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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 62

[EPA-HQ-OAR-2025-0068; FRL- 12906-03-OAR]

RIN 2060-AW92

Standards for Air Curtain Incinerators that Only Burn Wood Wastes, Yard Wastes and Clean Lumber; Provision for Commercial and Industrial Solid Waste Incineration Units: Temporary Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; request for comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing two separate and distinct actions under Clean Air Act (CAA) section 129. In the first action, the EPA proposes to consolidate the existing provisions governing air curtain incinerators (ACI) that only burn wood wastes, yard wastes, and clean lumber into one new rule subpart. Specifically, we are proposing to consolidate the opacity limitations and associated monitoring, recordkeeping, and reporting requirements that currently exist across various subparts for CAA section 129 source categories: large municipal waste combustors (LMWC), small municipal waste combustors (SMWC), commercial and industrial solid waste incinerators (CISWI), and other solid waste incinerators (OSWI). We are also proposing to remove the permitting requirement for this type of ACI that are not located at major sources or subject to federal permitting requirements for other reasons. The proposed removal would not cover ACI that are currently subject to OSWI or LMWC rules which have already been amended to remove such permitting requirements. In the second action, the EPA proposes to include in the CISWI rule

subparts provisions for the temporary use of CISWI units to combust debris from a qualifying disaster or emergency on a temporary basis without complying with (CAA) section 129 requirements that would otherwise apply to CISWI units for the combustion of commercial and industrial waste during normal operations. These additional provisions would bring the CISWI rule subparts into alignment with existing OSWI provisions that allow such temporary use of OSWI units to combust debris from a disaster or emergency.

DATES: Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing: If anyone contacts us requesting a public hearing on or before Wednesday, March 25, 2026, we will hold a virtual public hearing. See **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-2025-0068, by any of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- Email: *a-and-r-docket@epa.gov*. Include Docket ID No. EPA-HQ-OAR-2025-0068 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2025-0068, 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 *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 rule, contact Tianzhen Nie, Natural Resources Division (E243-05), Office of Clean Air Programs, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-1815 and email address: *nie.tianzhen@epa.gov*.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 627-7764 or by email at *NRDpublichearing@epa.gov*. If requested, the hearing will be held via virtual platform on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 at *https://www.epa.gov/stationary-sources-air-pollution/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and*.

The EPA will begin pre-registering speakers for the hearing no later than one 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/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and> or contact the public hearing team at (888) 627-7764 or by email at NRDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be Wednesday, April 1, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and>.

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 four minutes to provide oral testimony. The EPA encourages commenters to submit 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/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and>. While the EPA expects the hearing to be conducted as set forth earlier, please monitor our website or contact the public hearing team at 888-627-7764 or by email at NRDpublichearing@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 special accommodation such as audio description, please pre-register for the hearing with the public hearing team

and describe your needs by Friday, March 27, 2026. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2025-0068. All documents in the docket are listed at 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 at www.regulations.gov.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-0068. 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 www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be CBI, Proprietary Business Information (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 www.regulations.gov or email. This type of information should be submitted 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 www.epa.gov/dockets/commenting-epa-dockets.

The *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 *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 should be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/dockets*.

The EPA is soliciting comments on numerous aspects in this document. The EPA has indexed each comment solicitation with a unique identifier (e.g., "ACI-1," "ACI-2," "OSWI-1" ...) to provide a consistent framework for effective and efficient provision of comments. Requests for comment solicitation are organized by category, and can be found in sections V, VI, and XI of this preamble. Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier either in a heading or within the text of each comment, to make clear which comment solicitation is being addressed. We emphasize that we are not limiting comments to these identified areas and encourage provision of any other comments relevant to this proposed action.

Submitting CBI. Do not submit information containing CBI to the EPA through *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 the *Instructions* section 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 and note the docket ID. 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.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Clean Air Programs CBI Office at the email address *oaqps_cbi@epa.gov*, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqps_cbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OCAP Document Control Officer (C404-02), OCAP, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina, 27711, Attention Docket ID No. EPA-HQ-OAR-2025-0068. The mailed CBI

material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope. 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 document and for reference purposes, the EPA defines the following terms and acronyms here:

ACI	Air Curtain Incinerator
ANSI	American National Standards Institute
CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Regulations
CISWI	Commercial and Industrial Solid Waste Incinerator
DCOT	Digital Camera Opacity Technique
EG	Emission Guidelines
EPA	Environmental Protection Agency
FR	Federal Register
ICR	Information Collection Request
LMWC	Large Municipal Waste Combustor
MSW	Municipal Solid Waste
NSPS	New Source Performance Standards
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
OSWI	Other Solid Waste Incinerator
PBI	Proprietary Business Information
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
SMWC	Small Municipal Waste Combustor
TPD	Tons Per Day
UMRA	Unfunded Mandates Reform Act
VCS	Voluntary Consensus Standard

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I. General Information for ACI That Only Burn Wood Wastes, Yard Wastes, and Clean Lumber

A. Executive Summary

The EPA is proposing to consolidate the existing provisions governing Air Curtain Incinerators (ACI) and placing them in one new rule subpart. Pursuant to Clean

Air Act (CAA) section 129(g)(1)(C), the EPA has previously established in various CAA section 129 regulations opacity limitations and associated monitoring and recordkeeping requirements for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these three materials. In this rulemaking, the EPA is proposing to consolidate the opacity limitations and associated monitoring, recordkeeping, and reporting requirements that currently exist across CAA section 129 regulations for four different solid waste incineration unit source categories: large municipal waste combustors (LMWC), small municipal waste combustors (SMWC), commercial and industrial solid waste incinerators (CISWI), and other solid waste incinerators (OSWI). The EPA is also proposing to remove the CAA title V permitting requirement for this type of ACI that is subject to title V under current CAA section 129 regulations and are not located at title V major sources or subject to title V for other reasons. In addition to the proposed actions for ACI that only burn wood wastes, yard wastes, and clean lumber, or any mixture of these three materials, the EPA is soliciting comment on the definition of “municipal waste combustion unit” in the OSWI rules. The EPA anticipates that this rule will have cost savings due to the removal of title V permit requirements for ACI that only burn wood wastes, yard wastes, and clean lumber. The EPA is proposing this action to provide relief regarding the overly burdensome permit process for States as they work to utilize ACI for natural disasters clean up and to mitigate wildfires. This proposal would make it easier for the EPA’s regulatory partners to understand and comply with the regulations under CAA section 129 and speed up the permitting process across the country, while still meeting all statutory requirements under the CAA.

B. Does this proposed action apply to me?

Sources potentially affected by this proposed rulemaking are ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these three materials.

Wood waste refers to untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include yard waste (defined later in this paragraph); construction, renovation, and demolition wastes; clean lumber (defined later in this paragraph); treated wood or treated wood products such as wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, or creosote; or manufactured wood products that contain adhesives or resins (*e.g.*, plywood, particle board, flake board, and oriented strand board).¹ Yard waste refers to grass, grass clippings, bushes, shrubs, and bush and shrub clippings from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include construction, renovation, demolition wastes; and clean lumber, which is exempt from the definition of municipal solid waste (MSW) in this section. Clean lumber refers to wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products. Clean lumber does include treated wood and treated wood products.²

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.

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

In addition to being available in the docket, an electronic copy of this document is available on the internet. Following signature by the Administrator, the EPA also will post a copy of this document to www.epa.gov/stationary-sources-air-pollution/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and.

¹ *See, e.g.*, 40 CFR 60.2977.

² *See, e.g.*, 40 CFR 60.2977.

A memorandum for ACI that only burn wood wastes, yard wastes, and clean lumber showing the rule edits that would be necessary to incorporate the changes to 40 CFR parts 60 and 62 is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2025-0068). Following signature by the EPA Administrator, the EPA also will post a copy of this document to www.epa.gov/stationary-sources-air-pollution/air-curtain-incinerators-only-burn-wood-wastes-yard-wastes-and.

II. Background for ACI that Only Burn Wood Wastes, Yard Wastes, and Clean Lumber

A. What is the Agency's statutory authority for taking this action?

Section 129 of the CAA requires the EPA to establish standards for solid waste incineration units. Such standards include emission limitations for new sources and guidelines for existing sources pursuant to CAA section 129 and 111.³ CAA section 129(g)(1) defines a “solid waste incineration unit” as “a distinct operating unit of any facility which combusts any material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)”; however, “solid waste incineration units” do not include “air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.”⁴ Because ACI that only burn these materials and comply with the opacity limitations established by the EPA under CAA section 129(g)(1)(C) are not solid waste incineration units, they are not subject to standards for solid waste incineration units established under CAA sections 129(a) and (b), and the only provisions in the existing section 129 regulations that apply to these ACI are the opacity limitations and the associated requirements established under CAA section 129(g)(1)(C).

³ 42 U.S.C. 7429(a)(1)(A) (citing 42 U.S.C. 7411).

⁴ *Id.* 7429(g)(1), (g)(1)(C).

Pursuant to CAA section 129(g)(1)(C), the EPA has previously established in various CAA section 129 regulations the opacity limitations and associated monitoring and recordkeeping requirements for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these three materials. In this rulemaking, the EPA is proposing to consolidate these requirements by removing them from existing CAA section 129 regulations and placing them in a new rule subpart specific to this type of ACI (40 CFR part 60 subpart Ca).

The EPA is also proposing to remove the CAA title V permitting requirement for such ACI to the extent they that are currently subject to title V under existing CAA section 129 regulations but are not located at title V major sources or subject to title V for other reasons.⁵ In 2024 the EPA amended existing Other Solid Waste Incinerator (OSWI) CAA section 129 regulations to remove the title V permitting requirement for such ACI,⁶ and in 2026 we finalized new LMWC New Source Performance Standards (NSPS) and did the same.⁷ The remaining section 129 regulations that still subject such ACI to the title V permitting requirement include CISWI and SMWC rules as well as the LWMC Federal Plan. The EPA is proposing to remove this requirement from these existing regulations and clarify in the proposed new subpart Ca that title V permits are not required for any such ACI provided that it is not a major source or subject to title V for other reasons. Unless provided otherwise by law, an agency may change existing positions (*e.g.*, reconsider, revise, or rescind prior actions) so long as it acknowledges the change in position, provides a reasoned explanation for the change, and takes any serious

⁵ The proposed removal would not cover ACI for which such removal was finalized in the 2026 LMWC new source performance standards and emissions. 91 FR 11802 (Mar. 10, 2026).

⁶ 89 FR 27392 (Apr. 17, 2024), as amended November 04, 2024.

⁷ 91 FR 11802 (Mar. 10, 2026).

reliance interests into account.⁸ The EPA explains below in this section and in more detail in section III.B of this document why it had previously required title V permitting for ACI that only burn wood wastes, yard wastes, and clean lumber and why it is proposing to remove this requirement for such ACI. The EPA is not aware of any serious reliance interest engendered by the current title V permitting requirement for these ACI and is soliciting comment on whether there is any such interest that the EPA must consider in removing this requirement (ACI-0).

Section 129(e) of the CAA requires that “solid waste incineration units” operate pursuant to a title V permit.⁹ Section 502(a) of the CAA also requires title V permits for sources subject to regulation under CAA section 111,¹⁰ and the EPA’s regulation at 40 CFR 70.3(a) clarifies that title V permitting is required for “[a]ny source, including an area source, subject to a standard, limitation, or other requirement under [CAA] section 111.” As explained in section III.B of this document, the title V requirements for “solid waste incineration units” under CAA section 129(e) do not apply to ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these three materials because these ACI are not “solid waste incineration units” as defined in CAA section 129(g)(1). The EPA also did not invoke CAA section 129(e) as the basis for requiring title V permitting for such ACI in the existing section 129 regulations.¹¹ Rather, the EPA explained that the opacity limitations for such ACI were established pursuant to CAA sections 111 and 129, and because these ACI are sources subject to regulation under CAA section 111, they must operate with title V permits as required by CAA section 502(a).¹² For the reasons explained in section III.B of this document, the EPA now

⁸ See, e.g., *FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 917 (2025); *Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁹ 42 U.S.C. 7429(e).

¹⁰ 42 U.S.C. 7661a(a).

¹¹ See e.g., 76 FR 15741 (Mar. 21, 2011).

¹² *Id.*

believes that the opacity limitations established for these ACI are not CAA section 111 standards within the scope of section 502(a) and 40 CFR 70.3(a). Moreover, CAA section 502(a) authorizes the Administrator to exempt nonmajor source categories from title V through rulemaking.¹³ The EPA also finds, in the alternative, that title V permitting is unnecessarily burdensome for these ACI and proposes to exempt them by rule from title V requirements on that basis.

A. What is the regulatory history for this action?

As mentioned above, ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials, are currently addressed in separate CAA section 129 regulations for four different solid waste incineration unit source categories: LMWC, SMWC, CISWI, and OSWI. These CAA section 129 regulations are as follows:

- 40 CFR part 60 subpart Cb—Emission Guidelines (EG) and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994;
- 40 CFR part 60 subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 16, 1996;
- 40 CFR part 60 subpart VVVV—Standards of Performance for Large Municipal Waste Combustors;
- 40 CFR part 60 subpart WWWW—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before January 23, 2024;

¹³ 42 U.S.C. 7661a(a).

- 40 CFR part 60 subpart AAAA—Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999, or for Which Modification or Reconstruction is Commenced After June 6, 2001;
- 40 CFR part 60 subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustors Constructed on or Before August 30, 1999;
- 40 CFR part 60 subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units;
- 40 CFR part 60 subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units;
- 40 CFR part 60 subpart EEEE—Standards of Performance for Other Solid Waste Incineration Units;
- 40 CFR part 60 subpart FFFF—Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units;
- 40 CFR part 62 subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994;
- 40 CFR part 62 subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before November 30, 1999;
- 40 CFR part 62 IIIa—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before June 4, 2010, and Have Not been Modified or Reconstructed Since August 7, 2013;
and
- 40 CFR part 62 subpart JJJ—Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999.

The provisions governing ACI that only burn wood wastes, yard waste, clean lumber, or any mixture of these materials, are, for the most part, the same or substantially similar across these regulations except for minor differences in definitions of an ACI and averaging times for determining compliance with applicable emissions limits. These differences are discussed further in section III.A of this document. Table 1 provides a summary of ACI definitions, applicability and exemption language, and opacity limits and averaging times across these rules.

Table 1—Current ACI unit definitions, applicability/exemptions, and opacity limits across different CAA section 129 rule provisions.

Category	Definition of ACI unit	Applicability	Opacity limits and averaging times
LMWC	Incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incineration of this type can be constructed above or below ground and with or without refractory walls and floor.	ACI located at a plant that meets the capacity specifications (greater than 250 tons per day (tpd) municipal solid waste) and combusts 100 percent yard waste are exempt from all provisions except opacity limit, testing procedures, and reporting and recordkeeping.	10 percent opacity limit (6-minute average). 35 percent opacity limit (6-minute average) during 30-minute startup period. Limit applies at all times except during malfunction. Malfunction periods are limited to 3 hours per occurrence.
SMWC	Incinerator that operates by forcefully projecting a curtain of air across as open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground with or without refractory walls and floor.	ACI that combust 100 percent yard waste and meet capacity specifications for SMWC (at least 35 tpd municipal solid waste and no more than 250 tpd municipal solid waste) are only required to meet opacity limits, testing procedures, and recordkeeping and reporting requirements.	10 percent opacity limit (6-minute average). 35 percent opacity limit (6-minute average) during 30-minute startup period. Malfunctions exempted, but not to exceed 3 hours.
CISWI	Incinerator that operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion	ACI located at commercial and industrial facilities that burn (1) 100 percent wood waste; (2) 100	10 percent opacity limit (average of three 1-hour blocks consisting of ten 6-minute average opacity values).

	occurs. Incinerators of this type can be constructed above or below ground with or without refractory walls and floor.	percent clean lumber; or (3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste are only required to meet opacity limits, testing procedures, and recordkeeping and reporting requirements.	35 percent opacity limit (average of three 1-hour blocks consisting of ten 6-minute average opacity values) during 30-minute startup period. Periods of malfunction are not exempt.
OSWI	Incinerator that operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs.	<p>(A) <i>Very small MWC subcategories</i>: ACI that burn less than 35 tpd of only (1) 100 percent wood waste; (2) 100 percent clean lumber; (3) 100 percent yard waste; and (4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste collected from the general public and from residential, commercial, institutional, and industrial sources.</p> <p>(B) <i>Institutional Waste Incineration Unit subcategories</i>: ACI located at institutional facilities that only burn (1) 100 percent wood waste; (2) 100 percent clean lumber; (3) 100 percent yard waste; and (4) 100 percent mixture of only wood, clean lumber, and/or yard waste generated at that facility.</p> <p>ACI as described in (A) and (B) above are only required to meet opacity limits, testing procedures, and recordkeeping and reporting requirements.</p>	<p>10 percent opacity limit (6-minute average).</p> <p>35 percent opacity limit (6-minute average) during 30-minute startup period.</p> <p>Limits apply at all times except during malfunction.</p>

There are also differences among the current title V permitting requirements for this type of ACI across CAA section 129 rule subparts. For example, the OSWI rules do not require a title V permit for ACI that only burn wood wastes, yard wastes, and clean lumber if they “are not otherwise required to obtain a title V permit.”¹⁴ Similarly, the EPA removed the title V permit requirement for ACI that only burn wood wastes, yard wastes, and clean lumber and are not located at a major source or subject to title V for other reasons in the 2026 LMWC final rule.¹⁵ However, similar ACI, such as those subject to the CISWI or SMWC rules and LMWC Federal Plan, must obtain a title V permit under current regulations.¹⁶

In this rulemaking, the EPA is proposing to consolidate regulatory provisions governing ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials, by removing them from existing CAA section 129 regulations and placing them in a new rule subpart specific to this type of ACI. (40 CFR part 60 subpart Ca). Also, because these ACI are materially indistinguishable regardless of which CAA section 129 source category they are currently regulated under and therefore need to be treated in a consistent manner, the EPA is proposing to remove the title V permitting requirement for these ACI that are currently regulated under the CAA section 129 regulations for CISWI, SMWC, and the LMWC Federal Plan. This is consistent with the EPA’s 2024 final rule that removed title V permitting for these ACI in the existing CAA section 129 OSWI regulations¹⁷ and its 2026 amendments to the LMWC NSPS and EG.¹⁸ For the new subpart Ca, the EPA is proposing that title V permits are not required provided that the ACI is not a major source or subject to title V for other reasons.

¹⁴ 40 CFR 60.2966(b); *see also* 40 CFR 70.3(a)(1) (requiring title V permitting for any “major source”); 40 CFR 70.2 (defining a “major source” under title V).

¹⁵ *See* 91 FR 11802 (Mar. 10, 2026).

¹⁶ *See, e.g.*, 40 CFR 60.2242, 62.15020(k).

¹⁷ 89 FR 27392 (Apr. 17, 2024).

¹⁸ *See* 91 FR 11802 (Mar. 10, 2026).

Please note that the proposed new subpart Ca does not directly apply to existing sources subject to state plans that implement CAA section 129 EGs. However, if finalized, States that currently require title V permitting in their state plans would be able to revise their plans to remove the title V permitting requirement for this type of ACI.

III. Proposed Actions for ACI that Only Burn Wood Wastes, Yard Wastes, and Clean Lumber

A. Proposed consolidation of the existing opacity limits for ACIs that only burn wood wastes, yard wastes, and clean lumber

The EPA is proposing to consolidate requirements for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials, by removing them from existing CAA section 129 regulations and placing them in a new rule subpart specific to this type of ACI, 40 CFR part 60 subpart Ca. The proposed subpart Ca includes certain consolidated changes as described below.

The EPA is proposing a single definition for any ACI that burns only wood wastes, yard wastes, clean lumber, or any mixture of these materials. In the CAA section 129 rules governing LMWC, SMWC, and CISWI, an ACI is defined as an “incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incineration of this type can be constructed above or below ground and with or without refractory walls and floor.”¹⁹ The OSWI rules define ACI slightly differently as an “incinerator that operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs.”²⁰

We are proposing to adopt the OSWI regulation definition in the new subpart Ca for the following reasons. First, this definition specifically includes fire box and trench

¹⁹ 40 CFR 60.51b, 60.1940, 60.2875; Table 1 of this document.

²⁰ 40 CFR 60.2977, 60.3078; *see also* Table 1 of this document.

burner unit types that are commonly used for cleanup and disposal of wood wastes, yard wastes, and clean lumber while not excluding other potential types of units. Second, the part of the ACI definition in the CISWI, LMWC, and SMWC rules that the unit “can be constructed above or below ground and with or without refractory walls and floor” appears redundant (*e.g.*, construction can only be above or below ground – there is no third choice); without this phrase, ACI can still be constructed either above or below ground. Please note that the proposed definition is independent of unit design capacity and type of facility that owns or operates the unit, and so the choice of definition is not intended to and should not result in material differences in applicability or requirements imposed. We solicit comment on the proposed definition of ACI (ACI-1).

The proposed new subpart Ca would consolidate existing opacity limitations during periods of regular operation for this type of ACI and during the startup period of the unit. The opacity limits in the new subpart Ca would be the same as those across all existing CAA section 129 regulations (*i.e.*, 10 percent opacity during regular operation and 35 percent opacity during startup).²¹ This proposal merely consolidates these longstanding opacity limitations for clarity and administrability and does not reopen them for comment.

The EPA also proposes to create a single set of opacity measurement averaging time requirements that are clear and consistent with the methodologies of EPA Method 9, a compliance determination method for opacity that is required in the LMWC, SMWC, OSWI, and CISWI rules.²² We are proposing that compliance with the opacity limit will be based on 6-minute averages, as provided in the 40 CFR part 60 *General Provisions* at 40 CFR 60.11(b). This is the current requirement in all CAA section 129 rules except the CISWI rules, which require that the determination be based on “three 1-hour blocks

²¹ *See, e.g.*, 40 CFR 60.1920, 60.2860, 60.56b, 60.3066; Table 1 of this document.

²² *See, e.g.*, 65 FR 76355 (Dec. 6, 2000); 60 FR 65419 (Dec. 19, 1995); 84 FR 15853 (Apr. 16, 2019), 70 FR 74892 (Dec. 16, 2005).

consisting of ten 6-minute average opacity values.”²³ Under 40 CFR 60.11(b), “the minimum total time of observations shall be 3 hours” and the 3 hours are comprised of 30 6-minute averages. While the minimum observation period under the CISWI rules is also 3 hours, CISWI requires averaging the ten values for each 1-hour block and then averaging the three 1-hour block values, making the final value less representative of the individual 6-minute average values and in turn providing less confidence in determining whether there is an opacity concern, which would be indicative of a combustion issue that needs to be addressed. We did not find in the CISWI rule records an explanation for why the EPA chose to depart from 40 CFR 60.11(b) or why the averaging method in CISWI rules differ from other CAA section 129 rules²⁴. As mentioned earlier in this preamble, the purpose of this proposed rulemaking is to have one set of requirements for all ACI that only burn wood wastes, yard wastes, clean lumber, or a mixture thereof. Because all the other rules follow 40 CFR 60.11(b), we are proposing to apply the averaging requirement in 40 CFR 60.11(b) in the proposed consolidated new rule subpart Ca. We solicit comment on these proposed averaging time requirements (ACI-2).

In addition to creating a single set of averaging time requirements, the EPA is proposing to include text clarifying the opacity monitoring requirements. One of these clarifications describes how compliance is demonstrated when conducting opacity measurements; this clarification is consistent with our discussion on averaging times above. This clarification is especially needed for periods of startup, as the startup period is only 30 minutes. The EPA has previously received questions on how owners and operators are supposed to comply with 40 CFR 60.8 during the startup period, as 40 CFR 60.8 requires three test runs. The additional regulatory text would clarify that owners and operators only need to make observations for 30 minutes to demonstrate compliance

²³ See, e.g., NSPS CCCC (40 CFR 60.2125(i)).

²⁴ See Docket ID No. EPA-HQ-OAR-2003-0119

during startup. We also propose to add a cross-reference to 40 CFR 60.11 for performance tests, as this section of the *General Provisions* provides instructions for conducting opacity measurements.

Currently, the LMWC, CISWI, and OSWI rules require an annual performance test, which must be conducted within 12 months following the date of the previous test.²⁵ However, the SMWC rule's required annual performance test must be conducted "no more than 13 months following the date of the previous test."²⁶ To maintain consistency across ACI within the new subpart, we are proposing to require that the annual performance tests must be conducted within 12 months of the date of the previous test. We solicit comment on the proposed timeframe for these annual performance tests (ACI-3).

Currently, the OSWI rules state: "If the air curtain incinerator has been out of operation for more than 12 months following the date of the previous test, then the owner or operator must conduct a test for opacity upon startup of the unit."²⁷ However, this language does not appear in the CISWI, LMWC, or SMWC rules. Therefore, the EPA is proposing to include in the new subpart Ca a provision similar to that in the OSWI rules but with further clarification. Specifically, the EPA is proposing that any ACI that is not in operation at the time the annual test is due (12 months from the previous test) is not required to conduct a test for opacity at that time. Without this language, owners and operators could assume that they must start up their unit to conduct annual testing, which would be an unnecessary burden for the owner or operator and would tend to increase, rather than control, emissions at a non-operating unit - a counterintuitive result with no environmental benefit. Therefore, we are proposing to delay testing until the next startup

²⁵ See NSPS Eb (40 CFR 60.58b(1)(3)), NSPS CCCC (40 CFR 60.2255(c)), and NSPS EEEE (40 CFR 60.2972(c)).

²⁶ See NSPS AAAA (40 CFR 60.1445(a)).

²⁷ See NSPS EEEE (40 CFR 60.2972(d)).

for any ACI that is not operating at the time of scheduled testing. Specifically, the proposed new subpart Ca would state: “If the air curtain incinerator is not operating at the time that the annual test would be required under paragraph (c) of this section, you may delay the annual test until the next day you operate the unit.” We solicit comment on this proposed requirement (ACI-4).

The EPA is also proposing to require the completion of an initial performance test within 60 days of the initial startup. Currently, the timeline for conducting the initial performance test in all the different CAA section 129 regulations is within 60 days after reaching the operational charge rate but no later than 180 days after initial startup.²⁸ Since the performance test is used to demonstrate compliance, allowing up to 180 days of startup for performance testing seems unreasonably long in this case. The “up to 180 days” is a default maximum timeframe provided in the *General Provisions*, which may be necessary for complicated sources with multiple air pollution control devices that may need time to fully begin operations and work through issues that can occur during initial startup. This is often referred to as a shakedown period. During the shakedown period, sources generally ramp up operations over time to protect the unit against operational problems like thermal stress, overheating, and leaks. We do not expect ACI that only burn wood wastes, yard wastes, and clean lumber, or mixtures of these materials, and are subject only to opacity limits, to require a long shakedown period. Such ACI are less complicated than other sources that are required to conduct performance testing, and as such, we would expect that these units can reach their operational charge rate not long after startup; therefore, we expect that these units should be able to conduct initial performance tests within 60 days of startup.

²⁸ See NSPS Eb (40 CFR 60.58b(1)(2)), NSPS CCCC (40 CFR 60.2255(b)), and NSPS EEEE (40 CFR 60.2972(b)), which reference 40 CFR 60.8 for conducting the initial performance test and NSPS AAAA, which states the same timeframe in 40 CFR 60.1445(a).

This proposed rulemaking also includes initial notification requirements. These would require the submission of an initial notification of startup of this type of ACI, location of the ACI unit, initial startup date, and types of materials burned in the ACI. Previous notification requirements for this type of ACI did not include the location of the ACI unit. We are proposing this requirement because we believe it would be helpful for the EPA, State, and local authorities to maintain an inventory of where these units are located, particularly given the proposed removal of title V permit requirements detailed in section III.B of this document. We solicit comment on these proposed initial notification requirements (ACI-5).

This rulemaking also proposes recordkeeping and reporting requirements for initial and annual opacity tests for this type of ACI. For such ACI currently regulated under the OSWI rules, owners and operators must keep records of these opacity tests in either a paper copy or computer-readable (*e.g.*, electronic) format for at least 5 years.²⁹ These records must be kept on site for at least 2 years but then may be kept off site for the remaining 3 years. These test results must be submitted to the Administrator (as paper or electronic copy). For initial opacity tests, results must be submitted within 60 days of the test. For annual opacity tests, results must be submitted within 12 months following the previous report. The recordkeeping and reporting requirements for this type of ACI regulated under the CISWI rules are identical to those in the OSWI rules, with the exception of requiring records of these opacity tests be kept on site for the entire 5-year recordkeeping period.³⁰ Like units regulated under CISWI, this type of ACI regulated under the LMWC and SMWC rules are required to keep records (paper or electronic copy) of these opacity tests on site for 5 years.³¹ However, opacity test results are to be submitted to the Administrator by February 1 of the following year, rather than 60 days

²⁹ See 40 CFR 60.3068.

³⁰ See 40 CFR 60.2870.

³¹ See 40 CFR 60.59b(e) and 60.1930, respectively.

from the initial test for initial reports, or 12 months from submittal of the previous test for annual reports. In this case, the degree of flexibility afforded to owners and operators of these ACI for compliance with this reporting requirement could vary greatly depending on when during the calendar year an initial opacity test is performed. For this proposed rulemaking, we are basing the recordkeeping and reporting requirements on those in the OSWI rules, as we believe the language provides the greatest degree of specificity for these respective requirements. We solicit comment on the proposed recordkeeping and reporting requirements for these ACI (ACI-6).

B. Proposed removal of existing title V requirements for ACI that only burn wood wastes, yard wastes, and clean lumber

We are proposing to remove the title V permitting requirements for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials, that were previously covered by CAA section 129 CISWI and SMWC regulations as well as the LWMC Federal Plan, provided they are not otherwise subject to title V.³² The EPA made the same amendments in the revised OSWI rule in 2024³³ and the LMWC rule in 2026.³⁴

The EPA is proposing to remove the title V permitting requirement for this type of ACI for the following reasons. First, CAA section 129(e) and the EPA's title V regulation at 40 CFR 70.3(b)(1), which require that each solid waste incineration unit operate with a title V permit, do not by their terms apply to ACI that only burn wood wastes, yard wastes, or clean lumber and that are subject to opacity limitations established by the EPA. These ACI are not "solid waste incineration units" as defined in

³² CAA section 502(a) provides that the EPA cannot exempt major sources from title V by rule. *See* 42 U.S.C. 7661a(a); 40 CFR 70.3(b)(1). This proposed rule also would not affect title V applicability to any ACI currently subject to title V for other reasons, as provided in CAA section 502(a) and 40 CFR 70.3(a).

³³ *See* 89 FR 27392 (Apr. 17, 2024).

³⁴ *See* 91 FR 11802 (Mar. 10, 2026).

CAA section 129(g)(1)(C) and are therefore not subject to title V permitting under CAA section 129(e) or 40 CFR 70.3(b)(1).

Second, while CAA section 502(a) and the EPA's title V regulations at 40 CFR 70.3(a)(2) require that sources subject to CAA section 111 standards operate with a title V permit, the opacity limits for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials, are not section 111 standards. As mentioned earlier, the EPA had previously claimed that the opacity limits for these ACI "were established pursuant to CAA sections 111 and 129" and thereby triggered CAA section 502 requirement that sources subject to regulation under CAA section 111 must operate with title V permits.³⁵ However, the EPA now believes that prior assertion to be inaccurate for the following reasons. First, the opacity limitations and related requirements for these ACI were established under CAA section 129(g)(1)(C), which does not require the EPA to establish such opacity limitations under CAA section 111. Second, while certain section 129 provisions require that standards be established pursuant to CAA sections 111 and 129, it does not appear that the opacity limitations for these ACI were established pursuant to any such section. For example, CAA section 129(a) requires the EPA to establish standards "pursuant to section [111] of this title and this section for each category of solid waste incineration units." As noted above, because these ACI are not solid waste incineration units, section 129(a) does not apply to such ACI. Similarly, CAA section 129(a)(2) requires that "standards applicable to solid waste incineration units" promulgated under section [111 and 129] shall reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) 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 or existing units in each category." CAA

³⁵ See 76 FR 15741 (Mar. 21, 2011).

section 129(a)(4), in turn, provides that standards promulgated under sections 111 and 129 and “applicable to solid waste incineration units shall” include opacity limits “as appropriate.” However, as noted above, ACI burning only wood wastes, yard wastes, clean lumber, or mixtures thereof are not solid waste incineration units under CAA section 129(g)(1)(C). Therefore, the EPA is not required by CAA section 129(a)(2) and (4) to establish opacity limits for such ACI units pursuant to sections 111 and 129. Nor is there any record showing that the opacity limits for this type of ACI were established pursuant to sections 111 and 129 in accordance with CAA section 129(a)(4). The EPA first established the opacity limits for ACI that only burn yard wastes in 1995.³⁶ The EPA explained at the time that it was directed by CAA section 129 to establish such opacity limits³⁷ and that the limits “are based on levels achieved by well-designed and operated air curtain incinerators.”³⁸ The EPA subsequently promulgated the same opacity limits for ACI that only burn wood wastes and clean lumber.³⁹ In neither rulemaking did the EPA explain how the standards were established pursuant to CAA sections 111.

For the reasons stated above, we do not believe that the opacity limitations established under CAA section 129(g)(1)(C) for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture thereof are CAA section 111 standards; therefore, these opacity limitations do not trigger the title V permitting requirement for this type of ACI.

Third, CAA section 502(a) authorizes the Administrator to promulgate regulations to exempt non-major sources from the title V permitting requirement if the Administrator finds, in his discretion, that compliance with such requirement is impracticable, infeasible, or unnecessarily burdensome. Such an exemption is not required in this case

³⁶ See 60 FR 65387, 65425 (Dec. 19, 1995).

³⁷ See 59 FR 48198, 48211 (Sept. 20, 1994).

³⁸ See *id.* at 48223.

³⁹ 65 FR 75338 (Dec. 1, 2000).

because, as proposed above, the statute does not require title V permitting for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture thereof. Nevertheless, the EPA finds, in the alternative, that compliance with title V permitting is unnecessarily burdensome for this type of ACI. Under this alternative, even if it were determined that such ACI are CAA section 111 standards subject to title V permitting requirements under CAA section 502(a) and the EPA's regulation at 40 CFR 70.3(a)(2), we would nevertheless exempt such sources from title V requirements on that basis. During the prior CISWI rulemakings, the EPA had acknowledged that it could exempt nonmajor sources from title V permitting by making the necessary finding under CAA section 502 but had declined to do so for these ACI because the EPA had not made such finding for these ACI in other CAA section 129 rules and believed that it was important to treat these ACI in the same manner.⁴⁰ As mentioned earlier, in 2024 the EPA amended existing OSWI section 129 regulations to remove the title V permitting requirement for such ACI.^{41,42} The EPA is treating these ACI in the same manner by proposing to remove the title V permitting requirement for units regulated under the remaining section 129 regulations that currently require title V permitting for these ACI.

The EPA has previously developed a four-factor balancing test in determining under CAA section 502(a) whether compliance with title V is “unnecessarily burdensome.” These four factors are: (1) whether title V permitting would result in significant improvements in compliance with emission standards; (2) whether title V permitting would impose significant burdens on the area source category; (3) whether the costs are justified, taking into account potential gains; and (4) whether there are existing

⁴⁰ 76 FR 15704, 15741 (Mar. 21, 2011); 84 FR 15846, 15851 (Apr. 16, 2019).

⁴¹ 89 FR 27392 (Apr. 17, 2024); *see also* 89 FR 89928 (Nov. 14, 2024) (technical correction).

⁴² 89 FR 4243 (Jan. 23, 2024).

enforcement programs in place sufficient to ensure compliance.⁴³ The EPA has historically also considered whether such an exemption would adversely affect public health, welfare, or the environment.⁴⁴ In exercising the discretion conferred by statute, the Administrator considers these factors in combination, and not every factor must point in the same direction to support an exemption. As explained below, the EPA considers and balances these same factors in this action.

With respect to the first factor, the EPA does not believe that title V permitting would result in significant improvements in compliance with emission standards. One of the primary benefits of the title V program is to compile and clarify, in a single document, the various and complex regulations that apply to a facility in order to improve compliance and thereby “enable the source, states, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.”⁴⁵ However, this benefit is not realized with respect to ACI that only burn wood wastes, yard wastes, clean lumber, or mixtures thereof; these ACI are subject only to opacity limitations and associated monitoring recordkeeping and reporting requirements established under CAA section 129(g)(1)(C), and we are not aware that they are subject to any other requirement under the CAA. Another way title V can improve compliance is its requirement that “[e]ach permit ... shall set forth ... monitoring ... requirements to assure compliance with the permit terms and conditions.”⁴⁶ This rulemaking, however, would adopt and consolidate the monitoring, recordkeeping and reporting requirements for these ACI in the current CAA section 129 rules with some minor variations as detailed previously in section III.A. of this document. Specifically, opacity would be monitored according to EPA Method 9, a long established and common

⁴³ 70 FR 75320, 75323 (Dec. 19, 2005); see *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 647 (D.C. Cir. 2016).

⁴⁴ See, e.g., 70 FR 75323 (Dec. 19, 2005).

⁴⁵ See 57 FR 32250, 32251 (July 21, 1992).

⁴⁶ 42 U.S.C. 7661c(c); see also 40 CFR 70.6(c)(1).

practice for determining compliance with opacity limits. The owners and operators of these sources would perform an initial opacity test no later than 60 days after initial startup, and annual opacity tests no later than 12 calendar months following the date of the previous test, unless the ACI is not operating at the time that the annual test would be required. Owners and operators would submit the results of each opacity test to the Administrator no later than 60 calendar days after the date of completing the test. Records of these opacity tests would be kept in either paper copy or electronic format for at least 5 years; they would be kept on site for at least 2 years, then could be kept off site for the remaining 3 years. These requirements have been adequate to ensure compliance with the ACI opacity limits currently in the existing CAA section 129 regulations for various source categories. Although title V requires submitting reports of any required monitoring at least every 6 months, per 40 CFR 70.6(a)(3)(iii)(A), we do not think more frequent reporting is necessary for purposes of ensuring compliance with one single opacity limit. In light of the above, we believe that the proposed monitoring, recordkeeping, and reporting requirements of this proposed rulemaking would be sufficient to ensure compliance, and that title V would not significantly improve compliance.

Regarding the second factor, we believe that title V permitting would impose significant burdens on the owners and operators of these sources. Costs associated with initial application and annual fees for a title V permit can vary depending on state permitting policies.⁴⁷ The permitting process, which includes preparing and submitting the permit applications, meeting with the permitting authorities and subjecting their

⁴⁷ See, e.g., South Carolina title V fees: <https://des.sc.gov/programs/bureau-air-quality/annual-fees-title-v-sources>; Virginia title V fees; <https://www.deq.virginia.gov/laws-regulations/air/fees-under-the-air-pollution-control-law>; Florida title V fees: <https://floridadep.gov/air/permitting-compliance/content/title-v-fees>; Oregon title V fees: <https://www.oregon.gov/deq/aq/aqpermits/pages/tvrule.aspx>.

operations and permit application to public comment, takes time and could potentially delay operations. Considering the above, we believe that title V requirements would impose a significant additional burden without corresponding health or environmental benefit.⁴⁸

Regarding the third factor, we believe the title V permitting costs and other burdens are not justified as we believe there would be little, if any, potential gain in compliance from subjecting this type of ACI to title V. It is likely that many ACI that burn exclusively wood wastes, yard wastes, clean lumber, or mixtures thereof are commonly located at facilities that would not otherwise require a title V operating permit, such as land clearing operations in public or private land and fuels treatment for wildfire prevention.⁴⁹ State and industry stakeholders have commented that the title V requirements for these units are overly burdensome and costly, particularly in light of the dependence on ACI units to mitigate natural disaster debris, such as massive amounts of clean wood and vegetative waste for wildfire mitigation and forest management, burning of storm-generated wood and vegetative debris, and burning of land clearing debris. Several States have commented that these ACI should not be required to obtain title V permits because they are low-emitting and because permitting these ACI is unnecessarily burdensome and expensive. Further, ACI that burn exclusively wood wastes, yard wastes, clean lumber, or any mixtures thereof are often used temporarily at the location of a natural disaster or disaster prevention, not at facilities that are subject to title V. As mentioned earlier in this preamble, the only requirements for these ACI are opacity limitations and associated monitoring, recordkeeping, and reporting requirements that we believe are adequate to assure compliance. In light of the above, we conclude that the

⁴⁸ Also, as explained in the 2024 final rule removing title V permitting requirement from OSWI section 129 regulations, “the EPA has received feedback from several States indicating that the title V permits are unnecessarily burdensome and expensive for States to maintain for these ACIs.” 89 FR 27394 (Apr. 17, 2024).

⁴⁹ See, e.g., 89 FR 27392, 27394 (Apr. 17, 2024)

cost of title V permitting is not justified as we do not anticipate any potential gain in health and environmental outcomes from compliance by these ACI with additional title V requirements.

Regarding the fourth factor, we believe there are existing enforcement programs in place sufficient to ensure compliance with opacity limits for these ACI. State and local authorities can monitor compliance with these opacity limits and related requirements with delegated authorities for implementing and enforcing CAA section 129 regulations; the EPA is aware of no indication that these section 129 delegated authorities are insufficient to assure compliance with these requirements, which as mentioned above have been in place for a long time and are common practices. Therefore, enforcement of these opacity limits and related requirements through title V permitting is not necessary.

Lastly, requiring title V permitting for these ACI could adversely affect public health, welfare, or the environment by diverting resources toward permitting activities unlikely to generate additional health or environmental benefits. Since compliance with the opacity limitations for these ACI can be adequately assured without title V, as explained above, title V permitting would unnecessarily shift State resources away from assuring compliance for major sources and potentially reducing overall air program effectiveness. We therefore find title V permitting to be unnecessarily burdensome for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture thereof, and that are not major sources or subject to title V permitting requirements for another reason.

In sum, the title V requirements for “solid waste incineration units” and sources subject to CAA section 111 standards do not apply to ACI that only burn wood wastes, yard wastes, clean lumber, or any combination thereof, because these ACI are not “solid waste incineration units” under CAA section 129(g)(1) and the opacity limitations established for these ACI are not CAA section 111 standards. We also find, in the alternative, that title V requirements would be unnecessarily burdensome for this type of

ACI. For the reasons stated above, we propose to remove from CAA section 129 regulations any existing title V permitting requirements for ACI that only burn wood wastes, yard wastes, and clean lumber, and state in the new subpart for this type of ACI that these ACI are not required to obtain a title V operating permit, provided that they are not otherwise required to obtain a title V operating permit.

IV. Summary of Cost, Environmental, and Economic Impacts for ACI that Only Burn Wood Wastes, Yard Wastes, and Clean Lumber

This proposed rulemaking would consolidate the opacity limits and associated monitoring, recordkeeping and reporting requirements that currently exist across the OSWI, CISWI, LMWC, and SMWC rules for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials. The only additional cost that we anticipate is the cost of the initial notification requirement for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials. However, consistent with the current OSWI and LMWC rulemakings, we are proposing to remove title V requirements for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of these materials. We anticipate that the removal of the title V requirements would result in cost savings for such ACI that are not co-located at facilities with CISWI and SMWC units currently required to obtain a title V permit for these types of ACI. We do not anticipate any changes to emissions because no new emission standards are being set. With the removal of title V permitting requirements and the likelihood of associated net cost savings and the associated reduced overall cost of operation, there could be an increase in ACI use. This potential increase in ACI use could generate increased emissions. We are unable to quantify emissions changes of this nature for this proposed rulemaking but anticipate that they would be small, particularly given the retention of existing opacity limits for these units. We anticipate net savings because the cost of removing the title V requirements will outweigh any costs associated with the initial

notification requirement. Hence, we anticipate that there will not be adverse economic impacts for those entities that use these types of ACI.

V. Request for Comments on Proposed Rule for ACI that Only Burn Wood Wastes, Yard Wastes, and Clean Lumber

We solicit comment on all aspects of this proposed action described above. In addition to general comments on this proposed action, we are soliciting comments on the following topics. A comment reference indicator for each specific topic is provided (*e.g.*, ACI-1, ACI-2, etc.).

- Whether the existing title V permitting requirement for ACI that only burn wood wastes, yard wastes, and clean lumber, of any mixture thereof, has engendered any serious reliance interest that the EPA must consider in removing this permitting requirement. (ACI-0).
- The definition of ACI as an “incinerator that operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs” as discussed in section III.A of this document. (ACI-1).
- The averaging time requirement that compliance for opacity is based on 6-minute averages, as provided in the 40 CFR part 60 *General Provisions* at 40 CFR 60.11(b), as discussed in section III.A of this document. (ACI-2).
- The timeframe that annual performance tests be conducted within 12 months of the date of the previous test as discussed in section III.A of this document. (ACI-3).
- The ability to delay an annual performance test until the next startup of the unit if the ACI is not operating at the time that the annual test is required as described in section III.A of this document. (ACI-4).

- The initial notification requirement for this type of ACI as described in section III.A of this document. (ACI-5).
- Recordkeeping and reporting requirements as described in section III.A of this document. (ACI-6).

VI. Request for Comment on Revising the Definition of “Municipal Waste Combustion Unit” in OSWI NSPS and EG

In addition to the proposed action on ACI that only burn wood wastes, yard wastes, and clean lumber, or any mixture of these materials, the EPA is soliciting comment on revising the definition of “municipal waste combustion unit” in the OSWI NSPS and EG to remove the reference to “pyrolysis/combustion units.” In the preamble to the 2005 OSWI final rule, the EPA stated that “pyrolysis/combustion units (two chamber incinerators with a starved air primary chamber followed by an afterburner to complete combustion)” are considered OSWI units but did not further elaborate.⁵⁰ The EPA proposed in 2020 to modify the definition of “municipal waste combustion unit” in the OSWI rules to remove the reference to pyrolysis/combustion units. The EPA published an advanced notice of proposed rulemaking on September 8, 2021 (86 FR 50296), to gather more details on pyrolysis/combustion units, including how they are used, the inputs and products of the processes, and emissions from these processes. In 2023, the EPA proposed to withdraw the 2020 proposed definition change.⁵¹ To assist with the resolution of this longstanding issue, we are soliciting comment on whether removing the reference to “pyrolysis/combustion units” from the definition of “municipal waste combustion unit” in the OSWI rules is appropriate or not, along with supporting legal, policy, and factual arguments for the commenter’s recommended position. (OSWI-1).

⁵⁰ 70 FR 74876 and 74877 (Dec. 16, 2005).

⁵¹ 88 FR 36524 (June 5, 2023).

VII. General Information for Temporary Use of CISWI Units in Disaster Recovery

A. Executive Summary

The EPA is proposing to allow the temporary use of incineration units subject to CISWI regulations during disaster recovery without the need to comply with CAA section 129 requirements. In 2005, the EPA promulgated the OSWI NSPS (40 CFR part 60, subpart EEEE) and EG (40 CFR part 60, subpart FFFF).⁵² Those regulations established CAA section 129 standards and associated requirements for OSWI units, and authorized OSWI to combust debris from a disaster or emergency on a temporary basis without having to comply with applicable CAA section 129 requirements. In this rulemaking, we are proposing to authorize such temporary use for incinerators (including ACI) subject to CISWI regulations by adding temporary-use provisions similar to those in the OSWI regulations to existing Federal CISWI rule subparts. The EPA does not anticipate any additional capital costs associated with this proposal if finalized, only notification costs. This proposed action works to permanently respond to States' request for more incinerators to be available for disaster clean up. By proposing this action, the EPA is working to streamline responses to natural disasters and emergencies and to advance cooperative federalism.

B. Does this proposed action apply to me?

Categories and entities potentially affected by this proposed rulemaking are those that operate incinerators (including ACI) subject to CISWI NSPS (40 CFR part 60, subpart CCCC), Federal Plan (40 CFR part 62, subpart IIIa), or EG (40 CFR part 60, subpart DDDD) (hereinafter collectively referred to as "CISWI"⁵³). If you have questions

⁵² 70 FR 74870 (Dec. 16, 2005).

⁵³ As used in this notice, the term "CISWI" refers to this collection of Federal regulations and not incinerators as defined by the term "CISWI" in these regulations, and the term "CISWI units" refers to incinerators subject to any one of these regulations.

regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

The EPA has established a docket for CISWI Temporary Use Incinerator rulemaking under Docket ID No. EPA-HQ-OAR-2003-0119. 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/commercial-and-industrial-solid-waste-incineration-units-ciswi-new>.

VIII. Background for Temporary Use of CISWI Units in Disaster Recovery

A. What is the statutory authority for taking this action?

Section 129 of the CAA, entitled "Solid Waste Combustion," requires the EPA to develop and adopt NSPS and EG for solid waste incineration units pursuant to CAA section 111.⁵⁴ Section 111(b) of the CAA requires the EPA to establish NSPS for new sources, and CAA section 111(d) requires the EPA to establish procedures for States to submit plans for implementing EG for existing sources. The EPA promulgates Federal plans to regulate existing sources where there are no approved state plans.

Section 129(a)(1) of the CAA identifies five categories of solid waste incineration units and requires emissions standards for "each category of solid waste incineration unit." The five categories of solid waste incineration units are as follows:

- (1) Units with a capacity of greater than 250 tpd combusting municipal waste;
- (2) Units with a capacity equal to or less than 250 tpd combusting municipal waste;
- (3) Units combusting hospital, medical and infectious waste;
- (4) Units combusting commercial or industrial waste;
- (5) "other categories of solid waste incineration units."

⁵⁴ CAA section 129(a)(1)(A), 42 U.S.C. 7429(a)(1)(A).

While the CAA specifically describes four of the five listed categories by the types of wastes burnt, it leaves unspecified the “other categories of solid waste incineration units.” As the EPA observed during the development of standards for OSWI, Congress could have unambiguously required OSWI to cover “every other possible type of incineration unit burning any type of solid waste” but did not to do so, thereby leaving to the EPA’s discretion to delineate those “other” categories of solid waste incineration units.⁵⁵ Based on that authority, the EPA defined OSWI to include very small municipal combustion units and institutional waste combustion incineration units. The EPA analyzed and excluded various types of incinerators from being subject to CAA section 129 standards; among those excluded are incinerators when they are used on a temporary basis to combust debris during disaster recovery. The EPA determined that some incinerators “should be handled differently due to unusual circumstances (*e.g.*, unique geographic locations or climatic factors, temporary emergency use)” that would render compliance with CAA section 129 rules infeasible.⁵⁶ Accordingly, the EPA excluded incinerators from complying with CAA section 129 standards and associated requirements when they are used to combust debris during disaster recovery.⁵⁷ To qualify for this exclusion, an incinerator “must burn debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area.”⁵⁸ In addition, owners and operators must follow the notification requirements in the temporary use provisions.⁵⁹

Currently, these temporary use provisions are codified in the Federal OSWI regulations, and the EPA has realized that States need more incinerators for

⁵⁵ 70 FR 74870, 74875 (Dec. 16, 2005).

⁵⁶ *Id.* at 74875.

⁵⁷ 70 FR 74870 (Dec. 16, 2005).

⁵⁸ OSWI NSPS (40 CFR 60.2969) and OSWI EG (40 CFR 60.3061).

⁵⁹ *Id.*

emergency/disaster debris cleanup. Some States have requested the temporary use of CISWI for such purposes;⁶⁰ based on the same authority and for the same reasons explained in the 2005 OSWI rule⁶¹ and here in section VIII.B. of this preamble, the EPA is proposing to include similar temporary use provisions for disaster recovery in CISWI regulations, thereby extending such temporary use to incinerators at commercial and industrial facilities upon final promulgation.

The proposed action does not affect the EPA's obligation under CAA section 129(a)(1)(C) to establish standards for "solid waste incineration units combusting commercial and industrial wastes." This action proposes to provide for the temporary use of incinerators that normally burn commercial or industrial wastes to instead burn debris (which is defined in the Webster Dictionary as remains of materials broken or destroyed, in this case by a natural disaster or emergency) during disaster recovery without having to comply with CISWI standards established pursuant to CAA section 129(a)(1)(c); the temporary use provisions do not apply to combustion of commercial and industrial wastes (*i.e.*, wastes generated by commercial and industrial facilities) for which standards are required under CAA section 129(a)(1)(C). The EPA, therefore, concludes that these incinerators that are normally used at commercial and industrial facilities to burn commercial or industrial wastes need not comply with CAA section 129 emission standards and associated requirements for CISWI while they are used to combust debris if they only burn non-hazardous debris and not waste from normal operations at their commercial and industrial facilities during the temporary use period.

Please note that while the EPA is proposing to amend the CISWI EG (40 CFR part 60, subpart DDDD), along with the CISWI NSPS and Federal plan, to include the temporary use provisions, the CISWI EG does not directly apply to existing incinerators

⁶⁰ Abraczinskas, M. (2024). Request for Relief Concerning Air Curtain Incinerator Use in the State of North Carolina. <https://www.deq.nc.gov/media/46541/download?attachment>.

⁶¹ 70 FR 74875, 74879 (Dec. 16, 2005).

covered by that EG. However, if finalized, States may revise their State plans implementing subpart DDDD to add the temporary use provisions that would be in subpart DDDD, thereby allowing their existing incinerators at commercial or industrial facilities to be used temporarily for emergency/disaster debris clean up without complying with their CAA section 129 standards during that period.

B. What is the regulatory history for this action?

In 2005, the EPA promulgated the OSWI NSPS (40 CFR part 60, subpart EEEE) and EG (40 CFR part 60, subpart FFFF).⁶² Those regulations established CAA section 129 standards and associated requirements for OSWI units; however, the regulations also allow temporary use of incinerators to burn debris during disaster recovery or other emergencies without complying with such standards. Because these OSWI regulations are currently the only CAA section 129 regulations with such temporary use provisions, only incinerators subject to the OSWI NSPS or State plans implementing the OSWI EG may be used on a temporary basis to combust debris from a disaster or emergency without complying with CAA section 129 requirements during that period.

On January 24, 2025, President Trump issued Executive Order (EO) 14181 to expedite cleanup of the catastrophic wildfires in Los Angeles County.⁶³ The EO sparked renewed awareness of regulatory challenges associated with disaster recovery, which have increased in both intensity and costliness in recent years.⁶⁴ During disaster cleanup, frequently there is considerable excess organic waste that, if left, would decompose into more harmful organic air emissions than if combusted or landfilled. Incinerators are useful tools for disaster or emergency cleanup, as they can process large quantities of

⁶² 70 FR 74870 (Dec. 16, 2005).

⁶³ Executive Order 14181, Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas, 90 FR 8747 (Jan. 24, 2025).

⁶⁴ Moore, A. Hurricane Helene's Aftermath Fuels Heightened Wildfire Risk in Western North Carolina (2025). <https://cnr.ncsu.edu/staging/2025/11/04/hurricane-helene-aftermath-fuels-heightened-wildfire-risk-in-western-north-carolina/>.

debris and are considered safer and more environmentally sound than other remediation options.⁶⁵ When Hurricane Helene hit in September 2024, States and municipalities expressed concern over smoke impacts from open burning of waste and debris, and increased likelihood of wildfires.⁶⁶ To respond to the scale of the disaster and volume of debris generated, the EPA's Regional offices and Office of Enforcement and Compliance Assurance issued No Action Assurances to allow North Carolina and Tennessee to use their CISWI ACI units to combust non-hazardous disaster debris, as ACI can be easily mobilized to reduce waste volume and minimize harmful environmental impacts.⁶⁷ This situation highlighted the need for additional available incinerator capacity for States during disasters, beyond those that could be made available under the Federal OSWI regulations. In this action, the EPA is proposing to include temporary use provisions in the Federal CISWI regulations similar to those in the Federal OSWI regulations, increasing the incinerator capacity available to combust non-hazardous disaster debris during disaster or emergency events. These provisions were previously published by the EPA in a final agency action Interim Final Rule (IFR); however, due to the conclusion of the hurricane and wildfire seasons of 2025, the EPA is withdrawing the IFR and proposing those provisions through a notice-and-comment rulemaking action. The provisions propose to exclude incinerators subject to CISWI from CAA section 129 requirements when they are used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. Such temporary use provisions are being proposed in the following CAA section 129 regulations:

⁶⁵ U.S. EPA. No Action Assurance for the Use of Air Curtain Incinerators to Manage Debris Caused By Hurricane Helene in North Carolina (2024), <https://www.deq.nc.gov/media/46792/download?attachment>.

⁶⁶ *Id.*

⁶⁷ *Id.*

- 40 CFR part 60, subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incinerations Units;
- 40 CFR part 60, subpart DDDD - Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units;
- 40 CFR part 62, subpart IIIa - Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before June 4, 2010, and Have Not been Modified or Reconstructed Since August 7, 2013

As discussed earlier in section VIII.A, the temporary use provisions in the CISWI EG do not directly apply to existing sources. However, following final rule promulgation, States may amend their State plans implementing 40 CFR part 60, subpart DDDD to include these temporary use provisions.

IX. Rationale for Temporary Use of CISWI Units in Disaster Recovery

A. Temporary use of CISWI during disaster recovery

This rule proposes temporary use disaster recovery and emergency provisions for the Federal CISWI regulations similar to those currently in the Federal OSWI regulations. Under this proposal, like OSWI units, CISWI units would not need to comply with their CAA section 129 emission standards and associated requirements while they are used to combust debris as long as they follow the conditions for these temporary use provisions. Specifically, the owners or operators of CISWI units would be allowed to combust debris only in an area declared a State of Emergency by a local or State government or where the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. Under these temporary use provisions, debris that could be combusted would be any non-hazardous material that is the remains of something that is destroyed, broken, or discarded as a result of a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of

bioterrorism; and during the disaster recovery period, the CISWI unit would not be burning waste from normal operations at their commercial and industrial facilities. Also, owners and/or operators would follow the notification requirements specified in the temporary use provisions.

In addition, under the CISWI temporary use provisions, we are proposing that control devices that have been installed to comply with CISWI NSPS, CISWI Federal plan or a State plan implementing CISWI EG would continue operation during temporary use status unless it is not technically feasible to do so due to conditions in the disaster recovery area;⁶⁸ otherwise, these controls are already in place, and they can minimize air pollution during the disaster recovery period even if the CISWI are excluded from CAA section 129 standards and associated requirements during that time. Examples of infeasibility to operate include insufficient electricity to operate a control device, lack of water to operate a wet scrubber or quench, and inability to get replacement supplies such as activated carbon or parts for maintenance.

We believe that during the disaster recovery period, CAA section 129 CISWI standards and associated requirements are not appropriate for incinerators at commercial and industrial facilities that are burning only non-hazardous debris and only long enough to complete the recovery tasks; during the disaster recovery period, these incinerators are not used as regular commercial and industrial waste disposal devices, which Congress intended the CAA section 129 standards to regulate. Also, as the EPA previously explained, “in emergency situations, quick removal of debris is of utmost importance to maintain public health and safety, and temporary use incinerators may be best suited to

⁶⁸ In promulgating the temporary use provisions in the OSWI rules, the EPA recognized that there may be instances where it is not technically feasible to operate a control device through the entire duration of a disaster recovery period. (70 FR 74880; Dec. 16, 2005). Likewise, in this rule, the EPA is requiring that existing controls continue to operate during the temporary use period if technically feasible, thereby acknowledging potential operational issues during such period but minimizing emissions where there are not such issues.

dispose of debris.”⁶⁹ Quick removal without complying with CAA Section 129 standards allows for the more expedited incineration of dried debris, which reduces the near-term likelihood of catastrophic wildfires occurring.⁷⁰ If units elect to comply with the CISWI standards, they may lose valuable time and bandwidth to incinerate debris as quickly as possible. The EPA, therefore, elected to exclude incinerators from CAA section 129 standards when they are used on a short-term basis to burn debris during disaster recovery, noting that such “regulation would hinder the recovery effort and this impact would outweigh the benefits from regulation of the units.”⁷¹ The EPA found that “this proactive approach, which addresses the terms for use of a temporary-use incinerator during declared emergencies or disasters, is better than an approach that requires the EPA and others to react during or immediately after such an emergency or disaster strikes. This provision allows CISWI operators in a disaster region to quickly shift from existing operations to combusting only non-hazardous disaster debris, without the impediment of complying with the CISWI standards during temporary use. We also point out that States and the Federal government have specific procedures that are followed in declaring an area a State of Emergency or a major disaster area. Their procedures involve extensive involvement by local, State, and Federal officials to conduct a preliminary damage assessment, develop debris removal plans, and coordinate and manage disaster assistance activities.”

B. Temporary use period and notifications

As in the OSWI regulations, we are not proposing to require any notification for temporary use of CISWI units for disaster recovery that lasts eight weeks or less (beginning on the date the unit starts operation in response to a disaster or emergency).

⁶⁹ 70 FR 74879, (Dec. 16, 2005).

⁷⁰ U.S. EPA. No Action Assurance for the Use of Air Curtain Incinerators to Manage Debris Caused By Hurricane Helene in North Carolina (2024), <https://www.deq.nc.gov/media/46792/download?attachment>.

⁷¹ 70 FR 74879, (Dec.16, 2005).

This ability to start temporary use without notification during the first eight weeks would ease the burden during or immediately after a disaster or emergency. If the CISWI unit were used for longer than eight weeks, the owner or operator would be required to notify the Administrator in writing and request permission to continue to operate. Submitting such notification would permit temporary use for an additional eight weeks, which is a total of 16 weeks from the date the unit started operation. The notification would have to be submitted in writing by the date eight weeks after the temporary use incinerator starts operation and would include the following information: the date the incinerator started operation within the boundaries of the current emergency or disaster declaration area; identification of the disaster or emergency for which the incinerator is being used; a description of the types of materials being burned in the incinerator; a brief description of the size and design of the unit, including any existing control devices; the reasons the incinerator must be operated for more than eight weeks; the amount of time for which the owner or operator requests permission to operate including the date the unit is expected to cease operation; and, if applicable, a brief description of why the control devices are infeasible to operate due to the disaster. If the request is for longer than 16 weeks, the owner or operator would have to cease operation of the unit or comply with applicable CISWI regulatory requirements at the end of 16 weeks, unless the Administrator approves in writing a request to continue operation. 16 weeks will be the maximum length of time a temporary-use incinerator can operate in a given area declared a State of Emergency or major disaster without specific permission to continue operation from the Administrator. The approval of the request to continue operating must establish a site-specific date to cease operation. Similar to the OSWI exclusion, EPA is proposing this approach, rather than a uniform maximum amount of time, because a case-by-case approval process allows EPA and States to set the appropriate time limits for the specific situation.

If finalized, the proposed temporary use provisions would directly impact incinerators subject to the CISWI NSPS (40 CFR part 60, subpart CCCC) and Federal plan (40 CFR part 62, subpart IIIa) but not those subject to state plans implementing CISWI EG (40 CFR part 60, subpart DDDD). States could then amend their State plans for existing CISWI units to incorporate this temporary use provision.

X. Summary of Cost, Environmental, and Economic Impacts for CISWI Temporary Use Incinerators in Disaster Recovery

We are proposing the temporary use of CISWI units during a disaster or emergency, for the purposes of combusting related debris. Facilities with CISWI units that use the disaster recovery temporary use provisions would not be subject to additional control requirements; they would not need to meet the existing CAA section 129 requirements during this temporary use period. Therefore, we anticipate there would not be any additional capital costs for compliance with this proposal if finalized, only annual notification costs. As cleanup responses are necessary during and following a disaster or emergency, we anticipate that this action would have minimal adverse environmental impacts, as the benefits of using CISWI units will outweigh the alternatives of open burning and/or increased risk of wildfires that would degrade air quality.⁷² As we are unable to quantify the number of units that would be affected by this rulemaking, we are unable to quantify the cost savings from this action at this time.

XI. Request for Comment for CISWI Temporary Use Incinerators in Disaster Recovery

The EPA solicits comment on all aspects of this proposed action described above. Comments can be submitted to the CISWI Docket ID No. EPA-HQ-OAR-2003-0119.

⁷² U.S. EPA, No Action Assurance for the Use of Air Curtain Incinerators to Manage Debris Caused by Hurricane Helene in North Carolina (2024). <https://www.deq.nc.gov/media/46792/download?attachment>.

In addition to general comments on this proposed action, we are soliciting comments on the following topics. A comment reference indicator for each specific topic is provided (e.g., Emergency-1, Emergency-2, etc.).

- Incidents of insufficient numbers of incinerators for emergency/disaster debris cleanup and the impacts on the affected communities. (Emergency-1).
- Information on the difficulty with complying with CISWI regulations during emergency/disaster debris cleanup. (Emergency-2).
- Information on State and local efforts in minimizing health impact during emergency/disaster debris cleanup. (Emergency-3).

XII. 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 13563: Improving Regulation and Regulatory Review

The proposed actions to consolidate the regulations for ACI burning only certain fuels and to allow for temporary use of CISWI units during disasters or emergencies are not considered significant regulatory actions as defined in Executive Order 12866. This proposal was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action proposing to consolidate regulations for ACI that only burn wood wastes, yard wastes, clean lumber, or any mixture of those materials is considered an Executive Order 14192 deregulatory action because it would provide burden reduction by simplifying compliance and some permitting requirements. This action to allow for temporary use of CISWI units is considered an Executive Order 14192 deregulatory

action because it would reduce burdens for CISWI units during emergency and disaster recovery with the temporary use provisions.

C. Paperwork Reduction Act (PRA)

The information collection activities in this action have been submitted for approval to OMB under the PRA as discussed for each of the relevant subpart discussed in sections XII.C.1, XII.C.2, and XII.C.3.

1. ICR for Consolidated Air Curtain Incinerators: 40 CFR Part 60, Subpart Ca

The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 7813.01. You can find a copy of the ICR in Docket ID No. EPA-HQ-OAR-2025-0068, and it is briefly summarized here.

The proposed rulemaking requires initial notifications and opacity tests by the owners and operators of the affected facilities. Owners and operators would also be required to maintain records of and submit the results of opacity tests. These notifications, reports, and records are essential in determining compliance and are required of all affected facilities subject to the subpart. The EPA notes that most of the burden associated with this ICR is burden being transferred from existing ICRs for the subparts that currently regulate ACI that only burn wood wastes, yard wastes, and clean lumber. The only new burden for this ICR is associated with the initial notification of applicability for existing units.

Respondents/affected entities: New or existing air curtain incinerators that only burn wood wastes, yard wastes, and clean lumber.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ca).

Estimated number of respondents: 52.

Frequency of response: Once for startup/applicability notification, annually for opacity test, as needed for disaster recovery for the clean ACI.

Total estimated burden: 1,570 hours (per year), of which the EPA estimates approximately 640 burden hours are currently associated with the CISWI rules and 807 burden hours are currently associated with the OSWI rules. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$537,000, of which the EPA estimates that approximately \$230,000 is currently associated with the CISWI rules and \$290,000 is currently associated with the OSWI rules. The annualized capital operation & maintenance costs are \$156,000.

2. ICR for CISWI Temporary Use Incinerators NSPS: 40 CFR Part 60, Subpart CCCC

The information collection request (ICR) documents that the EPA prepared have been assigned EPA ICR number 1926.10. You can find a copy of the ICR in Docket ID No. EPA-HQ-OAR-2003-0119, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This action proposes to amend the current requirements in 40 CFR part 60, subpart CCCC to allow owners and operators to temporarily combust debris associated with disaster recovery. As part of these proposed requirements, owners and operators would submit a notification to the Administrator whenever an incinerator is used to combust this type of debris for more than eight weeks. There would be no other changes to the notification, recordkeeping, and reporting required in these subparts. These notifications, reports, and records are essential in determining compliance with the applicable subpart.

Respondents/affected entities: Owners and operators of new CISWI units.

Respondent's obligation to respond: Mandatory if temporary use exceeds eight weeks (40 CFR part 60, subpart CCCC).

Estimated number of respondents: 16, of which the EPA estimates that approximately 1.6 will be subject to this proposed notification requirement annually.

Frequency of response: As needed for disaster recovery.

Total estimated burden: 2,230 hours per year for 40 CFR part 60, subpart CCCC, of which the EPA estimates approximately 3.7 hours are associated with this notification annually. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,530,000 (per year) for 40 CFR part 60, subpart CCCC, of which the EPA estimates that approximately \$529 is associated with this notification annually.

3. ICR for CISWI Temporary Use Incinerators EG: 40 CFR Part 60, Subpart DDDD and 40 CFR Part 62, Subpart IIIa

This action proposes to amend the current requirements in 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa to allow owners and operators to temporarily combust debris associated with disaster recovery. As part of these proposed requirements, owners and operators would submit a notification to the Administrator whenever an incinerator is used to combust this type of debris for more than eight weeks. There would be no other changes to the notification, recordkeeping, and reporting required in these subparts. These notifications, reports, and records are essential in determining compliance with the applicable subpart.

Respondents/affected entities: Owners and operators of existing CISWI units.

Respondent's obligation to respond: Mandatory if temporary use exceeds eight weeks (40 CFR part 60, subpart DDDD, and 40 CFR part 62, subpart IIIa).

Estimated number of respondents: 76 for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa, of which the EPA estimates that approximately 2.7 existing units will be subject to this proposed notification requirement annually.

Frequency of response: As needed for disaster recovery.

Total estimated burden: 8,510 hours per year for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa, of which the EPA estimates approximately 6.2 burden hours are associated with this notification annually. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$13,500,000 (per year) for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa, of which the EPA estimates that approximately \$893 is associated with this notification annually.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 51 are listed in 40 CFR part 9. Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review-Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

D. Regulatory Flexibility Act (RFA)

I certify that these proposed actions will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rulemaking is any significant adverse economic impact on small entities, and that the agency is certifying that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. This Consolidated ACI proposed action will impose monitoring, recordkeeping and reporting requirements that currently exist in the respective rules for OSWI, CISWI, LMWC and SMWC units. We only anticipate the additional costs of the initial notification requirements. The EPA has provided a memo in the docket for this action titled,

“Economic Impact and Small Business Analysis for the Consolidated Air Curtain Incinerators (ACI) and Temporary Use of Commercial Industrial Solid Waste Incinerators (CISWI) Proposed Rule.” For the CISWI Temporary Use Incinerator Actions, there are no additional control requirements and thereby no additional compliance costs. Therefore, we conclude that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

These proposed actions do not contain unfunded mandates 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.

F. Executive Order 13132: Federalism

These proposed actions do not have federalism implications. The actions 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.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

These proposed do not have Tribal implications. It will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe

may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order.

The proposed actions are 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, EPA’s Policy on Children’s Health also does not apply.

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

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

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

This notice of proposed rulemaking involves technical standards for ACI that only burn wood wastes, yard wastes, and clean lumber. Therefore, the EPA conducted searches through the Enhanced National Standards System Network Database managed by the American National Standards Institute (ANSI) to determine if there are voluntary consensus standards (VCS) that are relevant to this action. We conducted searches for EPA Method 9 of 40 CFR part 60, appendix A. During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA’s reference method, the EPA considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for these rules. This review requires significant method validation data which meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS. ASTM D7520-16, Standard Test Method for Determining

the Opacity of a Plume in the Outdoor Ambient Atmosphere, approved April 1, 2016, describes how digital imagery and associated hardware and software is used to determine the opacity of a plume. The EPA will allow the voluntary consensus standard ASTM D7520-16, as an acceptable alternative to EPA Method 9 with the following caveats:

1. During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520-16, you (the operator of the regulated unit) or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and a sparse tree stand).

2. You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520-16.

3. You must follow the recordkeeping procedures outlined in section 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.

4. You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of anyone reading and the average error must not exceed 7.5 percent opacity.

5. Use of this approved alternative does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and training of the DCOT camera, software and operator in accordance with ASTM D7520-16 and these requirements is on the facility, DCOT operator, and DCOT vendor. This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See www.astm.org. The standard is available to everyone at a cost determined by ASTM. The cost of obtaining this method is not a significant financial burden, making

the method reasonably available. Additional information for the VCS search and determinations can be found in the memorandum, Voluntary Consensus Standard Results for Consolidation of standards for air curtain incinerators that only burn wood wastes, yard wastes, and clean lumber, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2025-0068).

Under 40 CFR 60.8(b) and 60.13(i) of subpart A of the General Provisions, a source may apply to the EPA to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule or any amendments.

Lee Zeldin

Administrator.

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