

distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This action only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources. Thus, EO 13132 does not apply to this rule.

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

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

This action does not have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000.) This action will not impose any new obligations or enforceable duties on Tribal governments. Thus, EO 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources. However, EPA solicits comments on whether the proposal would result in an adverse environmental effect that would have a disproportionate effect on children.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have

a significant adverse effect on the supply, distribution, or use of energy. This proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have a disproportionately high and adverse human health or environmental effect on minority or low-income populations because it only seeks to extend the existing administrative stay on one provision in the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources.

#### *K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(f) and 307(d)(1)(V) of the CAA, the Administrator determines that this

action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

#### **IV. Statutory Authority**

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

#### **List of Subjects in 40 CFR Part 52**

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: July 16, 2009.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. E9–17541 Filed 7–22–09; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 1200**

**[EPA–HQ–OAR–2008–0201–FRL–8934–4]**

**RIN 2060–AP14**

### **Waste Energy Recovery Registry**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to establish the criteria for including sources or sites in a Registry of Recoverable Waste Energy Sources (Registry), as required under Title IV, Subtitle D of the Energy Independence and Security Act of 2007. The Agency is also proposing the Survey processes by which EPA will collect data and populate the Registry. The rule would apply to major industrial and large commercial sources as defined by EPA in this rulemaking. This proposed rule would not require the installation of new monitoring equipment; rather it would require only that sources above certain threshold levels that wish to be included in the Registry enter specific already-monitored data points into the voluntary Survey, which is a software tool that will calculate the quantity and quality of potentially recoverable waste energy.

**DATES:** The public may comment on this proposed rule until September 21, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0201, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).

• *Fax:* (202) 566-1741.

• *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA-HQ-OAR-2008-0201, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• *Hand Delivery:* Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0201. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Site is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Katrina Pielli, Climate Protection Partnerships Division, Office of Atmospheric Programs (MC 6202J), Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460; telephone number: (202) 343-9610; fax number (202) 343-2204; e-mail address: [pielli.katrina@epa.gov](mailto:pielli.katrina@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information in this preamble is organized as follows:

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  2. What Are the Standards to Address New Sources or New Energy-Consuming Industrial Facilities Constructed After EISA Enactment?
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  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### A. Does This Action Apply To Me?

This is a proposed regulation. If finalized, these regulations would affect owners and operators of major industrial and large commercial sources (as defined in this regulation). Regulated categories and entities could include the following:

Code	2002 NAICS title
211 .....	Oil and Gas Extraction.
212 .....	Mining (except Oil and Gas).
221320 .....	Sewage Treatment Facilities.
221330 .....	Steam and Air-Conditioning Supply.

Code	2002 NAICS title
31–33 .....	Manufacturing.
311 .....	Food Manufacturing.
312 .....	Beverage and Tobacco Product Manufacturing.
313 .....	Textile Mills.
314 .....	Textile Product Mills.
315 .....	Apparel Manufacturing.
316 .....	Leather and Allied Product Manufacturing.
321 .....	Wood Product Manufacturing.
322 .....	Paper Manufacturing.
323 .....	Printing and Related Support Activities.
32411 .....	Petroleum Refineries.
324191 .....	Petroleum Lubricating Oil and Grease Manufacturing.
325 .....	Chemical Manufacturing.
326 .....	Plastics and Rubber Products Manufacturing.
327 .....	Nonmetallic Mineral Product Manufacturing.
3311 .....	Iron and Steel Mills and Ferroalloy Manufacturing.
3313 .....	Alumina and Aluminum Production and Processing.
3314 .....	Nonferrous Metal (except Aluminum) Production and Processing.
3315 .....	Foundries.
332 .....	Fabricated Metal Product Manufacturing.
333 .....	Machinery Manufacturing.
334 .....	Computer and Electronic Product Manufacturing.
335 .....	Electrical Equipment, Appliance, and Component Manufacturing.
336 .....	Transportation Equipment Manufacturing.
337 .....	Furniture and Related Product Manufacturing.
339 .....	Miscellaneous Manufacturing.
44511 .....	Supermarkets and Other Grocery (except Convenience) Stores.
4862 .....	Pipeline Transportation of Natural Gas.
48811 .....	Airport Operations.
48831 .....	Port and Harbor Operations.
493120 .....	Refrigerated Warehousing and Storage.
518 .....	Internet Service Providers, Web Search Portals, and Data Processing Services.
521 .....	Monetary Authorities—Central Bank.
522 .....	Credit Intermediation and Related Activities.
5221 .....	Depository Credit Intermediation.
5222 .....	Nondepository Credit Intermediation.
6111 .....	Elementary and Secondary Schools.
6112 .....	Junior Colleges.
6113 .....	Colleges, Universities.
622 .....	Hospitals.
623 .....	Nursing and Residential Care Facilities.
71211 .....	Museums.
71213 .....	Zoos and Botanical Gardens.
71311 .....	Amusement and Theme Parks.
71321 .....	Casinos (except Casino Hotels).
72111 .....	Hotels (except Casino Hotels) and Motels.
72112 .....	Casino Hotels.
812331 .....	Linen Supply.
812332 .....	Industrial Launderers.
92214 .....	Correctional Institutions.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be covered by this action. This table lists the types of facilities that EPA is now aware of that could potentially be affected by this action. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether your site is affected by this action, you should carefully examine the applicability criteria found in the regulation text of this rule. If you have questions regarding the applicability of this action to a particular site, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What Should I Consider as I Prepare My Comments to EPA?*

Do not submit information containing CBI to EPA through <http://www.regulations.gov> or e-mail. Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0201. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute.

If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*C. Where Can I Get a Copy of This Document?*

All documents in the docket are listed in the <http://www.regulations.gov> index. Publicly available docket materials are also available in hard copy at the Air Docket, EPA/DC, EPA West, Room

B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Site is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

#### *D. Abbreviations Used in This Document*

Combined Heat and Power (CHP)  
Commercial Buildings Energy Consumption Survey (CBECS)  
Commercial Energy Profile Database (CEPD)  
Confidential Business Information (CBI)  
Detailed Quantitative Information (DQI)  
US EPA's Emission & Generation Resource Integrated Database (eGRID)  
Energy Independence and Security Act of 2007 (EISA)  
Energy Policy and Conservation Act (EPCA)  
Federal Energy Regulatory Commission (FERC)  
Freedom of Information Act (FOIA)  
Greenhouse Gas (GHG)  
Kilowatt (kW)  
Megawatt (MW)  
Million British Thermal Units (MMBtu)  
Million metric tons of carbon dioxide (MMTCO<sub>2</sub>)  
New Source Performance Standards (NSPS)  
North American Industry Classification System (NAICS)  
National Emissions Inventory (NEI)  
Operation and Maintenance (O&M)  
Registry of Recoverable Waste Energy Sources (Registry)  
Standard Cubic Feet per Minute (scf/min)  
U.S. Environmental Protection Agency (EPA)  
U.S. Environmental Protection Agency Combined Heat and Power Partnership (EPA CHPP)  
Waste Energy Survey Tool (WEST)

## **II. Background Information**

### *A. What Are the Purpose and Requirements of EISA Title IV, Subtitle D?*

On December 19, 2007 the President of the United States signed the Energy Independence and Security Act of 2007 (EISA) which was designed to improve vehicle fuel economy and help reduce US dependence on oil.

Title IV of EISA contains extensive new provisions designed to save energy in buildings and industries. EISA Subtitle D focuses on industrial energy efficiency and contains new provisions designed to improve energy efficiency by promoting combined heat and power (CHP), waste energy recovery, and district energy systems.

This proposed rule addresses the U.S. Environmental Protection Agency's (EPA) obligation under EISA to publish a rule within 270 days of EISA enactment that establishes the criteria by which sources or sites will be listed in a Registry of Recoverable Waste Energy Sources (Registry).

The rule also addresses the related EPA obligation under EISA to develop

an ongoing Survey of major domestic industrial and large commercial sources as well as the sites at which the sources are located, and to conduct a review of each source for the quantity and quality of potential waste energy produced. This Survey is a necessary first step to gather the data needed to establish the Registry. EISA also directs EPA to establish the Registry within one year of EISA enactment.

The purposes of the Survey and Registry are to:

1. Provide a list of the economically feasible existing waste energy recovery opportunities in the US based on a Survey of major industrial and large commercial sources;
2. Provide State and national totals of the existing waste energy recovery opportunities, as well as the potential criteria pollutant and greenhouse gas emissions reductions that could be achieved with the capture and use of the waste energy recovery opportunities listed in the Registry;
3. Serve as the basis for potential waste energy recovery projects to qualify for financial and regulatory incentives as described in Energy Policy and Conservation Act (EPCA) Sections 373 "Waste Energy Recovery Incentive Grant Program" and 374 "Additional Incentives for Recovery, Use, and Prevention of Industrial Waste Energy," as added by EISA.

### *B. What Is the Legal Authority for the Proposed Action?*

EISA Title IV Subtitle D amends the Energy Policy and Conservation Act (EPCA) by adding a new Part E, titled "Industrial Energy Efficiency," to Title III of EPCA (42 U.S.C. 6291 *et seq.*). The new EPCA Section 372 directs EPA to establish a "recoverable waste energy inventory program," which is to include "an ongoing Survey of all major industrial and large commercial combustion sources in the United States (as defined by the Administrator) and the sites at which the sources are located," as well as "a review of each source for the quantity and quality of waste energy produced at the source." Section 372 further provides that EPA is to publish a rule to establish criteria for including sites in a Registry of Recoverable Waste Energy Sources within 270 days of EISA enactment (September 19, 2008) and to establish the Registry not later than one year after enactment (December 19, 2008).

### *C. What Is the Relationship to Other EPA Waste Energy Recovery and CHP Efforts?*

This rulemaking and Registry complement EPA's existing voluntary

program, the Combined Heat and Power Partnership (EPA CHPP). EPA established EPA CHPP in October 2001 in response to President George W. Bush's 2001 National Energy Policy Report, which identified CHP as an efficient, clean power generation technology that should be encouraged. The EPA CHPP is a voluntary effort to reduce the environmental impact of power generation by promoting the use of CHP. The EPA CHPP has over 285 Partners, including energy users, project developers, State agencies, and energy service companies. Between 2001 and 2008, the EPA CHPP has assisted its Partners with over 400 projects representing 4,764 megawatts of new, environmentally-beneficial and cost-effective CHP capacity. On an annual basis, these projects will prevent the emission of more than 11.8 MMTCO<sub>2</sub>.<sup>1</sup> Resources permitting, EPA will leverage the EPA CHPP to provide technical assistance to the owners or operators of sources or sites in the Registry, regarding the optimum means of recovery of value from the waste energy stream, as directed under EPCA Section 372(g) "Optimum Means of Recovery."

## **III. Summary of the Proposed Rule**

### *A. What Is the Overall Approach to the Survey and Registry?*

#### *1. What Are the Key Definitions and Interpretation?*

As added by EISA, Section 371 of EPCA defines several important terms, including "combined heat and power," "project," "recoverable waste energy," "useful thermal energy," and "waste energy." EPA is proposing to use the same definitions of "combined heat and power,"<sup>2</sup> "project", "recoverable waste energy" and "useful thermal energy" as stated in EPCA Section 371.

As defined in EPCA Section 371, the term "waste energy" includes three specified forms of waste energy as well as "[s]uch other forms of waste energy as the Administrator may determine." EPA is providing examples of the three specified forms of waste energy below:

"(A) Exhaust heat or flared gas from any industrial process;"

Examples of part A of the definition of waste energy may include high temperature exhaust streams from glass

<sup>1</sup> EPA Combined Heat and Power Partnership. <http://www.epa.gov/chp/partnership/index.html>. Methodology described at <http://www.epa.gov/appdstar/pdf/2007AnnualReportFinal.pdf>.

<sup>2</sup> Other definitions of "combined heat and power" and "cogeneration" under the Clean Air Act can be found at: 40 CFR 60.41Da, 40 CFR 60.41b Subpart Db, 40 CFR 60.4420 Subpart KKKK, 40 CFR 97.102 Subpart AA, 40 CFR 97.202 Subpart AAA, 40 CFR 97.302 Subpart AAAA.

melting, cement kilns, and pipeline compressor turbine drives.

“(B) Waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented;”

Examples of part B the definition of may include chemical and/or refinery off gases with combustible content, and combustible off gases from coke ovens.

“(C) A pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and”

Examples of part C of the definition of waste energy may include high pressure steam generated in a boiler that is subsequently reduced in pressure before being used in an industrial process or building heating system.

The definition of waste energy also includes “(D) Such other forms of waste energy as the Administrator may determine.” EPA is proposing a determination that waste energy include the potential opportunity for combined heat and power (CHP). In part, this is based on the statutory structure. EPCA Section 372 directs EPA to establish a Recoverable Waste Energy Inventory Program that includes a Survey and a Registry of Recoverable Waste Energy Sources. Section 372 is housed in Part E of EPCA, which is titled Industrial Energy Efficiency. Congress defined CHP for Part E of EPCA but did not include CHP-specific provisions in Part E. This suggests that Congress expected that EPA would consider opportunities for including CHP in the scope of the Survey and Registry. EPA believes it is appropriate to include CHP opportunities because doing so is consistent with the EISA goal of promoting the recovery of waste energy. In addition, CHP is inherently an energy efficiency measure where energy that is usually lost is recovered for useful purposes. This simultaneous generation of electricity and recovery of useful thermal energy from a single fuel source is more efficient than separate generation of power and thermal energy. Including potential CHP opportunities in the Registry will encourage more widespread consideration of this efficiency approach.

EISA Section 372 uses the terms “facility” and “site” interchangeably; for clarity, the proposed regulation uses “site” to refer to “a building or group of buildings that provides a particular service or is used for a particular industrial application.” References in this document to a “facility” should be understood as referring to the “site.” EPA is proposing to define “source” as “any process or activity resulting in the release of waste energy.” A site may have multiple sources.

Section 372 uses the terms “major industrial combustion source” and “large commercial combustion source” to refer to the types of sources to be included in the Survey. EPA believes that it has discretion to allow additional, non-combustion sources to participate in the Survey. EPA has not included the word “combustion” in the proposed regulatory definitions because not all waste energy as defined in EPCA Section 371 is necessarily generated by a combustion source. Waste heat, waste gas or pressure drop could all be the result of non-combustion operations (e.g., an exothermic chemical reaction generating waste heat). As discussed elsewhere in this notice, EPA is proposing to include Combined Heat and Power (CHP) in the regulatory definition of waste energy. One application of CHP that provides cooling as the thermal output can be implemented at sites that are currently all-electric. EPA believes that it is appropriate to include non-combustion sources of waste energy within the scope of the Survey because doing so will promote recovery of waste energy consistent with the statutory intent. Completion of the Survey is voluntary; non-combustion sources of waste energy would incur no penalty if they elected not to participate. In addition, Section 372(d) of EPCA directs EPA to establish a Registry of Recoverable Waste Energy Sources but does not instruct EPA to limit the Registry to combustion sources. Because Survey data will be used to evaluate sources for inclusion in the Registry, the scope of the Survey must be at least as broad as the scope of the Registry. While combustion does occur at most of the sources within the Survey scope, EPA is proposing that both the Survey and the Registry be open to non-combustion sources, to assess their waste energy recovery opportunities based on the proposed thresholds. Thus, this proposed regulation uses “major industrial source” and “large commercial source.” This regulation also uses the term “large commercial source” to include institutions and multi-family housing.

## 2. What Are the Survey and Registry Scope?

The scope of the Survey and Registry will be based on the thresholds for major industrial and large commercial sources as proposed in this rule. EPA expects to contact 11,000 facilities within the initial thresholds proposed in this rule. Not all of these facilities will have sources that meet the secondary thresholds. The Survey results will directly affect the Registry scope; EPA will use them to populate

the Registry. The Survey EPA is proposing is an Internet-based Survey, the Waste Energy Survey Tool (WEST), which would be downloaded by owners or operators of the sites or sources (the respondents). The respondents would enter data into WEST to be used to determine the potential waste energy recovery opportunity of the source. For more information on the proposed Survey questions, see the Technical Support Document—Waste Energy Survey Tool in the docket. Once a respondent has completed the Survey, WEST would generate a final summary report, which the respondent would subsequently submit to EPA via mail or e-mail.

WEST calculates the potential recoverable waste energy from each source using embedded algorithms based on the criteria proposed in this rule, using data provided by the site owner or operator. Sources or sites that meet the criteria included in this proposed rule would be included in the Registry. For more information on how the proposed Survey questions will allow WEST to calculate the payback for a potential waste energy recovery project, see the Technical Support Document—Economic Payback Calculation in the docket.

EPA is proposing to include the following information for each site in the Registry:

- a. Site name, address, NAICS code;
- b. Site contact person name, title, address, phone number, e-mail address;
- c. The total waste energy recovery potential at the site; and
- d. Date the listing was posted in the Registry.

EPA believes that the Registry, containing this information, will provide the site or source, the Agency, and private project developers of waste energy recovery systems valuable data on potential waste energy recovery opportunities that have been assessed by WEST. The Registry will not include detailed quantitative information as defined in this rule. The information EPA is proposing to include in the Registry is the minimum information needed for site or source operators or owners, and private project developers of waste energy recovery systems, to be aware that a potential waste energy recovery project has met the criteria included in this rule and facilitate conversations between private parties to pursue the capture and use of the potential waste energy.

As directed by EPCA Section 372(d)(2), EPA is also proposing to include in the Registry, nationally and by State, the total quantities of

potentially recoverable waste energy from sources at the sites in the Registry, as well as the criteria pollutant (NO<sub>x</sub>, SO<sub>x</sub>) and greenhouse gas (GHG) emissions savings that might be achieved with recovery of the waste energy from all sources and sites listed in the Registry. Emissions savings of waste energy recovery projects will be estimated by comparing the emissions from the waste energy recovery system to the emissions that would normally occur without the system in place, including the displaced power plant emissions from grid electricity avoided by the output of the waste energy recovery system. Avoided grid emissions will be calculated based on EPA's Emission & Generation Resource Integrated Database (eGRID).<sup>3</sup>

### 3. What Are the Survey and Registry Schedules?

EPA is proposing that the Survey be completed by owners or operators of affected sources anytime following release of WEST. The Agency expects WEST to be released within 90 days of the final rule being published in the **Federal Register**. Submissions received within 60 days of WEST being released would be included in the initial launch of the Registry. Additional submissions received would be included in the Registry on a rolling basis.

Following the release of WEST, affected sites and sources can submit the Survey reporting information to the Agency at any time. Sites meeting the initial thresholds as defined in this rule for major industrial and large commercial sources and that are in the list of affected NAICS codes, as provided above under **SUPPLEMENTARY INFORMATION**, would receive the request from EPA to download and complete the Survey as described in this rule. Sites or sources that submit Survey reporting information would be included in the Registry if they meet the criteria proposed in this rule, whether or not EPA notified them of the Survey. EPA may contact the respondent to discuss their submission if it appears inaccurate.

EPCA Section 372(e) provides that an owner, operator or third-party developer may self-certify their sites and sources "[s]ubject to any procedures that are established by the Administrator." It

further provides that "a site or source shall be included in the Registry only if the Administrator reviews and approves the self-certification." EPA is proposing to allow owners and operators, as well as third-party developers acting jointly with an owner or operator, to complete the Survey and submit the Survey results to EPA at any time. EPA believes this meets the intent of Section 372(e) while avoiding the need for a separate self-certification process. The Survey and Registry approach are constructed such that all Survey responses are generated by the algorithms embedded in the Survey tool (which are developed by EPA), regardless of when they are received by EPA. In addition, the Survey tool will be designed to not generate a final summary report if there are missing or incomplete fields. As such, the Agency is not proposing to create a separate option for self-certification. EPA invites comment on this approach.

EPA is proposing that the Survey and Registry be updated on an as-needed basis. The Agency intends to assess every three years relevant market conditions, technology status and applicable incentives, and make Survey adjustments as appropriate.

EPA invites comment on the proposed schedule.

#### B. Survey

##### 1. What Is the Rationale Behind the Survey Approach?

In considering the potential approaches, EPA decided that a voluntary Internet-based Survey, such as WEST, would be most effective at providing EPA the site-specific source data necessary to accomplish the review of each source for the quantity and quality of waste energy produced. WEST would also provide owners or operators the ability to retain confidential or sensitive business data that could be exploited for competitive advantage by requiring only the Survey output to be submitted to EPA. In addition, WEST would not allow a respondent to submit an incomplete Survey response (will not calculate the final summary report), thereby reducing burden on EPA and the respondent by avoiding the need for additional interaction on the completeness of the Survey response.

EPA is proposing that WEST be downloaded from the Internet to the respondent's computer. If a respondent is unable to download the Survey tool, the respondent can contact EPA for alternate submission instructions (consult the person listed in the preceding **FOR FURTHER INFORMATION**

**CONTACT** section). All information which EPA reasonably expects might be covered by a claim of confidentiality or otherwise be considered sensitive would remain on the respondent's computer. WEST will generate a final summary report based on that information using embedded algorithms and the respondent will submit the final summary report to EPA, which should not contain any sensitive business information. EPA is proposing WEST over a traditional Survey because the Agency will not need to collect any confidential or sensitive business information to accomplish the requirements of EISA. In addition, EPA believes the necessary information can be collected more efficiently and at a lower cost using WEST.

EPA considered alternatives to the proposed data collection approach. EPA considered utilizing the National Emissions Inventory (NEI) for the source specific information necessary for the Survey and Registry, but determined that NEI did not provide the type of information necessary for four primary reasons: NEI does not include data for waste gas streams or pressure drops so would not provide data for all types of waste energy, as described in Section A(1) of this preamble; NEI does not contain complete data sets; NEI contains data anomalies; and NEI data is not consistent across the States as to what specific information is included. EPA is requesting comment on the proposed data collection approach.

##### 2. What Are the Major Industrial and Large Commercial Thresholds?

EPA is proposing an initial and a secondary threshold for major industrial sources, and an initial and a secondary threshold for large commercial sources. The initial thresholds are used to determine which sites within the list of affected NAICS codes should expect to receive the Survey. The secondary thresholds are used by the sites that receive the Survey to determine if they have sources with characteristics suitable for an economically-feasible waste energy recovery opportunity, as required by EISA, based on commercially-available technology. The proposed thresholds are:

###### a. Major Industrial Sources

- Initial threshold—site with 100 MMBtu/hour fuel use;
- Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

<sup>3</sup>eGRID, developed by EPA's Climate Protection Partnership Division's State and Local Branch, contains data on the environmental attributes of virtually all of the electric power generated in the United States, linking air emissions to electricity generated. The most recent version, the sixth edition of eGRID, *eGRID2007*, includes operational data from 2005. <http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html>.

#### b. Large Commercial Sources

- Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour fuel input;
- Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

EPA is also proposing definitions of “major industrial source” and “large commercial source” that utilize these thresholds.

EPA is proposing that sources located at sites that do not meet the initial thresholds can complete the Survey if they meet the appropriate secondary threshold. The initial thresholds are intended to focus the Survey scope on those sites most likely to have sources that meet the criteria; they are not intended to prevent owners or operators of other sites from completing the Survey. If these sources or sites meet the secondary thresholds and all other criteria established in this rule, they would be placed in the Registry.

EPA considered establishing an initial threshold for major industrial sources, an initial threshold for large commercial sources, and sector-specific secondary thresholds based on NAICS codes. EPA believes that sector-specific thresholds are unnecessary since there are general considerations for waste energy opportunities, such as availability, temperature and flow rate, which are applicable across sectors.

In the development of thresholds, EPA considered the EISA obligation to survey all major industrial and commercial sources. EPA reviewed existing thresholds from other EPA regulations, including the New Source Performance Standards (NSPS), which could be used to denote major industrial or large commercial sources. EPA also reviewed relevant databases for other applicable thresholds. The threshold development also included reviewing existing analysis of waste energy projects by the EPA CHPP.

The proposed major industrial initial threshold of 100 MMBtu/hr is the NSPS threshold for industrial boilers. This NSPS, titled “Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units,” is available for reference at 40 CFR 60.40b. The proposed large commercial initial threshold of 1 MW average electric annual demand or 5 MMBtu/hour is reflective of the size of facilities associated with existing CHP commercial projects included in existing databases. These databases include the U.S. Department of Energy’s Commercial Buildings Energy Consumption Survey (CBECS), CHP

Installation database<sup>4</sup> and private databases including the IHS Commercial Energy Profile Database (CEPD).

EPA lacks data to definitively estimate the waste energy potential of major industrial and large commercial sources, the number of facilities or the individual facilities where this potential is located. This is likely a driver behind Congress’ intent in obligating EPA to conduct an ongoing survey of all major industrial and large commercial sources for the quantity and quality of waste energy produced at the source. Given the current uncertainty regarding potential waste energy recovery opportunities, EPA is relying on existing databases and analyses for supporting information in establishing the Survey scope.

Based on the existing databases and analyses, there are approximately 8,000–12,000 combined commercial facilities above 1 MW of average electric demand and industrial facilities above 100 MMBTU/hr fuel use. Based on a review of existing CHP projects at industrial facilities, projects of 20 MW or greater represent 95 percent of total installed industrial CHP capacity. The profile of existing industrial CHP also shows that the larger industrial fuel consumers most likely represent a majority of the economically feasible CHP potential in terms of MW capacity. As stated above, there are no corresponding data sets for the other waste energy categories; however EPA believes it is reasonable to assume that the profile of opportunities for these waste energy categories would be similar to the CHP profile. Based on a review of the existing CHP profile for commercial applications, 1 MW and greater is the most economically feasible market with current technology and market conditions. CHP projects of 1 MW or larger represent 97 percent of the existing CHP capacity in the commercial sector. For supporting information on these thresholds, see the Technical Support Document—Evaluation of Initial Thresholds for the Registry of Recoverable Waste Energy Sources and for the Survey of Major Industrial and Large Commercial Sources in the docket.

EPA is requesting comment on the major industrial and large commercial thresholds.

#### 3. What Is Detailed Quantitative Information and How Is It Applicable to the Survey and Registry?

Under EPCA Section 372(c)(3)(B) “the owner or operator of a source at a site

may elect to have detailed quantitative information (DQI) concerning the site not made public” by notifying EPA of the election. This section also states that DQI shall be made available to the applicable State energy office and utility requested to support recovery of waste energy from the source or site pursuant to the incentives provided under EPCA Section 374. Respondents should note that while DQI will not appear in the Registry, there is potential for it to be disclosed through other means pursuant to EPCA Section 372(3)(B)(ii) or EPA’s Freedom of Information Act (FOIA) regulations. DQI is a term created by EPCA Section 372(3)(B).

Section 374 allows a project owner or operator that is in the Registry to request that their State regulatory authority or nonregulated electric utility provide public notice, conduct a hearing, and make a determination whether or not it is appropriate to implement the regulatory incentives contained within this Section. These regulatory incentives allow an owner or operator of a waste energy recovery project identified in the Registry that generates net excess power to be eligible to benefit from at least one of the options described in Section 374 subsection (c) for disposal of the net excess power in accordance with the rate conditions and limitations described in Section 374 subsection (d).

As previously described, EPA is proposing to include the following information for each site in the Registry:

- a. Site name, address, NAICS code;
- b. Site contact person name, title, address, phone number, e-mail address;
- c. The total waste energy recovery potential at the site; and
- d. Date the listing was posted in the Registry.

EPA does not consider the types of information listed above to be DQI. The proposed Survey would not include an option for respondents to claim the information listed above as confidential business information (CBI) because the public availability of such information is crucial to fulfilling the purpose of the Registry. Since Congress directed that the Registry contain site level information, the above listed information is critical to identifying the site with the waste energy recovery opportunity based on the Survey data. The remaining outputs from the Survey are important for EPA to determine whether the site has met the criteria for inclusion in the Registry; however, their posting in the Registry is not crucial to the Registry’s operation. For simplicity, EPA proposes to treat the remaining Survey outputs as DQI. EPA will not post DQI in the Registry.

<sup>4</sup> ICF International, <http://www.eea-inc.com/chpdata/index.html>.



Respondents should be aware that EPCA Section 372 provides for the disclosure of DQI to “the applicable State energy office” and “any utility requested to support recovery of waste energy from the source” under Section 374. In addition, EPA could receive a request to release DQI under the Freedom of Information Act (FOIA). While the proposed Survey is designed to avoid the transmission to EPA of information for which facilities might be expected to assert a claim of confidentiality, respondents will nonetheless have the option of asserting such a claim for all or part of their DQI. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in EPA’s Confidential Business Information (CBI) regulations at 40 CFR part 2 subpart B.

EPA is proposing to define DQI as the following Survey output with respect to individual sources at a site:

- (1) Source description (*e.g.*, glass furnace, process flare);
- (2) Quantitative estimates of:
  - For each source, the CO<sub>2</sub> emissions reduction potential (tons/year).
  - For each source, the criteria pollutant reduction potential (NO<sub>x</sub> and SO<sub>x</sub> tons/yr).
  - For waste heat sources, the waste heat to power recovery potential (MW).
  - For waste gas sources, the waste gas to power recovery potential (MW).
  - For pressure drop sources, the pressure drop to power recovery potential (MW).
  - For CHP potential, the CHP potential (MW) based on sizing to thermal (heating and/or cooling) load.
- (3) Yes/no answers to the following questions:
  - For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project have a five year payback or less (yes/no).
  - For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project meet the primary purpose criteria (yes/no).
  - For each new source, does the potential project meet the 60% efficiency test (yes/no).
  - For each waste heat source, does the site have a waste heat recovery opportunity that passes all screening criteria (yes/no).
  - For each waste gas or industrial tail gas source, does the site have a waste gas or industrial tail gas recovery opportunity that passes all screening criteria (yes/no).
  - For each pressure drop source, does the site have a pressure drop recovery

opportunity that passes all screening criteria (yes/no).

- For each potential CHP opportunity, does the site have a CHP opportunity that passes all screening criteria (yes/no).

For more information on the proposed Survey questions, see the Technical Support Document—Waste Energy Survey Tool in the docket.

A State energy office may request DQI for a specific site in its State by submitting a request to EPA via mail (address at <http://www.epa.gov/wasteenergyregistry>) or e-mail at [wasteenergyregistry@epa.gov](mailto:wasteenergyregistry@epa.gov). E-mail requests may include the subject line “State energy office DQI request.” All DQI requests shall include: the requesting State energy office name, address, city, State, contact person, and the site or source name, address, and NAICS code as displayed in the Registry.

A utility may request DQI for a specific site in its service territory to support recovery of waste energy from the source pursuant to the incentives provided under EPCA Section 374 by submitting a request to EPA via mail (address at <http://www.epa.gov/wasteenergyregistry>) or e-mail at [wasteenergyregistry@epa.gov](mailto:wasteenergyregistry@epa.gov). E-mail requests may include the subject line “Utility DQI request.” All DQI requests shall include the utility name, address, city, State, and NAICS code of the site, as displayed in the Registry.

Since Section 372(c)(3)(B) states that utilities may request DQI in the context of supporting recovery of waste energy from the source/s pursuant to the incentives provided under EPCA Section 374, EPA urges utilities making such a request to include supporting information that the project has requested a hearing under Section 374. Supporting information could take the form of notification from the applicable State regulatory authority that the project has requested a hearing or other similar documentation. To minimize the burden, supporting information can include a Web site address where documentation is readily available. EPA may not be able to release DQI without such supporting information.

EPA is requesting comment on the information proposed to be considered DQI.

#### 4. What Is the Approach To Determine if a Potential Waste Energy Recovery Project Has a Five-year Payback or Less?

EPCA Section 372(b)(2)(A) states that EPA’s criteria for inclusion in the Registry shall include:

“A requirement that, to be included in the Registry, a project at the site shall be

determined to be economically feasible by virtue of offering a payback of invested costs not later than 5 years after the date of first full project operation (including incentives offered under this part);”

EPA is proposing to use WEST to determine if the site has economically feasible potential energy recovery project/s based on the 5 year financial payback requirement described above. WEST will include algorithms for estimating simple paybacks for waste energy recovery projects based on the site and source information requested of each site in the Survey. Simple payback for a waste energy recovery project would be calculated by dividing the total installed cost of the project by the projected annual savings of the project. The annual savings would be estimated by calculating potential savings from reduced purchases of electricity (essentially the electricity generated by the waste energy recovery system times the average purchase price for electricity at the site) less any incremental operating costs required by the project (for example, operating and maintenance [O&M] costs for the energy recovery equipment or incremental fuel use for CHP projects).

Section 372 requires that the payback determination include any financial incentives established in Part E of EPCA. The only financial incentives included in Part E are in Sections 373 and 374.

EPCA Section 373 directs the Department of Energy to establish a waste energy recovery incentive grant program to provide incentive grants to:

- “(a)(1) Owners and operators of projects that successfully produce electricity or incremental useful thermal energy from waste energy recovery;
- (2) Utilities for purchasing or distributing the electricity; and
- (3) States that have achieved 80 percent or more of recoverable waste heat recovery opportunities.”

EPCA Section 374 allows a project owner or operator to request that their State regulatory authority or nonregulated electric utility “provide public notice and conduct a hearing” with regard to the standard for sales of excess power described in Section 374(b), and “on the basis of the hearing, consider and make a determination whether or not it is appropriate to implement” that standard.

Under Section 374(b), the standard for sales of excess power “shall provide that an owner or operator of a waste energy recovery project identified in the Registry that generates net excess power shall be eligible to benefit from at least one of the options described in subsection (c) for disposal of the net



excess power in accordance with the rate conditions and limitations described in subsection (d).” The options include: (1) Sale of net excess power to utility; (2) transport by utility for direct sale to third party; (3) transport over private transmission lines.

Because Section 374 does not contain quantified financial incentives, EPA is proposing not to include Section 374 incentives in the payback determination. Section 374(d) describes how the regulatory incentives will be offered under purchase and transport rate conditions that reflect the rate components defined in that section.

The only financial incentives quantified in Section 373 for owners and operators of waste energy recovery projects are those described in Section 373(b). First, Section 373(b)(3)(A) provides for a grant at the rate of \$10/MWh of “documented electricity produced from recoverable waste energy.” This grant is limited to the first three calendar years of electricity production. Second, Section 373(b)(4) provides for a grant at the rate of \$10/3,412,000 Btus of excess thermal energy “used for a purpose different from that for which the project is principally designed.” EPA is proposing to add these financial incentives to the projected annual savings of the potential waste energy project. These financial incentives would be paid to the owners or operators of waste energy recovery projects. Inclusion of the Section 373 incentives in the payback calculation does not automatically qualify a site or source included in the Registry listing for such incentives.

The algorithms embedded in WEST will estimate total installed costs, incremental O&M costs, electricity generated, and incremental fuel use and cost for each potential waste energy recovery project at a responding site. Each of these estimates will be based on rules of thumb for sizing, efficiency, and costs that are specific to each of the potential waste energy recovery categories (e.g., waste heat recovery, waste gas recovery, pressure drop recovery, CHP). While the performance and cost estimates will vary by category, the calculation of payback itself will be similar. For more information, see the Technical Support Document—Economic Payback Calculation in the docket.

EPA is requesting comment on the approach to including incentives offered in EPCA Section 373.

5. What Is the Approach to Ensure Projects Proposed for Inclusion in the Registry Are Not Developed or Used for the Primary Purpose of Making Sales of Excess Electric Power Under the Regulatory Provisions of Subtitle D Part E?

EPCA Section 372(b)(2)(B) directs EPA to establish criteria for including sites in the Registry and specifically directs EPA to include criteria on “standards to ensure that projects proposed for inclusion in the Registry are not developed or used for the primary purpose of making sales of excess electric power under the regulatory provisions of this part.” EPA interprets the “regulatory provisions of this part” as a reference to EPCA Part E—Industrial Energy Efficiency, Section 374—Additional Incentives for Recovery, Use and Prevention of Industrial Waste Energy. Section 374 is the only section of Part E that contains regulatory provisions concerning the sale of excess power.

In proposing regulatory language consistent with EPCA Section 372(b)(2)(B) (the “primary purpose” criterion), EPA is looking to balance the Congressional directive to conduct a Survey and establish a Registry of recoverable waste energy sources and sites on which the sources are located, with the goal of ensuring that proposed projects have legitimate thermal and electric uses, and are not designed with the purpose of maximizing electric sales to the utility under EPCA Section 374. EPA recognizes that there is an existing body of regulatory decisions by State regulatory authorities and the Federal Electric Regulatory Commission (FERC) related to cogeneration facilities thermal output being used in a productive and beneficial manner, as well as other regulatory decisions on the purchase of excess electricity by utilities. EPA also recognizes that in certain industries and situations (such as chemical and refining), the thermal demand is sufficiently large that thermally-based CHP or waste heat recovery projects would generate more electricity than can be used on-site. In such cases, sale of excess electricity to the utility is a prerequisite to maximize energy and carbon savings, and optimize project economics. EPA also recognizes that 12 States currently recognize waste heat recovery or CHP as an eligible resource in their Renewable Portfolio Standard, Energy Efficiency Portfolio Standard or Alternative Energy Portfolio Standard.<sup>5</sup>

<sup>5</sup> EPA Combined Heat and Power Partnership. Energy Portfolio Standards and the Promotion of Combined Heat and Power. [http://www.epa.gov/chp/documents/eps\\_and\\_promotion.pdf](http://www.epa.gov/chp/documents/eps_and_promotion.pdf).

To strike the balance described above, EPA is proposing that for a potential waste energy project to be included in the Registry, it must meet one of the following primary purpose criteria:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) is to be used for industrial or commercial purposes, and not sold to an electric utility (“the 50 percent threshold”); or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EPCA Section 374 not to implement the regulatory sale of excess power provisions in EPCA Section 374. This waiver of the 50 percent threshold is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the 50 percent threshold be waived.

EPA is proposing to define “aggregated annual energy output of the site” as the total useful output of the fuel driving the source, including electricity produced by a project and thermal energy recovered in or driving the project. For CHP, the aggregate annual energy output would be the sum of the electricity generated and the useful thermal energy recovered on an annual basis. For other types of waste energy recovery projects, the aggregated annual energy output of the project would be the sum of the thermal energy used by the furnace or chemical process that generated the waste heat and the annual electricity generated by the recovery system. As an example, the thermal energy requirements of a furnace that is generating a hot exhaust stream that could potentially be recovered as electricity would be estimated by the furnace efficiency multiplied by the total fuel input to the furnace. In the case of an exothermic chemical reaction, the thermal energy requirements of the process would be equal to the energy released by the exothermic reaction (estimated by the amount of heat available for recovery). EPA is requesting comment on this proposed definition and on the primary purpose criteria.

“Primary purpose” criterion (i) is designed to determine whether a majority of the total energy output of the potential waste energy recovery project has the potential to be used at the site. A similar approach has been implemented by FERC in Docket RM05–36–000, Order 671 (February 2, 2006), which is available in the docket for this

action. Order 671 establishes a safe harbor for new cogeneration systems seeking Qualifying Facility status (18 CFR 292.205(d)). This safe harbor provision requires a demonstration that at least 50 percent of the aggregated annual energy output of the cogeneration project is to be used for industrial, commercial, residential or institutional purposes (essentially, used on-site), and not sold to an electric utility. Projects that comply with this safe harbor provision are assumed to be intended “fundamentally” for on-site purposes. FERC includes both electricity and/or mechanical power produced by a project and thermal energy recovered as part of the aggregated annual energy output. EPA is proposing to do the same.

“Primary purpose” criterion (ii) is designed to streamline the process for potential waste energy projects located in States that issue a State-wide decision to not implement the Section 374 regulatory incentives. In such States, sources constructed following the decision not to implement Section 374 clearly would not be developed for the primary purpose of making sales of excess electric power under Section 374. Such sources would not be able to take advantage of Section 374. Therefore, there is no need for them to show that they meet the 50 percent threshold. EPA is proposing that this waiver of the 50 percent threshold would apply until the State regulatory authority reverses or removes its decision.

“Primary purpose” criterion (iii) is designed to give local electric utilities flexibility to encourage the pursuit of waste energy recovery projects by customers in their service territory. EPA interprets the “primary purpose” test in Section 372(b) as an effort to ensure that development of waste energy recovery projects does not unduly impact the normal operation of local electric utilities. EPA therefore believes it is appropriate to allow waivers where the utility wishes to encourage such projects. Given that 12 States recognize waste heat recovery or CHP as an eligible resource in their energy portfolio standards, a local electric utility may decide to encourage a customer in their service territory to develop a waste energy or CHP project and sell excess electricity to the utility for purposes of meeting a portfolio standard requirement. In such cases, upon receipt of a joint petition from the utility and the owner or operator of the site, EPA will waive the 50 percent threshold.

## 6. How Will the Survey Be Distributed?

EPA is proposing to distribute WEST via the Internet for any site owner and operator to download and provide answers to the Survey directly on their computer. EPA plans to coordinate with State environmental and energy offices, industry trade associations, and energy and environmental non-profits, to notify sites on our list of potentially affected NAICS codes about the Survey and the availability of WEST on the Internet at <http://www.epa.gov/wasteenergyregistry>. EPA will also send a letter to the corporate headquarters of entities on the list of potentially affected NAICS codes, where the corporation has three or more affected sites that likely meet the initial major industrial or large commercial threshold as defined in this rule, describing EPA’s responsibilities, what the Agency is requesting them to do for each site and source, and instructions on downloading and returning WEST.

## 7. How Do I Return a Survey?

EPA is proposing that WEST final summary reports, which contain the information necessary to populate the Registry, shall be provided to the EPA via mail (address at <http://www.epa.gov/wasteenergyregistry> and also on the WEST final summary report) or e-mail at [wasteenergyregistry@epa.gov](mailto:wasteenergyregistry@epa.gov). E-mail requests may include the subject line “Survey response.” Submissions received within 60 days of WEST being released will be included in the initial launch of the Registry. The Registry will be publicly available at <http://www.epa.gov/wasteenergyregistry>.

## 8. What Is the Schedule for Returning a Survey?

EPA is proposing to include Survey submissions received within the first 60 days of the release of WEST in the initial launch of the Registry, with subsequent submissions added on a rolling basis.

## C. Registry

### 1. How Will EPA Notify Entities of Their Listing and What Is the Method for Any Interested State, Utility or Other Interested Person To Contest a Listing?

EPCA Section 372(d)(3) states that EPA must notify owners or operators of recoverable waste energy sources and sites listed in the Registry prior to publishing the listing. EPA is proposing to provide this notification in advance through the Survey tool. When an owner or operator submits the WEST summary report to EPA, they are acknowledging that if they meet the criteria included in this rule, their

source or site will be published in the Registry. No further notification will be provided prior to Registry publication. The Registry will list sites but will not contain a detailed description of each source at a particular site.

EPCA Section 372(d)(1)(C) states that any State, electric utility, or other interested person may contest the listing by submitting a petition to EPA. Petitions must be submitted in writing to the Director of the Office of Atmospheric Programs of the EPA. EPA is proposing that this petition shall be submitted via mail (address at <http://www.epa.gov/wasteenergyregistry>) or e-mail at [wasteenergyregistry@epa.gov](mailto:wasteenergyregistry@epa.gov). E-mail petitions may include in the subject line “Contest of a listing.” All petitions shall explain the reason[s] the listing (*i.e.*, site[s] or source[s]) is being contested. The following information shall be provided to the Director of the Office of Atmospheric Programs in writing (via e-mail or regular mail) to contest a Registry listing:

- Entity contesting the listing—Name, address, contact person name, title, address, e-mail and phone number;
- Registry listing being contested—Site name, address, and NAICS code as displayed in the Registry;
- Reason the listing is being contested (*i.e.*, why the site or source should be excluded from the Registry).

All Registry listings whose inclusion in the Registry is contested will be notified by EPA in writing (mail or e-mail) and be provided 60 days (from the date of notification) to submit information for consideration by EPA. No later than 180 days following receipt of information submitted by the entity contesting the listing, EPA will decide whether to remove or retain the listing in the Registry.

### 2. What Are the Standards To Address New Sources or New Energy-Consuming Industrial Facilities Constructed After EISA Enactment?

EISA contains two provisions addressing new sources or facilities: EPCA Section 372(d)(5), which addresses new sources; and EPCA Section 372(f), which addresses “new energy-consuming industrial facilities.” EPA is proposing to build on the previously described criteria for these new sources or facilities.

#### a. New Sources Constructed After EISA Enactment

EPCA Section 372(d)(5) directs EPA not to list in the Registry any source constructed after EISA enactment (December 19, 2007) if the Agency determines that it:

“(A) Was developed for the primary purpose of making sales of excess electric power under the regulatory provisions of this part; or

(B) Does not capture at least 60 percent of the total energy value of the fuels used (on a higher-heating-value basis) in the form of useful thermal energy, electricity, mechanical energy, chemical output, or any combination thereof.”

EPA is proposing to interpret the term “construct” as used in EPCA Section 372(d)(5) to mean “commence construction” as defined in this rule. For any source that commenced construction after EISA enactment, the financial and regulatory incentives in EISA Subtitle D could have influenced the decision to construct the source.

EPA is proposing to interpret Section 372(d)(5)(A) by utilizing the same “primary purpose” definition and interpretation as Section B(5) of this preamble:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) is to be used for industrial or commercial purposes, and not sold to an electric utility (“the 50 percent threshold”); or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EISA Section 374 not to implement the regulatory sale of excess power provisions in EISA Section 374. This waiver of the 50 percent threshold is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the 50 percent threshold be waived.

EPA considered two primary options for interpreting Section 372(d)(5)(B): A strict interpretation that would require the source itself, prior to project implementation, to capture 60 percent of the total energy value of the fuels used at the source, or a more liberal interpretation which would require that the source and the project combined reach at least 60 percent capture of the total energy value of the fuels used at the source.

EPA is proposing that per Section 372(d)(5)(B), for new sources that commence construction after EISA enactment, the combined potential project and source must capture at least 60 percent of the total energy value of the fuels used at the source (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy, electricity, mechanical energy,

chemical output, or any combination thereof. EPA believes that applying this efficiency requirement to the combination of potential project and source for new sources is in line with the objective of maximizing the efficiency of overall fuel use. EPA believes that the intent of the 60 percent threshold is to ensure that waste energy projects are legitimate and efficient, and to assure that new projects are not developed based on questionable sources (*i.e.*, sources that utilize inefficient equipment with the intent to generate large amounts of waste heat). EPA believes that new sources that commence construction (as defined in this rule) after EISA enactment have a strong financial interest in being very energy efficient and are not likely to utilize inefficient equipment purely for the purpose of being added to the Registry and being eligible for incentives under Sections 373 or 374. Applying this threshold to the combined source and project should accomplish Congress’ objective of screening out questionable projects. While some new sources may be able to meet a 60 percent threshold independently, prior to the development of a waste energy recovery project, others may not be able to meet this threshold because of legitimate technology, operational or economic reasons. EPA believes that capturing and efficiently utilizing the waste energy supports the objectives of maximizing overall fuel use as long as the combined efficiency of the source and project are at least equal to the 60 percent total fuel efficiency threshold.

EPA also understands that there are situations where existing technology cannot meet a strict 60 percent capture threshold under either interpretation described above, including but not limited to recovering power from the exhaust heat at pipeline compressor stations. EPA is proposing to waive this criterion in situations where existing technology cannot meet a strict 60 percent threshold yet significant overall efficiency improvements could be achieved through waste energy recovery technologies. Examples include, but are not limited to, heat recovery from pipeline compressor stations. EPA will determine if a source qualifies under this exception on a case by case basis based on internal review of the application and applicable technologies.

#### b. New Energy Consuming Industrial Sites Constructed After EISA Enactment

EPCA Section 372(f) states that EPA may elect to include in the Registry a new energy-consuming industrial facility (to the extent the site may

constitute a site with recoverable waste energy that may qualify for inclusion in the Registry) developed after EISA enactment, at the request of the owner, operator, or developer of the site, on a conditional basis with the site to be removed from the Registry if development ceases or the site fails to qualify for listing under Part E of EPCA.

EPA is proposing to add to the Registry any new energy-consuming industrial sites (as defined in this rule) that contain at least one new source meeting the requirements for new sources described above, as well as the standard criteria for listing. Because the Survey will continue to be available following the Registry’s initial launch, EPA does not believe it is necessary to establish a separate process for adding these new sites to the Registry. Upon submission of the Survey results by the site owner or operator, EPA will be able to determine whether the site meets the appropriate criteria. Since EPA will be adding facilities to the Registry on a rolling basis, listing sites on a conditional basis will not be necessary.

In defining “new energy-consuming industrial sites,” EPA proposes to interpret the phrase “developed after” the date of EISA enactment the same as the phrase “constructed after” the date of EISA enactment in Section 372(d)(5)(B). Therefore, a new energy-consuming industrial site developed after the date of EISA enactment is one that commenced construction after December 19, 2007. In addition, EPA proposes to apply the primary purpose criterion and the 60 percent criterion to new sources at these sites.

EPA is also proposing that developers who wish to submit Survey results for a new energy-consuming industrial site must do so jointly with an owner or operator. This is consistent with the proposed role of developers for existing sources.

#### 3. How Are Projects Removed From the Registry?

EPCA Section 372(d)(4)(A) directs that as a project achieves successful recovery of waste energy, EPA shall:

- (i) “Remove the related sites or sources from the Registry, and
- (ii) Designate the removed projects as eligible for incentives under Section 374.”

EPCA Section 372(d)(4)(B) states that no project shall be removed from the Registry without consent of the owner or operator of the project if:

- (i) “The owner or operator has submitted a petition under Section 374; and
- (ii) The petition has not been acted on or denied.”

Under Section 374(a), an owner, operator, or project sponsor may request that the State regulatory authority or nonregulated electric utility provide public notice, conduct a hearing, and determine whether to adopt a standard for sales of excess power as provided in Section 374(b). Section 374(b) requires that the sales of excess power standard "provide that an owner or operator of a waste energy recovery project identified on the Registry that generates net excess power shall be eligible to benefit" from at least one of three options listed under Section 374(c) "for disposal of the net excess power." Those options are (1) the sale of net excess power to the utility; (2) transport by the utility for direct sale to a third party; and (3) transport over private transmission lines without subjecting the project to regulation as a public utility. The third option includes waiver or modification of any laws that would otherwise prohibit the construction and operation of private transmission lines.

The regulatory incentives in EPCA Section 374 have the potential to affect whether an owner or operator pursues a waste energy project and achieves successful recovery of the waste energy, since they relate to the sales of net excess power to a utility. One interpretation of EPCA Section 372(d)(4) would not allow the owner or operator of the source or site to submit a Section 374 petition until the project is commercially operational. However, this interpretation is inconsistent with the notion of an incentive and with the purpose of EISA Subtitle D, as explained below. Therefore, EPA believes that a two-step approach to the Section 374 incentives is what Congress intended. Step one is for an owner or operator of a site or source listed in the Registry to submit a Section 374 petition and for the State regulatory authority or nonregulatory authority to act on that petition. Step two is that once a waste energy project is commercially operational, EPA will remove it from the Registry and it will be eligible to dispose of the net excess power in accordance with the standard adopted under Section 374(a), which would include one or more of the options in Section 374(c). EPA believes that full implementation of the Section 374 incentives as part of Step two is reasonable because a project must be commercially operational for it to be generating net excess power that can be disposed of by selling it to the utility, having the utility transport it for direct sale to a third party, or operating private transmission lines to transport it for sale to a third party [Section 374(c)]. EPA is

proposing that under the third option, the source would not have to wait until the project became commercially operational before obtaining the necessary legal waivers or modifications and constructing the private transmission lines. Such actions could proceed during project development. Once the project became commercially operational, EPA would remove the source from the Registry and designate the project as eligible to dispose of the net excess power, which in this instance would occur through operation of the private transmission lines.

EPA understands that the EPCA Section 374 incentives could significantly affect the feasibility of investing in the successful recovery of waste energy at a source. Offering the ability to submit a Section 374 petition only after a waste energy recovery project is commercially operational would prevent the incentives from serving their intended purpose, which is to overcome regulatory or financial obstacles to such recovery. Given an overarching goal of EISA Subtitle D is energy efficiency and the Registry is to facilitate the successful recovery of waste energy, EPA believes Congress intended sites or sources in the Registry to be able to submit a Section 374 petition, even though the Section 374 incentives relating to disposal of the net excess power will not be available for implementation until the waste energy project became commercially operational. When a waste energy project is commercially operational, the owner or operator is not eligible to submit a new Section 374 petition, but can continue to request action on a pending petition. Further, EPA is proposing that no source or site will be removed from the Registry if the owner or operator has submitted a petition under Section 374 based on the site or source in question, and the petition has not been acted on or denied.

EPA is proposing for sites or sources listed in the Registry, that as a waste energy project at the source becomes commercially operational, the site owner or operator shall notify EPA within 90 days. EPA is also proposing that if a site or source on the Registry chooses to no longer be listed in the Registry, the site or source can notify EPA that it requests to be removed from the Registry. EPA will remove the source from the Registry within 30 days from notification, with the exception that no source or site will be removed from the Registry if it has submitted a Section 374 petition and the petition has not been acted on or denied. The site owner or operator shall notify EPA via mail (address at <http://www.epa.gov/>

[wasteenergyregistry](http://www.epa.gov/wasteenergyregistry)) or e-mail at [wasteenergyregistry@epa.gov](mailto:wasteenergyregistry@epa.gov). E-mail submissions may include in the subject line "Source removal request" or "Commercial operation." All notifications shall include the site name, address, NAICS code, date project became commercially operational, project electric capacity, and the project thermal capacity. All notifications shall also include a statement whether the owner or operator has submitted a Section 374 petition to the appropriate regulatory authority or nonregulated electric utility and if so, whether that regulatory authority or utility has yet acted on the petition.

EPA is proposing to maintain a publicly-available list of all sources or sites that were listed in the Registry that were removed once waste energy projects were completed. This list will be used demonstrate the success of waste energy capture and be housed on the same Web site as the Registry.

#### IV. Economic Impacts

In developing this proposal, EPA prepared an economic analysis to estimate the cost of the proposal, how the rule might impact small entities, and the cost-effectiveness of regulatory alternatives.

The cost of the proposed rule reflects both the costs of collecting waste energy information, primarily through a Survey, and the costs of maintaining the information on a publicly available EPA Web site. EPA estimates total 3-year costs to the Agency of approximately \$1.4 million. The total cost over the 3-year period, including costs to respondents and non-respondents, is \$2.8 million.

The analysis determined that private costs per respondent will not impose a significant cost on large or small businesses. Furthermore, given that the Survey is targeted at the largest 1% of non-manufacturing establishments and the largest 2% of manufacturing establishments, the Survey is unlikely to affect many small entities at all. Respondents that download and submit Survey reporting information without request from EPA are unlikely to be small entities because these respondents are likely to know if they can produce economically-feasible recoverable waste energy.

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory

action” as it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in “Waste Energy Registry: Regulatory/Economic Analysis” in docket EPA–HQ–OAR–2008–0201. A copy of the analysis is available in the docket for this action and is briefly summarized here.

The proposed rule will not have an annual impact of \$100 million or meet the other criteria for “significant regulatory action” in the Executive Order. Therefore, EPA does not plan to prepare a regulatory impact statement for this proposed rule. However, EPA invites comments on the economic analysis.

#### *B. Paperwork Reduction Act*

The information collection requirements in this proposed 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.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2321.01. The information collected as a result of this proposed rule and Survey will allow EPA to implement the Registry of Recoverable Waste Energy Sources (Registry) mandated by Title IV, Subtitle D, Section 372 of the Energy Independence and Security Act (EISA) of 2007. Those major industrial and large commercial sources that choose to respond to the Survey by filling out the Survey tool will enter data into the tool to be used to determine the potential waste energy recovery opportunity at the source or site. Those sources or sites that satisfy the criteria for inclusion in this proposed rule will be placed by EPA in the Registry.

The major information burden involves enterprises that respond to the Survey. The Survey is a one-time burden given the scope of the ICR is three years.

For the first three years after publication of the final rule in the **Federal Register**, developing the Survey tool, conducting the Survey, and developing and administering the Registry will account for the burden to EPA.

Calculation of the information collection burden and costs associated with this proposal can be found in the

*Information Collection Request for the Proposed Rule (40 CFR part 1200) and Survey in Support of the Waste Energy Recovery Registry (USEPA, 2008), available through <http://www.regulation.gov> under Docket ID EPA–HQ–OAR–2008–0201.*

The total burden for respondents and non-respondents associated with the proposed rule over the 3 years following promulgation is 60,645 hours, or an average of 20,215 hours per year. The total cost over this period, including costs to respondents and non-respondents is approximately \$2.8 million or an average of \$933,000 per year.

The average burden per response, considering only survey respondents, for each activity that requires a collection of information is 7.29 hours; the average cost per response is \$336. Average burden and cost to non-respondents is approximately half of the burden and cost to respondents, or 3.6 hours and \$166. Time and cost variations may exist depending on the number of components of the Survey addressed by respondents.

The total burden to EPA is approximately 9,831 hours, or 3,277 hours per year. EPA costs are \$1,377,000 over three years, or approximately \$459,000 per year, including extramural costs. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule under Docket ID number EPA–HQ–OAR–2008–0201. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 23, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 24, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *C. Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”

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

Since this proposed rule establishes the criteria by which entities can submit a voluntary survey, no small entity is being regulated. The survey is voluntary, so it will not impose any requirements on small entities. Small entities may choose to participate in the Registry by submitting the Survey, but it is not mandatory.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. This action is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule pertains only to major domestic

industrial and large commercial sources that may have potentially recoverable waste energy.

#### *E. Executive Order 13132: Federalism*

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

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The Registry of Recoverable Waste Energy Sources and the Survey tool will be administered by EPA and will involve only major domestic industrial and large commercial sources with potentially recoverable waste energy. Thus, Executive Order 13132 does not apply to this rule.

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

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It involves only the collection of information from major domestic industrial and large commercial sources with potentially recoverable waste energy and the development and administration by EPA of a Registry of Recoverable Waste Energy Sources. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern

health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is focused on identifying the potential for waste energy recovery through a Survey and creating a Registry; it is not focused on other aspects of energy supply or distribution. Further, we have concluded that this rule is not likely to have any adverse energy effects because it will not pursue the installation of the waste energy recovery operations, rather just identify the potential. Since the decision to invest in these potential waste energy recovery projects is made by the facility owner or operator, it is too far removed from this rule and its effects; as such it will not have any adverse energy effects.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs

Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule involves only the collection of information about potential opportunities for waste energy recovery. Although the Survey and Registry of Recoverable Waste Energy Sources are expected to encourage the development of projects to reduce the amount of lost energy, the siting and development of waste energy recovery projects are not covered by this proposed rule.

#### **List of Subjects in 40 CFR Part 1200**

Environmental protection. Energy. Waste energy. Combined heat and power. Industrial energy efficiency.

Dated: July 16, 2009.

**Lisa Jackson,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended by adding part 1200 to Subchapter U to read as follows:

#### **PART 1200—WASTE ENERGY RECOVERY REGISTRY**

Sec.

- 1200.1 Purpose.
- 1200.2 Definitions.
- 1200.3 Criteria for inclusion in the Registry.
- 1200.4 Process for inclusion in the Registry.
- 1200.5 Process for removing a listing from the Registry.
- 1200.6 Process for contesting a Registry listing.

**Authority:** Sec. 451, Pub. L. 110–140, 121 Stat. 1492.

##### **§ 1200.1 Purpose.**

This part establishes criteria for the inclusion of sources or sites in the Registry of Potentially Recoverable Waste Energy Sources and establishes the processes for adding sources or sites to the Registry and removing them from the Registry.

##### **§ 1200.2 Definitions.**

As used in this part, the term:

*Administrator* means the Administrator of the Environmental Protection Agency.

*Aggregated annual energy output of the site* means the total useful output of the fuel driving the source, including electricity generated by a project and thermal energy recovered in or driving the project and/or process.

*Combined heat and power* means a site that simultaneously and efficiently produces useful thermal energy and electricity; and recovers not less than 60 percent of the energy value in the fuel (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy and electricity.

*Commence construction* means that the owner or operator has all necessary preconstruction approvals or permits and either has: begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

*Commercially operational* means the waste energy recovery project is placed in service. Commercially operational does not include commissioning or other testing prior to operation.

*Detailed Quantitative Information (DQI)* means the following Survey output with respect to individual sources at a site:

- (1) Source description (e.g., glass furnace, process flare);
- (2) Quantitative estimates of:
  - (i) For each source, the CO<sub>2</sub> emissions reduction potential (tons/year);
  - (ii) For each source, the criteria pollutant reduction potential (NO<sub>x</sub> and SO<sub>x</sub> tons/yr);
  - (iii) For waste heat sources, the waste heat to power recovery potential (MW);
  - (iv) For waste gas sources, the waste gas to power recovery potential (MW);
  - (v) For pressure drop sources, the pressure drop to power recovery potential (MW);
  - (vi) For potential CHP opportunities, the CHP potential based on sizing to thermal (heating and/or cooling) load (MW).
- (3) Yes/no answers to the following questions:
  - (i) For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project have a five year payback or less (yes/no);
  - (ii) For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity,

does the potential project meet the primary purpose criteria (yes/no);

(iii) For each new source, does the potential project meet the 60% efficiency test (yes/no);

(iv) For each waste heat source, does the site have a waste heat recovery opportunity that passes all screening criteria (yes/no);

(v) For each waste gas or industrial tail gas source, does the site have a waste gas or industrial tail gas recovery opportunity that passes all screening criteria (yes/no);

(vi) For each pressure drop source, does the site have a pressure drop recovery opportunity that passes all screening criteria (yes/no);

(vii) For each potential CHP opportunity, does the site have a CHP opportunity that passes all screening criteria (yes/no).

*Existing source or site* means a source or site that commenced construction prior to December 19, 2007.

*Heating-value* means how much energy is released on combustion of a given quantity of fuel, for example, Btu per gallon, or Btu per cubic foot.

*Higher heating-value (HHV)* means heating value including the heat of condensation of the water vapor contained in the products of combustion. Fuels are typically priced on an HHV basis. The HHV for natural gas is approximately 10% greater than the LHV.

*Large commercial source* means a source at a site that meets or exceeds an initial threshold of 1 MW average electric annual demand or 5 MMBtu/hour fuel use and where the source meets or exceeds a secondary threshold of minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

*Lower heating value (LHV)* means heating value not including the heat of condensation of the water vapor contained in the products of combustion.

*Major industrial source* means a source at a site that meets or exceeds an initial threshold of 100 MMBtu/hour fuel use and where the source meets or exceeds a secondary threshold of process stacks with temperatures 500° F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

*New energy-consuming industrial site* means any new major industrial site that has commenced construction on or after December 19, 2007. Sources at a new major industrial site that meet the definition of a major industrial source

are to be treated as new major industrial sources.

*New source or site* means a source or site that commenced construction on or after December 19, 2007.

*Project* means a recoverable waste energy project or a combined heat and power project. A project is located at a particular source. A site may have multiple projects.

*Recoverable waste energy* means waste energy from which electricity or useful thermal energy may be recovered through modification of an existing site or addition of a new site.

*Registry* means the Registry of Recoverable Waste Energy Sources.

*Respondent* means an owner or operator of a source or site that submits a Survey response to EPA.

*Section 374 petition* means the submission by an owner or operator of a site or source in the Registry of a request to a State regulatory authority or nonregulated utility on the basis of section 374 of the Energy Policy and Conservation Act.

*Site* means a building or group of buildings that provides a particular service or is used for a particular industrial application.

*Source* means any process or activity resulting in the release of waste energy. A site may have multiple sources.

*Survey* means the EPA document or tool which is designed to gather information from major industrial and large commercial sources about the potential waste energy produced at the source or site. The Survey gathers data necessary to establish the Registry of Recoverable Waste Energy Sources.

*Useful thermal energy* means energy in the form of direct heat, steam, hot water; or other thermal form that is used in production and beneficial measures for heating, cooling, humidity control, process use, or other valid thermal end-use requirements; and for which fuel or electricity would otherwise be consumed.

*Waste energy* means exhaust heat or flared gas from any industrial process; waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented; a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and the opportunity for combined heat and power project/s.

### **§ 1200.3 Criteria for inclusion in the Registry.**

(a) EPA will include in the Registry sources or sites that meet the criteria in paragraphs (b) and (c) of this section:

(b)(1) Existing sources and sites must meet the following initial and secondary threshold criteria except as provided in paragraph (b)(3) of this section:



(i) Major industrial sources.

(A) Initial threshold—site with 100 MMBtu/hour fuel use;

(B) Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

(ii) Large commercial sources.

(A) Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour fuel use;

(B) Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

(2) New sources and sites must meet the following initial and secondary threshold criteria except as provided in paragraph (b)(3) of this section and must also meet the criterion in paragraph (b)(2)(iii) of this section:

(i) Major industrial sources.

(A) Initial threshold—site with 100 MMBtu/hour fuel use;

(B) Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

(ii) Large commercial sources.

(A) Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour;

(B) Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

(iii) The combined potential project and source must capture at least 60 percent of the total energy value of the fuels used at the source (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy, electricity, mechanical energy, chemical output, or any combination thereof. Sources for which the Administrator determines that existing technology cannot meet the 60 percent threshold are considered to have met this criterion.

(3) Notwithstanding the initial thresholds in paragraphs (b)(1) and (b)(2) of this section, a source or site will be eligible for inclusion in the Registry if it meets the appropriate secondary threshold criteria and all other applicable criteria in this section. For purposes of §§ 1200.4 through 1200.6, such source will be considered a major industrial or large commercial source.

(c) Both existing and new sources or sites must meet the following criteria for inclusion in the Registry:

(1) A potential waste energy recovery project at a source or site must be

economically feasible by virtue of offering a payback of invested costs not later than 5 years after the date of first full project operation.

(2) A potential waste energy recovery project at a source or site must not be developed or used for the primary purpose of making sales of excess electric power under the regulatory provisions of EPCA Part E, Section 374, as demonstrated by meeting one of the following criteria:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) will be used for industrial or commercial purposes, and not sold to an electric utility; or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EPCA Section 374 to not implement the regulatory sale of excess power provisions in EPCA Section 374. This waiver of the 50 percent requirement in paragraph (c)(2)(i) of this section is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the primary purpose criterion be waived.

#### **§ 1200.4 Process for inclusion in the Registry.**

(a) *Response to Survey.* In order for a site or source to be eligible for inclusion in the Registry, owners or operators of major industrial and large commercial sources must submit to the Administrator data generated by the Survey. Third-party developers may make a joint submission with the owner or operator of the site or source.

(b) *Form of Response.* Respondents may submit the data generated by the Survey in either electronic or hardcopy format.

(c) *Timing of Response.* To be eligible for inclusion in the initial launch of the Registry, data submissions for a site or source must be received by EPA within the first 60 days following Survey release. Additional submissions received will be included on a rolling basis. Surveys jointly submitted by a third-party developer and owner or operator of the site or source will be included in the Registry with a notation of “joint submittal.”

(d) *Detailed Quantitative Information.* EPA will not include detailed quantitative information (DQI) in the Registry but may make DQI available to the applicable State energy office and utility requested to support recovery of waste energy from the source or site

pursuant to the incentives provided under EPCA section 374.

#### **§ 1200.5 Process for removing a listing from the Registry.**

(a) *Notice to EPA.* Owners or operators of major industrial and large commercial sources that have a potential waste energy recovery project currently listed in the Registry must notify EPA in writing within 90 days after the project becomes commercially operational that the project is commercially operational. Owners or operators shall provide notice by providing the site name, address, NAICS code, date that the project became commercially operational, project electric capacity, and project thermal capacity. The requesting site owner or operator shall also state whether they have submitted a Section 374 petition to the appropriate regulatory authority or nonregulated electric utility and if so, whether that regulatory authority or utility has acted on the petition.

(b) *Action by EPA.* EPA shall remove the source or site from the Registry within 30 days of receipt of notice, except that EPA shall not remove a source or site from the Registry if the source or site has submitted a petition under section 374 to the appropriate regulatory authority or nonregulated electric utility and the petition has not been acted on. EPA shall maintain a list of all sources or sites that have been removed from the Registry.

#### **§ 1200.6 Process for contesting a Registry listing.**

(a) Any State, electric utility, or other interested person may contest a Registry listing by submitting a petition in writing to EPA. All petitions must explain the reason[s] the listing (*i.e.*, site[s] or source[s]) is being contested. To contest a Registry listing, the State, electric utility, or other interested person must provide the following information to the Director of the Office of Atmospheric Programs of the EPA in writing (via e-mail or regular mail):

(1) Entity contesting the listing—Name, address, contact person name, title, address, e-mail and phone number;

(2) Registry listing being contested—Name, address, and NAICS code as displayed in the Registry;

(3) Reason the listing is being contested (*i.e.* why the site or source should be excluded from the Registry).

(b) *Notice of decision.* Within 15 days of receipt of a petition contesting a Registry listing, EPA shall provide written notification to the owner or operator of any source or site whose inclusion in the Registry is contested. EPA shall consider any information

regarding the contested listing received from the owner or operator within 60 days from the date of notification.

(c) *Decision on contested listing.* No later than 180 days following receipt of information submitted by an entity contesting the listing, EPA will inform the entity contesting the listing and the owner or operator of the source or site whether it will remove or retain the listing in the Registry.

[FR Doc. E9-17550 Filed 7-22-09; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[WC Docket No. 07-38; GN Docket Nos. 09-47, 09-41; DA 09-1550]

#### Comment Sought on Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission Wireline Competition Bureau (Bureau) released a public notice establishing a pleading cycle for comments on how the Federal Communications Commission should interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act of 2008 (BDIA). (Broadband Data Improvement Act of 2008, Public Law 110-385, 122 Stat. 4097 (codified at 47 U.S.C. 1301-04)).

**DATES:** Comments are due on or before July 30, 2009, and reply comments are due on or before August 4, 2009.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 07-38; and GN Docket Nos. 09-47 and 09-51, by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

All submissions received must include the agency name and docket numbers for this rulemaking, WC Docket No. 07-38; and GN Docket Nos. 09-47 and 09-51. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs>. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

**SUPPLEMENTARY INFORMATION:** Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and

four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

By this document, the Bureau seeks comment on how the Federal Communications Commission should interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act of 2008.

Since 2000, the Commission has collected basic service information from broadband service providers using Form 477. In 2008, the Commission adopted revisions to the Form 477, which would result in the collection of more detailed and granular data. At the same time, the Commission issued a further notice of proposed rulemaking, which, among other things, sought comment on the issue of how to provide Form 477 information to other broadband initiatives, including those undertaken by state agencies and public-private partnerships, and on how to preserve confidentiality when sharing the information collected on Form 477. (See *2008 Broadband Data Gathering Order*