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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[AD-FRL-6185-4]

RIN 2060-ZA03

### Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

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

**ACTION:** Final rule.

**SUMMARY:** This action promulgates (adopts) a Federal plan to implement emission guidelines for MWC units located in areas not covered by an approved and currently effective State plan. The Federal plan is an interim action because on the effective date of an approved State plan, the Federal plan will no longer apply to MWC units covered by the State plan. This MWC Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports.

On December 19, 1995, EPA adopted emission guidelines for existing municipal waste combustor (MWC) units. Section 129 of the Clean Air Act (Act) requires States with existing MWC units subject to the guidelines to submit plans to EPA that implement and enforce the emission guidelines. The State plans were due on December 19, 1996. States without MWC units subject to the emission guidelines must submit a negative declaration letter. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with existing MWC units does not submit an approvable plan within 2 years after promulgation of the guidelines (i.e., December 19, 1997), the Act requires EPA to develop, implement, and enforce a Federal Plan for MWC units in that State. This MWC Federal plan was proposed on January 23, 1998 (63 FR 3509).

**EFFECTIVE DATE:** The effective date of this MWC Federal plan is December 14, 1998. The incorporation by reference of certain publications listed in the rule is

approved by the Director of the Federal Register as of December 14, 1998.

**Judicial Review.** This section 111(d)/129 rule for municipal waste combustors was proposed on January 23, 1998 (63 FR 3509). This notice promulgating a rule for municipal waste combustors constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 11, 1999. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

**ADDRESSES:** *Docket.* Docket numbers A-89-08, A-90-45, and A-97-45 contain the supporting information for this promulgated rule and the supporting information for EPA's promulgation of emission guidelines for existing MWC units. Public comments on the proposed rule for this action were received in docket number A-97-45. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For procedural and implementation information regarding this Federal Plan, contact Ms. Julie Andresen McClintock at (919) 541-5339, Program Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information regarding State plans, contact Mr. Walt Stevenson at (919) 541-5264, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of **SUPPLEMENTARY INFORMATION.**

The following outline shows the organization of the **SUPPLEMENTARY INFORMATION** section of this preamble.

- I. Background of MWC Regulations and Affected Facilities
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  - E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996
  - F. Submission to Congress and the General Accounting Office
  - G. National Technology Transfer and Advancement Act
  - H. Executive Order 12875
  - I. Executive Order 13084
  - J. Executive Order 13045

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background of MWC Regulations and Affected Facilities**

#### *A. Background of MWC Regulations*

On February 11, 1991 (56 FR 5488), EPA promulgated in the **Federal Register** emission guidelines for existing MWC units (40 CFR part 60, subpart Ca) under authority of section 111 of the Act as amended in 1977. On September 20, 1994, EPA proposed revised emission guidelines for MWC units (40 CFR part 60, subpart Cb) under sections 111 and 129 of the Act as amended in 1990. On December 19, 1995, EPA issued final emission guidelines applicable to small and large categories of MWC units.<sup>1</sup> See 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day

<sup>1</sup> The small category comprised all MWC units located at facilities with total capacity to combust between 35 mg/day (40 tons per day), and 225 mg/day (250 tons per day) of MSW. The large category comprised all MWC units located at facilities with total capacity to combust greater than 250 tons per day of MSW.

of municipal solid waste (MSW) (small MWC units), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subpart Cb applies to MWC units with an individual capacity to combust more than 250 tons per day of MSW per unit (large MWC units). On August 25, 1997 (62 FR 45116), EPA published changes to the emission guidelines to address the court decision. Those changes went into effect on October 24, 1997 and State plans incorporating those changes were due on August 25, 1998.

States with existing large MWC units subject to the emission guidelines were required to submit to EPA a plan that implements and enforces the guidelines within 1 year after promulgation of the guidelines, or by December 19, 1996. As stated in the proposal preamble, the court's order that vacated the applicability of the guidelines to small MWC units and cement kilns did not affect the due date or the required content of State plans for Large MWC units. The due date for State plans remained December 19, 1996. Section 129(b)(3) of the Act requires EPA to develop, implement, and enforce a Federal plan for large units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 19, 1997.

Today's action adopts a Federal plan for MWC units that are not yet covered by an approved State plan. The elements of the Federal plan are summarized in section II of this preamble. This MWC Federal plan was proposed in the **Federal Register** on January 23, 1998 (63 FR 3509). Comment letters were received through March 24, 1998. An opportunity for public hearing was offered, but no requests were received and a public hearing was not held. The public comments and EPA's responses are also documented in "Municipal Waste Combustion: Background Information Document for Federal Plan—Public Comments and Responses" (EPA-456/R-98-005), docket A-97-45, item III-B-1. The EPA's responses to the public comments and changes to the regulation are also summarized in section III of this preamble.

#### B. MWC Federal Plan and Affected Facilities

This MWC Federal plan affects all MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC

units) that commenced construction on or before September 20, 1994 that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plan is subsequently vacated in whole or in part.

Section 129 of the Act specifies that the Federal plan applies to MWC units located in any State that has not submitted an "approvable" State plan by December 19, 1997. The EPA received several State plans before December 19, 1997 and those plans were approved; five more plans were approved by August 15, 1998. Any MWC units covered by plans submitted after December 19, 1997 are covered by the Federal plan until the State plan is approved and becomes effective. An approved State plan is a State plan 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 Cb. The State plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Today's adoption of this MWC Federal plan does not preclude a State from submitting a State plan later. If a State submits a State plan after today's publication of the MWC Federal plan, EPA will review and approve or disapprove the State plan. If EPA approves the State plan, then the Federal plan no longer applies as of the effective date of the State plan. (See the discussion in *State Submits A State Plan After Large MWC Units in the State Are Subject to the Federal Plan* in section V of this preamble.)

Sections 62.14100 and 62.14102 of subpart FFF describe the MWC units included and excluded from the Federal plan. The exclusion table in § 62.14102 of subpart FFF lists those units, by State, to which the MWC Federal plan currently does not apply. The exclusion table is provided as a matter of convenience and is not controlling in determining whether a large MWC unit is subject to the Federal plan. Any large MWC unit not covered by an approved and currently effective State plan is subject to the Federal plan. As State plans are approved, EPA will periodically amend the exclusion table in § 62.14102 of subpart FFF to identify MWC units covered in EPA-approved and currently effective State plans.

If a large MWC unit was overlooked by a State and the State submitted a negative declaration letter, the large unit would be subject to this Federal plan. Also, the EPA believes that no large MWC units are located in Indian

country. In the unlikely event that a large MWC unit is located in Indian country, then the unit would be covered by the Federal plan, unless it is covered by an approved and currently effective Tribal plan. The tribal Authority Rule authorizes eligible Tribal governments to submit to EPA a section 129/111(d) State plan for MWCs (63 FR 7254, February 12, 1998). The Tribal Authority Rule also contains a discussion on the EPA's authority to implement Clean Air Act programs in Indian country. See also the preamble discussion in the Federal Operating Permits Program proposed rule published on March 21, 1997, 62 FR 13747.

#### C. Status of State Plans

Many States are making significant progress on their State plans. Twenty-four States have large MWC units and require State plans. The EPA has approved the State plans for Florida (62 FR 36995), Georgia (63 FR 27494), Illinois (62 FR 67570), Minnesota (63 FR 43080), New York (63 FR 41427), Oregon (62 FR 36995), South Carolina (63 FR 40046), and Tennessee<sup>2</sup> and the MWC units covered in those State plans are not covered by the MWC Federal plan, as of the effective date specified in the **Federal Register** notice announcing EPA's approval of the State plan. The EPA expects more State plans to be approved in the next few months. Table 1 summarizes the status of States without State plans. The table is based on information received from EPA Regional Offices (A-97-45, IV-J-2). The status of States without State plans as of July 27, 1998 is as follows:

- The EPA has received a negative declaration letter from States listed in section I of table 1 stating that there are no large MWC units in these States; thus EPA is not expecting a State plan to be submitted from these States. However, in the unlikely event that there are large MWC units located in any of these States, this Federal plan would automatically apply to them;
- The EPA has received a State plan from States listed in section II of table 1 and the State plans currently are being reviewed by EPA. The Federal plan covers large MWC units in these States until these State plans are approved by EPA and become effective;
- The EPA has received a State plan or a negative declaration letter from the States listed in section III of table 1. The large MWC

<sup>2</sup> Program approval of the State plan has been signed by the Regional Administrator, but not yet published in the **Federal Register**. If the approval of the State plan occurs in a timely fashion, the State plan and not the Federal plan will apply. However, if approval is delayed for reasons such as receipt of adverse comments, the Federal plan will apply for the short period until the State plan is approved. Any delay in the approval of a State plan will be announced in the **Federal Register**.

units in these States are subject to the MWC Federal plan until a State plan applicable to large MWC units is approved by EPA and become effective.

**TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN <sup>a</sup>**

State	Status <sup>c</sup>
<b>I. Negative Declaration Submitted to EPA</b>	
Region I:	
Rhode Island .....	A
Vermont .....	A
Region II:	
Puerto Rico .....	A
Virgin Islands .....	A
Region III <sup>b</sup> :	
Delaware .....	A
District of Columbia .....	A
West Virginia .....	A
Region IV:	
Kentucky .....	A
Mississippi .....	A
North Carolina .....	A
Region V:	
Wisconsin .....	A
Region VI:	
Arkansas .....	A
Louisiana .....	A
New Mexico .....	A
Texas .....	A
Region VII:	
Iowa .....	A
Kansas .....	A
Missouri .....	A
Nebraska .....	A
Region VIII:	
Colorado .....	A
Montana .....	A
North Dakota .....	A
South Dakota .....	A
Utah .....	A
Wyoming .....	A
Region IX:	
American Samoa .....	A
Arizona .....	A

**TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN <sup>a</sup>—Continued**

State	Status <sup>c</sup>
Nevada .....	A
Northern Mariana Islands .....	A
Region X:	
Alaska .....	A
Idaho .....	A
<b>II. State plan submitted to EPA</b>	
Region I:	
Maine .....	B
Region III:	
Maryland .....	C
Pennsylvania .....	C
Region VI:	
Oklahoma .....	B
<b>III. Neither a State plan nor a negative declaration letter submitted to EPA</b>	
Region I:	
Connecticut .....	D
New Hampshire .....	D
Massachusetts .....	D
Region II:	
New Jersey .....	D
Region III:	
Virginia .....	D
Region IV:	
Alabama .....	D
Region V:	
Indiana .....	D
Michigan .....	D
Ohio .....	D
Region IX:	
California .....	D
Guam .....	D
Hawaii .....	D
Region X:	
Washington .....	D

<sup>a</sup> Any large MWC units in these States are covered by the Federal plan.

<sup>b</sup> The City of Philadelphia and Allegheny County, Pennsylvania submitted documentation stating that they have no municipal waste combustors that would be subject to the emission guidelines; however, the Pennsylvania Department of Environmental Protection submitted a State plan.

<sup>c</sup> Status codes.

A=Negative declaration submitted. No State plan is expected. However, in the unlikely event that large MWC units are located in any of these States, this Federal plan would automatically apply to them.

B=State plan has been submitted and is being received by EPA. If the plan is approved and becomes effective, MWC units covered by the State plan would not be subject to the promulgated Federal plan.

C=State plan has been submitted, but is incomplete.

D=State plan or negative declaration submission has not been received.

**Regulated Entities**

Entities regulated by this action are existing MWC units with the capacity to combust greater than 250 tons per day of MSW unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is in effect. Today's MWC Federal plan will affect MWC units in 15 States. However, many State plans are expected to be approved in the next few months. Based on a 1997 MWC inventory and recent information from EPA Regional Offices (A-97-45, IV-J-2), this Federal plan is expected to affect MWC units in 16 States.

Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local Government Agencies .....	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this MWC Federal plan. For specific applicability

criteria, see §§ 62.14100 and 62.14102 of subpart FFF.

**Regional Office Contracts**

For information regarding the implementation of the MWC Federal Plan, contact the appropriate EPA Regional Office as shown in table 2.

**TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS**

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg., Boston, MA 02203-0001 .....	(617) 565-9462	(617) 565-4940
Christine DeRosa, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007-1866 .....	(212) 637-4022	(212) 637-3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street, Philadelphia, PA 19103-2029 .....	(215) 814-2190	(215) 814-2134
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., N.E., Atlanta, GA 30365 .....	(404) 562-9127	(404) 562-9095

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS—Continued

Regional contact	Phone No.	Fax No.
Douglas Aburano (MN) .....	(312) 353-6960	(312) 886-5824
Mark Palermo (IL, IN, OH) .....	(312) 886-6082	.....
Victoria Hayden (MI) .....	(312) 886-4023	.....
Charles Hatten (WI) .....	(312) 886-6031	.....
U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604		
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202-2733 .....	(214) 665-7219	(214) 665-7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101 .....	(913) 551-7603	(913) 551-7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202-2466 .....	(303) 312-6440	(303) 312-6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105 .....	(415) 744-1188	(415) 744-1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101 .....	(206) 553-1814	(206) 553-0404

**II. Required Elements of the MWC Federal Plan**

Sections 111(d) and 129 of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the promulgated emission guidelines. Subparts B and Cb of 40 CFR part 60 require States to submit State plans that include

specified elements. Because this Federal plan is being adopted in lieu of State plans, it includes the same essential elements: (1) Identification of legal authority, (2) identification of mechanisms for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emission limits, (6) compliance schedules, (7) public hearing requirements, (8) reporting and recordkeeping requirements, and (9)

public progress reports. Each State plan element was discussed in detail as it relates to the Federal plan in the preamble to the proposed rule (63 FR 3509). The following table (Table 3) identifies each element and identifies where it is located or codified. The EPA received public comments on the emission limits, compliance schedules, and reporting presented in section III of this preamble.

TABLE 3.—REQUIRED ELEMENTS AND LOCATION

Require element of the MWC Federal plan	Where located
1. Identification of legal authority .....	Section 129(b)(3) of the Act.
2. Identification of mechanisms for implementation .....	Section V of this preamble.
3. Inventory of affected facilities .....	Docket A-97-45, item II-B-1.
4. Emissions inventory .....	Docket A-97-45, item II-B-1.
5. Emission limits .....	40 CFR 62.14103, 62.14106, and 62.14107 of subpart FFF.
6. Compliance schedules .....	40 CFR 62.14108 of subpart FFF.
7. Public hearing requirements .....	63 FR 3517, January 23, 1998.
8. Reporting and recordkeeping requirements .....	40 CFR 62.14109 of subpart FFF.
9. Public progress reports .....	63 FR 3517, January 23, 1998.

**III. Changes Since Proposal**

This section of the preamble discusses the changes to the MWC Federal plan resulting from public comments. The public comments received on the proposed Federal plan are summarized and addressed in the promulgation background information document (EPA-456/R-98-005, docket A-97-45, III-B-1).

**A. Final Control Plan Requirements**

The proposed MWC Federal plan included specific requirements for the final control plan, which must be submitted to meet the first of five increments of progress toward retrofitting air pollution control equipment. Commenters indicated that the detailed requirements, including a requirement to prepare engineering

drawings and specifications, go beyond the requirements in 40 CFR part 60, subparts B and Cb and EPA's State plan guidance document (EPA-456/R-96-003, docket A-97-45, II-A-7). Commenters requested that EPA revise the definition of final control plan to maintain consistency with subparts B and Cb and the State plan guidance document. This would allow owners and operators to better meet the increment 1 date and would be consistent with their efforts to prepare the same material for the State plan. In response to these comments, EPA revised the definition of final control plan to be consistent with 40 CFR part 60, subparts B and Cb and the State plan guidance document. The final rule requires a control plan, which can be a letter or brief document, that describes

the controls or process changes that the source will use to comply with the emission limits and other requirements. The EPA recognizes the importance of maintaining consistency between the Federal plan and previous rules and guidance. By maintaining this consistency, MWC owners and operators will be preparing the same final control plan whether they are subject to the Federal plan or a subsequently approved State plan, unless the approved State plan contains requirements that are more stringent than those in the Federal plan. The EPA's goal is to allow owners and operators sufficient time to select a control technology, award contracts, and begin construction to achieve compliance by December 19, 2000.

### B. Dates for Increments of Progress

The proposed MWC Federal plan included a generic compliance schedule with five increments of progress toward retrofitting air pollution control equipment. The proposed Federal plan would have required an owner or operator to submit the final control plan (increment 1) by September 21, 1998, award contracts (increment 2) by May 18, 1999, begin construction (increment 3) by November 14, 1999, finish construction (increment 4) by November 19, 2000, and achieve final compliance (increment 5) by December 19, 2000. The EPA received requests either to delay the increment 1 compliance date or "float" the increment dates relative to publication of the final rule in the **Federal Register** (i.e., each date would fall a certain number of months after publication). Commenters suggested that floating the dates would provide flexibility that would assist in achieving final compliance.

To respond to these comments, EPA delayed the increment 1 compliance date to allow sufficient notice and a reasonable amount of time for owners and operators to submit their control plans after the Federal plan rule is adopted. The revised increment 1 date is 60 days after today's publication of the Federal plan, which is about 2 months later than the proposed date of September 21, 1998. This will allow an owner or operator adequate time to prepare the final control plan, which is less detailed than would have been required in the proposal.

The remaining dates (increments 2 through 5) in the generic compliance schedule remain the same as in the proposal. These dates were retained for two reasons. First, these dates are achievable and they are necessary for MWC owners and operators to stay on track to complete retrofits by December 19, 2000. Second, if alternative dates are needed, an owner or operator may request alternative dates for increments 2, 3, and 4 as discussed in the next section of this preamble.

The EPA maintains that each date in the generic compliance schedule is achievable for MWC units. The generic schedule is based on four retrofit studies, which give a realistic estimate of the time required for an owner or operator to retrofit control equipment and reach final compliance. To provide maximum flexibility, the first three Federal plan increments are based on the maximum time required by any of the cases studied. The fourth increment was established to provide the maximum time to retrofit and still meet the final compliance date. The fifth and

final increment is dictated by the Act. If the State or owners or operators wish to differ from the generic compliance schedule, they have the option of submitting alternative dates for increments 2 through 4, as described below. Because EPA is allowing this flexibility, EPA is not floating the generic compliance dates in the final Federal plan and is maintaining the proposed compliance dates for increments 2 through 5.

The EPA also maintains that MWC owners and operators have had adequate notice to begin retrofits. MWC owners and operators have known that they would need to install controls by December 19, 2000 since the promulgation of the emission guidelines on December 19, 1995. In July of 1996, EPA published the EPA State plan guidance document (EPA-456/R-96-003) that clearly describes the increments of progress and the final compliance date. Thus, MWC owners and operators had adequate time to develop their final control plans, plan their increments, and begin retrofits.

### C. Options 1, 2, and 3 and Site-specific Compliance Schedules

Commenters supported EPA's approach in providing options for establishing the dates for the five increments of progress and EPA is retaining the proposed approach in the final Federal plan. The proposed Federal plan included three options for establishing the increment dates. Under option 1, a facility subject to the Federal plan would follow the generic compliance schedule developed by EPA. Under option 2, a State could submit alternative increment dates during the comment period that are consistent with the State plan. Under option 3, a State or the owner or operator could submit alternative dates for increments 2 through 4 on or before the date the final control plan is due under the generic compliance schedule. In all options, increment 1 and 5 dates must match increment 1 and 5 dates in the generic compliance schedule. In option 2, EPA reviewed the schedules submitted during the comment period and incorporated the approved schedules into the final Federal plan. In option 3, EPA would review the schedules before approving them and will periodically amend the site-specific table (table 6 of subpart FFF) to identify the MWC units with an EPA approved site-specific schedule.

The EPA is keeping these options to maintain consistency with State plans and offer flexibility on intermediate increments so long as the increment 1 and 5 dates are met. Many States

exercised option 2 and submitted site-specific compliance schedules during the comment period. The EPA reviewed all schedules submitted by States to determine if the schedules met the increment 1 and 5 compliance dates. The EPA reviewed justification letters for increments 2, 3, and 4, if the dates were later than the generic schedule. Based on this review, EPA approved the site-specific schedules for various MWC facilities in the following States: California, Maine, Maryland, New Jersey, Pennsylvania, and Virginia. These approved site-specific schedules appear in table 6 of subpart FFF. The background information document (EPA-456/R-98-005, A-97-45, III-B-1) and a memorandum (A-97-45, IV-A-1) available in the docket provide details on the schedules submitted by the commenters and EPA's review process.

Note that under option 3, MWC owners or operators and States still have the opportunity to submit site-specific alternative dates for increments 2, 3, and 4 for approval at the time the final control plan is due. MWC owners or operators must submit the dates and a justification to EPA and must provide the State a copy. The EPA will review and approve or disapprove the alternative compliance dates in a timely manner. In order to facilitate EPA review, the site-specific schedule requests should include a justification for the site-specific schedule. The date for achieving final compliance for all schedules cannot be later than December 19, 2000.

### D. Compliance Dates Already Achieved

At proposal, several States without approved State plans had submitted site-specific compliance schedules that included compliance dates that had already been achieved. To make it clear that these facilities must notify EPA when they meet an increment, EPA revised the format of the site-specific compliance schedule in the final rule. Rather than inserting "NA" (not applicable) for increment dates that have been achieved, EPA is inserting an increment compliance date that falls 60 days after publication of the final Federal plan. The owner or operator of an MWC unit that is not covered by an EPA approved and currently effective State plan must submit a notification to EPA stating that the increment was met. This is the same notification as required for all facilities subject to the Federal plan. The owner or operator must mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date defined in the Federal plan. For increments that have been achieved, the

due date for this notification is 70 days (60 days plus 10 days) after publication of this final rule. The EPA is requiring notification to ensure completion of increments so the facility will meet the final compliance deadline.

**E. Subpart Cb Amended Emission Limits**

This MWC Federal plan implements the emission guidelines (40 CFR part 60, subpart Cb) for MWC units not covered by an EPA approved and currently effective State plan. Because this Federal plan is being adopted in lieu of State plans, it contains the same elements required by 40 CFR part 60, subparts B and Cb. Each element is described in the Federal plan proposal (62 FR 3509, January 23, 1998), including the subpart Cb emission limits. Subpart Cb was amended on August 25, 1997 (62 FR 45116) to include revised emission limits for sulfur dioxide, hydrogen chloride, lead, and nitrogen oxides. States were required to incorporate the new limits in their State plans by August 25, 1998. The amended emission guidelines required final compliance with the amended emission limits no later than 5 years after promulgation (August 25, 2002), consistent with section 129 of the Act. The EPA incorporated these revised

emission limits in the proposed MWC Federal plan but proposed final compliance by December 19, 2000.

One commenter requested that EPA stagger the compliance dates for the amended emission limits to August 25, 2002 to be consistent with the maximum time allowed by subpart Cb, as amended. The commenter was concerned that there may be a significant cost associated with requiring earlier compliance with the more strict standards. However, the commenter was not able to provide any specific cost information. The EPA maintains that requiring compliance with the revised limits by December 19, 2000 does not cause significant additional burden or costs to facilities. The same types of air pollution control technology served as the basis for both the 1995 limits and the 1997 amended limits: spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. Large municipal waste combustor units need to install controls by December 19, 2000 to meet the original limits. As soon as these controls are installed, the units will also meet the final, amended limits. The EPA's test data used to develop the emission

guidelines show that these controls actually achieve emission levels well below the 1995 and 1997 emission limits (docket A-89-08 and A-90-45). The 1997 limits are only slightly different than the 1995 limits and will not require major operational changes or significantly increase costs. Section 129 of the Act and 40 CFR part 60, subpart B, require compliance "as expeditiously as practicable" and compliance with all limits by December 19, 2000 is practicable. Thus, EPA is not changing the proposed final compliance date for the amended 1997 limits from December 19, 2000.

**IV. Summary of Federal Plan Emission Limits and Requirements**

The MWC Federal plan (40 CFR part 62, subpart FFF), which implements the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. These emission limits and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cb), as amended. Table 4 summarizes the requirements of the Federal plan rule (40 CFR part 62, subpart FFF).

TABLE 4.—SUMMARY OF FEDERAL PLAN REQUIREMENTS FOR EXISTING MWCs <sup>a b</sup>

Applicability:

The Federal plan applies to existing MWC units with capacities to combust greater than 250 tons per day of municipal solid waste unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is currently effective.

Unit size (MSW combustion capacity)	Requirement
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>250 tons per day (referred to as a large MWC unit) ..... Subject to provisions listed below.

Good Combustion Practices:

- A site-specific operator training manual is required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course is required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification is required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level is required to be measured and not to exceed 100 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level is required to be measured using a CEMS, and the concentration in the flue gas is required not to exceed the following:

MWC type	CO level	Averaging time
Modular starved-air and excess-air .....	50 ppmv .....	4-hour.
Mass burn waterwall and refractory .....	100 ppmv .....	4-hour.
Mass burn rotary refractory .....	100 ppmv .....	24-hour.
Fluidized-bed combustion .....	100 ppmv .....	4-hour.
Pulverized coal/RDF mixed fuel-fired .....	150 ppmv .....	4-hour.
Spreader stoker coal/RDF mixed fuel-fired .....	200 ppmv .....	24-hour.
RDF stoker .....	200 ppmv .....	24-hour.
Mass burn rotary waterwall .....	250 ppmv .....	24-hour.

MWC Organic Emissions (measured as total mass dioxins/furans):

- Dioxins/furans (performance test by EPA Reference Method 23).

MWC units utilizing an ESP-based air pollution control system ..... 60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),<sup>c</sup>.

MWC units utilizing a nonESP-based air pollution control system ..... 30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),<sup>c</sup>.

- Basis for dioxin/furan limits GCP and SD/ESP or GCP and SD/FF, as specified above.

MWC Metal Emissions:

- PM (performance test by EPA Reference Method 5).

- 27 mg/dscm (0.012 gr/dscf).
  - Opacity (performance test by EPA Reference Method 9).  
10 percent (6-minute average).
  - Cd (performance test by EPA Reference Method 29). 0.040 mg/dscm (18 gr/million dscf).
  - Pb (performance test by EPA Reference Method 29).  
0.44 mg/dscm (200 gr/million dscf).
  - Hg (performance test by EPA Reference Method 29).  
0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
  - Basis for PM, opacity, Cd, Pb, and Hg limits GCP and SD/ESP/CI or GCP and SD/FF/CI.
  - MWC Acid Gas Emissions:
    - SO<sub>2</sub> (performance test by CEMS).  
29 ppmv or 75-percent reduction in SO<sub>2</sub> emissions.
    - HCl (performance test by EPA Reference Method 26).  
29 ppmv or 95-percent reduction in HCl emissions.
    - Basis for SO<sub>2</sub> and HCl limits.  
See basis for MWC metals.
  - Nitrogen Oxides Emissions:
    - NO<sub>x</sub> (performance test by CEMS):
 

Mass burn waterwall .....	205 ppmv.
Mass burn rotary waterwall .....	250 ppmv.
Refuse-derived fuel combustor .....	250 ppmv.
Fluidized bed combustor .....	180 ppmv.
Mass burn refractory .....	No NO <sub>x</sub> control requirement.
    - Basis for NO<sub>x</sub> limits:
 

MWC units except refractory .....	SNCR.
Refractory MWC units .....	No NO <sub>x</sub> control requirement.
  - Fugitive Ash Emissions:
    - Fugitive emissions (performance test by EPA Reference Method 22).  
Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.
    - Basis for fugitive emission limit ..... Wet ash handling or enclosed ash handling.
  - Performance Testing and Monitoring Requirements:
 

• Reporting frequency .....	Annual (semiannual if violation).
• Load, flue gas temperature .....	Continuous monitoring, 4-hour block arithmetic average.
• CO .....	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.
• Dioxins/furans, PM, Cd, Pb, HCl, and Hg .....	Annual stack test.
• Opacity .....	COMS (6-minute average) and annual stack test.
• SO <sub>2</sub> .....	CEMS 24-hour daily geometric mean.

  

Fugitive ash emissions	Annual test
• NO <sub>x</sub> .....	CEMS, 24-hour daily arithmetic average.
  - Compliance Schedule:
    - See Section III of this preamble and 40 CFR part 62, subpart FFF.
- <sup>a</sup> All concentration levels in the table are converted to 7 percent O<sub>2</sub>, dry basis.
- <sup>b</sup> List of acronyms and abbreviations.
- ASME—American Society of Mechanical Engineers.
  - C—Celsius.
  - Cd—cadmium.
  - CEMS—continuous emissions monitoring system.
  - CI—carbon injection.
  - CO—carbon monoxide.
  - COMS—continuous opacity monitoring system.
  - ESP—electrostatic precipitator.
  - FF—fabric filter.
  - gr/dscm—grains per dry standard cubic meter.
  - Hg—mercury.
  - MSW—municipal solid waste.
  - MWC—municipal waste combustor.
  - ng/dscm—nanograms per dry standard cubic meter.
  - NO<sub>x</sub>—nitrogen oxides.
  - O<sub>2</sub>—oxygen.
  - Pb—lead.
  - PM—particulate matter.
  - RDF—refuse-derived fuel.
  - SD—spray dryer.
  - SNCR—selective noncatalytic reduction.
  - TEQ—toxic equivalency.
- <sup>c</sup> Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm and 60 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ and 0.7 to 1.4 ng/dscm TEQ, respectively. The optional reduced testing limit of 15 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

**V. Implementation of Federal Plan and Delegation**

**A. Background of Authority**

Under sections 111(d) and 129 of the Act, the EPA is required to adopt

emission guidelines that are applicable to existing solid waste incineration sources. The emission guidelines are not enforceable, however, until the EPA approves a State plan or adopts a Federal plan for implementing and

enforcing them, and the State or Federal plan has become effective. In cases where a State has not submitted an approvable plan, the EPA must adopt a MWC Federal plan for sources in the State as an interim measure to

implement the emission guidelines until a State plan is approved and becomes effective. A few States may not submit a State plan at all.

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 Act.) Consistent with that overall determination, Congress established sections 111 and 129 of the Act 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. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110(c) for State Implementation Plans. Congress has shown a consistent intent for the States and local agencies to hold the primary responsibility to implement and enforce the requirements of the emission guidelines. Congress has also required EPA to promulgate a Federal plan for States that fail to submit approvable State plans in time. Accordingly, EPA has strongly encouraged the States to submit approvable State plans on time, and for those States that are unable to submit approvable State plans on time, EPA strongly encourages them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA believes, more specifically, that the State and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MWC rules and the MWC Federal plan. The EPA also believes that these agencies possess appropriate enforcement resources and other practical advantages to ensure the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State and local agencies, where requests for delegations can be granted. For example, the EPA has encouraged States to help determine compliance schedules and to provide operator training and certification requirements for this MWC Federal plan.

#### B. Delegation of the Federal Plan

For a State to request delegation of the Federal plan, the State must submit to the appropriate EPA Regional Administrator a written request for delegation of authority. The State must explain how the State meets the criteria for delegation. The minimum criteria include a demonstration that adequate

resources and legal and enforcement authority to administer and enforce the program exist in the State requesting the delegation. If the State meets these criteria, EPA will approve the delegation of the Federal plan and will announce the approval of the delegation in a **Federal Register** notice. A Memorandum of Agreement between the appropriate EPA Regional Office and the State would set forth the terms and conditions of the delegation and would be used to transfer authority.

An MWC owner or operator not covered by a State plan can submit requests for approvals to EPA directly and should copy the State on the request until the Federal Plan is delegated to the State. Actions that cannot be delegated, such as the approval of requests for waivers of operator training, should be sent to EPA and copied to the State. The EPA would, in conjunction with the State, make efforts to ensure that affected units are aware that the State has been delegated responsibility for implementation of the Federal Plan. The status of Federal plan delegations to the States will be posted on the EPA TTN Web Website: <http://www.epa.gov/ttn/oarpg>, along with an up-to-date list of State plan submittals.

The EPA will continue to implement the Federal plan if a State does not qualify to take delegation. If a State fails to implement the delegated portion of the Federal plan, EPA will take responsibility for direct implementation and enforcement of the Federal rule. For all delegations, the EPA would still retain the authority to approve an alternative "as protective as" emission standard, major alternatives to test methods, major alternatives to monitoring or waiver of recordkeeping, or waiver of operator training and certification. Major alternatives include entirely new methods or alternative test methods or monitoring methods that use unproven technology or procedures. The EPA does not relinquish enforcement authority even when a State has received delegation.

#### C. Mechanisms for Transferring Authority

There are three mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State plan submitted to EPA after the Federal plan is adopted, the State would by definition have authority to enforce and implement its State plan in lieu of the Federal plan upon the effective date of EPA's approval; (2) if a State does not submit and/or obtain approval of a State plan, EPA can delegate the authority to the State to perform certain

implementation responsibilities for the Federal plan to the extent requested by the State and allowed by State law; and (3) if a State plan is modified such that it is no longer as protective as the emission guidelines, and thus EPA does not approve these less protective provisions of the State plan, then EPA could encourage the State to request delegation of the MWC Federal plan. Each of these different options is described in more detail below.

#### 1. State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan

After an MWC unit in a particular State becomes subject to this Federal plan, the State may still adopt and submit to EPA for approval a State plan which contains all the required elements of a State plan. The EPA will determine if the State plan is as protective as the emission guidelines. If EPA determines that the State plan is not as protective as the guidelines, EPA will disapprove the plan. Large MWC units covered in the State plan remain subject to the Federal plan. If EPA determines that the State plan is as protective as the emission guidelines, EPA will approve the State plan. The State will implement and enforce the State plan in lieu of the Federal plan. The approval of the State plan automatically conveys to a State the responsibility for the 1995 emission guidelines, as amended, through the State plan mechanism as intended by Congress.

The EPA will periodically amend the Federal plan exclusion table to identify State that have approved State plans. MWC units covered in those approved and effective State plans are not subject to the Federal plan. The State plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval, whether or not the exclusion table has been revised.

#### 2. State Takes Delegation of the Federal Plan

As a matter of convenience, States that do not have an approved State plan in effect can request responsibilities for implementing the Federal plan. The EPA believes that it is advantageous and the best use of resources for the State to agree to undertake administrative and substantive roles in implementing the Federal plan to the maximum extent allowed by law. These roles could include as a minimum: administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. For some situations, the EPA could

retain primary responsibility for bringing enforcement actions against sources violating Federal plan provisions. These roles could include delegation of all substantive actions, including primary responsibility for enforcement of the requirements, as allowed by State law and approved by EPA.

### 3. An approved State Plan is No Longer as Protective as the Emission Guidelines

The EPA could also delegate portions of the Federal plan to a State for special circumstances. An example would be a State with an approved State plan that only contains the 1995 emission limits. This State plan must incorporate the revised emission limits by August 25, 1998. If a State plan does not incorporate the amended emission limits by that date, the State plan would no longer be as protective as the emission guidelines. Rather than withdrawing its approval of the entire State plan, the EPA could, to the extent authorized by State law, delegate that portion of the Federal plan containing the revised emission limits (from the August 25, 1997 amendments) to the State. The State would have responsibility for implementation and enforcement of all MWC requirements, including those in the partially delegated Federal Plan.

In the proposed Federal plan preamble EPA proposed another option for the delegation of the Federal plan in which a State adopts a State rule but does not submit a State plan. After considering all other proposed options, (e.g. the subsequent approval of a State plan, and the straight delegation of the Federal plan), EPA determined that this option was unnecessary, and could potentially result in the need to make equivalency determinations that would be resource intensive and complex to administer. The EPA believes that the preferred way to implement and enforce the emission guidelines after the State has adopted a State rule is for the State to submit a State plan that includes the State rule or other enforceable mechanism, as well as the other required elements of an approvable State plan. Upon EPA approval of the State plan that includes the enforceable mechanism, both the State and ETA are vested with full authority. Upon the effective date of EPA's approval of the State plan, the Federal plan will no longer apply to MWC units covered by the State plan.

## VI. Title V

All MWC sources subject to this MWC Federal plan must obtain a title V permit. Title V permits issued to these

sources must include all applicable requirements of this Federal plan. (See 40 CFR 70.2 and 71.2.) The permit must also contain all necessary terms and conditions to assure compliance with the applicable requirements.

If a source is subject to both State and Federal plan requirements due to, for example, the delegation options outlined above, then the source's permit must contain the applicable provisions from each plan. Given that a title V permit for a MWC source may contain both State and Federal provisions, it is especially important that each title V permit issued to a MWC source clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

## VII. Administrative Requirements

Since today's promulgated rule simply implements the MWC emission guidelines (40 CFR part 60, subpart Cb) promulgated on December 19, 1995 (60 FR 65387) and amended on August 25, 1997 (62 FR 45116) as they apply to large MWC units 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 1995 rule.

### A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)]. Docket numbers A-89-08 and A-90-45 contain the supporting information for the December 19, 1995 and August 25, 1997 emission guidelines. Because this promulgated rule implements the emission guidelines, these same dockets also contain the supporting information for this rulemaking. Public comments received on the proposed rule for this rulemaking and additional supporting information are included in docket number A-97-45.

### B. Paperwork Reduction Act

The information collection requirements in this rule have been

submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sand@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The information required under this rule is needed by the Agency to ensure that the MWC Federal plan requirements are implemented and are complied with on a continuous basis. Required records and reports are necessary to identify MWC units that may not be in compliance with the MWC Federal plan requirements. Based on reported information, EPA will decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of units maintain will indicate whether MWC personnel are operating and maintaining control equipment properly.

The EPA based its ICR calculations on a 1997 MWC inventory (A-97-45, II-B-1) and information from EPA Regional Offices (A-97-45, IV-J-1). As of June 1998 when the ICR was submitted, the Federal plan was projected to affect 135 MWC units at 56 plants located in 19 States. The EPA expected that 12 additional State plans would be approved within the year following promulgation and four additional State plans will be approved within 2 years following promulgation. (Since June 1998, the EPA has approved 4 additional State plans.) When a State plan is approved and becomes effective, the Federal plan no longer applies to MWC units covered in that State plan; therefore, the estimated burden will continue to decrease. The estimated annual burden for industry averaged over the first 3 years after the implementation of the Federal plan is 16,907 hours annually at a cost of \$6,285,923 (including \$657,885 in labor costs) per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated annual burden for the Agency averaged over the first 3 years would be 2,850 hours at a cost of \$115,003 (including travel expenses) per year.

Burden means 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 numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by December 14, 1998. Include the ICR number in any correspondence.

#### C. Executive Order 12866

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 EPA and OMB determine that this regulatory action is "not significant" under Executive Order 12866. This promulgated Federal plan simply implements the 1995 MWC emission guidelines (as amended in 1997) and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 MWC emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405).

#### D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any rule where the estimated costs to State, local or tribal governments in the aggregate, or to the private sector, will be \$100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. An unfunded mandates statement was prepared and published in the 1995 promulgation notice for the emission guidelines and standards (see 60 FR 65405 to 65412).

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this promulgated rule.

#### E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). This final Federal plan does not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

#### F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides

that before a rule may take effect, the Agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104-113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This promulgated MWC Federal plan does not establish any new requirements for MWC units. Therefore, the requirements of the NTTAA are not applicable to this final rule.

#### H. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 26, 1993. Executive Order 12875 prohibits the EPA, to the extent feasible and permitted by the law, from promulgating any regulation that is not required by statute and creates a mandate upon a State, local, or Tribal government unless the Federal government provides the funds necessary to pay the direct costs incurred by the State, local, or Tribal government in complying with the mandate. If the mandate is unfunded, the EPA must provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, or Tribal governments, the nature of those entities' concerns, any written communications submitted to EPA by

such units of government and the EPA's position supporting the need to issue the regulation. Executive Order 12875 further requires EPA to develop an effective process to permit elected officials and other representatives of State, local, and Tribal governments, "to provide meaningful and timely input in the development of regulatory proposals containing the significant unfunded mandates."

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emissions guidelines. Accordingly, the requirements of Executive Order 12875 do not apply. However, to ensure a smoother transition for facilities that are initially covered by the Federal plan but are later covered by a State plan, EPA has involved State and local governments in the development of this rule. During development of the Federal plan, EPA worked with the Regional Offices to identify and address State issues. The EPA invited States to identify State operator training and certification to be incorporated in the Federal plan and is, as a result, incorporating the Connecticut and Maryland State certifications for MWC operators and the Connecticut State operator training course. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. Nine States submitted compliance schedules. Also, the EPA received comments from ten States and local agencies and considered them in developing the final rule.

#### *I. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an

effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

The Federal plan adopted today does not significantly or uniquely affect communities of Indian tribal governments. As noted previously in this preamble, EPA believes that no large MWC units are located in Indian country. In addition, the EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. (See the discussion in Executive Order 12875 in this section.) Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *J. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, then 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 considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### **List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Report and recordkeeping requirements, Incorporation by reference.

Dated: October 30, 1998.

**Carol M. Browner,**  
*Administrator.*

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is 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 § 62.02 by revising paragraph (a) and adding paragraph (g) to read as follows:

#### **§ 62.02 Introduction.**

(a) This part sets forth the Administrator's approval and disapproval of State plans for the control of pollutants and facilities under section 111(d), and section 129 as applicable, of the Act, and the Administrator's promulgation of such plans or portions of plans thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d), and section 129 as applicable, of the Act and provisions of part 60 of this chapter.

\* \* \* \* \*

(g) Substitute plans promulgated by the Administrator for States that do not have approved plans are contained in separate subparts that appear after the subparts for States. These Federal plans include sections identifying the applicability of the plan, emission limits, compliance schedules, recordkeeping and reporting, performance testing, and monitoring requirements.

3. Amend subpart A by adding § 62.13 to read as follows:

#### **§ 62.13 Federal plans.**

The Federal plans apply to owners and operators of affected facilities that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility located in any State or portion of Indian country whose approved State or Tribal plan for that area is subsequently vacated in whole or in part. Affected facilities are defined in each Federal plan.

(a) The substantive requirements of the municipal waste combustor Federal plan are contained in subpart FFF of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(b) The substantive requirements of the municipal solid waste landfills Federal plan are contained in subpart GGG of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(c) Medical waste incinerator Federal plan. [Reserved]

4. Amend part 62 by adding and by reserving subparts DDD and EEE as follows:

**Subpart DDD—[Reserved]**

**Subpart EEE—[Reserved]**

5. Amend part 62 by adding subpart FFF consisting of §§ 62.14100 through 62.14109 to read as follows:

**Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994**

Sec.

- 62.14100 Scope and delegation of authority.
- 62.14101 Definitions.
- 62.14102 Affected facilities.
- 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
- 62.14104 Requirements for municipal waste combustor operating practices.
- 62.14105 Requirements for municipal waste combustor operating training and certification.
- 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.
- 62.14107 Emission limits for air curtain incinerators.
- 62.14108 Compliance schedules.
- 62.14109 Reporting and recordkeeping, and compliance and performance testing.
- Table 1 of Subpart FFF—Units Excluded From Subpart FFF
- Table 2 of Subpart FFF—Nitrogen Oxides Requirements for Affected Facilities
- Table 3 of Subpart FFF—Municipal Waste Combustor Operating Requirements
- Table 4 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Pre-1987 MWCs)
- Table 5 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Post-1987 MWCs)
- Table 6 of Subpart FFF—Site-specific Compliance Schedules and Increments of Progress

**Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994**

**§ 62.14100 Scope and delegation of authority.**

(a) This subpart contains emission requirements and compliance schedules for the control of pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and 40 CFR part 60, subparts B and Cb. This municipal waste combustor Federal plan applies to each affected facility as defined in § 62.14102 that is not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plan is subsequently vacated in whole or in

part. This Federal plan, or portions thereof, also applies to each affected facility located in Indian country if the approved Tribal plan for that area is subsequently vacated in whole or in part.

(b) The following authorities shall be retained by the EPA Administrator and not transferred to the State upon delegation of authority to the State to implement and enforce the Federal plan:

- (1) An alternative emission standard;
- (2) Major alternatives to test methods;
- (3) Major alternatives to monitoring;
- (4) Waiver of recordkeeping; and
- (5) Waiver of training requirement for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification on or before the effective date of this subpart, as provided in § 62.14105(d)(2) of this subpart.

**§ 62.14101 Definitions.**

Terms used but not defined in this subpart have the meaning given to them in the Clean Air Act and 40 CFR part 60, subparts A, B, and Eb.

*Contract* means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

*De-rate* means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 250 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

*EPA approved State plan* means a State plan 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 Cb. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

*Municipal waste combustor plant* means one or more affected facilities (as defined in § 62.14102) at the same location.

*Protectorate* means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

*State* means any of the 50 United States and the protectorates of the United States.

*State plan* means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40

CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cb.

*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 Cb.

**§ 62.14102 Affected facilities.**

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a capacity to combust greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994, that is not regulated by an EPA approved and currently effective State or Tribal plan. Table 1 of this subpart lists those units regulated by an EPA approved State plan. Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

(b) A municipal waste combustor unit regulated by an EPA approved and currently effective State or Tribal plan is not regulated by this subpart.

(c) Any municipal waste combustor unit that has the capacity to combust more than 250 tons per day of municipal solid waste and is subject to a Federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than 11 tons per day is not subject to this subpart if the owner or operator:

- (1) Notifies the EPA Administrator of an exemption claim;
- (2) Provides a copy of the Federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and
- (3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with the emission requirements of this subpart are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR part 60, subpart Ea or subpart Eb.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data

documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the EPA Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under 40 CFR 60.51b of subpart Eb that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under 40 CFR 60.51b, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 62.14107, and the testing procedures and the reporting and recordkeeping provisions under § 62.14109.

(l) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard

waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) Cement kilns firing municipal solid waste are not subject to this subpart.

**§ 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.**

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: particulate matter in excess of 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and opacity in excess of 10 percent (6-minute average).

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: cadmium in excess of 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and lead in excess of 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen

chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain municipal waste combustor organics, expressed as total mass dioxins/furans, in excess of the emission limits specified in either paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) The emission limit for affected facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) The emission limit for affected facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of the emission limits listed in table 2 of this subpart for affected facilities. Table 2 of this subpart provides emission limits for the nitrogen oxides concentration level for each type of affected facility.

**§ 62.14104 Requirements for municipal waste combustor operating practices.**

(a) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits listed in table 3 of this subpart. Table 3 provides emission

limits for the carbon monoxide concentration level for each type of affected facility.

(b) The owner or operator of an affected facility must comply with the municipal waste combustor operating practice requirements listed in 40 CFR 60.53(b) and (c) of subpart Eb. For calculating the steam (or feedwater) flow required under 40 CFR 60.58(i)(6)(i), proceed in accordance with ASME PTC 4.1-1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda). For design, construction, installation, calibration, and use of nozzles and orifices required in 40 CFR 60.58(i)(6)(ii), proceed in accordance with the recommendations in ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971). The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

**§ 62.14105 Requirements for municipal waste combustor operator training and certification.**

The owner or operator of an affected facility must comply with the municipal waste combustor operator training and certification requirements listed in paragraphs (a) through (g) of this section. For affected facilities, compliance with the municipal waste combustor operator training and certification requirements specified under paragraphs (a), (b), (d), and (g) of this section must be no later than 12 months after the effective date of this subpart.

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers QRO-1-1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO-1-1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the

Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) Each chief facility operator and shift supervisor must have completed full certification or must have scheduled a full certification exam with either the American Society of Mechanical Engineers QRO-1-1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO-1-1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The owner or operator of an affected facility must not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility: a fully certified chief facility operator; a provisionally certified chief facility operator who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart; a fully certified shift supervisor; or a provisionally certified shift supervisor who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart. If one of the persons listed in this paragraph must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this paragraph.

(d)(1) Each chief facility operator, shift supervisor, and control room operator at an affected facility must

complete the EPA municipal waste combustor operator training course or the State municipal waste combustor operator training course in Connecticut (if the affected facility is located in Connecticut).

(2) The requirement specified in this paragraph does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart. The owner or operator of an affected facility may request that the EPA Administrator waive the requirement specified in this paragraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(e) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that must, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Procedures for municipal waste combustor unit startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash

handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section must undergo initial training no later than the date specified in paragraph (f)(1)(i) or (f)(1)(ii) of this section, whichever is later.

(i) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(ii) The date 12 months after the effective date of this subpart.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section must be kept in a location readily accessible to each person required to undergo training under paragraph (f) of this section. The operating manual and records of training must be available for inspection by the EPA or its delegated enforcement agency upon request.

**§ 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.**

(a) The owner or operator of an affected facility must not cause to be discharged to the atmosphere from that affected facility visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k) of subpart Eb, except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

**§ 62.14107 Emission limits for air curtain incinerators.**

The owner or operator of an air curtain incinerator with the capacity to combust greater than 250 tons per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials must not (at any time) cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute

average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

**§ 62.14108 Compliance schedules.**

(a) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) to retrofit air pollution control devices to meet the emission limits of this subpart. As specified in 40 CFR part 60, subpart B, the compliance schedules and increments of progress apply to each owner or operator of an affected facility who is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits specified in this subpart.

(1) Submit a final control plan according to the requirements of § 62.14109(g).

(2) Award contract(s): Award contract(s) to initiate on-site construction, initiate on-site installation of emission control equipment, or incorporate process changes. The owner or operator must submit a signed copy of the contract(s) awarded according to the requirements of § 62.14109(h).

(3) Initiate on-site construction: Initiate on-site construction, initiate on-site installation of emission control equipment, or initiate process changes needed to meet the emission limits as outlined in the final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission control equipment or complete process changes.

(5) Achieve final compliance: Incorporate all process changes or complete retrofit construction as designed in the final control plan and connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line, all necessary process changes or air pollution control equipment are operating fully. Within 180 days after the date the affected facility is required to achieve final compliance, the initial performance test must be conducted.

(b) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraphs (b)(1) through (b)(4) of this section, except as provided in paragraphs (c), (d), and (e) of this section.

(1) The owner or operator of an affected facility that commenced

construction, modification, or reconstruction on or before June 26, 1987 and will take longer than 1 year after the date of publication of this subpart FFF (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required) to comply with the emission limits of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(2) The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve the increments of progress according to the schedule in table 5 of this subpart to comply with the emission limits of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(3) The owner or operator of each specified affected facility in table 6 of this subpart must achieve the increments of progress according to the schedule in table 6 of this subpart.

(4) For affected facilities that are subject to the schedule requirements of paragraph (b)(1) or (b)(2) of this section, the owner or operator (or the State air pollution control authority) may submit for approval alternative dates for achieving increments 2, 3, and 4. The owner or operator (or the State air pollution control authority) that is submitting these alternative dates must meet the reporting requirements of § 62.14109(m).

(c) The owner or operator of an affected facility that has ceased operation but will reopen prior to the applicable final compliance date specified in paragraphs (b)(1) through (b)(4) of this section must meet the same compliance dates and increments of progress specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility that has ceased or ceases operation of an affected facility and restarts the affected facility after the compliance dates specified in paragraphs (b)(1) through (b)(4) of this section must comply with the emission limits, requirements for combustor operating practices, and operator training and certification requirements of this subpart upon the date the affected facility restarts. The initial performance tests required by § 62.14109(c) must be conducted within 180 days after the date the unit restarts.

(e) The owner or operator of an affected facility that will be de-rated prior to the applicable final compliance date instead of complying with the

emission limits of this subpart must meet the same increments of progress and achieve the de-rating by the final compliance date (specified in paragraphs (b)(1) through (b)(4) of this section) that would be applicable to the affected facility if it did not de-rate. The owner or operator of an affected facility that will be de-rated must meet the reporting requirements of § 62.14109k. After de-rating is accomplished, the municipal waste combustor affected facility is no longer subject to this subpart.

**§ 62.14109 Reporting and recordkeeping and compliance and performance testing.**

(a) The owner or operator of an affected facility must comply with the reporting and recordkeeping provisions listed in 40 CFR 60.59b of subpart Eb, except as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) The siting requirements under 40 CFR 60.59b(a), (b)(5), and (d)(11) of subpart Eb and the notification of construction requirements under 40 CFR 60.59b(b) and (c) of subpart Eb do not apply.

(2) 40 CFR 60.54b, 60.56b, and 60.58b(g)(5)(iii) of subpart Eb do not apply to this subpart (see §§ 62.14105 and 62.14107 of this subpart).

(b) The owner or operator of an affected facility must comply with the compliance and performance testing methods and procedures listed in 40 CFR 60.58b of subpart Eb, except as provided in paragraphs (c) and (d) of this section.

(c) The initial performance test must be completed within 180 days after the date of final compliance specified in § 62.14108, rather than the date for the initial performance test specified in 40 CFR 60.58b of subpart Eb.

(d) The owner or operator of an affected facility may follow the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section.

(1) If all performance tests for all affected facilities at the MWC plant over a 2-year period indicate that dioxin/furan emissions are less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions shall be conducted annually (no more than 12 months following the previous performance test) for one

affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant shall be tested, and the affected facilities at the plant shall be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates a dioxin/furan emission level greater than 15 nanograms per dry standard cubic meter (total mass), performance tests thereafter shall be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass).

(2) The owner or operator who is following the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section may choose an alternative testing sequence (e.g., unit 1, 3, 2, 4) for affected facilities at the municipal waste combustor plant. The owner or operator must submit a request to EPA for approval of the alternative testing sequence. After approval, the alternative testing sequence is effective until a different testing sequence is received and approved by EPA.

(e) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits of this subpart must submit notification to the EPA Regional Office within 10 business days of completing each increment. Each notification must indicate which increment of progress specified in § 62.14108(a)(1) through (a)(5) has been achieved. The notification must be signed by the owner or operator of the affected facility.

(f) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart who fails to meet any increment of progress specified in § 62.14108(a)(1) through (a)(5) according to the applicable schedule in § 62.14108 must submit notification to the EPA Regional Office within 10 business days of the applicable date in § 62.14108 that the owner or operator failed to meet the increment.

(g) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a final control plan by the date specified in § 62.14108(b) with the notification required by § 62.14109(e). The final control plan must, at a minimum, include a description of the air pollution control devices or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(h) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a signed copy of the contract or contracts awarded according to the requirements of § 62.14108(a)(2) with the notification required by § 62.14109(e).

(i) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must keep on site a copy of the final control plan required by § 62.14109(g).

(j) The owner or operator of an affected facility that plans to cease operation of the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the applicable compliance date specified in § 62.14208 must submit a notification by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108(b)(1) through (b)(4), as applicable. (Affected facilities that cease operation on or before December 19, 2000, rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 are not required to submit a final control plan.) The notification must state the date by which the affected facility will cease operation. If the cease operation date is later than 1 year after the date of publication of this subpart FFF, the owner or operator must enter into a legally binding closure agreement with EPA by the date the final control plan is due. The agreement must specify the date by which operation will cease.

(k) The owner or operator of an affected facility that plans to de-rate the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 must submit a final control plan as required by paragraph (g) of this section and submit notification of increments of progress as required by paragraphs (e)

and (f) of this section and § 62.14108(e) of this subpart.

(1) The final control plan must, at a minimum, include the information in paragraphs (k)(1)(i) and (k)(1)(ii) of this section rather than the information in paragraph (g) of this section.

(i) A description of the physical changes that will be made to accomplish the de-rating.

(ii) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

(2) The owner or operator must submit a signed copy of the contract or

contracts awarded to initiate the de-rating with the notification required by paragraph (e) of this section.

(l) The owner or operator of an affected facility that is ceasing operation more than 1 year following the date of publication of this subpart FFF must submit performance test results for dioxin/furan emissions conducted during or after 1990 for each affected facility by the date 1 year after the date of publication of this subpart FFF. The performance test shall be conducted according to the procedure in paragraph (b) of this section.

(m) The owner or operator (or the State air pollution control authority) that is submitting alternative dates for

increments 2, 3, and 4 according to § 62.14108(b)(4) must submit the alternative dates by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) and (b)(2), as applicable. The owner or operator (or the State air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in tables 4 or 5 of this subpart. The owner or operator must also submit the alternative dates and justification to the State.

Tables to Subpart FFF

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF <sup>1</sup>

State	MWC units
Florida .....	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Georgia .....	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Savannah Energy Systems Company, Savannah, Georgia.
Illinois .....	Existing MWC units located at Robbins Resource Recovery Center, Robbins, Illinois.
Minnesota .....	All MWC units with unit capacities greater than 93.75 million British thermal units per hour on a heat input basis (250 tons per day) located in Minnesota.
New York .....	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Oregon .....	Existing facilities at the following MWC sites: (a) Ogden Martin Systems, Marion County, Oregon. (b) Coos County, Coos Bay, Oregon.
South Carolina .....	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Foster Wheeler Charleston Resource Recovery Facility, Charleston, South Carolina.
Tennessee .....	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.

<sup>1</sup> Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

TABLE 2 OF SUBPART FFF—NITROGEN OXIDES REQUIREMENTS FOR AFFECTED FACILITIES

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) <sup>a</sup>
Mass burn waterwall .....	205.
Mass burn rotary waterwall .....	250.
Refuse-derived fuel combustor .....	250.
Fluidized bed combustor .....	180.
Mass burn refractory combustors .....	No limit.

<sup>a</sup> Corrected to 7 percent oxygen, dry basis.

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) <sup>a</sup>	Averaging time (hrs) <sup>b</sup>
Mass burn waterwall .....	100	4
Mass burn refractory .....	100	4
Mass burn rotary refractory .....	100	24
Mass burn rotary waterwall .....	250	24
Modular starved air .....	50	4
Modular excess air .....	50	4

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS—Continued

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) <sup>a</sup>	Averaging time (hrs) <sup>b</sup>
Refuse-derived fuel stoker .....	200	24
Bubbling fluidized bed combustor .....	100	4
Circulating fluidized bed combustor .....	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor .....	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor .....	200	24

<sup>a</sup> Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

<sup>b</sup> Averaging times are 4-hour or 24-hour block averages.

TABLE 4 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS (PRE-1987 MWCs)<sup>a, b</sup>

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction, modification, or reconstruction on or before June 26, 1987 (All pollutants).	January 11, 1999 .....	05/18/99	11/16/99	11/19/00	12/19/00

<sup>a</sup> Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.

<sup>b</sup> As an alternative to this schedule, the owner or operator may close the affected facility by December 19, 2000, complete the retrofit while the affected facility is closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS  
[Post-1987 MWCs]<sup>a, b</sup>

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction modification, or reconstruction after June 26, 1987:					
1. Emission limits for Hg, dioxin/furan.	<sup>c</sup> NA .....	<sup>c</sup> NA	<sup>c</sup> NA	<sup>c</sup> NA	1 year after promulgation of this subpart or 1 year after permit issuance. <sup>d</sup>
2. Emission limits for SO <sub>2</sub> , HCl, PM, Pb, Cd, opacity CO, NO <sub>x</sub> .	January 11, 1999 .....	05/18/99	11/16/99	11/19/00	12/19/00.

<sup>a</sup> Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.

<sup>b</sup> As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

<sup>c</sup> Because final compliance is achieved in 1 year, no increments of progress are required.

<sup>d</sup> Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS<sup>a</sup>

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Stanislaus Resource Recovery Facility.	Crows Landing, California.	January 11, 1999 ....	01/19/02 .....	05/19/00 .....	11/19/00	12/19/00
Southeast Resource Recovery Facility.	Long Beach, California.	January 11, 1999 ....	04/30/99 .....	10/31/99 .....	04/30/00	12/19/00
All large MWC units	Maine .....	January 11, 1999 ....	01/01/99 .....	07/01/99 .....	09/01/00	12/19/00
Baltimore Resco .....	Baltimore, Maryland	January 11, 1999 ....	January 11, 1999 ....	January 11, 1999 ....	09/01/00	12/19/00
All large MWC units	New Jersey <sup>b</sup> .....	January 11, 1999 ....	05/18/99 .....	11/14/99 .....	11/19/00	12/19/00
American Ref-Fuel ...	Delaware County, Pennsylvania.	11/01/98 .....	05/18/99 .....	11/14/99 .....	11/19/00	12/19/00
Montenay Energy Resource.	Montgomery County, Pennsylvania.	11/01/98 .....	05/18/99 .....	11/14/99 .....	11/19/00	12/19/00

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS <sup>a</sup>—Continued

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
I-95 Energy/Resource Recovery Facility.	Lorton, Virginia .....	January 11, 1999 ....	10/15/99 .....	03/01/00 .....	11/19/00	12/19/00

<sup>a</sup> These schedules have been reviewed and determined to be acceptable by EPA.

<sup>b</sup> This schedule applies to HC1 SO<sub>2</sub>, PM, Pb, Cd, CO, and NO<sub>x</sub>. However, owners and operators of large MWC units in New Jersey have the option of reserving the portion of their control plan that addresses NO<sub>x</sub>. Owners and operators must submit the reserved portion to EPA by December 15, 1999.

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BILLING CODE 6560-50-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1827 and 1852**

**Reportable Item Definition**

**AGENCY:** National Aeronautics and Space Administration (NASA).  
**ACTION:** Final rule.

**SUMMARY:** This is a final rule to conform the two NASA FAR Supplement (NFS) definitions of “reportable item”.

**DATES:** This rule is effective November 12, 1998.

**ADDRESSES:** Tom O’Toole, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Tom O’Toole, (202) 358-0478.

**SUPPLEMENTARY INFORMATION:**

**Background**

The NFS has two definitions of “reportable item”—in section 1827.301, Definitions, and the clause at 1852.227-70, New Technology. These definitions vary slightly, and this rule will conform these definitions by using the version at 1827.301 as a baseline. Other minor adjustments are made to cite appropriate USC titles and add examples of reportable items. A proposed rule was published in the August 13, 1998 **Federal Register** (63 FR 43362). NASA received one public comment that suggested the scope of the revised definition was unnecessarily broad in that it would now apply to all copyrightable data. NASA disagrees. The revised definition only intended to clarify that all inventions and innovations, including computer programs, should be reported without regard to potential patentability under Title 35 and/or copyrightability under Title 17 of the U.S. Code. However, to optimize clarity and preclude the

potential misconception that reporting is required for all data produced under the contract, NASA has restructured the definition to focus more explicitly the U.S.C. references.

**Impact**

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes are editorial clarifications and do not impose any new requirements on offerors or contractors. The rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 48 CFR Parts 1827 and 1852**

Government procurement.  
**Tom Luedtke,**  
*Acting Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1827 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1827—PATENTS, DATA, AND COPYRIGHTS**

2. Section 1827.301 is amended by revising the definition of “reportable item” to read as follows:

**1827.301 Definitions.**

\* \* \* \* \*

*Reportable item*, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before

the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

\* \* \* \* \*

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 1852.227-70 is amended by revising the clause date and the definition of “reportable item” in paragraph (a) of the clause to read as follows:

**1852.227-70 New technology.**

\* \* \* \* \*

**New Technology November 1998**

(a) \* \* \*

*Reportable item*, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable