becomes effective.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and could be subject to the Federal plan. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS. If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

Your CISWI unit would be subject to this Federal plan if on the effective date of the Federal plan, EPA has not approved a State or Tribal Plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in §§ 62.14510 through 62.14530 of subpart III.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to a CISWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval of the plan.

The EPA's promulgation of a CISWI Federal plan will not preclude States or Tribes from submitting a plan. If a State or Tribe submits a plan after promulgation of the CISWI Federal plan final rule, EPA will review and approve or disapprove the State or Tribal plan. If EPA approves a plan, then the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. (See the discussion in "State or Tribe Submits A Plan After CISWI Units Located in the Area Are Subject to the Federal Plan" in section

VI.C of this preamble.) If a CISWI unit were overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual CISWI unit were not covered by an approved and effective State or Tribal plan, the CISWI unit would be subject to this Federal plan.

C. How Do I Determine If My CISWI Unit Is Covered by an Approved and Effective State or Tribal Plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of section 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

III. Elements of the CISWI Federal Plan

Because EPA is proposing a Federal plan to cover CISWI units located in States and areas of Indian Country where plans are not in effect, EPA has elected to include in this proposal the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of CISWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. See 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this proposed CISWI Federal plan. Table 2 lists each element and identifies where it is located or codified.

TABLE 2.—ELEMENTS OF THE CISWI FEDERAL PLAN

Element of the CISWI Federal plan	Location
Legal authority and enforcement mechanism.	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA
Inventory of Affected MWC Units.	Docket A–2000–52
Inventory of Emissions.	Docket A–2000–52

TABLE 2.—ELEMENTS OF THE CISWI FEDERAL PLAN—Continued

Element of the CISWI Federal plan	Location
Emission Limits.	40 CFR 62.14630–62.14645
Compliance Schedules.	40 CFR 62.14535–62.14575
Operator Training and Qualification.	40 CFR 62.14595–62.14625
Waste Management Plan.	40 CFR 62.14580–62.14590
Record of Public Hearings.	Docket A–2000–52
Testing, Monitoring, Recordkeeping, and Reporting.	40 CFR 62.14670–62.14760
Progress Reports.	Section III.J of this preamble

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. Section 129(b)(3) requires EPA to develop, implement, and enforce a Federal plan within 2 years after the date the relevant emission guidelines are promulgated (by December 1, 2002 for CISWI units). Compliance with the emission guidelines cannot be later than 5 years after the relevant emission guidelines are promulgated (by December 1, 2005 for CISWI units).

2. EPA's Legal Authority in Indian Country

Section 301 provides EPA with the authority to administer Federal programs in Indian country. See sections 301 (a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VI.E of this preamble for a more detailed discussion of EPA's authority to administer the CISWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of

the CAA to implement the emission guidelines in those States and areas of Indian country not covered by an approved plan. As discussed in section VI of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected CISWI Units

The proposed Federal plan includes an inventory of CISWI units affected by the emission guidelines. (See 40 CFR 60.25(a).) Docket number A-2000-52 contains an inventory of the CISWI units that may potentially be covered by this proposed Federal plan in the absence of State or Tribal plans. This inventory contains 99 CISWI units in 30 States and one protectorate. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the CISWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the CISWI units listed in the inventory memorandum in docket number A-2000-52. Any CISWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory. States, Tribes, or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

C. Inventory of Emissions

The proposed Federal plan includes an emissions estimate for CISWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), and sulfur dioxide (SO₂). For this proposal, EPA has estimated the emissions from each known CISWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the CISWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the CISWI emission guidelines and the Federal plan. Refer to the inventory memorandum in docket number A-2000-52 for the complete emissions

inventory and details on the emissions calculations.

D. Emission Limitations

The proposed Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be "at least as protective as" those in the emission guidelines. The emission limitations in this proposed CISWI Federal plan are the same as those contained in the emission guidelines. (See table 2 of subpart III.) Section IV of this preamble discusses the emission limitations and operating limits. Table 3 of subpart III contains operating limits for wet scrubbers.

E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the proposed CISWI Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The proposed increments of progress are described in section IV.E of this preamble.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring,

recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of the proposed subpart III contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provides opportunity for public participation in adopting the plan. (See 40 CFR 60.23(c).) If requested to do so, EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket A-2000-52. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

Under the Federal plan, the EPA Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Appendix D of 40 CFR part 60 requires reporting of emissions data to the Aerometric Emissions Information Retrieval System (AIRS)/AIRS Facility Subsystem(AFS). These reports can be combined with the State implementation plan report required by 40 CFR 51.321 in order to avoid double reporting. Under the proposed Federal plan, EPA Regional Offices would report AIRS emissions data. If a State or Tribe has been delegated the authority to implement and enforce the Federal plan, the State or Tribe would report emissions data to AIRS.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification

of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of

technical reports on any performance testing and monitoring.

IV. Summary of CISWI Federal Plan

A. What Emission Limitations Must I Meet?

As the owner or operator of an existing CISWI unit, you will be

required to meet the emission limitations specified in Table 1. See section IV.E of this preamble for a discussion of the compliance schedule.

TABLE 1.—EMISSION LIMITATIONS FOR EXISTING CISWI UNITS

For these pollutants	You must meet these emission limitations ^a	And determine compliance using these methods ^b
Cadmium	0.004 mg/dscm	EPA Method 29
Carbon Monoxide	157 ppm	EPA Methods 10, 10A, or 10B
Dioxins/Furans, toxic equivalent (TEQ) basis.	0.41 ng/dscm	EPA Method 23
Hydrogen Chloride	62 ppm by dry volume	EPA Method 26A
Lead	0.04 mg/dscm	EPA Method 29
Mercury	0.47 mg/dscm	EPA Method 29
Opacity	10 percent	EPA Method 9
Oxides of Nitrogen	388 ppm by dry volume	EPA Method 7, 7A, 7C, 7D, or 7E
Particulate Matter	70 mg/dscm	EPA Method 5 or 29
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6 or 6c

^a All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

^b These methods are in 40 CFR part 60, appendix A.

B. What Operating Limits Must I Meet?

If you are using a wet scrubber to comply with the emission limitations,

you will be required to establish the maximum and minimum site-specific operating limits indicated in Table 2. You will be required to operate the

CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 2.—OPERATING LIMITS FOR EXISTING CISWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes
For these operating parameters.	You must establish these operating limits.	And monitor continuously using these recording times
Scrubber liquor pH	Minimum pH	Every 15 minutes

NOTE: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you will be required to petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 62.14640 of subpart III.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

C. What Are the Requirements for Air Curtain Incinerators?

The Federal plan will establish opacity limitations for air curtain CISWI units burning 100 percent wood wastes and/or clean lumber. This opacity limitation will be 10 percent, except 35 percent opacity will be allowed during start-up periods that are within the first 30 minutes of operation.

D. What Are the Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements?

The owner or operator of a CISWI unit subject to the CISWI Federal plan will be required to conduct initial performance tests for cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter,

and sulfur dioxide and establish operating limits (i.e., maximum or minimum values for operating parameters). The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

The owner or operator will be required to conduct annual performance tests for particulate matter, hydrogen chloride, and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

To assure ongoing achievement of the Federal plan's provisions, an owner or operator using a wet scrubber to comply with the emission limitations will continuously monitor the following

operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH. If something other than a wet scrubber is used to comply with the emission limitations, the owner or operator will be required to monitor other operating parameters, as approved by the Administrator.

If the owner or operator is using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, the owner or operator must install and continuously operate a bag leak detection system. The owner or operator must keep records of periods when the alarm sounds and calculate whether these periods are more than 5 percent of the operating time for each 6-month period. The owner or operator will be required to submit information documenting compliance with these requirements as part of an annual report; and report deviations semi-annually.

In addition, the Federal plan will require CISWI unit owners and operators to maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, and operator training and qualification. The owner or operator will submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters in annual reports.

E. What Is the Compliance Schedule?

Each CISWI unit will be required to either: (1) Reach final compliance by the date 1 year after publication of the final rule in the **Federal Register**, or (2) meet increments of progress and reach final compliance by the date 2 years after publication of the final rule in the **Federal Register**. In addition, the owner or operator must comply with the operator training and qualification requirements and inspection requirements by the date 1 year after publication of the final rule in the **Federal Register**, regardless of when the CISWI unit reaches final compliance.

Each owner or operator that takes more than 1 year to reach final compliance must submit a final control plan (increment 1) by the date 6 months after publication of the final rule for this Federal plan in the **Federal Register** and reach final compliance (increment 2) by the date 2 years after publication of the final rule in the **Federal Register**. To ensure timely progress towards implementation of the Federal plan, the proposed rules include a requirement for owners or operators of CISWI units seeking to take an additional year to

reach final compliance to submit a request to the Administrator that documents the need for an extension.

To meet the increment 1 requirement, the owner or operator of each CISWI unit must submit a final control plan that includes five items: (1) A description of the air pollution control devices and/or process changes that will be employed so that each CISWI unit complies with the emission limits and other requirements, (2) a list of the types of waste burned, (3) the maximum design waste burning capacity, (4) the anticipated maximum charge rate, and, (5) if applicable, the petition for site-specific operating limits. A final control plan is not required for units that will be shut down, but those units must close by 1 year after the final rule is published or must submit a closure agreement by 6 months after the final rule is published, close no later than 2 years after the rule is published, and meet other requirements as described in section V.A. of this preamble.

To meet the second increment of progress, the owner or operator of each CISWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the CISWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

F. How Did EPA Determine the Compliance Schedule?

The EPA determined the compliance schedule based on the requirements of 40 CFR part 60, subpart B and the feasibility of owners or operators to retrofit combustion units with air pollution control devices. CISWI units must comply within 1 year after publication of the final Federal plan or meet increments of progress. The requirement to reach final compliance within 1 year is consistent with 40 CFR 60.24(c) of subpart B. Subpart B requires final compliance to be "as expeditiously as practicable* * *" and requires increments of progress if the compliance schedule is longer than 1 year.

The EPA believes that many CISWI units can reach final compliance within 1 year after promulgation of the Federal plan based on their similarity to HMIWI units. In addition to the 1 year after promulgation of the Federal plan, units could use the time between this proposed rule and promulgation of the final Federal plan to plan and begin retrofits.

The proposed compliance schedule for CISWI units is similar to the

compliance schedule for HMIWI units. Most CISWI units are similar in size to HMIWI units. In addition, CISWI units would require similar controls to meet the CISWI Federal plan emission limits as HMIWI units would need to meet the HMIWI Federal plan emission limits. To determine the compliance schedule for HMIWI units, EPA conducted case studies of eight HMIWI units that completed retrofits of the types of controls needed to meet the HMIWI Federal plan (64 FR 36430, July 6, 1999). Based on these case studies (Docket No. A-98-24, II-A-1), EPA found that many HMIWI units can meet the requirements of the Federal plan within 1 year. Similarly, many CISWI units could meet a 1-year schedule.

We expect that some CISWI units could need more than 1 year to comply, as did some HMIWI units, due to site-specific circumstances. For units that cannot comply within 1 year, the proposed Federal plan establishes increments of progress, as required by subpart B. The proposed date for the first increment of progress, submittal of a final control plan, is 6 months after publication of the final Federal plan in the **Federal Register**. The proposed date for the second increment of progress, final compliance, is 2 years after publication of the final Federal plan in the **Federal Register**. These increments are derived from the findings of the case studies performed to characterize the retrofit of control systems for hospital medical and infectious waste (HMIWI) incinerators (Docket A-98-24, Item II-A-1). The size and design of CISWI are similar to the smaller HMIWI that were the subjects of the case studies. In particular, most units are small and controls will be ordered "off-the-shelf" as assembled packages. Thus, the Agency did not see a need for increments to address details of on-site construction and installation of control systems. Also, CISWI sites are not thought to have the problems with space and access that were concerns for HMIWI retrofits. In addition, CISWI units have the time between publication of this proposed rule and publication of the final rule in the **Federal Register** to begin developing the final control plan and to initiate retrofit activities.

The proposed rules do not include increments of progress for air curtain incinerators (ACI). Air curtain incinerators must comply with the requirements of the Federal plan one year after the date of promulgation of the final rule. Delaying implementation for ACI would not be appropriate because there will be little or no need for the installation of control equipment on these units (Primarily because control

equipment is typically infeasible for ACI). Compliance with the opacity limits applicable to this class of units would primarily be achieved by good operation and maintenance practices. This approach is consistent with the proposed requirement for completion of CISWI operator training by the date one year after promulgation of the final rule.

V. CISWI That Have or Will Shut Down

A. Units That Plan To Close Rather Than Comply

If you plan to permanently close your currently operating CISWI unit, you must do one of the following: (a) close by the date 1 year after publication of the final rule for this Federal plan in the **Federal Register**, or (b) submit a legally binding closure agreement, including the date of closure, to the Administrator by the date 6 months after publication of the final rule in the **Federal Register**. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the final compliance date of the CISWI Federal plan (2 years after publication of the final rule in the **Federal Register**). If you close your CISWI unit after the date 1 year after publication of the final rule in the **Federal Register**, but before the date 2 years after publication of the final rule in the **Federal Register**, then you must comply with the operator training and qualification requirements by the date 1 year after publication of the final rule in the **Federal Register**. In addition, while still in operation, you are subject to the same requirements for title V operating permits that apply to units that will not shut down.

B. Inoperable Units

In cases where a CISWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the CISWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. A CISWI unit that has been rendered inoperable would not be covered by the Federal plan. The CISWI owner or operator may do the following to render a CISWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. CISWI Units That Have Shut Down

CISWI units that are known to have already shut down (but are not known to be inoperable) will be included in the source inventory and identified in any State or Tribal plan submitted to EPA.

1. Restarting Before The Final Compliance Date

If the owner or operator of an inactive CISWI unit plans to restart before the final compliance date, the owner or operator must submit a control plan for the CISWI unit and meet the applicable compliance schedule. Final compliance is required for all pollutants and all CISWI units no later than the final compliance date. (See section IV.E for the discussion on compliance schedules and increments of progress.)

2. Restarting After The Final Compliance Date

Under this proposed Federal plan, a control plan would not be needed for inactive CISWI units that restart after the final compliance date. However, before restarting, such CISWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications. Performance testing to demonstrate compliance would be required within 180 days after restarting. There would be no need to show that the increments of progress have been met since these steps would have occurred before restart while the CISWI unit was shut down and not generating emissions. A CISWI unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

VI. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates CISWI units in a State or Tribal area that does not have an EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. See section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved.

Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the CISWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum ("EPA Indian Policy," signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. See generally "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section IV.E.1 of this preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement

between the State or Tribe and EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

(1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III),

(2) Alternative methods of demonstrating compliance,

(3) Alternative requirements that could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting; and

(4) Petitions to the Administrator to add a chemical recovery unit to § 62.14525(n) of subpart III.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the

authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the CISWI units covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by such a plan, and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI inspections, and preparation of draft notices of violation.

The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these

programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, EPA may choose to delegate a partial Federal plan (i.e., to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

D. Implementing Authority

The EPA will delegate authority within the Agency to the EPA Regional Administrators to implement the CISWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 1 under Supplementary Information lists the names and addresses of the EPA Regional Office contacts and the States that they cover.

E. CISWI Federal Plan and Indian Country

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The CISWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing CISWI units in Indian country. However, eligible Indian tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. See 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of

March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the CISWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (See 40 CFR 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (See 40 CFR 49.6.)

2. EPA Implementation

The CAA also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement Clean

Air Act programs in Indian country is discussed in more detail in the Tribal Authority Rule. See 63 FR at 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a CISWI plan under section 111(d) of the CAA.

3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with EPA's implementation of the Federal Operating Permits program in Indian country (see 64 FR 8247 (February 19, 1999)).

VII. Title V Operating Permits

Except for the sources specified in section 62.14830 of this proposed rule, sources subject to this CISWI Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. See 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including CISWI units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (See, e.g., the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority.² As a result, EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to

² A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. See 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.³

As a result of EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's proposal, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, i.e., December 1, 2003. Therefore, December 1, 2003 is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.⁴ For example, if an existing CISWI unit

³ For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the Act and 40 CFR 70.7(b) and 71.7(b). EPA's interpretation is also consistent with section 503(c) of the Act which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits programs. If a permit as opposed to a title V application were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been issued final title V permits in potentially much less time than allotted for non-section 129 sources to submit their title V applications.

⁴ If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003 or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement his title V application by

including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.⁵ However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a

title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the Title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including the following chart to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While the following chart provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective, etc. Lastly, the following table takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in effect in the area in which the source is located.

Title V Permit Application Deadlines

If a CISWI unit is a major source or is part of a major source, and had commenced operation as of the effective date of the relevant title V permits program,	Then a complete title V application which covers the entire source ⁶ is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the relevant title V permits program. <i>See</i> CAA section 503(c) and 40 CFR 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a major source or is part of a major source, but did not commence operation until after the relevant title V permits program became effective,	Then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. <i>See</i> CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).

⁵ *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and had commenced operation as of December 1, 2000,	Then a complete title V application ⁷ is due not later than 12 months after subpart CCCC was promulgated, <i>i.e.</i> , December 1, 2001 (or earlier if required by the title V permitting authority). <i>See</i> CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but did not commence operation until after December 1, 2000,	Then a complete title V application ⁷ is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. <i>See</i> CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan,	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or Tribal section 11(d)/129 plan. ⁸ <i>See</i> CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. <i>See</i> CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to the CISWI Federal plan (subpart III of 40 CFR part 62),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart III. <i>See</i> CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. <i>See</i> CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is required to obtain a title V permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first caused the unit to be subject to title V. <i>See</i> CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. <i>See</i> CAA section 129(e) and 40 CFR 62.14835 of subpart III.

Reopening Title V Permits

If a CISWI unit is a major source or is part of a major source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 1, 2000,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart CCCC not later than June 1, 2002. <i>See</i> CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, and is covered by a title V permit with a remaining term of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. <i>See</i> CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart III of 40 CFR part 62 not later than 18 months after the effective date of the CISWI Federal plan. <i>See</i> CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

Updating Existing Title V Permit Applications

If a CISWI unit is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of this NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart CCCC in accordance with 40 CFR 70.5(b) or 71.5(b).
If a CISWI unit is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b).

If a CISWI unit is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,

Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart III in accordance with 40 CFR 70.5(b) or 71.5(b).

⁶ A title V application from a major source must address all emissions units at the title V source, not just the section 129 emissions unit. See 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2.)

⁷ Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emissions units which caused the source to be subject to title V. The requirements which trigger the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, e.g., State Implementation Plan requirements, not just the requirements which caused the source to be subject to title V. See footnote #2 in *Change to Definition of Major Source* rule, November 27, 2001 (66 FR 59161, 59163).

⁸ If a CISWI unit becomes subject to an approved and effective State or Tribal section 111(d)/129 plan after being subject to an effective Federal plan, the CISWI unit is still required to file a complete title V application consistent with the application deadlines for units subject to the CISWI Federal plan.

Title V and Delegation of a Federal Plan

During the development of the Federal plan for Hospital/Medical/ Infectious Waste Incinerators (HMIWI), a State agency raised the question of whether a title V operating permits program could be used as a mechanism for transferring the authority to implement and enforce section 111/129 requirements from EPA to State and local agencies. See "Transfer of Authority" section of final Federal plan for HMIWI, August 15, 2000 (65 FR 49868, 49873). The State agency noted that the proposal for that rulemaking described two mechanisms for transferring authority to State and local agencies following promulgation of the Federal plan. Those two mechanisms were: (1) The approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement and enforce the HMIWI Federal plan. The State asked EPA to recognize the Title V operating permits program as a third mechanism for transferring authority to State and local agencies. The commenter said that State and local agencies implement Title V programs and that Title V permits must include the requirements of the Federal plan. The commenter concluded that Title V permitting authorities already have implementation responsibility for the Federal plan through their Title V permits programs, regardless of whether the authority to implement the Federal plan is delegated to the State or local agency.

In its response to the State, the EPA explained why the issuance of a Title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan by focusing on situations in which a Title V permitting authority without delegation of a Federal plan could not implement and enforce section 111/129 requirements. This situation would arise

any time a Title V permit was not in effect for a source subject to the section 111/129 Federal plan or where the permit did not contain the applicable section 111/129 requirements. For example, a title V source may be allowed to operate without a title V permit for a number of years in some cases between the time the source first triggers the requirement to apply for a permit and the issuance of the permit. The preamble to the final HMIWI Federal plan also noted that a source with a Title V permit with a permit term less than 3 years is not required by part 70 to have its permit reopened by a State or Tribe to include new applicable requirements such as the HMIWI standard.⁹ See 40 CFR 70.7(f)(1)(i).

In addition to the explanation provided in the preamble to the final HMIWI Federal plan, there are additional State implementation and enforcement gaps which would not be addressed by implementing and enforcing the section 111/129 standard through a Title V permit. The following is an example of such a gap: Title V permits are not permanent. With two exceptions, all permits must be renewed at least every 5 years¹⁰. Although 40 CFR 70.4(b)(10) requires States to provide that a permit or the terms and conditions of a permit may not expire until the permit is renewed, this requirement only applies if a timely and complete application for a renewal

⁹ An owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. See 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

¹⁰ Under 40 CFR 70.4(b)(3)(iv), permitting authorities are allowed to issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years, provided that the permits are reviewed at least every 5 years. Permits with acid rain provisions must be issued for a fixed term of five years; shorter terms for such permits are not allowed.

permit has been submitted by the source, creating a potential gap. In contrast to the example, the two mechanisms that EPA has identified for transferring authority ensure that a State or Tribe can implement and enforce the section 111/129 standards at all times.

Legally, delegation of a standard or requirement results in a delegated State or Tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.¹¹ Although a State or Tribe may have the authority to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or Tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or Tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or Tribe.

As mentioned above, a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 Federal plan.¹² Some States or

¹¹ If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, e.g., alternative methods of demonstrating compliance.

¹² The EPA interprets the phrase "assure compliance" in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce

Tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or Tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or Tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.¹³ In practical terms, without approval of a State or Tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and Tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements, and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or Tribe's part 70 program. As a result, prior to a State or Tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or Tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or Tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive

these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, entering emissions data into the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS), and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. See Section III.J. of this preamble titled "Progress Reports"; section II.J. of the proposed Federal plan for HMIWI, July 6, 1999 (64 FR 36426, 36431); 40 CFR 60.25(e), and Appendix D of 40 CFR part 60.

It is important to note that the EPA is not using its authority under 40 CFR 70.4(i)(3) to request that all States and Tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or Tribe's authority to incorporate section 111/129 requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

Lastly, the EPA would like to correct and clarify the following sentences from the "Transfer of Authority" section of the preamble to the final HMIWI Federal plan (65 FR 49868, 49873): "Prior to delegation, only the EPA will have enforcement authority. In neither instance does the title V permit status of a source affect the enforcement responsibility of EPA and the State or Tribal permitting authorities." In situations where a State or Tribe is subject to a section 111/129 Federal plan and does not take delegation of the Federal plan, the following applies: Prior to delegation, only EPA can implement and enforce section 111/129 requirements outside of a title V permit. Whenever there is a title V permit in effect which includes section 111/129 requirements, however, EPA and the State or Tribe have dual authority to implement and enforce the section 111/129 requirements in the title V permit. When a State or Tribe has not taken delegation of a section 111/129 Federal plan, the previous sentence is relevant only in situations where a State or Tribe has the authority to incorporate section 111/129 requirements into title V

permits, and to implement and enforce these requirements in title V permits without delegation.

VIII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Public Hearing, Executive Orders 12866, 13132, 13175, 13045, and 13211, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act, Paperwork Reduction Act, and the National Technology Transfer and Advancement Act. Since today's rule simply proposes to implement the CISWI emission guidelines (40 CFR part 60, subpart DDDD) as promulgated on December 1, 2000, and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements as discussed in the preamble to the rule promulgating the emission guidelines (65 FR 75338, December 1, 2000).

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with proposed and promulgated standards and their preambles, the contents of the docket (with limited exceptions) will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the CAA.

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the CAA, 42 U.S.C. 7607(d). Supporting information is included in Docket A-2000-52. Docket number A-94-63 contains the technical support for the final emission guidelines, 40 CFR part 60, subpart DDDD. Docket A-2000-52 incorporates all of the information in Docket A-94-63.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations on the proposed standards should contact EPA (see ADDRESSES). If a public hearing is requested and held, EPA will ask clarifying questions during the oral

each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. See definition of "applicable requirement" in 40 CFR 70.2. See also 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

¹³ It is important to note that an AG's opinion submitted at the time of initial title V program approval is sufficient if it demonstrates that a State or Tribe has adequate authority to incorporate section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before January 24, 2003. Written statements should be addressed to the Air and Radiation Docket and Information Center (*see ADDRESSES*), and refer to Docket No. A-2000-52. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (*see ADDRESSES*).

C. 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 OMB review and the requirements of the Executive Order. The 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 impacts 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.

The EPA considered the 2000 emission guidelines to be significant and the rules were reviewed by OMB in 2000. *See* 65 FR 75338, December 1, 2000. The Federal plan promulgated today would simply implement the 2000 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Therefore, this regulatory action is considered “not significant” under Executive Order 12866.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires us 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” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule establishes emission limits and other requirements for solid waste incineration units that are not covered by an EPA-approved and effective State or Tribal plan. The EPA is required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards for such units. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to facilities that operate commercial or industrial solid waste incineration units located in States that do not have EPA-approved plans covering such units by the effective date of the promulgated Federal plan (and the owners or operators of such facilities). The regulation does not include an express provision preempting State or local regulations. However, once this Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to

potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the CISWI emission guidelines. This consultation took place during the Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Act committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including the CISWI emission guidelines. Additionally, EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about the CISWI emission guidelines and to solicit their comments. The concerns raised by representative of State and local governments were considered during the development of the CISWI emission guidelines.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 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 one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

The EPA knows of no CISWI units presently owned by Indian tribal

governments. However, if any exist now or in the future, the rule would not have tribal implications on these tribal governments as defined by the Executive Order. This Federal plan simply implements the 2000 emission guidelines. It does not result in any additional control requirements nor imposes any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Thus, the requirements of Executive Order 13175 do not apply.

F. Executive Order 13045: Protection of Children From Environmental Health Risks 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, (2) concerns an environmental health or safety risk that EPA has reason to believe may disproportionately affect children. If the regulatory action meets these 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 Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this proposed rule is not economically significant as defined by Executive Order 12866.

G. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 F.R. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 to State, local,

and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of 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 under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The environmental impact analysis for the emission guidelines estimates the total national annualized cost impact of this regulatory action at \$11.6 million per year (Docket A-94-63). This proposed Federal plan will apply to only a subset of the units considered in the environmental impacts analysis for the emission guidelines. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because commercial and industrial units are not likely to be owned by small governments.

I. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to

conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 500 employees; (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; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues and the size standards vary from industry to industry. Generally, businesses covered by the North American Industrial Classification System (NAICS) codes affected by this rule are considered small if they have less than 500 employees or less than \$5 million in annual sales.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

During the 2000 CISWI emission guidelines rulemaking, EPA determined that based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, the CISWI emission guidelines should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. The EPA determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the final emission guidelines. The EPA has also determined that the final emission guidelines would not have a significant economic impact on a substantial number of small entities (65 FR 75348). This Federal plan would not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA has determined that this proposed Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

J. Paperwork Reduction Act

The information collection requirements have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared for the emission guidelines (ICR No. 1927.02 for subpart DDDD) and copies may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Office of Environmental Information; Collection Strategies Division (2822T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. Copies may also be downloaded from the internet at <http://www.epa.gov/icr>.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 1, 2000. The burden estimate includes the burden associated with

State or Tribal plans as well as the burden associated with the proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State or Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The Federal plan contains monitoring, reporting, and recordkeeping requirements. The information will be used to ensure that the Federal plan requirements are met on a continuous basis. Records and reports will be necessary to enable us to identify waste incineration units that may not be in

compliance with the Federal plan requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected. The records that owners and operators of existing CISWI units maintain will indicate to EPA whether personnel are operating and maintaining control equipment property.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	\$407,067	0	0	\$407,067
Implementing agency	1,817	\$48,386	0	0	\$48,386

The EPA expects the Federal plan to affect a maximum of 116 units over the first 3 years. (Note: This assumes that no State plans are in effect.) The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years. The implementing agency would not incur any capital or start-up costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 number for this proposed rule and for

the emissions guidelines which it implements is 2060-0451. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C. 272) directs EPA to use voluntary consensus standards in 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 the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed Federal plan involves technical standards. The EPA proposes in this plan to use EPA Methods 1, 3A, 3B, 5, 6, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 23, 26A, and 29. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA

methods. No applicable voluntary consensus standards were identified for EPA Methods 7A, 7D, 9, and 10B. The search and review results have been documented and are placed in the Docket No. A-2000-52 for this proposed plan.

This search for emission measurement procedures identified 24 voluntary consensus standards. The EPA determined that 20 of these 24 standards were impractical alternatives to EPA test methods for the purposes of this proposed Federal plan. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the 20 methods are discussed below.

The standard, ASTM D3162 (1994) "Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry)," is impractical as an alternative to EPA Method 10 in this proposed Federal plan because this ASTM standard, which is stated to be applicable in the range of 0.5-100 ppm CO, does not cover the potential range in the plan (up to 157 ppm). Whereas EPA Method 10 has a range from 20-1000 ppm CO. Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of NDIR instrument performance

specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds). However, it should be noted that ASTM D3162 has more quality control requirements than EPA Method 10 in terms of instrument calibration procedures, span gas cylinder validation procedures, and operational checks.

The standard ASTM E1979-98 (1998), "Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead," is impractical as an alternative to EPA Method 29 in this proposed Federal plan. This ASTM standard does not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, it cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas this ASTM standard requires cellulose filters and other probable nonglass fiber media which cannot be considered equivalent to EPA Method 29.

The European standard EN 1911-1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Method 26A uses an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The following ten methods are impractical alternatives to EPA test methods for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154-91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1 and 3B; ASTM D5835-95, "Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration," for EPA Method 3A; ISO 10396:1993, "Stationary Source

Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; CAN/CSA Z223.2-M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A; ASME C00031 or PTC 19-10-1981—Part 10, "Flue and Exhaust Gas Analyses," for EPA Methods 6 and 7; ASTM D1608-98, "Test Method for Oxides of Nitrogen in Gaseous Combustion Products (Pheno-Disulfonic Acid Procedures)," for EPA Method 7; ISO 7934:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Hydrogen Peroxide/Barium Perchlorate/Thorin Method," for EPA Method 6; ISO 11564:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Nitrogen Oxides—NEDA (naphthylethylenediamine)/Photometric Method," for EPA Methods 7 and 7C; CAN/CSA Z223.21-M1978, "Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry," for EPA Methods 10 and 10A; and European Committee for Standardization (CEN) EN 1948-3 (1997), "Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification," for EPA Method 23.

The following seven methods are impractical alternatives to EPA test methods for the purposes of this Federal plan because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC-38-80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3685/D3685M-98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ISO 9096:1992, "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; CAN/CSA Z223.1-M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," for EPA Method 5; ISO 11632:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Ion Chromatography," for EPA Method 6; CAN/CSA Z223.24-M1983, "Method for the Measurement of Nitric Oxide and Nitrogen Dioxide in Air," for EPA Method 7; and CAN/CSA Z223.26-M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption

Spectrophotometric Method," for EPA Method 29.

The following four of the 24 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed plan because they are under development by a voluntary consensus body: ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; ASTM Z6449Z, "Standard Method for the Determination of Sulfur Dioxide in Stationary Sources," for EPA Method 6; ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury," for EPA Method 29 (portion for mercury only); prEN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Method 29 (portion for mercury only). While EPA is not proposing to include these four voluntary consensus standards in today's proposed plan, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements proposed in this Federal plan and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this plan should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Table 1 of proposed Subpart III lists the EPA testing methods included in the emission Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators. Under 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: November 6, 2002.

Christine Todd Whitman,
Administrator.

40 CFR part 62 is proposed to be amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Amend § 62.13 by adding paragraph (d) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) The substantive requirements of the Commercial and industrial solid waste incineration units Federal plan are contained in subpart III of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

3. Amend part 62 by adding subpart III to read as follows:

Subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before November 30, 1999

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62.14500 What is the purpose of this subpart?

62.14505 What are the principal components of this subpart?

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62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

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Initial Compliance Requirements

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62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

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62.14840 What definitions must I know?

Tables

Table 1 of Subpart III of Part 62—Emission Limitations

Table 2 of Subpart III of Part 62—Operating Limits for Wet Scrubbers

Table 3 of Subpart III of Part 62—Toxic Equivalency Factors

Table 4 of Subpart III of Part 62—Summary of Reporting Requirements

Introduction

§ 62.14500 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, *you* means the owner or operator of a CISWI unit.

§ 62.14505 What are the principal components of this subpart?

This subpart contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

Applicability

§ 62.14510 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a commercial and industrial solid waste incinerator (CISWI) unit as defined in § 62.14840 and the CISWI unit meets the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your CISWI unit commenced on or before November 30, 1999.

(2) Your CISWI unit is not exempt under § 62.14525.

(3) Your CISWI unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your CISWI unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If you made changes after June 1, 2001 that meet the definition of modification or reconstruction after promulgation of the final 40 CFR part 60, subpart CCCC (New Source Performance Standards for Commercial

and Industrial Solid Waste Incineration Units), your CISWI unit is subject to subpart CCCC of 40 CFR part 60 and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing CISWI unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR part 60.

§ 62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

(a) If your CISWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your CISWI unit until EPA approves a State plan that covers your CISWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your CISWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your CISWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

§ 62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart are not limited to the inventory of sources listed in Docket A-2000-52 for the Federal plan. If your CISWI units meets the applicability criteria in § 62.14510, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

§ 62.14525 Can my combustion unit be exempt from this subpart?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section except for the requirements specified in this section and in § 62.14531.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Units that are regulated under subpart Ea of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors); subpart Eb of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of 40 CFR part 60 (Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before September 20, 1994); subpart AAAA of 40 CFR part 60 (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); or subpart BBBB of 40 CFR part 60 (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units).

(2) Units that burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR part 60 subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements

in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of 40 CFR part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996); 40 CFR part 60 subpart Ce (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators); and 40 CFR part 62 subpart HHH (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units regulated under subpart EEE of part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn 100 percent wood waste and clean lumber are only required to meet the requirements under "Air Curtain Incinerators That Burn 100 Percent

Wood Wastes and Clean Lumber" (§§ 62.14765 through 62.14825) and the title V operating permit requirements (§§ 62.14830 and 62.14835).

(j) *Cyclonic barrel burners.*

(k) *Rack, part, and drum reclamation units.*

(l) *Cement kilns.*

(m) *Sewage sludge incinerators.*

Incineration units regulated under subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.*

Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in paragraphs (n)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(o) *Laboratory units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

(a) If you have a recovery unit that is not listed in § 62.14525(n), you can petition the Administrator to add the unit to the list. The petition must contain the six items in paragraphs (a)(1) through (6) of this section.

(1) A description of the source of the materials being burned.

(2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.

(3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.

(4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.

(5) A description of the commercial markets for the recovered chemical constituents and their use.

(6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

(b) Until the Administrator approves the petition, the incineration unit is covered by this subpart.

(c) If a petition is approved, the Administrator will amend § 62.14525(n) to add the unit to the list of chemical recovery units.

§ 62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

Owners or operators of sources that qualify for the exemptions in § 62.14525(a) through (o) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.14525(a) through (o) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.14525(a) through (o) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.14525(a) through (o) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

Compliance Schedule and Increments of Progress

§ 62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

If you plan to continue operation of your CISWI unit, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (a)(3) of this section.

(5) You must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, you must petition for and be granted an extension of the final compliance date specified § 62.14535(a)(3) by meeting the requirements of § 62.14536 and you must meet the requirements for

increments of progress specified in § 62.14540 through § 62.14565. To achieve the final compliance increment of progress, you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**. For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (b)(3) of this section.

(5) You must submit an initial report including the result of the initial performance no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

§ 62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

If you plan to continue operation and want to come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must petition to the Administrator to grant you an extension by following the procedures outlined in paragraphs (a) and (b) of this section.

(a) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) on or before the date two months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) Your request must include documentation of the analyses undertaken to support your need for an

extension, including an explanation of why you are unable to meet the final compliance date specified in § 62.14535(a)(3) and why your requested extension date is needed to provide sufficient time for you to design, fabricate, and install the emissions control systems necessary to meet the requirements of this subpart. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied.

§ 62.14540 When must I complete each increment of progress?

If you plan to come into compliance after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) *Increment 1.* Submit a final control plan by the date 6 months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) *Increment 2.* Reach final compliance by the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14545 What must I include in each notification of achievement of an increment of progress?

Your notification of achievement of an increment of progress must include the four items specified in paragraphs (a) through (d) of this section.

(a) Notification of the date that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

(d) The date you were required to complete the increment of progress.

§ 62.14550 When must I submit a notification of achievement of the first increment of progress?

Your notification for achieving the first increment of progress must be postmarked no later the date ten days after the date that is six months from the date of promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14555 What if I do not meet an increment of progress?

Failure to meet an increment of progress is a violation of the standards under this subpart. If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the due date for that increment of progress. You must inform the Administrator that you did not meet the increment, and you must continue to

submit reports each subsequent calendar month until the increment of progress is met.

§ 62.14560 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the six items described in paragraphs (a)(1) through (6) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 62.14640.

(6) A schedule that includes the date by which you will award the contracts to procure emission control equipment or related materials, initiate on-site construction, initiate on-site installation of emission control equipment, and/or incorporate process changes, and the date by which you will initiate on-site construction.

(b) Maintain an onsite copy of the final control plan.

§ 62.14565 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

§ 62.14570 What must I do if I plan to permanently close my CISWI unit?

If you plan to permanently close your CISWI unit, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, rather than come into compliance with the complete set of requirements in this subpart, then you must shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

(b) If you plan to shut down rather than come into compliance with the complete set of requirements of this subpart, but are unable to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal**

Register, then you must petition EPA for and be granted an extension by following the procedures outlined in paragraphs (b)(1) through (5) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by the date two months after promulgation of the CISWI Federal plan in the **Federal Register**. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while the date one year after promulgation of the CISWI Federal plan in the **Federal Register** does not provide sufficient time for shut down. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial or municipal waste treatment and/or disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

If you . . .	then your increments of progress could be . . .
(A) Need an extension so you can install on onsite alternative waste treatment technology before you shut down your CISWI.	(1) Date when you will enter into a contract with an alternative treatment technology vendor, (2) Date for initiating onsite construction or installation of the alternative technology, (3) Date for completing onsite construction or installation of the alternative technology, and (4) Date for shutting down the CISWI.
(B) Need an extension so you can acquire the services of a commercial waste disposal company before you shut down your CISWI.	(1) Date when price quotes will be obtained from commercial disposal companies, (2) Date when you will enter into a contract with a commercial disposal company, and (3) Date for shutting down the CISWI.

(2) You must shut down no later than by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(4) You must submit a legally binding closure agreement to the Administrator by the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. The closure

agreement must specify the date by which operation will cease. The closure date cannot be later than the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

(5) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14575 What must I do if I close my CISWI unit and then restart it?

If you temporarily close your CISWI unit and restart the unit for the purpose of continuing operation of your CISWI unit, then you must follow the

requirements in paragraphs (a), (b), or (c) of this section depending on when you plan to come into compliance with the requirements of this subpart. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your CISWI unit.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of § 62.14535(a).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart on or before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements § 62.14535(b). You must have first requested and been granted an extension from the initial compliance date by following the requirements of § 62.14536.

(c) If you restart your CISWI unit after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** and resume operation, but have not previously requested an extension by meeting all of the requirements of § 62.14536, you must meet all of the requirements of § 62.14535(a)(1) through (a)(5) at the time you restart your CISWI unit. Upon restarting your CISWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

Waste Management Plan

§ 62.14580 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 62.14585 When must I submit my waste management plan?

You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14590 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 62.14595 What are the operator training and qualification requirements?

(a) You must have a fully trained and qualified CISWI unit operator accessible at all times when the unit is in operation, either at your facility or able to be at your facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 62.14625.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (where applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(xii) Recordkeeping requirements.

(xiii) Methods to continuously monitor CISWI unit and air pollution control device operating parameters and monitoring equipment calibration procedures (where applicable).

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 62.14600 When must the operator training course be completed?

(a) The operator training course must be completed by the later of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) The date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(b) You must follow the requirements in § 63.14625 if all qualified operators are temporarily not accessible.

§ 62.14605 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.14595(b) or (c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.14595(c)(2).

§ 62.14610 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course of at least 4 hours covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 62.14615 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.14610.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.14605(a).

§ 62.14620 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You

must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.14580 through 62.14590.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each employee who operates your incinerator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the two dates specified in paragraphs (b)(1)(i) through (ii) of this section.

(i) The date 1 year after publication of this final rule in the **Federal Register**.

(ii) Two months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of all plant personnel who operate your CISWI unit who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of all plant personnel who operate your CISWI unit who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial refresher training, and the

dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 62.14625 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 62.14620(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.14730.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.14595(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 62.14630 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart by the applicable final compliance date for your CISWI unit.

§ 62.14635 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii), as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 62.14640 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 62.14630, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 62.14645 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during periods of CISWI unit startup, shutdown, or malfunction as defined in § 62.14840.

(b) Each malfunction must last no longer than three hours.

Performance Testing

§ 62.14650 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 62.14700(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of 40 CFR part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{\text{adj}} = C_{\text{meas}}(20.9 - 7) / (20.9 - \%O_2) \quad (\text{Eq. 1})$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9 - 7)$ = 20.9 percent oxygen – 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this

section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§ 62.14655 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 62.14660 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 CFR 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

§ 62.14665 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 90 days after your final compliance date.

Continuous Compliance Requirements

§ 62.14670 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under 40 CFR 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

(b) You must continuously monitor the operating parameters specified in § 62.14635 or established under § 62.14640. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the

established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 62.14640. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 62.14675 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 62.14680 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no later than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 62.14685 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 62.14690 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 62.14630, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times except as specified in § 62.14695(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the

emission limitations under § 62.14630, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.14640.

§ 62.14695 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 62.14700 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 62.14640, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of

operating time during each 6-month period that the alarm sounds, calculated as specified in § 62.14635(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 62.14640 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 62.14690.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 62.14620(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 62.14705 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 62.14710 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 62.14715 When must I submit my waste management plan?

You must submit the waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14720 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.14660, as applicable.

(b) The values for the site-specific operating limits established in § 62.14635 or § 62.14640.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 62.14690(b).

§ 62.14725 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.14720. You must submit subsequent reports no more than 12 months following the previous report. As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permit requirements of 40 CFR parts 70 and 71.

§ 62.14730 What information must I include in my annual report?

The annual report required under § 62.14725 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.14735, 62.14740, and 62.14745.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.14635 or § 62.14640.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.14700(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.14680(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.14680(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 62.14735 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for any 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 62.14740 What must I include in the deviation report?

In each report required under § 62.14735, for any pollutant or

parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 62.14745 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Within ten days of each deviation, you must submit a notification that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 62.14625(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 62.14750 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by 40 CFR 60.7.

§ 62.14755 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 62.14760 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See 40 CFR 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators that Burn 100 Percent Wood Wastes and Clean Lumber

§ 62.14765 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 62.14770 When must I achieve final compliance?

If you plan to continue operating, then you must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. It is unlawful for your air curtain incinerator to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** if you have not achieved final compliance. An air curtain incinerator that continues to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** without being in compliance is subject to penalties.

§ 62.14795 How do I achieve final compliance?

For the final compliance, you must complete all equipment changes and retrofit installation control devices so that, when the affected air curtain incinerator is placed into service, all necessary equipment and air pollution control devices operate as designed and meet the opacity limits of § 62.14815.

§ 62.14805 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in this subpart, you must achieve final compliance by the date one year after promulgation of the

CISWI Federal plan in the Federal Register.

(b) If you close your incinerator but will restart it after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must have completed any needed emission control retrofits and meet the opacity limits of § 62.14815 on the date your incinerator restarts operation.

(c) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your air curtain incinerator.

§ 62.14810 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to permanently close your incinerator rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by the date by the 180 days after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14815 What are the emission limitations for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) After the date the initial test for opacity is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 62.14820 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Use Method 9 of 40 CFR part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 90 days after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 62.14825 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Title V Requirements

§ 62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

Yes. If you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements specified in 40 CFR 62.14525(a)–(h) and (j)–(o) and all of the requirements specified in 40 CFR 62.14531.

§ 62.14835 When must I submit a title V permit application for my existing CISWI unit?

(a) If your existing CISWI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR part 60, subpart DDDD (December 1, 2003), or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing CISWI unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective. See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(b) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and

40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. See sections 503(d) and 502(a) of the Clean Air Act; 40 CFR 70.7(b) and 71.7(b).

Definitions

§ 62.14840 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act, subparts A and B of part 60 and subpart A of this part 62.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste, for the purposes of this subpart, means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery 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 without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or

operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

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

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or modified CISWI unit means a CISWI unit you have changed later than promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building

and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR part 60, Appendix A.

Parts reclamation unit means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

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 (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in 40 CFR 60.2555 of subpart DDDD and § 62.14525 of this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart DDDD.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

TABLE 1 OF SUBPART III OF PART 62.—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation ^a	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of part 60)
Dioxins/furans (toxic equivalency basis)	0.41 nanograms per dry standard cubic meter.	3-run average (4 hour minimum sample time per run).	Performance test (Method 23 of appendix A of part 60)
Hydrogen chloride	62 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 26A of appendix A of part 60)
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of part 60)
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods average 7, 7A, 7C, 7D, or 7E of appendix A of part 60)
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of part 60)
Sulfur dioxide	20 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of part volume 60)

^aAll emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART III OF PART 62.—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	1. Daily (batch units). 2. 3-hour rolling (continuous and intermittent units). ^a 3-hour rolling. ^a
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes.	3-hour rolling. ^a
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes.	3-hour rolling. ^a
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes.	3-hour rolling. ^a

^aCalculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART III OF PART 62.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
A. 2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
B. 12,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
C. 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
D. 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
E. 12,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
F. 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
G. Octachlorinated dibenzo-p-dioxin	0.001
H. 2,3,7,8-tetrachlorinated dibenzofuran	0.1
I. 2,3,4,7,8-pentachlorinated dibenzofuran	0.5
J. 1,2,3,7,8-pentachlorinated dibenzofuran	0.05
K. 1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
L. 1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
M. 1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
N. 2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
O. 1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
P. 1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Q. Octachlorinated dibenzofuran	0.001

TABLE 4 OF SUBPART III OF PART 62.—SUMMARY OF REPORTING REQUIREMENTS

Report	Due Date	Contents	Reference
A. Waste Management Plan.	No later than the date 6 months after publication of the final rule the Federal Register.	Waste management plan	§ 62.14715.
B. Initial Test Report	No later than 60 days following the performance test.	1. Complete test report for the initial performance test. 2. The values for the site-specific operating limits 3. Installation of bag leak detection systems for fabric filters.	§ 62.14720.
C. Annual Report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	1. Name and address 2. Statement and signature by responsible official 3. Date of report 4. Values for the operating limits 5. If no deviations or malfunctions were reported, a statement that no deviations occurred during reporting period. 6. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported. 7. Information for deviations or malfunctions recorded under § 62.14700(b)(6) and (c) through (e). 8. If a performance test was conducted during the reporting period, the results of the test. 9. If a performance test was not conducted during the reporting period, a statement that the requirements of § 62.14680(a) or (b) were met. 10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.	§§ 62.14725 and 62.14730 Subsequent reports are to be submitted no more than 12 months following the previous report.
D. Emission Limitation or Operating Limit Deviation Report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	1. Dates and times of deviations 2. Averaged and recorded data for these dates ... 3. Duration and causes for each deviation and the corrective actions taken. 4. Copy of operating limit monitoring data and any test reports. 5. Dates, times, and causes for monitor downtime incidents. 6. Whether each deviation occurred during a period of startup, shutdown, or malfunction.	§§ 62.14735 and 62.14740.
E. Qualified Operator Deviation Notification.	Within 10 days of deviation.	1. Statement of cause of deviation 2. Description of efforts to have an accessible qualified operator. 3. The date a qualified operator will be accessible.	§ 62.14745(a)(1).
F. Qualified Operator Deviation Status Report.	Every 4 weeks following deviation.	1. Description of efforts to have an accessible qualified operator. 2. The date a qualified operator will be accessible. 3. Request for approval to continue operation	§ 62.14745(a)(2).
G. Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation.	Notification that you are resuming operation	§ 62.14745(b).

^a This table is only a summary, see the referenced sections of the rule for the complete requirements.