

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[EPA-HQ-OAR-2003-0156; FRL-7547-03-OAR]

RIN 2060-AU60

**Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Revisions to Definitions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This action supplements the proposed amendments to the new source performance standards (NSPS) and emission guidelines (EG) for the Other Solid Waste Incineration (OSWI) units source category published in the *Federal Register* on August 31, 2020. In that action, the Environmental Protection Agency (EPA) proposed changes to OSWI subcategories and related maximum achievable control technology (MACT) floor redeterminations, applicability-related changes and testing and monitoring flexibilities for certain small OSWI units, among other proposed changes. Based on the EPA's analysis of comments received after proposal and discussions with the state of Alaska and tribes, we are proposing to add a definition for a rudimentary combustion device and are asking for specific comment on this definition. We are also proposing to postpone developing standards for such devices.

**DATES:** Comments must be received on or before September 9, 2024.

**Public hearing.** If anyone contacts us requesting a public hearing on or before July 30, 2024, we will hold a virtual hearing. Please refer to the **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2003-0156, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2003-0156 in the subject line of the message.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2003-

0156, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday-Friday (except Federal holidays).

**Instructions:** All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Ms. Noel Cope, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2128 and email address: [cope.noel@epa.gov](mailto:cope.noel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Participation in virtual public hearing.** To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov). If requested, the hearing will be held via virtual platform on August 9, 2024. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details on the virtual public hearing at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance> or contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov). The last day to pre-register to speak at the hearing will be August 6, 2024. Prior to the hearing, the EPA will post a general agenda for the hearing that will

list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. However, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to [cope.noel@epa.gov](mailto:cope.noel@epa.gov). The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing team and describe your needs by August 1, 2024. The EPA may not be able to arrange accommodations without advance notice.

**Docket.** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2003-0156. All documents in the docket are listed on the <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in <https://www.regulations.gov/>.

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0156. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI, PBI, or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, PBI, or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, 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 <https://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 digital storage media 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 not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

*Submitting CBI.* Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or

email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in Instructions above. If you include other information whose disclosure is restricted by statute in your comment, clearly mark your submission as including that information. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA’s electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Information whose disclosure is otherwise restricted by statute will be processed by the EPA Docket Center in accordance with the applicable statute. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0156. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

*Preamble acronyms and abbreviations.* Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act  
 CBI Confidential Business Information  
 CFR Code of Federal Regulations  
 CISWI commercial and industrial solid waste incineration  
 EG emission guidelines  
 EJ environmental justice  
 EPA Environmental Protection Agency  
 FR Federal Register  
 IWI institutional waste incineration  
 MACT maximum achievable control technology  
 MSW municipal solid waste

NACAA National Association of Clean Air Agencies  
 NSPS new source performance standards  
 NTAA National Tribal Air Association  
 NTTAA National Technology Transfer and Advancement Act  
 OMB Office of Management and Budget  
 OSWI other solid waste incineration  
 PRA Paperwork Reduction Act  
 RFA Regulatory Flexibility Act  
 SBEAP Small Business Environmental Assistance Program  
 SSM startup, shutdown, and malfunction  
 TPD tons per day  
 UMRA Unfunded Mandates Reform Act  
 VSMWC very small municipal waste combustion

*Organization of this document.* The information in this preamble is organized as follows:

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  - I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially affected by this supplemental proposal are those that operate rudimentary combustion devices as described in section II.C. of this preamble and

currently subject to the OSWI EG and NSPS. OSWI units are not commercial and industrial solid waste incineration units (CISWI), hazardous waste combustion units, hospital/medical/infectious waste incinerators, sewage sludge incinerators, or other

incinerators regulated under other provisions of section 129 of the Clean Air Act (CAA). The NSPS and EG for OSWI, hereinafter referred to as “the OSWI standards,” affect the categories of sources identified in table 1 of this preamble:

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NAICS code <sup>1</sup>	Examples of potentially regulated entities
Any state, local, or tribal government using a very small municipal waste combustion (VSMWC) unit.	562213, 92411	Solid waste combustion units burning municipal solid waste (MSW).
Any correctional institutions using an institutional waste incineration (IWI) unit.	922, 7213	Correctional institutions.
Any nursing or residential care facilities using an OSWI unit	623	Any nursing care, residential intellectual and developmental disability, residential mental health and substance abuse, or assisted living facilities.
Any Federal government agency using an OSWI unit .....	928, 7121	Department of Defense (labs, military bases, munition facilities) and National Parks.
Any educational institution using an OSWI unit .....	6111, 6112, 6113	Primary and secondary schools, universities, colleges, and community colleges.
Any church or convent using an OSWI unit .....	8131	Churches and convents.
Any civic or religious organization using an OSWI unit .....	8134	Civic associations and fraternal associations.

<sup>1</sup> 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 regulated by this supplemental proposal. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 60.2885, 60.2981, and 60.2991. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your delegated authority, or your EPA Regional representative listed in 40 CFR 60.4 (general provisions).

*B. Where can I get a copy of this document and other related information?*

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 60, subparts EEEE and FFFF proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2003–0156). Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

**II. Background**

*A. What is the regulatory history for this action?*

Section 129 of the CAA requires the EPA to develop and adopt NSPS and EG for solid waste incineration units, in

accordance with CAA sections 129 and 111. Section 129(a) of the CAA requires the EPA to establish NSPS for new sources, and CAA section 129(b) requires the EPA to establish procedures for states to submit plans for implementing EG for existing sources (see CAA sections 111(b) and (d)). The EPA proposed NSPS and EG for OSWI units on December 9, 2004, and promulgated them on December 16, 2005 (70 FR 74870), at 40 CFR part 60, subparts EEEE and FFFF.

Under the 2005 regulations, the term “OSWI unit” means either a very small municipal waste combustion (“VSMWC”) unit or an institutional waste incinerator (“IWI”) unit. A VSMWC unit is any municipal waste combustion unit that has the capacity to combust less than 35 tons per day (TPD) of municipal solid waste (MSW) or refuse-derived fuel. An IWI unit is any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility (e.g., university, correctional institutions) that generated the waste. As required by section 129 of the CAA, the OSWI NSPS and EG rules set emission standards for nine pollutants: cadmium, carbon monoxide, dioxins/furans, hydrochloric acid, lead, mercury, oxides of nitrogen, particulate matter, and sulfur dioxide. They also establish opacity standards.

CAA section 129(a)(5) requires the EPA to review and, if appropriate, revise the requirements for solid waste incineration units. In 2018, the U.S. District Court for the District of

Columbia ordered the EPA to publish a proposed rulemaking by August 31, 2020, and promulgate a final rule by May 31, 2021, because the EPA had not reviewed and revised the 2005 OSWI standards as required by law. *Sierra Club v. Wheeler*, 330 F. Supp. 3d 407, 413 (D.D.C. 2018).<sup>1</sup> The EPA published a proposed rulemaking on August 31, 2020. The EPA proposed testing and monitoring flexibilities to help rudimentary combustion devices demonstrate compliance with the rule, but additional information is needed to address the issues related to these devices. This supplemental notice of proposed rulemaking proposes additional amendments to address issues related to certain rudimentary combustion devices as described in sections II.C. and III. of this preamble.

*B. What changes did we propose for the OSWI source category in our August 31, 2020, proposal?*

On August 31, 2020, the EPA published a proposed rule in the **Federal Register** for the OSWI NSPS and EG rules that addressed the requisite CAA section 129(a)(5) periodic review (85 FR 54178). We proposed that no new developments in practices, processes, or control technologies exist for any OSWI units and that it was not necessary to revise the OSWI standards under CAA section 129(a)(5). In accordance with the EPA’s general authority under CAA section 129(a), we

<sup>1</sup> The deadline was extended to June 30, 2025. *Sierra Club v. Wheeler*, Civ. No. 16–2461, D. DC, Minute Order filed 11/7/2023.

proposed: (1) MACT floors for newly proposed small OSWI unit subcategories; (2) changes to applicability provisions for the EG and NSPS including removing the term “collected from” as used in the “municipal solid waste” definition; (3) revised regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); (4) testing and monitoring flexibilities so that units with rudimentary designs can demonstrate compliance with the rule; (5) provisions for electronic reporting of certain notices and reports; (6) revisions to recordkeeping and reporting provisions consistent with the revised testing and monitoring; (7) changes to title V permitting requirements; and (8) other technical edits, clarifications, and revisions intended to improve the understanding of the rules and improve consistency with other CAA section 129 rules.

### *C. What action is the Agency taking in this action?*

Based on comments received on the proposed rulemaking and discussions with state and tribal agencies in Alaska regarding rudimentary combustion devices, we are proposing to add a definition for a rudimentary combustion device to address the unique issues associated with them. Comments received on the proposed rulemaking are discussed in section III. of this preamble. The EPA is proposing to define a rudimentary combustion device as a combustion device with a capacity less than or equal to 10 TPD that is designed and constructed without one or more of the following elements: (1) a stack, chimney, or pipe designed for the purpose of managing air flow and discharging flue gases from combustion; (2) mechanical draft to provide air flow; (3) burners designed to manage the combustion process; (4) an ancillary power supply to operate; or (5) supplemental fuel burners or nozzles. We are also proposing to postpone developing standards for these devices.

### *D. What is the Agency’s authority for taking this action?*

Section 129 of the CAA requires the EPA to establish NSPS and EG pursuant to sections 111 and 129 of the CAA for new and existing solid waste incineration units, including “other categories of solid waste incineration units.” This action supplements our 2020 proposal<sup>2</sup> to amend the OSWI standards under such authority as discussed in greater detail in section III. of this preamble. In addition, CAA

section 129(a)(5) specifically requires the EPA to review and revise the standards and the requirements for solid waste incineration units, including OSWI units, every 5 years.

The EPA has discretion to distinguish among classes, types, and sizes of incinerator units within a category while setting standards. CAA section 129(a)(2) provides that standards “applicable to solid waste incineration units promulgated under . . . [section 111] and this section shall reflect the maximum degree of reduction in emissions of . . . [listed air pollutants] that the Administrator, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing units in each category.”

### *E. What outreach and engagement did we conduct?*

In developing this supplemental proposal, the EPA conducted outreach activities with communities with environmental justice (EJ) concerns, states, and tribes. In addition to public comments received on the 2020 proposal, we obtained feedback from interested parties and evaluated and weighed the information received as we developed this supplemental proposal. In June 2020, the EPA conducted four pre-proposal informational calls for Federally Recognized Tribes, including an overview presentation during the June 25, 2020, National Tribal Air Association (NTAA) call. On August 31, 2020, the EPA sent an email notification to stakeholders announcing that this action had been published with a 45-day comment period with an opportunity to request a public hearing. In September 2020, the EPA held several consultation meetings with tribes, including the Northway Village Tribe, Qagan Tayagungin Tribe, Loudon Tribe, and the Mescalero Apache Tribe. The EPA also conducted four informational calls on the OSWI rule in September 2020, including an overview at the Small Business Environmental Assistance Program (SBEAP) Annual Training, the Alaska Air Workgroup call, the Tribal Environmental Leaders Summit call. The EPA also provided an update at the NTAA call. Although a public hearing was not requested, the EPA continued to seek out additional opportunities for communities with EJ concerns and other key interested parties to be informed about potential requirements of this action. Outreach included a presentation to the SBEAP on June 5, 2023; regular meetings with the state of Alaska to discuss units that

could potentially be subject to the rule; and a presentation during the National Association of Clean Air Agencies (NACAA) Permitting and New Source Review Committee meeting in October 2020.

### **III. Proposed Revisions**

We received numerous comments on the August 31, 2020, proposal and held discussions with state and tribal agencies in Alaska regarding rural rudimentary combustion devices and waste management concerns. Following consideration of the information and comments received, we are proposing to add a definition for a rudimentary combustion device to the OSWI rules to address the issues raised by commenters regarding these units. The issues raised are summarized in this section.

Several commenters stated that burning MSW in simple burn boxes is a crucial aspect of waste management in rural Alaska. The commenters noted that according to the state of Alaska Solid Waste Program, 147 rural Alaskan landfills practice some type of waste burning. Of these, 118 depend on small burn units to manage their landfills. The commenters added that this inexpensive and effective waste management method helps isolated communities reduce physical waste volume, maintain safety, and extend the useful life of their landfills. The commenters stated that removing the Alaska class II/III municipal solid waste landfill exemption could result in an unfunded mandate and that it would be nearly impossible for most rural Alaskan communities to comply with the proposed standard. Commenters noted the costs for testing, monitoring, recordkeeping and reporting, and controls for these units would be unaffordable for rural Alaskan communities and would result in other methods of disposal that would be less environmentally friendly. Commenters added:

- Very little funding is available for solid waste activities. Installing controls, increased operation and maintenance costs, and required monitoring would be financially impossible for rural Alaskan communities and their partner organizations. At a minimum, a new unit capable of meeting the proposed standards would cost several hundred thousand dollars. According to quotes from Anchorage-based stack testers, annual testing would cost \$80,000-\$100,000 per community.

- Many communities are likely to abandon their burn units and return to poorer burning practices, such as open burning of waste on the ground or barrel

<sup>2</sup> 85 FR 54178 (Aug. 31, 2020).

burning, which would result in poorer air quality and inhalation exposure to more toxics for the affected areas, and a significant increase in wildfires caused by sparks or flames escaping the area. On the ground burning is also a fire issue for which the majority of villages are ill-prepared due to lack of firefighting equipment. The resident exposures entailed in extinguishing dump fires are substantial, involving a significant portion of the population in fighting the fire with inadequate or no personal protective equipment. If the number of villages with regular ground burning nearly doubled as commenters projected, concomitant doubled risk for dump-origin wildland fires would be expected.

- Other communities may return to loose filling waste which would significantly decrease landfill life and increase adverse health and safety impacts of the landfill. This would cause a significant setback in rural waste management for Alaska. Rural Alaskan communities off the road system do not have the option to send their waste to larger regional landfills. Unburned waste attracts wildlife to rural Alaskan landfills. Animals such as bears impose an immediate health and safety risk and the constant prevalence of rabies in the Western Alaskan fox make it exceedingly important that waste disposal practices do not attract these possible vectors of human disease.

- Waste burning is not an alternative to landfill disposal in rural Alaska. It is an essential aspect of landfill operations because space for landfill activities is extremely limited and burning waste reduces the physical volume of waste. Burning waste also aids in turning MSW into inert substances that are safe to dispose of locally. Heavy equipment required for traditional landfilling activities is expensive to purchase and difficult to maintain and use in rural Alaskan communities due to economic, environmental, and geological constraints. Burn units allow landfills to use smaller equipment, reducing operating and maintenance costs. Material required to provide adequate cover is not available in vast areas of the state. The spongy tundra that covers most of Western Alaska cannot be used for cover. Likewise, wetland environments, including tundra, make it exceedingly difficult to bury large quantities of non-inert waste without contaminating surface and groundwater sources.

- If no to little alternate burning is carried out by these communities the dumpsites are more likely to get out of control, with residents more likely to experience waste contact exposures

when self-hauling or, as site access and aesthetics incentivize greater storage of waste in town and around homes, when simply conducting daily life in town.

Commenters contended that the proposed stack test methods for Alaska burn boxes would be inapplicable or impractical because:

- A majority of units do not have a stack,
- Those with stacks are not capable of properly being tested as is and would need to be modified resulting in a substantial cost,
- The proposed OSWI stack testing requirements would overwhelm existing testing infrastructure and capacity in Alaska. If all the villages that use burn boxes now were to continue operating with the exclusion removed (either by retrofit or new OSWI purchase), 120 villages would require 20 total sets of testing and analysis equipment, and 35 to 40 personnel (*i.e.*, 3–4 person teams could each test only twice per month). This demand would well exceed the current capacity of qualified Alaska companies. Testing equipment must be freighted from far off locations resulting in substantial cost. Field testing logistics would result in substantial cost such as travel costs, and testing could only be performed with favorable wind conditions, resulting in delaying and extending testing.

- The proposed test methods and sample numbers were not designed for this type of unit. The method assumes that the unit is operating for a minimum of 1 hour. However, there is no ignition and temperature control. Once the unit is lit, the batch burns. Regardless of the heterogeneity of the MSW, the average emissions and temperature vary substantially from load to load depending on how it is lit and how the load is placed. Because the test methods are inapplicable, a separate testing procedure would have to be developed by the testing company and approved by the EPA—for each burnbox type and field condition.

- Operating a retrofitted or newly purchased incinerator capable of passing a stack test would add additional costs each year thereafter, regardless of whether it is a testing year.

A commenter added that the definition of OSWI is inapplicable to burnboxes, which are dissimilar in multiple ways, as follows:

- Burnboxes are absent a waste feed system, flue gas system, heat recovery and bottom ash system.
- Burnboxes contain only a single chamber. There is no flue gas “system.” Burnboxes operate with natural venting.
- Burnboxes lack a bottom ash system or equipment that transfers the ash. A

shovel is used for ash or it is tipped out and deposited there. There is no final disposal.

Following consideration of the comments received and discussions with state and tribal agencies, we are proposing to add a definition for rudimentary combustion device. The state of Alaska and communications with tribal representatives have provided us with additional information on the types of units used in rural communities spread across Alaska, many of which are located within Native American villages, and have small populations that have extremely limited financial resources. This information is available in the docket. We agree with commenters that many of these communities have limited road access to haul waste to a larger community for burning or landfilling. As a result, local waste disposal is the only option available. The rudimentary combustion devices used in these villages are often primitive in nature; often not commercially constructed or engineered; and have capacities less than 10 TPD. Because villages are likely to abandon their burn units and return to poorer burning practices, such as open burning of waste on the ground, if required to comply with the August 31, 2020, OSWI proposed rule, the EPA has determined that the affected areas would experience poorer air quality and a significant increase in risk of wildfires caused by sparks or flames escaping burning areas. We also agree with the commenters that some communities might return to loose-filling waste, which would significantly decrease landfill life and increase adverse health and safety impacts of the landfill. We agree these results would cause a significant setback in rural waste management for Alaska. We consider this a negative outcome of regulating these rudimentary combustion devices under the OSWI rules and are taking into consideration their unique situation for the final rulemaking.

We reviewed incinerator information submitted in comment letters and in communications with tribal leaders and the state of Alaska to determine the characteristics of these units. As a result, we are proposing to define “rudimentary combustion device” as a combustion device with capacity less than or equal to 10 TPD that is designed and constructed without one or more of the following elements: (1) a stack, chimney, or pipe designed for the purpose of managing air flow and discharging flue gases from

combustion;<sup>3</sup> (2) mechanical draft to provide airflow; (3) burners designed to manage the combustion process; (4) an ancillary power supply to operate; or (5) supplemental fuel burners or nozzles. These elements may also apply to small incineration units in the contiguous United States, particularly in rural areas. Because rudimentary combustion devices lack one or more of these elements, the emissions information, limits, and controls developed for the proposed OSWI rule would not be appropriate for them. Consequently, we are also proposing to postpone regulating rudimentary combustion devices. The EPA will undertake a separate rulemaking specific to these units.

#### IV. Request for Comments

We are not opening comment on aspects of the 2020 proposal (85 FR 54178) that have not changed and are not addressed in this supplemental proposal. Those comments will be addressed in the EPA's Response to Comments document and in the final rule preamble for the OSWI source category.

We do however solicit comments on this supplemental proposed action. In addition to general comments on this supplemental proposed action, the EPA is interested in additional data to refine the definition of "rudimentary combustion device," including additional parameters that should be considered, capacity (tpd) and location of specific units, the number of devices per rural community, the five design elements, and any emissions test information available for them. We are also requesting information on the number of individuals in rural communities that use a rudimentary combustion device. Additionally, we request comments on the rudimentary combustion device definition, including the proposed capacity threshold of less than or equal to 10 tpd for a rudimentary combustion device, and, more specifically, whether a smaller capacity threshold of less than 10 tpd would adequately capture these rudimentary combustion devices. We would also like to hear from the public, including states, tribes, and local governments, if this proposed definition, including the amount of waste being burned in rudimentary combustion devices, presents regulatory issues or unintended consequences.

In the 2020 OSWI proposal, the EPA proposed to remove the definition of the term "collected from" as used in, and

limiting the definition of, "municipal solid waste" in order to place focus on the source and type or nature of the waste, rather than the manner in which it is "collected" (85 FR 54186–87). The Agency did not receive any adverse comments. In light of the proposed change in this supplemental proposal, to add a definition of rudimentary combustion device, and this proposed change in the 2020 OSWI proposal to modify the definition of "municipal solid waste," we are also soliciting comment on removing "collected from" from the "municipal solid waste" definition.

#### V. Summary of Cost, Environmental, and Economic Impacts

##### A. What are the affected facilities?

We do not believe that we have complete information on the number of rudimentary combustion devices. We estimate that the OSWI database developed for the August 31, 2020, proposal includes at least 130 facilities with 143 units that may be rudimentary combustion devices. Through contacts with Alaskan state officials and tribal leaders, we have learned that there may be an additional 200 to 400 incinerators that could be classified as rudimentary combustion devices in Alaska. Due to their limited capacities, we believe that rudimentary combustion devices may be regulated by local governments through zoning or other ordinances.

##### B. What are the air quality impacts?

There are no air quality impacts associated with this supplemental proposal. The proposed addition of the rudimentary combustion device definition does not have an effect on the stringency of the standards in 40 CFR part 60, subparts EEEE or FFFF.

##### C. What are the cost and economic impacts?

There are no cost or economic impacts associated with this supplemental proposal. The proposed addition of the rudimentary combustion device definition does not have an effect on the stringency of the standards in 40 CFR part 60, subparts EEEE or FFFF.

#### VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

##### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

##### B. Paperwork Reduction Act (PRA)

This supplemental proposal does not impose an information collection burden under the PRA. There are no information collection request activities associated with this action.

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

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities that may be subject to the requirements of this action are small businesses, small government jurisdictions, and small nonprofits that operate rudimentary combustion devices currently subject to the OSWI EG and NSPS. This supplemental proposal defines rudimentary combustion device and proposes to postpone developing standards for devices owned by small entities that meet the definition of rudimentary combustion device. We have therefore concluded that this action will have no regulatory burden for all directly regulated small entities.

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

This supplemental proposal does not contain an unfunded mandate of \$100 million or more as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

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

This supplemental proposal 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.

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

This supplemental proposal has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. This action

<sup>3</sup> Under this element, the source does not have an exhaust stack.

proposes to provide regulatory relief to units that meet the definition of rudimentary combustion device.

The EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this supplemental proposal to have meaningful and timely input into its development. A summary of that consultation is provided in section II.E. of this preamble.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this supplemental proposal is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA’s Policy on Children’s Health also does not apply.

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

This supplemental proposal is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this supplemental proposal is not likely to have adverse energy effects because this supplemental proposal does not involve energy supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51*

This supplemental proposal does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All*

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that

exist prior to this supplemental proposal result in disproportionate and adverse effects on communities with environmental justice concerns. The EPA is not aware of the number of incineration units that will meet the definition of rudimentary combustion device. Therefore, the EPA is unable to fully evaluate a potential baseline for environmental justice concerns.

The EPA identified and addressed environmental justice concerns by conducting outreach activities with communities with environmental justice concerns, states, and tribes.

The information supporting this Executive Order review is contained in section II.E. of this preamble.

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

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Michael S. Regan,**  
*Administrator.*

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