

where the creek bed meets the 560-foot elevation point.

(11) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: March 6, 2001.

**Bradley A. Buckles,**

*Director.*

Approved: March 15, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary,  
(Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01-8795 Filed 4-9-01; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD01-01-034]

RIN 2115-AE46

#### Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** This notice puts into effect the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

**DATES:** The regulations in 33 CFR 100.101 are effective on June 3, 2001, and June 4, 2001, from 2:30 p.m. to 8 p.m.

**FOR FURTHER INFORMATION CONTACT:** Chief William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223-8460.

**SUPPLEMENTARY INFORMATION:** These regulations will be effective from 2:30 p.m. until 8 p.m. on June 3, 2001. If the event is cancelled due to inclement weather, then these regulations will be effective from 2:30 p.m. until 8 p.m. on June 4, 2001.

This notice implements the permanent special local regulation governing the 2001 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all

vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: March 21, 2001.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.*

[FR Doc. 01-8762 Filed 4-9-01; 8:45 am]

BILLING CODE 4910-15-U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01-01-037]

#### Drawbridge Operation Regulations: Taunton River, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Brightman Street Bridge, at mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4 p.m. on May 11, 2001. This action is necessary to facilitate necessary maintenance at the bridge.

**DATES:** This deviation is effective from May 4, 2001 through May 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

**SUPPLEMENTARY INFORMATION:** The Brightman Street Bridge, at mile 1.8, across the Taunton River, has a vertical clearance of 27 feet at mean high water, and 31 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.619.

The bridge owner, the Massachusetts Highway Department (MHD), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural maintenance and repairs at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4

p.m. on May 11, 2001. The upstream waterway facilities were contacted by the Coast Guard regarding this closure and no objections were received. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 2, 2001.

**Gerald M. Davis,**

*Captain, U.S. Coast Guard, Acting  
Commander, First Coast Guard District.*

[FR Doc. 01-8763 Filed 4-9-01; 8:45 am]

BILLING CODE 4910-15-U

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 60

[FRL-6965-4]

RIN 2060-AE56

#### Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** The EPA is taking direct final action to amend the emissions monitoring and compliance provisions contained in Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. This action adds monitoring exemptions and alternative compliance requirements for duct burners, as well as amendments to correct errors in subparts Da and Db. We are adopting these amendments to ensure that all owners or operators of duct burners have similar compliance requirements and exemptions for their monitoring requirements.

**DATES:** This direct final rule will be effective on June 11, 2001 without further notice, unless significant adverse comments are received by May 10, 2001. If adverse comment is received EPA will publish a timely withdrawal informing the public the rule will not take effect.

**ADDRESSES:** By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-71, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-71, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Eddinger, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5426, facsimile: (919) 541-5450, electronic mail address: eddinger.jim@epa.gov. For information regarding the applicability of this action to a particular entity, contact the appropriate EPA Regional Office representative.

#### SUPPLEMENTARY INFORMATION:

**Comments.** We are publishing this direct final rule without prior proposal because we view this as noncontroversial amendments and do not anticipate adverse comments. The amendments to the compliance and monitoring requirements for duct burners provide reasonable methods to owners or operators of duct burners to comply with the revised new source performance standards (NSPS) for nitrogen oxides (NO<sub>x</sub>) emissions. We consider the revised requirements consistent with the intent of the previously promulgated revised NO<sub>x</sub> NSPS. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

**Docket.** The docket is an organized and complete file of information compiled by EPA in development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The

docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A-92-71, which supported the proposal and promulgation of the revised NO<sub>x</sub> NSPS for boilers. *World Wide Web (WWW)*. In addition to being available in the docket, electronic copies of today's actions will be posted on the Technology Transfer Network's (TTN) policy and guidance information page <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

**Regulated Entities.** Entities that potentially will be affected by these amendments are combined cycle systems employing duct burners. The regulated categories and entities include the following:

Category	Regulated entities
Industry .....	Electric utility steam generating units, industrial steam generating units, commercial steam generating units, and institutional steam generating units.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.40a and 60.40b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Judicial Review.** Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit June 11, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in

civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review.

#### Organization of This Document.

The following outline is provided to aid in locating information presented in this preamble.

- I. Background
  - A. Why is EPA amending the NSPS for utility boilers and industrial boilers?
  - B. What is the purpose of this direct final rule?
  - C. Does this direct final rule apply to me?
- II. New Requirements for Duct Burners
  - A. How do I know if my unit is a duct burner?
  - B. What changes impact my duct burner?
- III. Other Changes
  - A. What wording change is EPA making that applies to my utility boiler?
  - B. What changes are being made in definitions?
- IV. What Are the Impacts Associated With the Corrections?
- V. Administrative Requirements
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Executive Order 13132: Federalism
  - C. Executive Order 13185: Consultation and Coordination with Indian Tribal Governments
  - D. Executive Order 13045: Protection of Children From Environmental Health Risk and Safety Risks
  - E. Unfunded Mandates Reform Act of 1995
  - F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  - G. Paperwork Reduction Act
  - H. National Technology Transfer and Advancement Act
  - I. Congressional Review Act

#### I. Background

##### A. Why is EPA Amending the NSPS for Utility Boilers and Industrial Boilers?

On September 16, 1998 (63 FR 49442), we promulgated the revised NO<sub>x</sub> NSPS for boilers, which reduce the numerical NO<sub>x</sub> emissions limits for both new utility boilers and new industrial boilers to reflect the performance of best demonstrated technology (see 40 CFR part 60, subparts Da and Db). The revisions also change the format of the NO<sub>x</sub> emission limit for new electric utility steam generating units to an output-based format.

The revised NO<sub>x</sub> NSPS for boilers include an exemption for combined cycle gas turbine systems that would apply when the applicability of 40 CFR part 60, Subpart GG—Standards of Performance for Stationary Gas Turbines, is extended to include duct

burners of combined cycle systems. We added that exemption at promulgation based on comments we received at proposal that the NO<sub>x</sub> emissions from the upstream device (i.e., combustion turbine) cannot be separated from the duct burner's NO<sub>x</sub> emissions when add-on control (i.e., selective catalytic reduction) is used.

At the time of promulgation, we considered an ongoing rulemaking extending the applicability of subpart GG to duct burners, which are currently covered by 40 CFR part 60, subpart Da. However, since that time, we have decided not to revise subpart GG. Therefore, to address concerns that have been raised during and since promulgation of the revised NO<sub>x</sub> NSPS for boilers and due to some inadvertent errors relating to duct burners, today's action consists of amendments and editorial and clarifying corrections to subparts Da and Db.

When subpart Db was originally promulgated on November 25, 1986 (51 FR 42768), we were aware of the concerns and difficulties relating to the monitoring and compliance testing of NO<sub>x</sub> emissions from duct burners used in combined cycle systems. Duct burners contribute only a portion of the NO<sub>x</sub> emissions emitted from the heat recovery steam generator (HRSG) unit. The remaining portion is attributed to the combustion turbine which is regulated under subpart GG. Under subpart Db, we exempt duct burners from the requirement for continuous emissions monitoring (§ 60.48b(h)), and we add procedures for conducting performance tests to determine compliance (§ 60.46b(f)).

However, we did not include a monitoring exemption for duct burners in subpart Da when it was originally promulgated on June 11, 1979 (44 FR 33613). At that time, we were not aware of duct burners that met the applicability criteria (i.e., heat input greater than 250 million British Thermal Units (Btu) per hour), and no one raised that issue during the comment period. Since promulgation of the revised NO<sub>x</sub> NSPS for boilers, we have become aware of the construction of utility-size duct burners and the difficulties relating to implementing the monitoring requirements in subpart Da.

#### *B. What Is the Purpose of This Direct Final Rule?*

This direct final rule will: (1) Extend the already existing monitoring exemption in subpart Db for duct burners to include those duct burners that become subject to the revised NO<sub>x</sub> NSPS for boilers, (2) amend subpart Da to include the same monitoring

exemption specified in subpart Db, (3) promulgate an alternative compliance determination procedure for both subparts Da and Db that owners and operators can elect for affected duct burners used in combined cycle systems, and (4) clarify the intent and correct inadvertent omissions and minor drafting errors in the revised NO<sub>x</sub> NSPS for boilers.

#### *C. Does This Direct Final Rule Apply to me?*

The changes contained in today's direct final rule apply to you if you are the owner or operator of a duct burner used in a combined cycle system which meets the applicability criteria of either subpart Da or Db. A combined cycle system consists of a gas turbine, or internal combustion engine, kiln, etc., to which a HRSG unit is added to produce steam that is then used to produce electricity or used in an industrial process.

## **II. New Requirements for Duct Burners**

#### *A. How Do I Know if My Unit is a Duct Burner?*

A duct burner is a device that combusts fuel and is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a HRSG unit.

#### *B. What Changes Impact My Duct Burner?*

As owners and operators of affected industrial duct burners subject to the revised NO<sub>x</sub> NSPS for boilers, you will not be required to install and operate a continuous emissions monitoring system (CEMS) for NO<sub>x</sub> emissions. The amendments include an exemption from continuous monitoring of NO<sub>x</sub> emissions, exhaust flow rates and gross energy outputs, and an alternative procedure for determining compliance. The monitoring exemption and alternative procedure for determining compliance using a CEMS are the same as those specified for industrial duct burners. The changes will enable you to comply with all of the requirements of the revised NO<sub>x</sub> NSPS for utility boilers. The amendments account for the inherent differences between duct burners used in combined cycle systems and conventional utility boilers.

The following are the amendments to the rules that apply only to duct burners.

#### **1. Exemption on Monitoring for NO<sub>x</sub> Emissions**

When subpart Db was promulgated on November 25, 1986 (51 FR 42768), we included an exemption (§ 60.48b(h)) from the requirement for owners and operators of affected duct burners to install and operate a CEMS to measure NO<sub>x</sub> emissions. When we revised the NO<sub>x</sub> NSPS on September 16, 1998, we inadvertently did not revise the wording of the exemption. The actual wording of the exemption is:

The owner or operator of an affected facility which is subject to the NO<sub>x</sub> standards of § 60.44b(a)(4) is not required to install or operate a continuous monitoring system to measure nitrogen oxides emissions.

Section 60.44b(a)(4) provides the original NO<sub>x</sub> limit for duct burners which is now applicable only to duct burners constructed "prior" to July 9, 1997. The revised § 60.44b(l) is applicable to duct burners constructed "after" July 9, 1997.

Today's amendments clarify that all duct burners subject to subpart Db are exempted from the requirement to monitor continuously for NO<sub>x</sub> emissions.

#### **2. Alternatives to the Performance Test Method and Compliance Procedure**

Since you are exempt from the monitoring requirements under subpart Db, you are required to demonstrate compliance by determining the incremental increase of NO<sub>x</sub> emissions from the HRSG unit that is attributable to your duct burner. You are required to conduct a performance test to measure NO<sub>x</sub> emissions simultaneously at the gas turbine exhaust prior to the duct burner and at the HRSG unit outlet. You then calculate the NO<sub>x</sub> emissions rate from the duct burner by subtracting the NO<sub>x</sub> emissions rate measured at the gas turbine exhaust location from the NO<sub>x</sub> emission rate measured at the HRSG unit outlet. Using that procedure, you determine compliance with the NO<sub>x</sub> emissions limits on a three-run average (nominal 1-hour run) basis. The current standards cite Method 20. In these amendments, we are providing an alternative procedure citing Methods 7E, 3A, and 3B as the reference methods.

These amendments will also allow you to use a less complex option for determining compliance with subpart Db. Under this alternative, you may elect to determine compliance continuously by installing, operating, and reporting the measurements from a CEMS located at the outlet from the HRSG unit, with the NO<sub>x</sub> emissions rate measured at the outlet from the HRSG

unit constituting the NO<sub>x</sub> emissions rate from the duct burner. If you select this alternative, compliance with the NO<sub>x</sub> emissions limit is determined on a 30-day rolling average basis, which is the same requirement that is in effect for conventional industrial boilers.

We are aware that this alternative procedure for determining compliance (for both industrial and utility duct burners) may have the potential to produce erroneous compliance determinations. If the emission rate from the combustion turbine is low, this alternative will grossly underestimate the emission rate for the duct burners when the combined emissions are near the NSPS limit. That is, the actual NO<sub>x</sub> emissions attributable to the duct burner could be higher than the allowable, if we measured the duct burner's emissions alone.

There are several reasons for allowing this less complex alternative. As stated in the preamble for the revised NO<sub>x</sub> NSPS (62 FR 36954), we have established pollution prevention as one of our highest priorities. One of the opportunities for pollution prevention lies in using energy efficient technologies to minimize the generation of emissions. We want to encourage cogeneration since we recognize that cogeneration increases the efficiency of power generation. We also want to encourage the use of combined cycle systems since the principal fuel used is natural gas. The clean fuel approach also fits well with pollution prevention. Because natural gas is essentially free of sulfur and nitrogen and without the inorganic matter typically present in coal and oil, emissions of sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub>, particulate matter, and air toxic compounds can be dramatically reduced. Another advantage of allowing this alternative is that compliance would be determined on a continuous basis.

### 3. Monitoring Requirements and Compliance Provisions

In the NSPS for utility boilers, we are adding, for affected duct burners, an exemption from the NO<sub>x</sub> monitoring requirements. We are also adding a compliance determination provision that explains how utility duct burners are to demonstrate compliance with the output-based NO<sub>x</sub> standard on a three 1-hour run average basis, and an optional compliance procedure using a CEMS on a 30-day rolling average basis. As indicated in the proposal preamble for the revised NO<sub>x</sub> NSPS for boilers, these revisions will not increase the overall burden on sources to demonstrate compliance with the standards and will not require any new monitoring that is

not already required by some other program (e.g., the Acid Rain program). In addition, we stated that we would continue to explore additional ways to provide monitoring relief that will not compromise the ability of EPA to enforce Federal standards adequately.

Since promulgation of the revised NO<sub>x</sub> NSPS for boilers, we have become aware of concerns regarding how gross energy output from a duct burner would actually be measured and monitored, and how the NO<sub>x</sub> emissions attributable to duct burners can be continuously monitored. Today's amendments clarify that monitoring of gross energy output and the exhaust volumetric flow rate is exempt for duct burners used in utility-size combined cycle systems. The amendments also add a provision, available for utility boilers (as well as duct burners under the optional CEMS provision described above), for using fuel flowmeters specified in appendix D of 40 CFR part 75 in lieu of exhaust gas volumetric flow monitors for determining the mass rate of NO<sub>x</sub> emissions. We are also adding a clarification that data collected from appendix D of 40 CFR part 75 certified NO<sub>x</sub> CEMS may be used in lieu of data from a NO<sub>x</sub> CEMS specified under subpart Da.

Besides the two compliance determination procedures being added to subpart Da, the general provisions (subpart A of 40 CFR part 60) allow a source owner or operator to petition the Administrator for approval of alternative monitoring or performance testing procedures or requirements.

### III. Other Changes

We identified minor drafting errors and inadvertent omissions after promulgation of the revised NO<sub>x</sub> NSPS for boilers. In § 60.47a(l), we are deleting the comma after "shall." Today's action also makes the following corrections.

#### A. What wording change is EPA making that applies to my utility boiler?

One of the corrections we are making is in the wording. We made an error in § 60.47a(k) that could be confusing in the compliance determination procedures. At promulgation, § 60.47a(k) erroneously stated that the procedures specified were for determining gross heat rate. We should have stated that they were the procedures for determining gross energy output. We have corrected that error by replacing the words "heat rate" with "energy output."

#### B. What changes are being made in the definitions?

We are adding to subpart Da the definition of "duct burner." Subpart Da applies to steam generating units which are defined as " \* \* \* any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam \* \* \*." Thus, duct burners which supply supplemental heat input to the steam generating unit (i.e., heat recovery steam generator) are covered by the NSPS if the heat input due to the duct burner is greater than 250 million Btu per hour and supply more than 25 megawatt electrical output to any utility power distribution system for sale. The definition of "duct burner" is needed since we are adding a monitoring exemption and compliance procedures which are specific to duct burners.

We are also revising the definition in subpart Da for "boiler operating day" to be consistent with the definition in subpart Db for "steam generating unit operating day." Subpart Da applies to both based-loaded and peaking units. The current definition in subpart Da requires that fuel be combusted for the entire 24 hours to be considered an "operating day." Peaking units, such as some combined cycle units, may only operate for a short period of time each day and, thus, have difficulty in determining a 30-day rolling average since it is based on the preceding 30 boiler operating days. That concern was addressed in the definition of "steam generating unit operating day" currently in subpart Db, which states that it is not necessary for fuel to be combusted continuously for the entire 24-hour period. The revised definition of "boiler operating day" is needed since some of the combined cycle units using duct burners may be peaking units.

### IV. What are the impacts associated with the corrections?

The changes contained in this direct final rule are corrections, clarifications, and equivalent compliance alternatives that do not change the intended coverage of the revised NO<sub>x</sub> NSPS for NSPS boilers. The changes will not affect the estimated emissions reductions or the control costs for these rules. The clarifications and corrections should make it easier for owners and operators of duct burners and for local and State authorities to understand and implement the requirements in subparts Da and Db. The alternative compliance procedures will make it possible for some owners and operators of boilers (including duct burners) to comply with performance test and monitoring

requirements using CEMS installed, certified, and maintained to meet other regulatory requirements and, thus, save costs.

## V. Administrative Requirements

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is “significant” and, therefore, subject to review by the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this direct final rule does not qualify as a “significant regulatory action” under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

### B. Executive Order 13132: Federalism

Executive Order 13132, entitled “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” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. The EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, the EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities.”

Today’s direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

### E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not

apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

*F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

Today's direct final rule amendments is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This direct final rule is not subject to notice and comment requirements under the APA or any other statute.

Today's direct final rule amendments will have no significant impact on a substantial number of small entities because they clarify and make corrections to the promulgated 40 CFR part 60, subparts Da and Db, and do not impose any additional regulatory requirements on owners or operators of affected sources regulated by standards promulgated on September 16, 1998 (63 FR 49442).

#### *G. Paperwork Reduction Act*

The Office of Management and Budget had previously approved the information collection requirements contained in subparts Da and Db under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were originally promulgated and had assigned OMB control numbers 2060-0023, for 40 CFR 60.40a, and 2060-0072, for 40 CFR 60.40b.

The amendments contained in this direct final rule result in no changes to the information collection requirements of the current NSPS and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the original development of the NSPS. Therefore, the information collection requests have not been revised.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

#### *H. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

These direct final rule amendments do not involve technical standards. The EPA's compliance with the NTTAA has been addressed in the preamble of the underlying rule (63 FR 49442, September 16, 1998).

#### *I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 60**

Environmental protection, Air pollution control, Electric utility steam generating units, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For reasons set out in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

#### **PART 60—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart Da—[Amended]**

2. Section 60.41a is amended by placing the existing definitions in alphabetical order, adding a definition for "Duct burner" in alphabetical order, and revising the definition for "Boiler operating day" to read as follows:

#### **§ 60.41a Definitions.**

\* \* \* \* \*

*Boiler operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

\* \* \* \* \*

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

\* \* \* \* \*

3. Section 60.44a is amended by revising paragraphs (a) introductory text and (d)(1) to read as follows:

**§ 60.44a Standard for nitrogen oxides.**

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraphs (b) and (d) of this section, any gases which contain nitrogen oxides (expressed as NO<sub>2</sub>) in excess of the following emission limits, based on a 30-day rolling average, except as provided under § 60.46a(j)(1):

\* \* \* \* \*

(d)(1) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction commenced after July 9, 1997 any gases which contain nitrogen oxides (expressed as NO<sub>2</sub>) in excess of 200 nanograms per joule (1.6 pounds per megawatt-hour) gross energy output, based on a 30-day rolling average, except as provided under § 60.46a(k)(1).

\* \* \* \* \*

4. Section 60.46a is amended by revising paragraph (i) and adding paragraphs (j) and (k) to read as follows:

**§ 60.46a Compliance provisions.**

\* \* \* \* \*

(i) *Compliance provisions for sources subject to § 60.44a(d)(1).* The owner or operator of an affected facility subject to § 60.44a(d)(1) (new source constructed after July 7, 1997) shall calculate NO<sub>x</sub> emissions by multiplying the average hourly NO<sub>x</sub> output concentration, measured according to the provisions of § 60.47a(c), by the average hourly flow rate, measured according to the provisions of § 60.47a(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.47a(k).

(j) *Compliance provisions for duct burners subject to § 60.44a(a)(1).* To determine compliance with the emissions limits for NO<sub>x</sub> required by § 60.44a(a) for duct burners used in combined cycle systems, either of the procedures described in paragraph (j)(1) or (2) of this section may be used:

(1) The owner or operator of an affected duct burner shall conduct the performance test required under § 60.8 using the appropriate methods in appendix A of this part. Compliance with the emissions limits under § 60.44a(a)(1) is determined on the average of three (nominal 1-hour) runs for the initial and subsequent

performance tests. During the performance test, one sampling site shall be located in the exhaust of the turbine prior to the duct burner. A second sampling site shall be located at the outlet from the heat recovery steam generating unit. Measurements shall be taken at both sampling sites during the performance test; or

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the continuous emission monitoring system specified under § 60.47a for measuring NO<sub>x</sub> and oxygen and meet the requirements of § 60.47a. Data from a CEMS certified (or recertified) according to the provisions of 40 CFR 75.20, meeting the QA and QC requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used. This includes data substituted according to 40 CFR 75.21(i) for invalid data and 40 CFR 75.30 for missing data or data adjusted for negative bias as required by 40 CFR 75.23(d). The sampling site shall be located at the outlet from the steam generating unit. The NO<sub>x</sub> emission rate at the outlet from the steam generating unit shall constitute the NO<sub>x</sub> emission rate from the duct burner of the combined cycle system.

(k) *Compliance provisions for duct burners subject to § 60.44a(d)(1).* To determine compliance with the emissions limits for NO<sub>x</sub> required by § 60.44a(d)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the NO<sub>x</sub> standard in § 60.44a(d)(1) as follows:

(i) The emission rate (E) of NO<sub>x</sub> shall be computed using Equation 1 of this section:

$$E = [(C_{sg} \times Q_{sg}) - (C_{te} \times Q_{te})] / (O_{sg} \times h) \quad (\text{Eq. 1})$$

Where:

E = emission rate of NO<sub>x</sub> from the duct burner, ng/J (lb/Mwh) gross output

C<sub>sg</sub> = average hourly concentration of NO<sub>x</sub> exiting the steam generating unit, ng/dscm (lb/dscf)

C<sub>te</sub> = average hourly concentration of NO<sub>x</sub> in the turbine exhaust upstream from duct burner, ng/dscm (lb/dscf)

Q<sub>sg</sub> = average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr)

Q<sub>te</sub> = average hourly volumetric flow rate of exhaust gas from combustion turbine, dscm/hr (dscf/hr)

O<sub>sg</sub> = average hourly gross energy output from steam generating unit, J (Mwh)

h = average hourly fraction of the total heat input to the steam generating unit

derived from the combustion of fuel in the affected duct burner

(ii) Method 7E of appendix A of this part shall be used to determine the NO<sub>x</sub> concentrations (C<sub>sg</sub> and C<sub>te</sub>). Method 2, 2F or 2G of appendix A of this part, as appropriate, shall be used to determine the volumetric flow rates (Q<sub>sg</sub> and Q<sub>te</sub>) of the exhaust gases. The volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(iii) The owner or operator shall develop, demonstrate, and provide information satisfactory to the Administrator to determine the average hourly gross energy output from the steam generating unit, and the average hourly percentage of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44a (d)(1) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the NO<sub>x</sub> standard in § 60.44a(d)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

(i) The emission rate (E) of NO<sub>x</sub> shall be computed using Equation 2 of this section:

$$E = (C_{sg} \times Q_{sd}) / \text{Occ} \quad (\text{Eq. 2})$$

Where:

E = emission rate of NO<sub>x</sub> from the duct burner, ng/J (lb/Mwh) gross output

C<sub>sg</sub> = average hourly concentration of NO<sub>x</sub> exiting the steam generating unit, ng/dscm (lb/dscf)

Q<sub>sg</sub> = average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr)

Occ = average hourly gross energy output from entire combined cycle unit, J (Mwh)

(ii) The continuous emissions monitoring system specified under § 60.47a for measuring NO<sub>x</sub> and oxygen shall be used to determine the average hourly NO<sub>x</sub> concentrations (C<sub>sg</sub>). The continuous flow monitoring system specified in § 60.47a(l) shall be used to determine the volumetric flow rate (Q<sub>sg</sub>) of the exhaust gas. The sampling site shall be located at the outlet from the steam generating unit. Data from a continuous flow monitoring system certified (or recertified) following procedures specified in 40 CFR 75.20, meeting the quality assurance and quality control requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used.

(iii) The continuous monitoring system specified under § 60.47a(k) for

measuring and determining gross energy output shall be used to determine the average hourly gross energy output from the entire combined cycle unit (Occ), which is the combined output from the combustion turbine and the steam generating unit.

(iv) The owner or operator may, in lieu of installing, operating, and recording data from the continuous flow monitoring system specified in § 60.47a(l), determine the mass rate (lb/hr) of NO<sub>x</sub> emissions by installing, operating, and maintaining continuous fuel flowmeters following the appropriate measurements procedures specified in appendix D of 40 CFR part 75. If this compliance option is selected, the emission rate (E) of NO<sub>x</sub> shall be computed using Equation 3 of this section:

$$E = (ER_{sg} \times Hcc) / Occ \text{ (Eq. 3)}$$

Where:

E = emission rate of NO<sub>x</sub> from the duct burner, ng/J (lb/Mwh) gross output

ER<sub>sg</sub> = average hourly emission rate of NO<sub>x</sub> exiting the steam generating unit heat input calculated using appropriate F-factor as described in Method 19, ng/J (lb/million Btu)

Hcc = average hourly heat input rate of entire combined cycle unit, J/hr (million Btu/hr)

Occ = average hourly gross energy output from entire combined cycle unit, J (Mwh)

(3) When an affected duct burner steam generating unit utilizes a common steam turbine with one or more affected duct burner steam generating units, the owner or operator shall either:

(i) Determine compliance with the applicable NO<sub>x</sub> emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common steam turbine; or

(ii) Develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the steam turbine for each of the affected duct burners. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions regulated under this part.

5. Section 60.47a is amended by:

a. Revising paragraph (k) introductory text;

b. Revising paragraph (l);

c. Adding paragraphs (m), (n) and (o).

The revisions and additions read as follows:

#### § 60.47a Emission monitoring.

\* \* \* \* \*

(k) The procedures specified in paragraphs (k)(1) through (3) of this

section shall be used to determine gross output for sources demonstrating compliance with the output-based standard under § 60.44a(d)(1). \* \* \*

(l) The owner or operator of an affected facility demonstrating compliance with the output-based standard under § 60.44a(d)(1) shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B and procedure 1 of appendix F of this subpart, and record the output of the system, for measuring the flow of exhaust gases discharged to the atmosphere; or

(m) Alternatively, data from a continuous flow monitoring system certified according to the requirements of 40 CFR 75.20, meeting the applicable quality control and quality assurance requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23, may be used.

(n) Gas-fired and oil-fired units. The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in 40 CFR 72.2, may use, as an alternative to the requirements specified in either paragraph (l) or (m) of this section, a fuel flow monitoring system certified and operated according to the requirements of appendix D of 40 CFR part 75.

(o) The owner or operator of a duct burner, as described in § 60.41a, which is subject to the NO<sub>x</sub> standards of § 60.44a(a)(1) or (d)(1) is not required to install or operate a continuous emissions monitoring system to measure NO<sub>x</sub> emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to measure the flow of exhaust gases discharged to the atmosphere.

#### Subpart Db—[Amended]

6. Section 60.46b is amended by revising paragraph (f) to read as follows:

#### § 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

\* \* \* \* \*

(f) To determine compliance with the emissions limits for NO<sub>x</sub> required by § 60.44b(a)(4) or § 60.44b(l) for duct burners used in combined cycle systems, either of the procedures described in paragraph (f)(1) or (2) of this section may be used:

(1) The owner or operator of an affected facility shall conduct the performance test required under § 60.8 as follows:

(i) The emissions rate (E) of NO<sub>x</sub> shall be computed using Equation of 1 this section:

$$E = E_{sg} + (H_g / H_b)(E_{sg} - E_g) \text{ (Eq. 1)}$$

Where:

E = emissions rate of NO<sub>x</sub> from the duct burner, ng/J (lb/million Btu) heat input

E<sub>sg</sub> = combined effluent emissions rate, in ng/J (lb/million Btu) heat input using appropriate F-Factor as described in Method 19

H<sub>g</sub> = heat input rate to the combustion turbine, in Joules/hour (million Btu/hour)

H<sub>b</sub> = heat input rate to the duct burner, in Joules/hour (million Btu/hour)

E<sub>g</sub> = emissions rate from the combustion turbine, in ng/J (lb/million Btu) heat input calculated using appropriate F-Factor as described in Method 19

(ii) Method 7E of appendix A of this part shall be used to determine the NO<sub>x</sub> concentrations. Method 3A or 3B of appendix A of this part shall be used to determine oxygen concentration.

(iii) The owner or operator shall identify and demonstrate to the Administrator's satisfaction suitable methods to determine the average hourly heat input rate to the combustion turbine and the average hourly heat input rate to the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44b (a)(4) or § 60.44b(l) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests; or

(2) The owner or operator of an affected facility may elect to determine compliance on a 30-day rolling average basis by using the continuous emission monitoring system specified under § 60.48b for measuring NO<sub>x</sub> and oxygen and meet the requirements of § 60.48b. The sampling site shall be located at the outlet from the steam generating unit. The NO<sub>x</sub> emissions rate at the outlet from the steam generating unit shall constitute the NO<sub>x</sub> emissions rate from the duct burner of the combined cycle system.

\* \* \* \* \*

7. Section 60.48b is amended by revising paragraph (h) to read as follows:

#### § 60.48b Emission monitoring for particulate matter and nitrogen oxides.

\* \* \* \* \*

(h) The owner or operator of a duct burner, as described in § 60.41b, which is subject to the NO<sub>x</sub> standards of § 60.44b(a)(4) or § 60.44b(l) is not required to install or operate a continuous emissions monitoring system to measure NO<sub>x</sub> emissions.

\* \* \* \* \*

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