

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[EPA-HQ-OAR-2011-0405 and EPA-HQ-OAR-2006-0534; FRL-9660-1]

RIN 2060-AR11

Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008 and Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 6, 2009, the EPA adopted amendments to the September 15, 1997, new source performance standards and emissions guidelines for hospital/medical/infectious waste incinerators. The amendments were developed in response to the March 2, 1999, remand of the 1997 hospital/medical/infectious waste incinerators regulations by the U.S. Court of Appeals for the District of Columbia Circuit (the Court), which requested further explanation of the EPA's reasoning in determining the minimum regulatory emission standards for new and existing hospital/medical/infectious waste incinerators. Today's action proposes amendments to the hospital/medical/infectious waste incinerators federal plan to implement the amended emission guidelines adopted on October 6, 2009, for those states that do not have an approved revised/new state plan implementing the emission guidelines, as amended, in place by October 6, 2011. Today's action also proposes to amend the new source performance standards to better reflect our original intent in the October 6, 2009, final rule in eliminating an exemption during startup, shutdown and malfunction periods from the requirement to comply with standards at all times.

DATES: *Comments.* Comments must be received on or before June 7, 2012. Because of the need to revise the hospital/medical/infectious waste incinerators (HMIWI) federal plan in a timely manner, the EPA does not expect to grant requests for extensions beyond this date.

Public Hearing. If anyone contacts the EPA by May 3, 2012 requesting to speak at a public hearing, the EPA will hold a public hearing on May 8, 2012.

ADDRESSES: Submit your comments on the federal plan requirements proposed rule, identified by Docket ID No. EPA-

HQ-OAR-2011-0405, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.

- *Email:* Send your comments via electronic mail to *a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA-HQ-OAR-2011-0405.

- *Facsimile:* Fax your comments to (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2011-0405.

- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2011-0405. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery:* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2011-0405. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Submit your comments on the new source performance standards (NSPS) final rule amendments, identified by Docket ID No. EPA-HQ-OAR-2006-0534, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.

- *Email:* Send your comments via electronic mail to *a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA-HQ-OAR-2006-0534.

- *Facsimile:* Fax your comments to (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2006-0534.

- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0534. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery:* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2006-0534. Such deliveries are accepted only during the normal hours of operation

(8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the federal plan requirements proposed rule to Docket ID No. EPA-HQ-OAR-2011-0405. Direct your comments on the NSPS final rule amendments to Docket ID No. EPA-HQ-OAR-2006-0534. The EPA's policy is that all comments received will be included in the public docket and may be made available online at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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.

Public Hearing: If a public hearing is held, it will be held at the EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Contact Ms. Joan Rogers at (919) 541-4487, to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held or to determine the hearing location. If no one contacts the EPA requesting to speak at a public hearing concerning this proposed rule by May 3, 2012, the hearing will be cancelled without further notice.

Docket: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0405 and Legacy Docket ID No. A-98-24. The EPA has established a docket for the HMIWI rules under Docket ID No. EPA-HQ-OAR-2006-0534 and Legacy

Docket ID No. A-91-61. All documents in the docket are listed in the 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 form. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room 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 EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Fuels and Incineration Group, Sector Policies and Programs Division (E143-05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0964; fax number: (919) 541-3470; email address: hambrick.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

Organization of This Document

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 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice (EJ) in Minority Populations and Low-Income Populations

A redline version of the federal plan regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does the proposed action apply to me?

Regulated Entities. If you own or operate an existing HMIWI and are not already subject to an EPA-approved and effective state plan implementing the October 6, 2009, revised emission guidelines (EG), you may be covered by this proposed action. Existing HMIWI are those that commenced construction on or before December 1, 2008, or commenced modification on or before April 6, 2010. Regulated categories and entities include those listed in the following table.

Category	NAICS* code	Examples of regulated entities
Industry	622110, 622310, 325411, 325412, 562213, 611310.	Private hospitals, other health care facilities, commercial research laboratories, commercial waste disposal companies, private universities.
Federal Government	622110, 541710, 928110	Federal hospitals, other health care facilities, public health service, armed services.
State/local/tribal Government	622110, 562213, 611310	State/local hospitals, other health care facilities, state/local waste disposal services, state universities.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility would be affected by the proposed action, you should examine the applicability

criteria in § 62.14400 of subpart HHH. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through www.regulations.gov or email. Send or deliver information identified

as CBI to only the following address: Ms. Amy Hambrick, c/o OAQPS Document Control Officer (Room C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2011-0405. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified in the preceding section titled **DATES**.

3. Docket

The docket number for the proposed action regarding the HMIWI federal plan (40 CFR part 62, subpart HHH) is Docket ID No. EPA-HQ-OAR-2011-0405.

The docket number for the proposed action regarding the NSPS (40 CFR part

60, subpart Ec) is Docket ID No. EPA-HQ-2006-0534.

4. Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of the proposed action and final rule amendments is available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, the EPA posted a copy of the proposed action and final rule amendments on the TTN's policy and guidance page for newly proposed or promulgated rules at www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

A. What is the regulatory development background for this proposed rule?

Section 129 of the Clean Air Act (CAA) requires the EPA to develop NSPS and EG for "units combusting hospital waste, medical waste and infectious waste." On September 15, 1997, the EPA promulgated NSPS for new HMIWI, codified at 40 CFR part 60 subpart Ec, and EG for existing HMIWI, codified at 40 CFR part 60 subpart Ce. (See 62 FR 48348.) The NSPS and EG were designed to reduce air pollution emitted from these HMIWI, including cadmium (Cd), carbon monoxide (CO), dioxins/furans (total, or 2,3,7,8-Tetrachlorodibenzo-p-Dioxin toxic equivalent (TEQ)), hydrogen chloride (HCl), lead (Pb), mercury (Hg), nitrogen oxides (NO_x), opacity, particulate matter (PM) and sulfur dioxide (SO₂). The 1997 NSPS applied to HMIWI for which construction began after June 20, 1996, and required compliance within 6 months after startup or by March 16, 1998, whichever date was later. The 1997 EG applied to HMIWI for which construction began on or before June 20, 1996, and required compliance no later than September 15, 2002.

On March 2, 1999, in *Sierra Club v. EPA*, 167 F.3d 658 (DC Cir. 1999), the U.S. Court of Appeals for the DC Circuit remanded the rule to the EPA for further explanation regarding how the EPA derived the maximum achievable control technology (MACT) emissions standards for HMIWI. The Court did not vacate the regulations and the regulations remained in effect during the remand.

On July 6, 1999, the EPA proposed the federal plan requirements for HMIWI units constructed on or before June 20, 1996 (64 FR 36426). The federal plan covered existing HMIWI located in states that did not have an approved state plan. Furthermore, the federal plan

would implement and enforce the EG in Indian country until tribes receive approval to administer their own programs. On August 15, 2000, the EPA promulgated the federal plan requirements for HMIWI units constructed on or before June 20, 1996 (65 FR 49868). The 1997 HMIWI rules were fully implemented by September 2002.

On February 6, 2007, the EPA proposed a response to the HMIWI remand. (See 72 FR 5510.) The proposed response would have revised some of the emissions limits in the NSPS and EG. In addition to responding to the Court's remand, the EPA also proposed its first 5-year review of the HMIWI standards. Every 5 years after adopting a MACT standard under section 129, CAA section 129(a)(5) requires the EPA to review and, if appropriate, revise the incinerator standards.

On December 1, 2008, the EPA repropose its response to the Court's remand and 5-year review (73 FR 72962). The EPA's decision to repropose its response to the remand was based on a number of factors, including further rulings by the Court that were issued after the 2007 proposal was published. In addition, public comments regarding the 2007 proposal raised issues that, upon further consideration, the EPA believed would best be addressed through a reproposal. In response to public comments on the 2008 reproposal, the EPA further revised the standards and, on October 6, 2009, published final revisions to the September 1997 NSPS and EG to respond to the remand and satisfy the 5-year review requirement under CAA section 129(a)(5) (74 FR 51367). On April 4, 2011, the EPA promulgated amendments to the NSPS and EG, correcting inadvertent drafting errors in the NO_x and SO₂ emissions limits for large HMIWI in the NSPS, which did not correspond to our description of our standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the NSPS, clarifying that compliance with the EG must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the EG, correcting errors in the units' description for several emissions limits in the EG and NSPS and removing extraneous text from the HCl emissions limit for large HMIWI in the EG (76 FR 18407).

B. What is the purpose of this proposed rule?

Section 129 of the CAA relies upon states as the preferred implementers of

EG for existing HMIWI. To make the HMIWI EG enforceable, states with existing HMIWI are to submit to the EPA within 1 year following promulgation of the EG state plans that implement and enforce the amended EG. For states that do not have an EPA-approved and effective plan, the EPA must develop and implement a federal plan within 2 years following promulgation of the EG. The federal plan is an interim measure to ensure that emissions standards are implemented until states assume their role as the preferred implementers of the EG. States without any existing HMIWI are directed to submit to the Administrator a letter of negative declaration certifying that there are no HMIWI in the state. No plan is required for states that do not have any HMIWI. Hospital/medical/infectious waste incinerators located in states that mistakenly submit a letter of negative declaration would be subject to the federal plan until a state plan becomes approved and effective covering those HMIWI.

State plans to implement the EG adopted on September 15, 1997, are already in place and the EPA adopted a HMIWI federal plan on August 15, 2000, (65 FR 49868) to implement the September 15, 1997, EG for those HMIWI not covered by an approved

state plan. Revised or new state plans to implement the amended EG adopted on October 6, 2009, are currently undergoing EPA review. The deadline for submitting revised/new state plans for EPA review was October 6, 2010.

Today's action proposes amendments to the HMIWI federal plan to implement the amended EG adopted on October 6, 2009, for those states that did not have an approved revised/new state plan in place by October 6, 2011. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement and enforce a federal plan to cover existing HMIWI located in states that do not have an approved plan within 2 years after promulgation of the EG (by October 6, 2011). The EPA is proposing amendments to the HMIWI federal plan now so that a promulgated federal plan will go into place for any such states, thus ensuring implementation and enforcement of the amended HMIWI EG.

The amended EG adopted on October 6, 2009, required improvements in performance for 50 of the then operating 57 units.¹ Incineration of hospital/medical/infectious waste causes the release of a wide array of air pollutants, some of which exist in the waste feed material and are released unchanged during combustion, and some of which are generated as a result of the

combustion process itself. EPA estimated that a total emissions reduction of 393,000 pounds per year of the regulated pollutants, of which acid gases (*i.e.*, hydrogen chloride and sulfur dioxide) comprise about 62 percent, particulate matter about 0.8 percent, carbon monoxide about 0.3 percent, nitrogen oxides about 37 percent, and metals (*i.e.*, lead, cadmium, and mercury) and dioxins/furans about 0.2 percent. EPA also estimated that air pollution control devices that would be installed to comply with the 2009 rule would also effectively reduce emissions of pollutants such as polycyclic organic matter (POM) and polychlorinated biphenyls (PCBs). The 2009 final rule's revised waste management plan provisions encourage segregation of types of waste that lead to such emissions, such as chlorinated plastics and PCB-containing wastes.

C. What is the status of state plan submittals?

Sections 111(d) and 129(b)(3) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(3), authorize the EPA to develop and implement a federal plan for HMIWI located in states with no approved and effective state plan. The status of the state plans are outlined in the below table.

STATUS OF STATE PLANS

Status	States
I. States with EPA-Approved State Plans	Florida.
II. Anticipated States to Submit Negative Declarations to the EPA	New York; Puerto Rico; Pennsylvania; Mississippi; New Mexico-City of Albuquerque; Oklahoma; South Dakota; District of Columbia.
III. Negative Declaration Submitted/EPA Approved	Maine; Massachusetts; Vermont; Delaware; Virginia; Jefferson County (Birmingham), Alabama; Kentucky; Jefferson County (Louisville), Kentucky; Forsyth County (Winston-Salem), North Carolina; Buncombe County (Asheville), North Carolina; South Carolina; Philadelphia County; New Hampshire; Rhode Island.
IV. Final State Plans Submitted to the EPA	North Dakota.
V. Draft States Plans Submitted to the EPA	Maryland; West Virginia.
VI. States for which the EPA has not received a draft or final plan or negative declaration.	Pennsylvania; Alabama; Huntsville, Alabama; North Carolina; Mecklenburg County (Charlotte), North Carolina; Georgia; Tennessee; Illinois; Indiana; Arkansas; Louisiana; Texas; Iowa; Kansas; Missouri; Nebraska; Colorado; Montana; Arizona; Maricopa County, Arizona; Pima County, Arizona; Pinal County, Arizona; California; Hawaii; Nevada; American Samoa; Guam; Alaska; Idaho; Oregon; Washington.
VII. Anticipated States to Accept Delegation of Federal Plan	Connecticut; New Jersey; Virgin Islands; Allegheny County, Pennsylvania; Michigan; Minnesota; Ohio; Wisconsin.

The preamble of the final federal plan will list states that have an EPA-approved plan in effect on the date the final federal plan is signed by the EPA Administrator. As Regional Offices approve state plans, they will also, in the same action, amend the appropriate

subpart of 40 CFR part 62 to codify their approvals.

The EPA will maintain a list of revised/new state plan submittals and approvals on the TTN Air Toxics Web site at <http://www.epa.gov/ttn/atw/129/hmiwi/rihmiwi.html>. The list will help

HMIWI owners or operators determine whether their HMIWI is affected by a state plan or the federal plan.

Hospital/medical/infectious waste incinerator owners and operators can also contact the EPA Regional Office for the state in which their HMIWI is

¹ See 74 FR 51371-51375, 51396-51399, and 51399-51400 to reference the regulatory

background, summary of final rule changes, and

impacts of the amended EG adopted on October 6, 2009.

located to determine whether there is an approved and effective revised/new state plan in place. The following table

lists the names, email addresses and telephone numbers of the EPA Regional

Office contacts and the states and protectorates that they cover.

REGIONAL OFFICE CONTACTS

Region	Regional contact	Phone	States and protectorates
Region I	Ian Cohen, <i>cohen.ian@epa.gov</i>	(617) 918-1655	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont.
Region II ...	Ted Gardella, <i>gardella.anthony@epa.gov</i>	(212) 637-3892	New York, New Jersey, Puerto Rico, Virgin Islands.
Region III ..	Mike Gordon, <i>gordon.mike@epa.gov</i>	(215) 814-2039	Virginia, Delaware, District of Columbia, Maryland, Pennsylvania, West Virginia.
Region IV	Donnette Sturdivant, <i>sturdivant.donnette@epa.gov</i> Daniel Garver, <i>garver.daniel@epa.gov</i>	Sturdivant: (404) 562-9431 Garver: (404) 562-9839	Florida, Georgia, North Carolina, Alabama, Kentucky, Mississippi, South Carolina, Tennessee.
Region V ..	Margaret Sieffert, <i>sieffert.margaret@epa.gov</i>	(312) 353-1151	Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio.
Region VI	Steve Thompson, <i>thompson.steve@epa.gov</i>	(214) 665-2769	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII	Lisa Hanlon, <i>hanlon.lisa@epa.gov</i>	(913) 551-7599	Iowa, Kansas, Missouri, Nebraska.
Region VIII	Christopher Razzazian, <i>razzazian.christopher@epa.gov</i>	(303) 312-6648	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Region IX	Joseph Lapka, <i>lapka.joseph@epa.gov</i>	(415) 947-4226	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands.
Region X ..	Heather Valdez, <i>valdez.heather@epa.gov</i>	(206) 553-6220	Alaska, Idaho, Oregon, Washington.

III. Affected Facilities

A. What is a HMIWI?

The term “HMIWI” means any device that combusts any amount of hospital waste and/or medical/infectious waste, as defined in 40 CFR part 62, subpart HHH. Six types of combustion units, which are listed in § 62.14400 of subpart HHH, are conditionally exempt from specific provisions of the currently promulgated 2000 federal plan and would continue to be so under today’s proposed amended federal plan.

B. Does the federal plan apply to me?

The amended federal plan would apply to you if you are the owner or operator of a combustion device that combusts hospital waste and/or medical/infectious waste (as defined in subpart HHH) and the device is not covered by an approved and effective state plan as of October 6, 2011. The federal plan would cover your HMIWI until the EPA approves a state plan that covers your HMIWI and that plan becomes effective.

If you began the construction of your HMIWI on or before December 1, 2008, or began modification of your HMIWI on or before April 6, 2010, it would be considered an existing HMIWI and could be subject to the federal plan. If you began the construction of your HMIWI after December 1, 2008, or began modification of your HMIWI after April 6, 2010, it would be considered a new HMIWI and would be subject to the NSPS.

Your existing HMIWI would be subject to this federal plan, if on the effective date of the amended federal plan, the EPA has not approved the revised/new state plan implementing the amended EG that covers your unit or the EPA-approved state plan has not become effective. The specific applicability of the currently promulgated federal plan is described in 40 CFR 62.14400 through 62.14403 of subpart HHH, and would continue to apply, as amended, under the proposed revised federal plan. The amended federal plan would become effective 30 days after final promulgation of these amendments.

Once an approved revised/new state plan is in effect, the amended federal plan would no longer apply to HMIWI covered by such plan. An approved state plan is a plan developed by a state that the EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B, to implement and enforce 40 CFR part 60, subpart Ce. The state plan is effective on the date specified in the notice published in the **Federal Register** announcing the EPA’s approval of the plan.

The EPA’s promulgation of an amended HMIWI federal plan will not preclude states from submitting a plan. If a state submits a plan after the promulgation of amendments to the HMIWI federal plan, the EPA will review and approve or disapprove the state plan. If the EPA approves a plan, then the amended HMIWI federal plan would no longer apply to HMIWI

covered by the state plan as of the effective date of the state plan. If a HMIWI were overlooked by a state and the state submitted a negative declaration letter, or if an individual HMIWI were not covered by an approved and effective state plan, the HMIWI would be subject to this amended federal plan.

C. How do I determine if my HMIWI is covered by an approved and effective state plan?

Part 62 of Title 40 of the CFR identifies the status of approval and promulgation of section 111(d) and section 129 state plans for designated facilities in each state. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your state has an approved and effective plan, you should contact your state environmental agency’s air director or your EPA Regional Office (see table in section II.C of this preamble) to determine if approval occurred since publication of the most recent version of part 62.

IV. Elements of the Current HMIWI Federal Plan

The EPA is not proposing amendments to several elements of the existing federal plan. For other elements, we are proposing amendments, to reflect the amended EG. The basic elements of the federal plan include: (1) Identification of legal authority and mechanisms for implementation; (2) inventory of HMIWI; (3) emissions inventory; (4)

emissions limits; (5) compliance schedules; (6) public hearing; (7) testing, monitoring, recordkeeping and reporting; (8) waste management plan; (9) operator training and qualification; and (10) progress reporting. See 40 CFR part 62 subparts HHH and sections 111 and 129 of the CAA. For each element discussed below, we explain to what extent we are proposing to amend the current federal plan requirements.

A. Legal Authority and Enforcement Mechanism

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct the EPA to develop a federal plan for states that do not submit approvable state plans. Sections 111 and 129 of the CAA provide the EPA with the authority to implement and enforce the federal plan in cases where the state fails to submit a satisfactory state plan. Section 129(b)(3) of the CAA requires the EPA to develop, implement and enforce a federal plan within 2 years after the date the relevant EG are promulgated (by October 6, 2011, for the 2009 HMIWI EG). Compliance with the EG cannot be later than 5 years after the relevant EG are promulgated (by October 6, 2014, for the 2009 HMIWI EG). Today's action is not proposing any changes to this element.

B. Inventory of Affected HMIWI

The federal plan, as currently promulgated, includes an inventory of HMIWI affected by the EG. (See 40 CFR 62.14402.) Today's proposed amendments to the federal plan will also include in Docket No. EPA-HQ-OAR-2011-0405 an inventory of the HMIWI that may potentially be covered by these amendments in the absence of approved state plans. This revised inventory contains 53 HMIWI in 21 states. It is based on information collected from EPA Regions, states, HMIWI facilities; and review of existing HMIWI inventories, Title V permits, emissions test reports and facility Web sites. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this proposed amended federal plan may include, but are not limited to, the HMIWI listed in Docket No. EPA-HQ-OAR-2011-0405. Any HMIWI that meets the applicability criteria in the proposed amended federal plan rule would be subject to the amended federal plan, regardless of whether it is listed in the inventory. States or individuals are invited to identify additional sources for inclusion

to the list during the comment period for this proposal.

C. Inventory of Emissions

The federal plan, as currently promulgated, includes an emissions estimate for HMIWI subject to the EG. The pollutants inventoried are Cd, CO, dioxins/furans, HCl, Pb, Hg, PM, NO_x and SO₂. For this proposal, the EPA has estimated the emissions from each known HMIWI that potentially may be covered by the proposed amended federal plan for the nine pollutants regulated by the EG and covered by the proposed revised federal plan.

The emissions inventory is based on available information about the HMIWI, emissions factors and typical emissions rates developed for calculating nationwide air impacts of the amended EG and the amended federal plan. Refer to the inventory memorandum in Docket No. EPA-HQ-OAR-2011-0405 for the complete updated emissions inventory and details on the emissions calculations associated with today's proposal.

D. Emissions Limits

As the current federal plan contains emissions limits that correspond to the 1997 HMIWI rule, today's proposed amended federal plan includes emissions limits that correspond to those in the 2009 EG. (See 40 CFR 62.14410-62.14413.) Section 129(b)(2) of the CAA requires these emissions limits to be "at least as protective as" those in the EG. The emissions limits in these proposed amendments to the HMIWI federal plan are the same as those contained in the 2009 amended EG but also include the PM emissions limits for medium HMIWI and HCl emissions limits for small HMIWI that were previously subject to the 1997 NSPS but are now subject to the amended EG. These two emissions limits are more stringent than the corresponding EG emissions limits. We include these limits because HMIWI units that were regulated as new sources under the 1997 NSPS would be treated as existing sources under the 2009 EG, but would need to continue to comply with the 1997 NSPS limits where those are more stringent than the 2009 EG limits. (See proposed revised Table 1 to subpart HHH.) Section V.B of this preamble discusses the amended emissions limits.

E. Compliance Schedules

Increments of progress are required for HMIWI that need more than 1 year from state plan approval to comply, or in the case of the federal plan, more than 1 year after promulgation of the

final amended federal plan. (See 40 CFR 62.14470-62.14472.) Increments of progress are included to ensure that each HMIWI needing more time to comply is making progress toward meeting the emissions limits.

For HMIWI that need more than 1 year to comply, the proposed amended federal plan includes in its compliance schedule the same five increments of progress from 40 CFR 62.14470(b)(2). The proposed amended federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are: (1) Submit final control plan; (2) award contracts for control systems or process modifications or orders for purchase of components; (3) begin on-site construction or installation of the air pollution control device(s) or process changes; (4) complete on-site construction or installation of the air pollution control device(s) or process changes; and (5) final compliance.

F. Waste Management Plan Requirements

The current federal plan includes a waste management plan which is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. (See 40 CFR 62.14430-62.14432.) Today's proposed amendments to the federal plan include this element and require that the waste management plan must be submitted no later than the date 60 days after the initial compliance demonstration. This date is 240 days after the final compliance date.

G. Testing, Monitoring, Recordkeeping and Reporting Requirements

The current federal plan includes testing, monitoring, recordkeeping and reporting requirements. (See 40 CFR 62.14440-62.14465.) Today's proposed amendments update these requirements to correspond with the 2009 EG. Testing, monitoring, recordkeeping and reporting requirements are consistent with 40 CFR part 62 subpart HHH and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The current federal plan requires that the owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. (See 40 CFR 62.14420-62.14425.) Today's proposed amended federal plan also contains operator training and

qualification requirements that correspond to the 2009 EG; no changes are proposed to this element.

I. Record of Public Hearings

As the current federal plan provided the opportunity for public hearings, today's proposed amended federal plan provides opportunity for public participation in adopting the plan. If requested to do so, the EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket No. EPA-HQ-OAR-2011-0405. If a public hearing is requested and held, the EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and

supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

As under the current federal plan, today's amendments request that the EPA Regional Offices prepare annual progress reports to show the progress of HMIWI toward implementation of the EG. States that have been delegated the authority to implement and enforce this federal plan would be required to submit annual progress reports to the appropriate EPA Regional Office.

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

increments of progress; (3) identification of sources that have shutdown or started operation; (4) emissions inventory data for sources that were not in operation at the time of plan development but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emissions information; and (6) copies of technical reports on any performance testing and monitoring.

V. Summary of Today's Proposed Amendments to HMIWI Federal Plan

Each amended plan element is described below as it relates to the elements outlined above in the current HMIWI federal plan. The table below lists each amended element and identifies where it is located or codified.

Element of the HMIWI federal plan	Location
Legal authority and enforcement mechanism	Sections 129(b)(3), 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of affected HMIWI units	Docket EPA-HQ-OAR-2011-0405.
Inventory of emissions	Docket EPA-HQ-OAR-2011-0405.
Emissions limits	40 CFR 62.14410-62.14413.
Compliance schedules	40 CFR 62.14470-62.14472.
Operator training and qualification	40 CFR 62.14420-62.14425.
Waste management plan	40 CFR 62.14430-62.14432.
Record of public hearings	Docket EPA-HQ-OAR-2011-0405.
Testing, monitoring, recordkeeping and reporting	40 CFR 62.14440-62.14465.
Progress reports	Section IV.J of this preamble.

A. What are the proposed amendments to applicability?

Hospital/medical/infectious waste incinerators were treated differently under the 2009 amended EG than they were under the 1997 EG in terms of whether they are "existing" or "new" sources. The 2009 amended EG included new dates defining what are "existing" and "new" sources for purposes of the revised NSPS and EG. All HMIWI that complied with the 1997 EG (*i.e.*, those units for which construction commenced on or before June 20, 1996, or for which modification commenced on or before March 16, 1998) were still considered "existing" sources under the 2009 amended EG and are required to meet the emissions limits under the amended EG by the applicable compliance date for the amended EG. All HMIWI that complied with the 1997 NSPS (*i.e.*, those units for which construction commenced after June 20, 1996, but no later than December 1, 2008, or for which modification commenced after March 16, 1998, but no later than April 6, 2010) were also considered "existing" sources under the amended EG. Those HMIWI are required to meet the emissions limits under the amended EG by the applicable compliance date for

the amended EG, except where the corresponding 1997 NSPS is more stringent, in which case the HMIWI are to continue to comply with that 1997 NSPS. In the interim, those 1997 NSPS sources that must meet the amended EG must continue to be subject to the NSPS as promulgated in 1997 until the date for compliance with the revised EG. Those units for which construction commenced after the December 1, 2008, HMIWI proposal, or for which modification commenced on or after April 6, 2010, are considered "new" units subject to more stringent revised NSPS emissions limits.

Today's action proposes to incorporate these changes to the applicability into the HMIWI federal plan. No other amendments are being proposed for the other applicability provisions in the federal plan (*i.e.*, exemptions for incinerators burning pathological, low-level radioactive, and/or chemotherapeutic waste; co-fired combustors; combustors with permits under section 3005 of the Solid Waste Disposal Act; certain municipal waste combustors; pyrolysis units; and cement kilns firing hospital waste and/or medical/infectious waste).

B. What are the proposed amendments to the emissions limits?

As noted in section II.A of this preamble, on October 6, 2009, the EPA published final amendments to the September 15, 1997, NSPS and EG in response to a Court remand of the 1997 regulations and to satisfy the 5-year review requirement under CAA section 129(a)(5).

The EPA's response to the remand and 5-year review resulted in a revision to all of the emissions limits in the EG. Today's action proposes to incorporate the amended EG emissions limits into the existing HMIWI federal plan. Table 1 of this preamble summarizes the amended EG emissions limits promulgated to respond to the remand and fulfill the EPA's 5-year review obligation.

TABLE 1—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI

Pollutant (units)	Unit size ¹	Final limit ²
HCl (ppmv)	L	6.6
	M	7.7
	S	44
	SR	810
CO (ppmv)	L	11

TABLE 1—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI—Continued

Pollutant (units)	Unit size ¹	Final limit ²
Pb (mg/dscm)	M	5.5
	S,SR	20
	L	0.036
	M	0.018
Cd (mg/dscm) ...	S	0.31
	SR	0.50
	L	0.0092
	M	0.013
Hg (mg/dscm) ...	S	0.017
	SR	0.11
	L	0.018
	M	0.025
PM (gr/dscf)	S	0.014
	SR	0.0051
	L	0.011
	M	0.020
Dioxins/furans, total (ng/dscm).	S	0.029
	SR	0.038
	L	9.3
	M	0.85
Dioxins/furans, TEQ (ng/ dscm).	S	16
	SR	240
	L	0.054
	M	0.020
NO _x (ppmv)	S	0.013
	SR	5.1
	L	140
	M, S	190
SO ₂ (ppmv)	SR	130
	L	9.0
	M, S	4.2
	SR	55
Opacity (%)	L, M, S, SR	6.0

¹ L = Large (>500 lb/hr of waste); M = Medium (>200 to ≤500 lb/hr of waste); S = Small (≤200 lb/hr of waste); SR = Small rural (small HMIWI >50 miles from boundary of nearest SMSA, burning <2,000 lb/wk of waste).

² All emissions limits are reported as corrected to 7 percent oxygen.

The 2009 amended EG removed provisions from the 1997 standards at 40 CFR 60.56c and 60.37e that exempted HMIWI from the standards during periods of startup, shutdown and malfunction (SSM) provided that no hospital waste or medical/infectious waste was being changed to the unit during those SSM periods. The 2009 EG requires that the emissions limits as listed above in Table 1, regardless of a SSM event, be met at all times. However, in one provision of the NSPS, section 60.56c(d)(2), the EPA inadvertently failed to delete a SSM exemption we had intended to eliminate, and to better reflect the EPA's intent in the 2009 final rule, today's action also amends that section of the NSPS to remove the accidentally retained SSM exemption. Please see section VI. of this preamble, which

further discusses the amendment of the NSPS. Today's action also proposes to remove the SSM exemption from the 2000 federal plan at 40 CFR 62.14413, and proposes that the emissions limits apply at all times, for the same reasons.

As noted in the previous section, the 2009 amended EG specified that those HMIWI that previously complied with the 1997 NSPS would have to meet the emissions limits under the 2009 amended EG or the 1997 NSPS, whichever was more stringent. In two cases, the HCl emissions limit for small HMIWI and the PM emissions limit for medium HMIWI, the 1997 NSPS limits are more stringent than the 2009 amended EG limits, so those HMIWI that previously complied with the 1997 NSPS would continue to comply with the more stringent 1997 NSPS limits. Specifically, they would have to meet the 1997 NSPS HCl emissions limit of 15 parts per million by volume (ppmv) (at 7 percent oxygen) for small HMIWI and the 1997 NSPS PM limit of 0.015 grains per dry standard cubic foot (gr/dscf) (at 7 percent oxygen) for medium HMIWI, in addition to the 2009 EG emissions limits for the other pollutants. Today's action proposes to include these two 1997 NSPS emissions limits along with the 2009 amended EG emissions limits in the HMIWI federal plan.

Under the 1997 NSPS, new large HMIWI were required to demonstrate compliance with the 5 percent visible emissions limit for fugitive emissions generated during ash handling, by conducting annual performance tests using EPA Method 22. As discussed in section V.E.1 below, the 2009 amendments to the EG expanded this requirement to include all HMIWI, but only as an initial test requirement. As a result, under the amended EG, all HMIWI were made subject to the same 5 percent visible emissions limit. Today's action proposes to include this visible emissions limit for existing HMIWI in the HMIWI federal plan.

To provide greater clarity, the 2009 amendments to the EG also included averaging times and EPA reference test methods in the emissions limit tables for existing sources. It should be noted that the averaging times and EPA reference test methods added to the emissions limits tables were not new requirements but simply a restating of requirements presented elsewhere in the HMIWI regulations. Today's action proposes to add these additional columns to the emissions limits table in the HMIWI federal plan.

C. What are the proposed amendments to the waste management plan requirements?

Under the HMIWI EG promulgated on September 15, 1997, and HMIWI federal plan promulgated on August 15, 2000, existing HMIWI were required to submit a written plan that identified both the feasibility and methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

Commenters on the December 1, 2008, reproposal of the HMIWI EG amendments recommended that the EPA minimize or eliminate from the HMIWI waste stream any plastic wastes, Hg and other hazardous wastes (e.g., Hg-containing dental waste, Hg-containing devices), pharmaceuticals and confidential documents and other paper products that could be shredded and recycled. One commenter recommended that the EPA take action to regulate emissions of polychlorinated biphenyls and polycyclic organic matter from HMIWI. Some commenters recommended that the EPA require commercial HMIWI to provide training and education to their customers regarding waste segregation and make incinerator operators responsible for the waste in their possession.

To address the various commenters' concerns, the waste management plan provisions in the HMIWI regulations were revised to promote the segregation of the aforementioned wastes and specify that commercial facilities train and educate their clients to conduct their own waste segregation. Today's action proposes to incorporate these revisions into the HMIWI federal plan.

D. What are the proposed amendments to the inspection requirements?

Under the 1997 EG and 2000 federal plan, existing small rural HMIWI were required to conduct annual equipment inspections to compensate for the lack of annual emissions testing at those sources. The inspections included the incinerator, air pollution control device (if any) and monitoring equipment. For the 2009 amendments to the EG, the EPA expanded annual air pollution control device inspections to the other HMIWI to allow those sources to demonstrate that their air pollution control devices are operating sufficiently well to allow compliance with the tighter emissions limits under the amended EG. Today's action proposes to incorporate this additional requirement into the HMIWI federal plan.

E. What are the proposed amendments to the performance testing and monitoring requirements?

The following paragraphs list a number of additional testing and monitoring requirements in the 2009 amendments to the EG that are proposed to be incorporated into the HMIWI federal plan in today's action.

1. Performance Testing

The 1997 EG and 2000 federal plan required existing large, medium and small non-rural HMIWI to conduct initial performance tests for Cd, CO, dioxins/furans, HCl, Pb, Hg, opacity and PM and annual performance tests for CO, HCl, opacity and PM. (An owner or operator could conduct less frequent testing if the facility demonstrated that it was in compliance with the emissions limits for 3 consecutive performance tests.) The 2009 amendments to the EG added the requirement that all HMIWI conduct initial performance tests for NO_x and SO₂ to demonstrate initial compliance with the revised emissions limits for those pollutants.

Under the 1997 EG and 2000 federal plan, small rural HMIWI were only required to conduct initial performance tests for CO, dioxins/furans, Hg, opacity and PM, and annual performance tests for opacity. Under the 2009 amendments to the EG, small rural HMIWI were required to also conduct initial performance tests for the other five regulated pollutants (Cd, HCl, Pb, NO_x and SO₂) and also conduct annual performance tests for CO, HCl and PM.

Under the 1997 NSPS, new large HMIWI were subject to a 5 percent visible emissions limit for fugitive emissions generated during ash handling. To demonstrate compliance with this emissions limit, new large HMIWI were required to conduct annual performance tests for fugitive emissions from ash handling using EPA Method 22. In the 2009 amendments to the EG, the EPA extended this minimal testing requirement to the other HMIWI, but only as an initial test requirement, to determine whether fugitive ash emissions are a concern from these sources. Existing HMIWI would be required to measure fugitive ash emissions during their next performance test.

In order to reduce the burden of complying with the additional testing requirements in the 2009 amendments to the EG, sources were allowed to use results of their previous emissions tests to demonstrate initial compliance with the revised emissions limits as long as the sources certify that the previous test results are representative of current

operations. Only those sources who could not so certify and/or whose previous emissions tests do not demonstrate compliance with one or more revised emissions limits would be required to conduct another emissions test for those pollutants. (Note that most sources were already required under the 1997 EG to test for CO, HCl, opacity and PM on an annual basis and those annual tests are still required.)

To provide HMIWI with greater flexibility in demonstrating compliance, the 2009 amendments to the EG also incorporated by reference two alternatives to EPA reference test methods American Society of Mechanical Engineers (ASME) PTC 19.10-1981 and American Society for Testing and Materials (ASTM) D6784-02), discussed further in section IX.I of this preamble.

2. Monitoring

Monitoring of operating parameters can be used to indicate whether air pollution control equipment and practices are functioning properly to minimize air pollution. The 1997 HMIWI EG and 2000 federal plan included the following parameter monitoring requirements for good combustion, wet scrubbers and dry scrubbers with fabric filters (FFs):

- If using a dry scrubber followed by a FF to comply with the emissions limits, continuously monitor charge rate, FF inlet temperature, flue gas temperature, secondary chamber temperature and sorbent flow rates for dioxin/furan, HCl and Hg sorbents.
- If using a wet scrubber to comply with the emissions limits, continuously monitor charge rate, flue gas temperature, secondary chamber temperature, pressure drop across the wet scrubber (or horsepower or amperage), scrubber liquor flow rate and scrubber liquor pH.
- If using a dry scrubber followed by a FF and wet scrubber, continuously monitor all of the aforementioned parameters.
- If using something other than the aforementioned air pollution control devices to comply with the emissions limits, petition the Administrator for other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter.

In the 2009 amendments to the EG, the EPA kept these parameter monitoring requirements and added a parameter requirement for those HMIWI expected to install selective noncatalytic reduction (SNCR) systems in order to comply with the more stringent NO_x limits in the 2009 EG. Those HMIWI

installing SNCR technology to comply with the NO_x emissions limit were required to continuously monitor the charge rate, secondary chamber temperature and reagent (e.g., ammonia or urea) flow rate.

Since the 1997 EG, bag leak detectors have been shown to be an effective method for demonstrating continuous compliance for sources equipped with FFs. Although the 2009 amendments to the EG did not require existing HMIWI equipped with FFs to install bag leak detectors, use of bag leak detectors was presented as an option for these HMIWI.

The most direct means of monitoring compliance with emissions limits is the use of continuous emissions monitoring systems (CEMS) to measure the emissions of a pollutant on a continuous basis. In addition to CEMS, sorbent trap biweekly monitoring systems for Hg and dioxins/furans are also available. Although the 2009 amendments to the EG did not require CO, HCl, PM, Hg or multi-metal CEMS or sorbent trap biweekly Hg and dioxin/furan monitoring systems for existing HMIWI, such systems were presented as alternative monitoring requirements in lieu of annual testing for all sources.

3. Electronic Data Submittal

The EPA must have performance test data to conduct effective 5-year reviews of CAA section 129 standards, as well as for many other purposes, including compliance determinations, development of emissions factors and determining annual emissions rates. In conducting 5-year reviews, the EPA has found it ineffective and time-consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

In the 2009 amendments to the EG, to improve data accessibility, we gave HMIWI the option of submitting to an EPA electronic database an electronic copy of annual stack test reports. Data entry would be through an electronic emissions test report structure used by the staff as part of the emissions testing project. The electronic reporting tool (ERT) was developed with input from stack testing companies who generally collect and compile performance test data electronically. The ERT is currently available and access to direct data

submittal to the EPA's electronic emissions database (WebFIRE).²

The option to submit source test data electronically to the EPA would not require any additional performance testing. In addition, when a facility elects to submit performance test data to WebFIRE, there would be no additional requirements for data compilation. Further discussion of the benefits of using electronic data submittal is provided in the preamble to the October 6, 2009, amendments. (See 74 FR 51373-4.)

The electronic database that would be used is the EPA's WebFIRE, which is a Web site accessible through the EPA's TTN. The WebFIRE Web site was constructed to store emissions test data for use in developing emissions factors. A description of the WebFIRE database can be found at <http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main>. The ERT would be able to transmit the electronic report which would be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The submitted report would be submitted through the EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at http://www.epa.gov/ttn/chief/ert/ert_tool.html and CEDRI can be accessed through the CDX Web site (www.epa.gov/cdx). The ERT can be used to document stack tests data for those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at <http://www.epa.gov/ttn/chief/ert/index.html>. We believe that industry would benefit from this option of electronic data submittal. Having these data, EPA would be able to develop improved emission factors, make fewer information requests, and promulgate better regulations.

One major advantage of the option to submit performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to EPA at the time the source test is conducted is that it

should substantially reduce the effort involved in data collection activities in the future. When EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies, and EPA significant time, money, and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

F. What are the proposed amendments to recordkeeping and reporting requirements?

The following paragraphs list a number of additional recordkeeping and reporting requirements in the 2009 amendments to the EG, that would be incorporated into the HMIWI federal plan in today's proposed amendments.

1. Recordkeeping

The 1997 EG and 2000 federal plan required owners and operators to maintain for 5 years records of opacity

and emissions measurements, operating parameters, equipment inspections and maintenance (small rural units only), deviations, initial performance tests and all subsequent performance tests, operator training and qualification and calibration of monitoring devices.

The 2009 amendments to the EG added the requirement that owners and operators maintain records of the amount and type of NO_x reagent used, records of the annual air pollution control device inspections (including any maintenance), and a description, included with each test report, of how operating parameters were established during the initial performance test and re-established during subsequent performance tests.

2. Reporting

Under the 1997 EG and 2000 federal plan, owners and operators were required to submit the results of the initial performance tests and all subsequent performance tests, values for the operating parameters, waste management plan, equipment inspections and maintenance (small rural units only) and annual compliance reports and semiannual reports of any deviations from the emissions limits.

The 2009 amendments to the EG added requirements for existing HMIWI to submit, along with each test report, a description of how operating parameters were established or re-established and submit records of annual air pollution control device inspections (including any maintenance).

G. What are the proposed amendments to the compliance schedule?

Similar to the approach of the 2000 HMIWI federal plan, as described in section IV.J. "Progress Reports," today's proposed revised federal plan requires owners or operators of HMIWI to either: (1) Come into compliance with the plan within 1 year after the plan is promulgated; or (2) meet increments of progress and come into compliance by October 6, 2014. Increments of progress are necessary in order to ensure that HMIWI needing more time to comply are making progress toward meeting the emissions limits. The amended federal plan, as proposed, includes as its compliance schedule the same five increments of progress from 40 CFR 62.14470(b)(2), along with defined and enforceable dates for completion of each increment.

The HMIWI owner or operator is responsible for meeting each of the five increments of progress for each HMIWI no later than the applicable compliance date. The owner or operator must notify

² See <http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main>, http://www.epa.gov/ttn/chief/ert/ert_tool.html.

the EPA as each increment of progress is achieved, as well as when any is missed. The notification must identify the increment and the date the increment is achieved (or missed). If an owner or operator misses an increment deadline, the owner or operator must also notify the EPA when the increment is finally achieved. The owner or operator must mail the notification to the applicable EPA Regional Office within 10 business days after the increment date defined in the amended federal plan. (See the table under section II.C. of this document for a list of Regional Offices.)

The definition of each increment of progress, along with its required completion date, follows.

Submit Final Control Plan. To meet this increment, the owner or operator of each HMIWI must submit a plan that describes, at a minimum, the air pollution control device and/or process changes that will be employed so that each HMIWI complies with the emissions limits and other requirements. A final control plan is not required for units that will be shutdown. Completion date: October 6, 2012.

Award Contract. To award a contract means the HMIWI owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the HMIWI owner or operator must award a contract or contracts to initiate on-site construction, to initiate on-site installation of air pollution control devices, and/or to incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to the EPA within 10 business days of entering the contract(s). Completion date: May 6, 2013.

Begin On-site Construction. To begin on-site construction, installation of air pollution control devices or process change means to begin any of the following:

(1) Installation of an air pollution control device in order to comply with the final emissions limits as outlined in the final control plan;

(2) Physical preparation necessary for the installation of an air pollution

control device in order to comply with the final emissions limits as outlined in the final control plan;

(3) Alteration of an existing air pollution control device in order to comply with the final emissions limits as outlined in the final control plan;

(4) Alteration of the waste combustion process to accommodate installation of an air pollution control device in order to comply with the final emissions limits as outlined in the final control plan; or

(5) Process changes identified in the final control plan in order to meet the emissions standards. Completion date: January 6, 2014.

Complete On-site Construction. To complete on-site construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, on-site and ready for operation on the HMIWI. Completion date: August 6, 2014.

Final Compliance. To be in final compliance means to incorporate all process changes or complete retrofit construction in accordance with the final control plan and to connect the air pollution control equipment or process changes such that, if the HMIWI is brought online, all necessary process changes or air pollution control equipment will operate as designed. Completion date: October 6, 2014.

If a HMIWI does not achieve final compliance by October 6, 2014, the amended federal plan, as proposed, requires the HMIWI to shutdown by October 6, 2014, complete the retrofit while not operating and be in compliance upon restarting. Shutdown is necessary in order to avoid being out of compliance and subject to possible enforcement action.

H. What are the other proposed amendments?

1. Definitions

For clarification, the 2009 amendments to the EG revised the definition of “Minimum secondary chamber temperature” to read “Minimum secondary chamber temperature means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, and dioxin/furan emissions limits.”

To address the introduction of some new terms, the 2009 amendments to the EG added the following definitions:

- “Bag leak detection system” means “an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures,” and examples of such a system were provided.

- “Commercial HMIWI” means “a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.”

- “Minimum reagent flow rate” means “90 percent of the highest 3-hour average reagent flow rate at the inlet to the selective noncatalytic reduction technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the NO_x emissions limit.”

Today’s action proposes to amend the HMIWI federal plan to include these revised and new definitions from the amended EG. Today’s action also proposes to include a revised definition for “modification or modified HMIWI” to address the change in applicability for modified HMIWI under the amended federal plan.

2. Toxicity Equivalence Factors

In a January 6, 2011, **Federal Register** notice, the EPA announced the availability of the final “Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds” (EPA/100/R-10/005). Various stakeholders, inside and outside the EPA, had called for a more comprehensive characterization of risks, so the EPA re-examined the current recommended approach for applying the toxicity equivalence methodology. The EPA developed and revised, in response to public comments and recommendations from peer reviewers, the aforementioned guidance document to assist the EPA scientists in using this methodology and to inform the EPA decision makers, other agencies and the public about this methodology. The revised methodology includes the following changes to TEFs that HMIWI would use to determine compliance with the HMIWI dioxin/furan TEQ emissions limits:

Dioxin/furan congener	Toxicity equivalence factor	
	1997 EG/2000 federal plan	Today’s proposed amendments to federal plan
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5	1

Dioxin/furan congener	Toxicity equivalence factor	
	1997 EG/2000 federal plan	Today's proposed amendments to federal plan
Octachlorinated dibenzo-p-dioxin	0.001	0.0003
2,3,4,7,8-pentachlorinated dibenzofuran	0.5	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.05	0.03
Octachlorinated dibenzofuran	0.001	0.0003

To incorporate these latest revisions to TEFs, we are proposing to amend Table 2 to subpart HHH in today's action.

VI. Summary of Proposed Amendments to HMIWI New Source Performance Standards

A. What are the proposed amendments to the emissions limits?

The 2009 amended EG removed provisions from the 1997 standards at 40 CFR 60.56c and 60.37e that exempted HMIWI from the standards during periods of startup, shutdown and malfunction (SSM) provided that no hospital waste or medical/infectious waste was being charged to the unit during those SSM periods. The 2009 EG requires that the emissions limits as listed above in Table 1, regardless of a SSM event, be met at all times. However, in one provision of the NSPS, section 60.56c(d)(2), the EPA inadvertently failed to delete a SSM exemption we had intended to eliminate, and to better reflect the EPA's intent in the 2009 final rule, today's action also proposes to amend that section of the NSPS to remove the accidentally retained SSM exemption. This action is necessary to make the NSPS continuously applicable, as required under CAA section 302(k) and under the U.S. Court of Appeals for the DC Circuit's 2008 *Sierra Club v. EPA* ruling. Our rationale for this amendment was presented in the Oct. 6, 2009 final rule, at 74 FR 51368, 51375 and 51393–95 (Oct. 6, 2009), and we hereby incorporate by reference that rationale in order to complete the regulatory amendments we intended to make at the time. Today's action also proposes to remove the SSM exemption from the 2000 federal plan at 40 CFR 62.14413, and proposes that the emissions limits apply at all times, for the same reasons.

VII. HMIWI That Have or Will Shutdown

A. Units That Plan to Close Rather Than Comply

The 2000 federal plan established that if you planned to permanently close your currently operating HMIWI, you

must have done so by the date 1 year after publication of the final federal plan in the **Federal Register**. Today's proposed amended federal plan retains this provision so that if you plan to permanently close your currently operating HMIWI, you must do so by the date 1 year after publication of the final amended federal plan in the **Federal Register**. The proposed amendments will allow HMIWI owners or operators that are planning to shutdown the opportunity to petition the EPA for an extension beyond the 1-year compliance date (but no later than October 6, 2014). An example of a facility that might petition the EPA for such an extension is a facility installing an on-site alternative waste treatment technology. It is possible that installation cannot be completed within 1 year and the facility has no feasible waste disposal options other than on-site incineration while the alternative technology is being installed. The requirements for a petition for an extension to shutdown under today's proposed federal plan will update the compliance date requirements set forth at § 62.14471 of subpart HHH.

If you continue to operate your HMIWI 1 year after publication of the final amendments to the federal plan in the **Federal Register**, then you must comply with the operator training and qualification requirements and the inspection requirements of the plan by the date 1 year after publication of the final amendments. This requirement includes HMIWI that comply within 1 year, as well as those that have been granted an extension beyond the 1-year compliance date (*i.e.*, HMIWI with extended retrofit schedules and HMIWI granted an extension to shutdown after the 1-year compliance date). In addition, while still in operation, you are subject to the same requirements for Title V operating permits that apply to units that will not shutdown.

B. Inoperable Units

Retaining certain aspects of the 2000 federal plan, today's proposed revised federal plan includes that in cases where a HMIWI has already shutdown, has been rendered inoperable and does not intend to restart, the HMIWI may be left off the source inventory in a

revised/new state plan or this proposed amended federal plan. A HMIWI that has been rendered inoperable would not be covered by the amended federal plan. The HMIWI owner or operator may do one the following to render a HMIWI inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. HMIWI That Have Shutdown

Retaining certain aspects of the 2000 federal plan, today's revised federal plan proposal includes any HMIWI that are known to have already shutdown (but are not known to be inoperable) in the source inventory. These HMIWI should be identified in any revised/new state plan submitted to the EPA.

1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive HMIWI plans to restart before the final compliance date, the owner or operator must submit a control plan for the HMIWI and bring the HMIWI into compliance with the applicable compliance schedule. Final compliance is required for all pollutants and all HMIWI no later than the final compliance date.

2. Restarting After the Final Compliance Date

Under this federal plan, as amended, a control plan is not needed for inactive HMIWI that restart after the final compliance date. However, before restarting, operators of these HMIWI would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. There is no need to show that the increments of progress have been met since these steps would have occurred before restart while the HMIWI was shutdown and not generating emissions. A HMIWI that operates out of compliance after the final compliance date would be in

violation of the amended federal plan and subject to enforcement action.

VIII. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, the EPA is required to adopt EG that are applicable to existing solid waste incineration sources. These EG are not enforceable until the EPA approves a state plan or adopts a federal plan that implements and enforces them and the state or federal plan has become effective. As discussed above, the federal plan regulates HMIWI in states that do not have approved plans in effect to implement the amended EG.

Congress has determined that the primary responsibility for air pollution prevention and control rests with state and local agencies. (See section 101(a)(3) of the CAA.) Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the state and local agencies take the primary responsibility for ensuring that the emissions limitations and other requirements in the EG are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that the EPA establish procedures that are similar to those under section 110(c) for state implementation plans. Although Congress required the EPA to propose and promulgate a federal plan for states that fail to submit approvable state plans on time, states may submit approvable revised/new plans after promulgation of the amended HMIWI federal plan. The EPA strongly encourages states that are unable to submit approvable revised/new plans to request delegation of the amended federal plan so that they can have primary responsibility for implementing the revised EG, consistent with the intent of Congress.

Approved and effective revised/new state plans or delegation of the amended federal plan is the EPA's preferred outcome since the EPA believes that state and local agencies not only have the responsibility to carry out the revised EG but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, the EPA will do all that it can to expedite delegation of the amended federal plan to state and local agencies, whenever possible, in cases where states are unable to develop and submit approvable state plans.

B. Delegation of the Federal Plan and Retained Authorities

As similarly described in the 2000 federal plan, if a state or tribe intends to take delegation of the amended federal plan, the state or tribe should submit to the appropriate EPA Regional Office a written request for delegation of authority. The state or tribe should explain how it meets the criteria for delegation. See generally "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). The letter requesting delegation of authority to implement the amended federal plan should: (1) Demonstrate that the state or tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program, (2) include an inventory of affected HMIWI units, which includes those that have ceased operation but have not been dismantled, include an inventory of the affected units' air emissions and a provision for state progress reports to the EPA, (3) certify that a public hearing is held on the state delegation request, and (4) include a memorandum of agreement between the state or tribe and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement and would serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a state or tribe, the EPA will implement the amended federal plan. Also, if a state or tribe fails to properly implement a delegated portion of the amended federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the state or tribe even when a state or tribe has received delegation of the amended federal plan. In all cases where the amended federal plan is delegated, the EPA will retain and will not transfer authority to a state or tribe to approve the following items that include additional items to those listed in the 2000 federal plan as to correspond to those changes promulgated in the 2009 HMIWI rules:

- (1) Alternative site-specific operating parameters established by facilities using HMIWI controls other than a wet scrubber, dry scrubber followed by a FF, or dry scrubber followed by a FF and wet scrubber;
- (2) Alternative methods of demonstrating compliance, including

the following methods outlined in the October 6, 2009, amendments to the HMIWI EG:

- Approval of CEMS for PM, HCl, multi-metals and Hg where used for purposes of demonstrating compliance;
 - Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance; and
 - Approval of major alternatives to test methods;
- (3) Approval of major alternatives to monitoring (added in 2009 amended EG);
 - (4) Waiver of recordkeeping requirements (added in 2009 amended EG); and
 - (5) Performance test and data reduction waivers under 40 CFR 60.8(b) (added in 2009 amended EG).

Retaining what was established in the 2000 federal plan, today's proposed amended federal plan also specifies that hospital/medical/infectious waste incinerator owners or operators who wish to establish alternative operating parameters, alternative methods of demonstrating compliance, major alternatives to monitoring, waiver of recordkeeping requirements or performance test and data reduction waivers should submit a request to the Regional Office Administrator with a copy to the appropriate state.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to state and local agencies: (1) The EPA approval of a revised/new state plan after the amended federal plan is in effect; and (2) if a state does not submit or obtain approval of its own revised/new plan, the EPA delegation to a state of the authority to implement certain portions of this amended federal plan to the extent appropriate and if allowed by state law. Both of these options are maintained from those which were first outlined in the 2000 federal plan, are described in more detail below.

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

After HMIWI in a state become subject to the amended federal plan, the state or local agency may still adopt and submit a revised/new plan to the EPA. If the EPA determines that the revised/new state plan is as protective as the revised EG, the EPA will approve the revised/new state plan. If the EPA determines that the plan is not as protective as the revised EG, the EPA will disapprove the plan and the HMIWI covered in the state plan would remain subject to the amended federal plan until a revised

state plan covering those HMIWI is approved and effective. Prior to disapproval, EPA will work with states to attempt to reconcile areas of the plan that remain not as protective as the revised EG.

Upon the effective date of a revised/new state plan, the amended federal plan would no longer apply to HMIWI covered by such a plan and the state or local agency would implement and enforce the revised/new state plan in lieu of the amended federal plan. When an EPA Regional Office approves a revised/new state plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to state agencies the authority to implement this amended federal plan. As discussed above, the EPA believes that it is advantageous and the best use of resources for state or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the amended federal plan to the extent appropriate and where authorized by state law. If a state requests delegation, the EPA will generally delegate the entire amended federal plan to the state agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, HMIWI inspections and preparation of draft notices of violation but will not include any retained authorities. State agencies that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating federal plan provisions.

D. Implementing Authority

The EPA Regional Administrators have been delegated the authority for implementing the HMIWI federal plan amendments. All reports required by these amendments to the federal plan should be submitted to the appropriate Regional Office Administrator. Section II.C. of this preamble includes a table that lists names and addresses of the EPA Regional Office contacts and the states they cover.

IX. Title V Operating Permits

All existing HMIWI regulated under state or federal plans implementing the 1997 EG and any HMIWI that was regulated under the 1997 NSPS should have already applied for and obtained Title V operating permits, as required under the EG. Title V operating permits assure compliance with all applicable federal requirements for HMIWI,

including all applicable CAA section 129 requirements. (See 40 CFR 70.2, 70.6(a)(1), 71.2 and 71.6(a)(1).) Title V operating permits for the above-noted sources may, however, need to be reopened to incorporate the requirements of a revised/new state plan, this amended federal plan or more stringent NSPS requirements.

For more background information on the interface between CAA section 129 and Title V, including the EPA's interpretation of CAA section 129(e), as well as information on submitting Title V permit applications, updating existing Title V permit applications and reopening existing Title V permits, see the final Federal Plan for Commercial and Industrial Solid Waste Incinerators, October 3, 2003 (68 FR 57518, 57532). See also the final Federal Plan for Hospital Medical Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49877).

Today's proposed revised federal plan maintains the 2000 federal plan approach, specifying that owners or operators of HMIWI that burn only pathological waste, low-level radioactive waste and/or chemotherapeutic waste and co-fired combustors, as defined in § 62.14490 of subpart HHH, must comply only with certain recordkeeping and reporting requirements set forth in today's proposed amended federal plan. (See § 62.14400.) These HMIWI and co-fired combustors would not be subject to the emissions control-related requirements of the amended federal plan as long as they complied with the recordkeeping and reporting requirements set forth as conditions for their exemption. Consistent with the 2000 federal plan, owners and operators of these sources as listed above would not be required to obtain Title V operating permits as a matter of federal law if the only reason they would potentially be subject to Title V is these non-emissions control-related recordkeeping and reporting requirements. (See § 62.14480.) Originally explained in the 2000 federal plan, today's rule maintains that owners and operators of HMIWI that burn only pathological waste, low-level radioactive waste and/or chemotherapeutic waste and co-fired combustors that do not comply with the recordkeeping and reporting requirements necessary to qualify for exemption from the other requirements of the amended federal plan would become subject to those other requirements and would have to obtain Title V permits. Moreover as stated in the 2000 federal plan and again in today's proposal, if, in the future, the EPA promulgates regulations subjecting

any of these sources to requirements other than these recordkeeping and reporting requirements, these sources could become subject to Title V at that time.

A. Title V and Delegation of a Federal Plan

We have previously stated our position that issuance of a Title V permit is not equivalent to the approval of a state plan or delegation of a federal plan.³ Legally, delegation of a standard or requirement results in a delegated state or tribe standing in for the EPA as a matter of federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a state (except for functions that the EPA retains for itself) upon delegation.⁴ Although a state or tribe may have the authority under state or tribal law to incorporate section 111/129 requirements into its Title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 federal plan, the state or tribe is not standing in for the EPA as a matter of federal law in this situation. Where a state or tribe does not take delegation of a section 111/129 federal plan, obligations that a source has to the EPA under the federal plan continue after a Title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the federal plan from the EPA to a state or tribe. As mentioned above, a state or tribe may have the authority under state or tribal law to incorporate section 111/129 requirements into its Title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 federal plan.⁵ Some

³ For the sake of brevity, the discussion from the proposed federal plan regarding Title V and delegation of a federal plan is not being repeated. See "Title V and Delegation of a Federal Plan" section of the proposed federal plan for CISWI, November 25, 2002 (67 FR 70640, 70652). Nevertheless, the preamble language from this section in the proposed rule is hereby reaffirmed in this final rule.

⁴ If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, e.g., alternative methods of demonstrating compliance.

⁵ The EPA interprets the phrase "assure compliance" in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation or requirement which must be included in the Title V permits the permitting authorities issue. See definition of "applicable requirement" in 40 CFR 70.2. See also 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

states or tribes, however, may not be able to implement and enforce a section 111/129 standard in a Title V permit until the section 111/129 standard has been delegated. In these situations, a state or tribe should not issue a part 70 permit to a source subject to a federal plan before taking delegation of the section 111/129 federal plan. If a state or tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a state or tribe does not need to take delegation of the section 111/129 requirements for purposes of Title V permitting.⁶ In practical terms, without approval of a state or tribal plan, delegation of a federal plan, or an adequate AG's opinion, states and tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a state's or tribe's part 70 program. As a result, prior to a state or tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 federal plan, the state or tribe, the EPA Regional Office and source in question are advised to ensure that delegation of the relevant federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion. In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a federal plan, a section 111/129 source subject to the federal plan in that state must simultaneously submit to both the EPA and the state or tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in Title V permits, the permitting authority needs to receive these reports at the same time as the EPA. In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a federal plan, the EPA Regional Offices will be responsible for

implementing and enforcing section 111/129 requirements outside of any Title V permits. Moreover, in this situation, the EPA Regional Offices will continue to be responsible for developing progress reports and conducting any other administrative functions required under this federal plan or any other section 111/129 federal plan. See the section IV.J. of this preamble titled "Progress Reports". It is important to note that the EPA is not using its authority under 40 CFR part 70.4(i)(3) to request that all states and tribes which do not take delegation of this federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a state's or tribe's authority to incorporate section 111/129 requirements into a Title V permit and implement and enforce these requirements in that context without delegation.

X. Statutory and Executive Order Reviews

This section addresses the following administrative requirements: Executive Orders 12866 and 13563, 13132, 13175, 13045, 13211 and 12898, PRA, RFA, UMRA and the NTTAA. This two-part action proposes a revised federal plan and proposes amendments to the final 2009 NSPS. Since this proposed federal plan rule merely implements the amended HMIWI EG promulgated on October 6, 2009 (codified at 40 part 60, subpart Ce) as they apply to HMIWI and the proposed NSPS amendments clarify EPA's original intent removing the startup, shutdown, and malfunction exemption in the final NSPS rule October 6, 2009 (codified at 40 part 60, subpart Ec) and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements in the preamble to the 2009 rule promulgating the amended EG and NSPS (74 FR 51368–51402, October 6, 2009).

A. Executive Order 12866 and 13563: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735; October 4, 1993) and is, therefore, not subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

The EPA considered the 2009 amendments to the HMIWI EG to be significant and the rule was reviewed by the Office of Management and Budget

(OMB) in 2009. (See 74 FR 51400.) The federal plan proposed today would simply implement the EG as amended in 2009 and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2009 amended EG. Therefore, this regulatory action is considered "not significant" under Executive Order 12866 and 13563.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose any new information collection burden. This action simply proposes amendments to the hospital/medical/infectious waste incinerators federal plan to implement the amended emission guidelines adopted on October 6, 2009, for those states that do not have an approved revised/new state plan implementing the emission guidelines. Additionally, today's action also proposes to amend the new source performance standards to better reflect EPA's original intent in the October 6, 2009, final rule in eliminating an exemption during startup, shutdown and malfunction periods from the requirement to comply with standards at all times. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 60 subparts CE and EC under the provisions on the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0422. The OMB Control Numbers for EPA's regulation in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The 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 (SISNOSE). Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as follows: (1) A small business as defined by the Small Business Administration's 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; or (3) a small organization that is any not-for-profit enterprise that is independently

⁶ It is important to note that an AG's opinion submitted at the time of initial Title V program approval is sufficient if it demonstrates that a state or tribe has adequate authority to incorporate CAA section 111/129 requirements into its Title V permits and to implement and enforce these requirements through its Title V permits without delegation.

owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. During the 2009 HMIWI EG rulemaking, the EPA estimated that a substantial number of small entities would not be significantly impacted by the promulgated EG. (See 74 FR at 51400–51401.) This proposed amended federal plan does not establish any new requirements.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain a federal mandate that may result in expenditures of \$100 million or more for state and local governments, in the aggregate, or the private sector in any 1 year. In the preamble to the 2009 EG, the national total cost to comply with the final rule was estimated to be approximately \$15.5 million in each of the first 3 years of compliance. This proposed federal plan, as amended, will apply to only a subset of the units considered in the cost analysis for the EG, and less than 10 percent of the units nationwide are state or locally owned. Thus, the proposed federal plan, as amended, is not subject to the requirements of sections 202 or 205 of UMRA.

In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because, as noted above, the burden is small and the regulation does not unfairly apply to small governments. Therefore, the proposed rule is also not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action will not impose substantial direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this proposed action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment

on this proposed action from state and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The EPA is not aware of any HMIWI owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

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

The EPA interprets Executive Order 13045 (62 FR 19885; April 23, 1997) as applying to those regulatory actions that concern 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 proposed action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) 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 VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use two VCS in today's action. One VCS, ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” is cited in the 2009 EG and the proposed rule for its manual method of measuring the content of the exhaust gas as an acceptable alternative to EPA Method 3B of appendix A–2. This standard is available from the ASME, P.O. Box 2900, Fairfield, NJ 07007–2900; or

Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

Another VCS, ASTM D6784–02, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),” is cited in the 2009 EG and the proposed rule as an acceptable alternative to EPA Method 29 of appendix A–8 (portion for Hg only) for measuring Hg. This standard is available from the ASTM, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

While the EPA has identified 16 VCS as being potentially applicable to the proposed rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would be impractical because they do not meet the objectives of the standards cited in this proposed rule. See the docket for the 2009 EG (Docket ID No. EPA–HQ–OAR–2006–0534), which is being implemented under today's proposed action, for the reasons for these determinations.

Under 40 CFR 62.14495, the EPA Administrator retains the authority of approving alternative methods of demonstrating compliance as established under 40 CFR 60.8(b) and 60.13(i) of 40 CFR part 60, subpart A (NSPS General Provisions). A source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required EPA test methods, performance specifications or procedures.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice (EJ) in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; Feb. 16, 1994) establishes federal executive policy on EJ. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ 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.

The EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

This proposed action implements national standards in the 2009 amendments to the HMIWI EG that would result in reductions in emissions of Cd, CO, dioxins/furans, HCl, Pb, Hg, NO_x, PM and SO₂ from all HMIWI and thus decrease the amount of such emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Parts 60 and 62

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

Dated: March 27, 2012.

Lisa P. Jackson,
Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS

For the reasons stated in the preamble, Title 40, chapter I, parts 60 and 62 of the CFR are proposed to be 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 Ec—[Amended]

2. The subpart heading for subpart Ec is revised to read as follows:

Subpart Ec—Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators: Final Rule Amendments

3. Section 60.56c is amended by revising the first sentence of paragraph (d)(2) to read as follows:

§ 60.56c Compliance and performance testing.

(d) * * *

(2) Following the date on which the initial performance test is completed or is required to be completed under

§ 60.8, whichever date comes first, ensure that the affected facility does not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in table 3 of this subpart and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times. * * *

PART 62—FEDERAL PLAN REQUIREMENTS FOR HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS CONSTRUCTED ON OR BEFORE DECEMBER 1, 2008

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

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

Subpart HHH—[Amended]

5. The subpart heading for subpart HHH is revised to read as follows:

Subpart HHH—Federal Plan Requirements for Hospital/Medical/ Infectious Waste Incinerators Constructed On or Before December 1, 2008

6. Section 62.14400 is amended by revising paragraphs (a) introductory text, (a)(2), and (c) to read as follows:

§ 62.14400 Am I subject to this subpart?

(a) You are subject to this subpart if paragraphs (a)(1), (2)(i) or (ii), and (3) of this section are all true:

* * * * *

(2)(i) Construction of the HMIWI commenced on or before June 20, 1996, or modification of the HMIWI commenced on or before March 16, 1998; or

(ii) Construction of the HMIWI commenced after June 20, 1996 but no later than December 1, 2008, or modification of the HMIWI commenced after March 16, 1998 but no later than April 6, 2010; and

* * * * *

(c) Owners or operators of sources that qualify for the exemptions in paragraphs (b)(1) or (b)(2) of this section must submit records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in (b)(1) or (b)(2) from an owner or operator and make such records available to the requestor to the extent

required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Records required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the EPA or delegated enforcement authority for as long as the source is operating under such exempt status. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

7. Section 62.14401 is revised to read as follows:

§ 62.14401 How do I determine if my HMIWI is covered by an approved and effective state or tribal plan?

This part (40 CFR part 62) contains a list of all states and tribal areas with approved Clean Air Act (CAA) section 111(d)/129 plans in effect. However, this part is only updated once a year. Thus, if this part does not indicate that your state or tribal area has an approved and effective plan, you should contact your state environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of this part. A state may also meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the federal plan that meets the requirements of this section. This is the only other option for a state to meet its 111(d)/129 obligations.

(a) An acceptable federal plan delegation request must include the following:

(1) A demonstration of adequate resources and legal authority to administer and enforce the federal plan.

(2) The items under § 60.25(a) and 60.39e(c).

(3) Certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(4) A commitment to enter into a Memorandum of Agreement with the Regional Administrator who sets forth the terms, conditions and effective date of the delegation and that serves as the mechanism for the transfer of authority. Additional guidance and information is given in the EPA's Delegation Manual,

Item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) federal plans.

(b) A state with an already approved HMIWI CAA section 111(d)/129 state plan is not precluded from receiving EPA approval of a delegation request for the revised federal plan, providing the requirements of paragraph (a) of this section are met, and at the time of the delegation request, the state also requests withdrawal of the EPA's previous state plan approval.

(c) A state's CAA section 111(d)/129 obligations are separate from its obligations under Title V of the CAA.

8. Section 62.14402 is revised to read as follows:

§ 62.14402 If my HMIWI is not listed on the federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart include, but are not limited to, the inventory of sources listed in Docket ID No. EPA–HQ–OAR–2011–0405 for the federal plan. Review the applicability of § 62.14400 to determine if you are subject.

9. Section 62.14403 is revised to read as follows:

§ 62.14403 What happens if I modify an existing HMIWI?

(a) If you commenced modification (defined in 40 CFR 62.14490) of an existing HMIWI after April 6, 2010, you are subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c), as amended, and you are not subject to this subpart, except as provided in paragraph (b) of this section.

(b) If you made physical or operational changes to your existing HMIWI solely for the purpose of complying with this subpart, these changes are not considered a modification and you are not subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c), as amended. You remain subject to this subpart.

10. Section 62.14412 is revised to read as follows:

§ 62.14412 What stack opacity and visible emissions requirements apply?

(a) Your HMIWI (regardless of size category) must not discharge into the atmosphere from the stack any gases that exhibit greater than 6 percent opacity (6-minute block average).

(b) Your HMIWI (regardless of size category) must not discharge into the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (*i.e.*, 9 minutes per 3-hour period), as determined by EPA Reference Method 22 of 40 CFR part 60,

appendix A–7, except as provided in paragraphs (b)(1) and (2) of this section.

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

(2) The provisions specified in paragraph (b) of this section do not apply during maintenance and repair of ash conveying systems. Maintenance and/or repair must not exceed 10 operating days per calendar quarter unless you obtain written approval from the state agency establishing a date when all necessary maintenance and repairs of ash conveying systems are to be completed.

11. Section 62.14413 is revised to read as follows:

§ 62.14413 When do the emissions limits and stack opacity and visible emissions requirements apply?

The emissions limits and stack opacity and visible emissions requirements of this subpart apply at all times.

12. Section 62.14422 is amended by adding paragraph (a)(14) to read as follows:

* * * * *

(14) Training in waste segregation according to § 62.14430(c).

13. Section 62.14425 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) You must conduct your initial review of the information listed in § 62.14424 by [date 6 months after publication of final rule], or prior to assumption of responsibilities affecting HMIWI operation, whichever is later.

* * * * *

14. Section 62.14431 is revised to read as follows:

§ 62.14431 What must my waste management plan include?

(a) Your waste management plan must identify both the feasibility of, and the approach for, separating certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. The waste management plan you develop may address, but is not limited to, elements such as segregation and recycling of paper, cardboard, plastics, glass, batteries, food waste and metals (*e.g.*, aluminum cans, metals-containing devices); segregation of non-recyclable wastes (*e.g.*, polychlorinated biphenyl-containing waste, pharmaceutical waste,

and mercury-containing waste such as dental waste); and purchasing recycled or recyclable products. Your waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. When you develop your waste management plan, it should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other potential environmental or energy impacts they might have. In developing your waste management plan, you must consider the American Hospital Association (AHA) publication titled "Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities." This publication (AHA Catalog No. 057007) is available for purchase from the AHA Services, Inc., Post Office Box 933283, Atlanta, Georgia 31193–3283.

(b) If you own or operate commercial HMIWI, you must conduct training and education programs in waste segregation for each of your waste generator clients and ensure that each client prepares its own waste management plan that includes, but is not limited to, the provisions listed in this section.

(c) If you own or operate commercial HMIWI, you must conduct training and education programs in waste segregation for your HMIWI operators.

15. Section 62.14432 is revised to read as follows:

§ 62.14432 When must my waste management plan be completed?

As specified in §§ 62.14463 and 62.14464, you must submit your waste management plan with your initial report, which is due 60 days after you demonstrate initial compliance with the amended emissions limits, by conducting an initial performance test or submitting the results of previous emissions tests, provided the conditions in § 62.14451(e) are met.

16. Section 62.14440 is revised to read as follows:

§ 62.14440 Which HMIWI are subject to inspection requirements?

(a) Small rural HMIWI (defined in § 62.14490) are subject to the HMIWI inspection requirements.

(b) All HMIWI equipped with one or more air pollution control devices are subject to the air pollution control device inspection requirements.

17. Section 62.14441 is revised to read as follows:

§ 62.14441 When must I inspect my HMIWI?

(a) You must inspect your small rural HMIWI by [date 1 year after publication of final rule].

(b) You must conduct inspections of your small rural HMIWI as outlined in § 62.14442(a) annually (no more than 12 months following the previous annual HMIWI inspection).

(c) You must inspect the air pollution control devices on your large, medium, small or small rural HMIWI by [date 1 year after publication of final rule].

(d) You must conduct the air pollution control device inspections as outlined in § 62.14442(b) annually (no more than 12 months following the previous annual air pollution control device inspection).

18. Section 62.14442 is amended as follows:

a. By redesignating paragraphs (a) through (q) as paragraphs (a)(1) through (a)(18);

b. By redesignating introductory text as paragraph (a) introductory text;

c. By revising newly designated paragraph (a) introductory text; and

d. By adding paragraph (a)(17)

e. By adding paragraph new paragraph (b).

§ 62.14442 What must my inspection include?

(a) At a minimum, you must do the following during your HMIWI inspection:

* * * * *

(17) Include inspection elements according to manufacturer's recommendations; and

(18) * * *

(b) At a minimum, you must do the following during your air pollution control device inspection:

(1) Inspect air pollution control device(s) for proper operation, if applicable;

(2) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(3) Include inspection elements according to manufacturer's recommendations; and

(4) Generally observe that the equipment is maintained in good operating condition.

19. Section 62.14443 is revised to read as follows:

§ 62.14443 When must I do repairs?

(a) You must complete any necessary repairs to the HMIWI within 10 operating days of the HMIWI inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a

different date when all necessary repairs of your HMIWI must be completed.

(b) You must complete any necessary repairs to the air pollution control device within 10 operating days of the air pollution control device inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a different date when all necessary repairs of your air pollution control device must be completed. During the time that you effecting repairs to your air pollution control device, all emissions standards remain in effect according to § 62.14413.

20. Section 62.14450 is removed and reserved.

21. Section 62.14451 is amended as follows:

a. By revising paragraph (a);

b. By adding paragraph (b)(3);

c. By redesignating paragraph (c) as paragraph (d);

d. By adding new paragraph (c); and

e. By adding paragraph (e).

§ 62.14451 What are the testing requirements?

(a) Except as specified in paragraph (e) of this section, you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, HCl, Pb, Cd, Hg, SO₂, NO_x and fugitive ash emissions using the test methods and procedures outlined in § 62.14452.

(b) * * *

(3) If you use a large HMIWI that commenced construction or modification according to § 62.14400(a)(2)(ii), determine compliance with the visible emissions limits for fugitive emissions from flyash/bottom ash storage and handling by conducting a performance test using EPA Reference Method 22 of 40 CFR part 60, appendix A-7 on an annual basis (no more than 12 months following the previous performance test).

(c) The 2,000 lb/wk limitation for small rural HMIWI does not apply during performance tests.

* * * * *

(e) You may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that the conditions in paragraphs (e)(1) through (3) of this section are met:

(1) Your previous emissions tests must have been conducted using the applicable procedures and test methods listed in § 62.14452. Previous emissions test results obtained using the EPA-accepted voluntary consensus standards are also acceptable.

(2) The HMIWI at your facility must currently be operated in a manner (e.g.,

with charge rate, secondary chamber temperature, etc.) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s), and the HMIWI may not have been modified such that emissions would be expected to exceed the results from previous emissions test(s).

(3) The previous emissions test(s) must have been conducted in 1996 or later.

22. Section 62.14452 is amended as follows:

a. By revising paragraphs (c), (d), and (f);

b. By redesignating paragraph (l) as paragraph (o);

c. By revising newly designated paragraph (o);

d. By redesignating paragraph (m) as paragraph (r);

e. By redesignating paragraphs (g) through (k) as paragraphs (i) through (m);

f. By revising newly designated paragraphs (i) through (m);

g. By adding new paragraphs (g) and (h);

h. By adding paragraphs (n), (p) and (q).

§ 62.14452 What test methods and procedures must I use?

* * * * *

(c) You must use EPA Reference Method 1 of 40 CFR part 60, appendix A-1 to select the sampling location and number of traverse points;

(d) You must use EPA Reference Method 3, 3A or 3B of 40 CFR part 60, appendix A-2 for gas composition analysis, including measurement of oxygen concentration. You must use EPA Reference Method 3, 3A or 3B of 40 CFR part 60, appendix A-2 simultaneously with each reference method. You may use ASME PTC-19-10-1981-Part 10 (incorporated by reference in 40 CFR 60.17) as an alternative to EPA Reference Method 3B;

* * * * *

(f) You must use EPA Reference Method 5 of 40 CFR part 60, appendix A-3 or Method 26A or Method 29 of 40 CFR part 60, appendix A-8 to measure particulate matter (PM) emissions. You may use bag leak detection systems, as specified in § 62.14454(e), or PM continuous emissions monitoring systems (CEMS), as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the PM emissions limit;

(g) You must use EPA Reference Method 6 or 6C of 40 CFR part 60, appendix A-4 to measure SO₂ emissions;

(h) You must use EPA Reference Method 7 or 7E of 40 CFR part 60, appendix A-4 to measure NO_x emissions;

(i) You must use EPA Reference Method 9 of 40 CFR part 60, appendix A-4 to measure stack opacity. You may use bag leak detection systems, as specified in § 62.14454(e), or PM CEMS, as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the opacity requirements;

(j) You must use EPA Reference Method 10 or 10B of 40 CFR part 60, appendix A-4 to measure the CO emissions. You may use CO CEMS, as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the CO emissions limit;

(k) You must use EPA Reference Method 23 of 40 CFR part 60, appendix A-7 to measure total dioxin/furan emissions. The minimum sample time must be 4 hours per test run. You may elect to sample dioxins/furans by installing, calibrating, maintaining and operating a continuous automated sampling system, as specified in paragraph (p) of this section, as an alternative to demonstrate compliance with the dioxin/furan emissions limit. If you have selected the toxic equivalency (TEQ) standards for dioxin/furans under § 62.14411, you must use the following procedures to determine compliance:

(1) Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using EPA Reference Method 23 of 40 CFR part 60, appendix A-7;

(2) For each dioxin/furan congener measured in accordance with paragraph (k)(1) of this section, multiply the congener concentration by its corresponding TEQ factor specified in Table 2 of this subpart;

(3) Sum the products calculated in accordance with paragraph (k)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of TEQ.

(l) You must use EPA Reference Method 26 or 26A of 40 CFR part 60, appendix A-8 to measure HCl emissions. You may use HCl CEMS as an alternative to demonstrate compliance with the HCl emissions limit;

(m) You must use EPA Reference Method 29 of 40 CFR part 60, appendix A-8 to measure Pb, Cd and Hg emissions. You may use ASTM D6784-02 (incorporated by reference in 40 CFR 60.17) as an alternative to EPA Reference Method 29 for measuring Hg emissions. You may also use Hg CEMS, as specified in paragraph (o) of this

section, or a continuous automated sampling system for monitoring Hg emissions, as specified in paragraph (q) of this section, as an alternative to demonstrate compliance with the Hg emissions limit. You may use multi-metals CEMS, as specified in paragraph (o) of this section, as an alternative to EPA Reference Method 29 to demonstrate compliance with the Pb, Cd or Hg emissions limits;

(n) You must use EPA Reference Method 22 of 40 CFR part 60, appendix A-7 to determine compliance with the fugitive ash emissions limit under § 60.52c(c). The minimum observation time must be a series of three 1-hour observations.

(o) If you are using a CEMS to demonstrate compliance with any of the emissions limits under §§ 62.14411 or 62.14412, you:

(1) Must determine compliance with the appropriate emissions limit(s) using a 12-hour rolling average, calculated as specified in section 12.4.1 of EPA Reference Method 19 of 40 CFR part 60, appendix A-7. Performance tests using EPA Reference Methods are not required for pollutants monitored with CEMS.

(2) Must operate a CEMS to measure oxygen concentration, adjusting pollutant concentrations to 7 percent oxygen as specified in paragraph (e) of this section.

(3) Must operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60. For those CEMS for which performance specifications have not yet been promulgated (HCl, multi-metals), this option takes effect on the date a final performance specification is published in the **Federal Register** or the date of approval of a site-specific monitoring plan.

(4) May substitute use of a CO CEMS for the CO annual performance test and minimum secondary chamber temperature to demonstrate compliance with the CO emissions limit.

(5) May substitute use of an HCl CEMS for the HCl annual performance test, minimum HCl sorbent flow rate and minimum scrubber liquor pH to demonstrate compliance with the HCl emissions limit.

(6) May substitute use of a PM CEMS for the PM annual performance test and minimum pressure drop across the wet scrubber, if applicable, to demonstrate compliance with the PM emissions limit.

(p) If you are using a continuous automated sampling system to demonstrate compliance with the dioxin/furan emissions limits, you must record the output of the system and analyze the sample according to EPA

Reference Method 23 of 40 CFR part 60, appendix A-7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. If you elect to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Reference Method 23 of 40 CFR part 60, appendix A-7, you must install, calibrate, maintain and operate a continuous automated sampling system and comply with the requirements specified in 40 CFR 60.58b(p) and (q) of subpart Eb.

(q) If you are using a continuous automated sampling system to demonstrate compliance with the Hg emissions limits, you must record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet appropriate performance criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to Hg from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. If you elect to continuously sample Hg emissions instead of sampling and testing using EPA Reference Method 29 of 40 CFR part 60, appendix A-8, or an approved alternative method for measuring Hg emissions, you must install, calibrate, maintain and operate a continuous automated sampling system and comply with the requirements specified in 40 CFR 60.58b(p) and (q) of subpart Eb.

* * * * *

23. Section 62.14453 is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (a)(2); and
- c. By revising paragraph (b).

§ 62.14453 What must I monitor?

(a) If your HMIWI uses combustion control only, or your HMIWI is equipped with a dry scrubber followed by a fabric filter (FF), a wet scrubber, a dry scrubber followed by a FF and wet scrubber, or a selective noncatalytic reduction (SNCR) system:

* * * * *

(2) After the date on which the initial performance test is completed or is required to be completed under § 62.14470, whichever comes first, your HMIWI must not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating

parameters listed in Table 3 and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours), at all times except during performance tests.

(b) If you are using an air pollution control device other than a dry scrubber followed by a FF, a wet scrubber, a dry scrubber followed by a FF and a wet scrubber, or a SNCR system to comply with the emissions limits under § 62.14411, you must petition the EPA Administrator for site-specific operating parameters to be established during the initial performance test and you must continuously monitor those parameters thereafter. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

24. Section 62.14454 is amended as follows:

- a. By revising paragraph (a);
- b. By revising paragraph (b);
- c. By revising paragraph (c); and
- d. By adding paragraph (e).

§ 62.14454 How must I monitor the required parameters?

(a) Except as provided in § 62.14452(o) through (q), you must install, calibrate (to manufacturers' specifications), maintain and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 3 of this subpart (unless CEMS are used as a substitute for certain parameters as specified) such that these devices (or methods) measure and record values for the operating parameters at the frequencies indicated in Table 3 of this subpart at all times. For charge rate, the device must measure and record the date, time and weight of each charge fed to the HMIWI. This must be done automatically, meaning that the only intervention from an operator during the process would be to load the charge onto the weighing device. For batch HMIWI, the maximum charge rate is measured on a daily basis (the amount of waste charged to the unit each day).

(b) For all HMIWI, you must install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack, including the date, time and duration of such use.

(c) For all HMIWI, if you are using controls other than a dry scrubber followed by a FF, a wet scrubber, a dry

scrubber followed by a FF and a wet scrubber, or a SNCR system to comply with the emissions limits under § 62.14411, you must install, calibrate (to manufacturers' specifications), maintain and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to § 62.14453(b).

* * * * *

(e) If you use an air pollution control device that includes a FF and are not demonstrating compliance using PM CEMS, you must determine compliance with the PM emissions limit using a bag leak detection system and meet the requirements in paragraphs (e)(1) through (12) of this section for each bag leak detection system.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (EPA-454/R-98-015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D-243-02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emissions Measurement Center Continuous Emissions Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

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

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

(6) For positive pressure FF systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air FF, the bag leak detector must be installed downstream of the FF.

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

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points or alarm delay time may not be adjusted. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete FF inspection that demonstrates that the FF is in good operating condition. Each adjustment must be recorded.

(11) Record the results of each inspection, calibration and validation check.

(12) Initiate corrective action within 1 hour of a bag leak detection system alarm; operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. If inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

25. Section 62.14455 is revised to read as follows:

§ 62.14455 What if my HMIWI goes outside of a parameter limit?

(a) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter(s). Operating parameter limits do not apply during performance tests.

(b) Except as provided in paragraph (g) or (h) of this section, if your HMIWI uses combustion control only:

And your HMIWI . . .	Then you are in violation of . . .
Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The PM, CO and dioxin/furan emissions limits.

(c) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a FF:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum FF inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum HCl sorbent flow rate (3-hour rolling average) simultaneously.	The HCl emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emissions limit.
(5) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.
(6) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(7) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the PM emissions limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The PM emissions limit. ^a
(8) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the opacity limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The opacity limit. ^a
(9) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(10) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(11) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Pb emissions limit.
(12) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Cd emissions limit.
(13) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Hg emissions limit.
(14) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(15) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

^a If inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(d) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a wet scrubber:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum pressure drop across the wet scrubber (3-hour rolling average) or below the minimum horsepower or amperage to the system (3-hour rolling average) simultaneously.	The PM emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum scrubber liquor flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emissions limit.
(5) Operates above the maximum flue gas temperature (3-hour rolling average) and above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) simultaneously.	The Hg emissions limit.
(6) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.

And your HMIWI . . .	Then you are in violation of . . .
(7) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(8) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(9) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(10) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Pb emissions limit.
(11) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Cd emissions limit.
(12) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Hg emissions limit.
(13) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(14) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

(e) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a dry scrubber followed by a FF and a wet scrubber:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emissions limit.
(5) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.
(6) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(7) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the PM emissions limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The PM emissions limit. ^a
(8) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the opacity limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The opacity limit. ^a
(9) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(10) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(11) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Pb emissions limit.
(12) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Cd emissions limit.
(13) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o) ..	The Hg emissions limit.
(14) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(15) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

^aIf inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(f) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a SNCR system:

And your HMIWI . . .	Then you are in violation of . . .
Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum reagent flow rate (3-hour rolling average) simultaneously.	The NO _x emissions limit.

(g) You may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that your HMIWI is not in violation of the applicable emissions limit(s). You must conduct repeat performance tests pursuant to this paragraph using the identical operating parameters that indicated a violation under paragraph (b), (c), (d), (e), or (f) of this section.

(h) If you are using a CEMS to demonstrate compliance with any of the emissions limits in table 1 of this subpart or § 62.14412, and your CEMS indicates compliance with an emissions limit during periods when operating parameters indicate a violation of an emissions limit under paragraphs (b), (c), (d), (e) or (f) of this section, then you are considered to be in compliance with the emissions limit. You need not conduct a repeat performance test to demonstrate compliance.

26. Section 62.14460 is amended as follows:

- a. By redesignating paragraphs (b)(7) through (b)(15) as paragraphs (b)(8) through (b)(16);
- b. By revising newly designated paragraph (b)(16);
- c. By adding new paragraph (b)(7);
- d. By adding paragraphs (b)(17) through (b)(19); and
- e. By revising paragraphs (c), (e), and (f).

§ 62.14460 What records must I maintain?

* * * * *

(b) * * *

(7) Amount and type of NO_x reagent used during each hour of operation, as applicable;

* * * * *

(16) All operating parameter data collected, if you are complying by monitoring site-specific operating parameters under § 62.14453(b).

(17) Concentrations of CO, PM, HCl, Pb, Cd, Hg and dioxin/furan, as applicable, as determined by the CEMS or continuous automated sampling system, as applicable.

(18) Records of the annual air pollution control device inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(19) Records of each bag leak detection system alarm, the time of the alarm, the time corrective action was initiated and completed and a brief description of the cause of the alarm and the corrective action taken, as applicable.

(c) Identification of calendar days for which data on emissions rates or operating parameters specified under paragraph (b)(1) through (17) of this section were not obtained, with an identification of the emissions rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken;

* * * * *

(e) Identification of calendar days for which data on emissions rates or operating parameters specified under

paragraphs (b)(1) through (17) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances and a description of corrective actions taken.

(f) The results of the initial, annual and any subsequent performance tests conducted to determine compliance with the emissions limits and/or to establish or re-establish operating parameters, as applicable, including sample calculations, of how the operating parameters were established or re-established, if applicable.

* * * * *

27. Section 62.14463 is amended as follows:

- a. By redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (a)(3);
- b. By revising newly designated paragraphs (a)(1) and (a)(2);
- c. By adding paragraph (a)(4);
- d. By redesignating introductory text as paragraph (a) introductory text;
- e. By redesignating paragraphs (d) through (k) as paragraphs (a)(5) through (a)(12);
- f. By revising newly designated paragraphs (a)(5), (a)(11), and (a)(12);
- g. By adding paragraphs (a)(13) through (a)(15); and
- h. By adding new paragraph (b).

§ 62.14463 What reporting requirements must I satisfy?

(a) * * *

(1) The initial performance test data as recorded under § 62.14451(a);

(2) The values for the site-specific operating parameters established pursuant to § 62.14453, as applicable, and a description, including sample calculations, of how the operating parameters were established during the initial performance test;

* * * * *

(4) If you use a bag leak detection system, analysis and supporting documentation demonstrating conformance with the EPA guidance and specifications for bag leak detection systems in § 62.14454(e);

(5) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to § 62.14453, as applicable;

* * * * *

(11) Any use of the bypass stack, duration of such use, reason for malfunction and corrective action taken;

(12) Records of the annual equipment inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the time frame established by the EPA

Administrator (or delegated enforcement authority);

(13) Records of the annual air pollution control device inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator (or delegated enforcement authority);

(14) Concentrations of CO, PM, HCl, Pb, Cd, Hg and dioxin/furan, as applicable, as determined by the CEMS or continuous automated sampling system, as applicable; and

(15) Petition for site-specific operating parameters under § 62.14453(b).

(b) If you choose to submit an electronic copy of stack test reports to the EPA's WebFIRE database, as of December 31, 2011, you must enter the test data into the EPA's database using the Electronic Reporting Tool (ERT) located at http://www.epa.gov/ttn/chief/ert/ert_tool.html.

28. Section 62.14464 is amended as follows:

- a. By revising paragraph (a);
- b. By revising paragraph (b); and
- c. By adding paragraph (d).

§ 62.14464 When must I submit reports?

(a) You must submit the information specified in §§ 62.14463(a)(1) through (4) no later than 60 days following the initial performance test.

(b) You must submit an annual report to the EPA Administrator (or delegated enforcement authority) no more than 1 year following the submission of the information in paragraph (a) of this section, and you must submit subsequent reports no more than 1 year following the previous report (once the unit is subject to permitting requirements under Title V of the CAA, you must submit these reports semiannually). The annual report must include the information specified in §§ 62.14463(a)(5) through (14), as applicable.

* * * * *

(d) You must submit your petition for site-specific operating parameters specified in § 62.14463(a)(15) prior to your initial performance test. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

29. Section 62.14470 is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraphs (a)(1) through (a)(3);
- c. By revising paragraph (b) introductory text;
- d. By revising paragraph (b)(1);
- e. By revising paragraphs (b)(2)(i) through (b)(2)(v); and

f. By revising paragraph (b)(3).

§ 62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?

* * * * *

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by [date 1 year after publication of final rule], then you must complete the requirements of paragraphs (a)(1) through (a)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) You must achieve final compliance by [date 1 year after publication of final rule]. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought online, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you are required to achieve final compliance under paragraph (a)(2) of this section.

* * * * *

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after [date 1 year after publication of final rule], but before October 6, 2014, then you must complete the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) * * *

(i) You must submit a final control plan by October 6, 2012. Your final control plan must, at a minimum, include a description of the air pollution control device(s) or process changes that will be employed for each unit to comply with the emissions limits and other requirements of this subpart.

(ii) You must award contract(s) for on-site construction, on-site installation of emissions control equipment or incorporation of process changes by May 6, 2013. You must submit a signed copy of the contract(s) awarded.

(iii) You must begin on-site construction, begin on-site installation of emissions control equipment or begin

process changes needed to meet the emissions limits as outlined in the final control plan by January 6, 2014.

(iv) You must complete on-site construction, installation of emissions control equipment or process changes by August 6, 2014.

(v) You must achieve final compliance by October 6, 2014. This includes incorporating all process changes and/or completing retrofit construction as described in the final control plan, connecting the air pollution control equipment or process changes such that the HMIWI is brought online and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you are required to achieve final compliance under paragraph (b)(2)(v) of this section.

* * * * *

30. Section 62.14471 is amended as follows:

- a. By revising paragraph (a);
- b. By revising paragraph (b) introductory text;
- c. By revising paragraphs (b)(1) and (b)(1)(i); and
- d. By revising paragraphs (b)(2) and (b)(3).

§ 62.14471 When must I comply with this subpart if I plan to shutdown?

* * * * *

(a) If you plan to shutdown by [date 1 year after publication of final rule], rather than come into compliance with the requirements of this subpart, then you must shutdown by [date 1 year after publication of final rule], to avoid coverage under any of the requirements of this subpart.

(b) If you plan to shutdown rather than come into compliance with the requirements of this subpart but are unable to shutdown by [date 1 year after publication of final rule], then you may petition the EPA for an extension by following the procedures outlined in paragraphs (b)(1) through (b)(3) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by [date 90 days after publication of final rule]. Your request must include:

- (i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shutdown while [date 1 year after publication of final rule], does not provide sufficient time for shutdown. Your documentation

must include an evaluation of the option to transport your waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

* * * * *

(2) You must shutdown no later than October 6, 2014.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

31. Section 62.14472 is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (b) introductory text;
- c. By revising paragraphs (b)(1) and (b)(4);
- d. By revising paragraph (c) introductory text; and
- e. By revising paragraph (c)(1).

§ 62.14472 When must I comply with this subpart if I plan to shutdown and later restart?

* * * * *

(a) If you plan to shutdown and restart prior to October 6, 2014, then you must:

(1) Meet the compliance schedule outlined in § 63.14470(a) if you restart prior to [date 1 year after publication of final rule]; or

(2) Meet the compliance schedule outlined in § 62.14470(b) if you restart after [date 1 year after publication of final rule]. Any missed increments of progress need to be completed prior to or upon the date of restart.

(b) If you plan to shutdown by [date 1 year after publication of final rule], and restart after October 6, 2014, then you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must shutdown by [date 1 year after publication of final rule].

* * * * *

(4) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you restart.

* * * * *

(c) If you plan to shutdown after [date 1 year after publication of final rule], and restart after October 6, 2014, then you must complete the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) You must petition the EPA for an extension by following the procedures outlined in § 63.14471(b)(1) through (b)(3).

* * * * *

32. Section 62.14490 is amended as follows:

- a. By adding a definition for “Bag leak detection system”;
- b. By adding a definition for “Commercial HMIWI”;
- c. By revising the definition for “Maximum design waste burning capacity”;
- d. By adding a definition for “Minimum reagent flow rate”;
- e. By revising the definition for “Minimum secondary chamber temperature”; and
- f. By revising the introductory text to the definition for “Modification” or “Modified HMIWI.”

§ 62.14490 Definitions.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a FF in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance or other effects to monitor relative PM loadings.

Commercial HMIWI means a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.

Maximum design waste burning capacity means:

(1) For intermittent and continuous HMIWI,
 $C = P_v \times 15,000/8,500$ (Eq. 2)

Where:
 C = HMIWI capacity, lb/hr
 P_v = primary chamber volume, ft³
 15,000 = primary chamber heat release rate factor, Btu/ft³/hr
 8,500 = standard waste heating value, Btu/lb;

(2) For batch HMIWI,
 $C = P_v \times 4.5/8$ (Eq. 3)

Where:
 C = HMIWI capacity, lb/hr
 P_v = primary chamber volume, ft³
 4.5 = waste density, lb/ft³
 8 = typical hours of operation of a batch HMIWI, hours.

Minimum reagent flow rate means 90 percent of the highest 3-hour average reagent flow rate at the inlet to the SNCR technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the NO_x emissions limit.

Minimum secondary chamber temperature means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM,

CO, dioxin/furan or NO_x emissions limits.

Modification or Modified HMIWI means any change to a HMIWI unit after April 6, 2010, such that:

33. Section 62.14495 is amended as follows:

- a. By revising paragraph (b);
- b. By adding paragraph (c);
- c. By adding paragraph (d); and
- d. By adding paragraph (e).

§ 62.14495 What authorities will be retained by the EPA Administrator?

(b) Approval of alternative methods of demonstrating compliance under 40 CFR 60.8, including:

- (1) Approval of CEMS for PM, HCl, multi-metals and Hg where used for purposes of demonstrating compliance,
- (2) Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance, and
- (3) Approval of major alternatives to test methods;
- (c) Approval of major alternatives to monitoring;
- (d) Waiver of recordkeeping requirements; and
- (e) Performance test and data reduction waivers under 40 CFR 60.8(b).

33. Table 1 to Subpart HHH is revised to read as follows:

TABLE 1 TO SUBPART HHH OF PART 62—EMISSIONS LIMITS FOR SMALL RURAL, SMALL, MEDIUM AND LARGE HMIWI

For the air pollutant	You must meet this emissions limit				With these units (7 percent oxygen, dry basis)	Using this averaging time ^a	And determining compliance using this method ^b
	HMIWI size						
	Small rural	Small	Medium	Large			
Particulate matter	87 (0.038) ..	66 (0.029) ..	46 (0.020) ^c 34 (0.015) ^d	25 (0.011) ..	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A-3 of part 60, or EPA Reference Method M 26A or 29 of appendix A-8 of part 60.
Carbon monoxide	20	20	5.5	11	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A-4 of part 60.
Dioxins/furans	240 (100) or 5.1 (2.2)	16 (7.0) or 0.013 (0.0057).	0.85 (0.37) or 0.020 (0.0087).	9.3 (4.1) or 0.054 (0.024).	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A-7 of part 60.
Hydrogen chloride	810	44 ^c , 15 ^d	7.7	6.6	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A-8 of part 60.
Sulfur dioxide	55	4.2	4.2	9.0	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A-4 of part 60.
Nitrogen oxides	130	190	190	140	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A-4 of part 60.

TABLE 1 TO SUBPART HHH OF PART 62—EMISSIONS LIMITS FOR SMALL RURAL, SMALL, MEDIUM AND LARGE HMIWI—Continued

For the air pollutant	You must meet this emissions limit				With these units (7 percent oxygen, dry basis)	Using this averaging time ^a	And determining compliance using this method ^b
	HMIWI size						
	Small rural	Small	Medium	Large			
Lead	0.50 (0.22)	0.31 (0.14)	0.018 (0.0079).	0.036 (0.016).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A-8 of part 60.
Cadmium	0.11 (0.048)	0.017 (0.0074).	0.013 (0.0057).	0.0092 (0.0040).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A-8 of part 60.
Mercury	0.051 (0.0022).	0.014 (0.0061).	0.025 (0.011).	0.018 (0.0079).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A-8 of part 60.

^a Except as allowed under §§ 62.14452(o)–(q) for HMIWI equipped with CEMS or continuous automated sampling systems.
^b Does not include CEMS, continuous automated sampling systems, and approved alternative non-EPA test methods allowed under § 62.14452(d) and (m).
^c Limits for those HMIWI for which construction or modification was commenced according to § 62.14400(a)(2)(i).
^d Limits for those HMIWI for which construction or modification was commenced according to § 62.14400(a)(2)(ii).

34. Table 2 to Subpart HHH is revised to read as follows:

TABLE 2 TO SUBPART HHH OF PART 62—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
Octachlorinated dibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.03
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.0003

35. Table 3 to Subpart HHH is revised to read as follows:

TABLE 3 TO SUBPART HHH OF PART 62—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

Operating parameters to be monitored	Minimum frequency		HMIWI				
	Data measurement	Data recording	HMIWI with combustion control only	HMIWI with dry scrubber followed by FF	HMIWI with wet scrubber	HMIWI with dry scrubber followed by FF and wet scrubber	HMIWI with SNCR system
Maximum operating parameters:							
Maximum charge rate	Once per charge	Once per charge	✓	✓	✓	✓	✓
Maximum FF inlet temperature	Continuous	Once per minute	.....	✓	.....	✓	.....
Maximum flue gas temperature	Continuous	Once per minute	.....	.....	✓	✓	.....
Minimum operating parameters:							

TABLE 3 TO SUBPART HHH OF PART 62—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES—Continued

Operating parameters to be monitored	Minimum frequency		HMIWI				
	Data measurement	Data recording	HMIWI with combustion control only	HMIWI with dry scrubber followed by FF	HMIWI with wet scrubber	HMIWI with dry scrubber followed by FF and wet scrubber	HMIWI with SNCR system
Minimum secondary chamber temperature.	Continuous	Once per minute	✓	✓	✓	✓	✓
Minimum dioxin/furan sorbent flow rate.	Hourly	Once per hour ...	.....	✓	.....	✓	.....
Minimum HCl sorbent flow rate	Hourly	Once per hour ...	.....	✓	.....	✓	.....
Minimum mercury (Hg) sorbent flow rate.	Hourly	Once per hour ...	.....	✓	.....	✓	.....
Minimum pressure drop across the wet scrubber or minimum horsepower or amperage to wet scrubber.	Continuous	Once per minute	.....	.....	✓	✓	.....
Minimum scrubber liquor flow rate.	Continuous	Once per minute	.....	.....	✓	✓	.....
Minimum scrubber liquor pH	Continuous	Once per minute	✓	✓
Minimum reagent flow rate	Hourly	Once per hour	✓

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