



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-HQ-OAR-2025-3028; FRL-12944-02-OAR]

RIN 2060-AW94

Federal Plan Requirements for Other Solid Waste Incineration Units That Commenced Construction on or Before August 31, 2020, and Have Not Been Modified or Reconstructed After August 29, 2025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing a Federal plan to implement the revised emission guidelines for existing other solid waste incineration (OSWI) units. The EPA promulgated emission guidelines for existing OSWI units in 2005 and revised the emission guidelines on June 30, 2025. If a State or Tribe with existing OSWI units subject to the 2025 revised OSWI emission guidelines does not submit an approvable plan by June 30, 2027, the EPA will develop, implement, and enforce a Federal plan for existing OSWI units located in that State or area of Indian Country. This action proposes a Federal plan to implement the 2025 revised OSWI units emission guidelines for existing OSWI units located in States and on Tribal lands without effective State or Tribal plans by the effective date of this Federal plan.

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 July 7, 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-2025-3028, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2025-3028 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2025-3028, 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. to 4:30 p.m., Monday through Friday (except Federal holidays).

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

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rulemaking, contact Felica Davis, Ph.D., Natural Resources Division (E143-03), Office of Clean Air Programs, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-4857; and email address: davis.felica@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 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA will announce further details at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

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/other-solid-waste-incinerators-oswi-new-source-performance> 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 July 14, 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/other-solid-waste-incinerators-oswi-new-source-performance>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers.

Each commenter will have 4 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/other-solid-waste-incinerators-oswi-new-source-performance>. 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 special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by July 9, 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-2025-3028. All documents in the docket are listed at <https://www.regulations.gov>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA does not place certain other material, such as copyrighted material, on the internet; this material is publicly available only as Portable Document Format (PDF) versions and accessible only on EPA computers in the docket office reading room. The public cannot download certain databases and physical items from the docket but may request these items by contacting the docket office by telephone at (202) 566-1744. The docket office has 10 business days to respond to such requests. Except for these items, publicly available docket materials are available electronically at <https://www.regulations.gov>.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-3028. The EPA's policy is that all comments received will be included in the public docket

without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to <https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

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 or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and should be free of any

defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Throughout this proposal, the EPA is soliciting comment on numerous aspects of this proposed rulemaking. The EPA has indexed each comment solicitation with an identifier (e.g., Question 1, Question 2) to provide a consistent framework for effective and efficient provision of comments. Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier in either a heading, or within the text of each comment (e.g., In response to Question 1, . . .) 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 proposal.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you 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.

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 Air Programs (OCAP) at the email address *ocapcbi@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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to receive instructions.

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

AG	Attorney General
CAA	Clean Air Act
CBI	Confidential Business Information
Cd	cadmium
CFR	Code of Federal Regulations
CISWI	Commercial and industrial solid waste incineration units
CMS	continuous monitoring system
CO	carbon monoxide
EG	Emission Guidelines
EPA	Environmental Protection Agency
ERU	energy recovery unit
FF	fabric filter
HAP	hazardous air pollutants
HCl	hydrogen chloride
Hg	mercury
IBR	incorporation by reference
ICR	information collection request
mg/dscm	milligrams per dry standard cubic meter
NAICS	North American Industrial Classification System
NESHAP	national emission standards for hazardous air pollutants
ng/dscm	nanograms per dry standard cubic meter
NO _x	nitrogen oxides
NSPS	new source performance standards
NTTAA	National Technology Transfer and Advancement Act

OCAP	Office of Clean Air Programs
OSWI	other solid waste incineration
Pb	lead
PCB	hydrocarbons and polychlorinated biphenyls
PCDD	polychlorinated dibenzo-p-dioxins
PCDF	polychlorinated dibenzofurans
PM	particulate matter (filterable, unless otherwise specified)
PM _{2.5}	particulate matter (diameter less than or equal to 2.5 micrometers)
PM CPMS	particulate matter Continuous Parameter Monitoring System
ppmv	parts per million by volume
RIN	Regulatory Information Number
SMCD	substitute means of compliance demonstration
SRI	small, remote incinerators
SO ₂	sulfur dioxide
TPD	tons per day
UMRA	Unfunded Mandates Reform Act
U.S.C.	United States Code
VCS	voluntary consensus standards

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I. General Information

A. Executive Summary

On June 30, 2025, the EPA promulgated revised new source performance standards (NSPS) and emission guidelines (EG) for other solid waste incineration (OSWI) units.¹ In this proposed rulemaking, the EPA is proposing to adopt as the OSWI Federal plan, the model rule standards and associated requirements that were presented in the 2025 revised OSWI EG. The NSPS are directly enforceable Federal regulations, and, under CAA section 129(f)(1), become effective six months after promulgation. Unlike the NSPS, the EG are not themselves directly enforceable. For the EG to be enforceable, it must be implemented through either an EPA approved State or Tribal plan or through

¹ 90 FR 27910, (June 30, 2025).

an EPA promulgated Federal plan. In this proposed rulemaking, the EPA proposes to implement the 2025 revised OSWI EG for States that do not have an approved revised or new State or Tribal plan in place to implement and enforce the 2025 revised OSWI EG by the effective date of the final Federal plan.² Existing OSWI units under the revised EG and this proposed Federal plan are those that commenced construction on or before August 31, 2020 and have not been modified or reconstructed after August 29, 2025.

The proposed Federal plan would also apply to facilities located in States that have opted to implement the Federal plan rather than developing a State plan. The proposed Federal plan, which adopts the model rule standards and associated requirements in the revised EGs, would not result in any additional control requirements or impose any additional costs above those previously considered in the 2025 revised OSWI EG.

We estimated the total cost impacts of the testing, add-on controls, monitoring, and recordkeeping and reporting requirements in the 2025 revised OSWI EG. Consistent with the model rule, we are proposing the substitute means of compliance demonstration (SMCD) for OSWI units with capacities less than or equal to 10 tons per day (TPD). We have considered the cost of testing, and we recognize that testing and monitoring requirements can impose substantial financial burdens and technical challenges on owners and operators of these sources. The SMCD provides an alternative to the general testing and monitoring requirements for OSWI units with capacities less than or equal to 10 TPD. OSWI units with capacities less than or equal to 10 TPD are expected to be able to comply with the 2025 revised OSWI EG emission limits without the use of an add-on control device beyond what they currently have. The 2025 revised OSWI EG does not require these units to use continuous emissions monitoring systems (CEMS) and only requires recordkeeping and reporting to demonstrate compliance. The 2025 revised

² The Federal plan will become effective 30 days after final promulgation.

OSWI EG does not substantively change the compliance requirements for OSWI units with capacity greater than 10 TPD. We anticipate that the Federal plan will ultimately result in a de minimis increase in burden for all affected sources.

Compliance with performance standards and other requirements promulgated pursuant to CAA section 129 and applicable to existing units, cannot be later than five years after the relevant EG are promulgated (*i.e.*, July 1, 2030) or within three years from State plan approval (or promulgation of a Federal plan), whichever is earlier. This rulemaking is not proposing any changes to this compliance schedule.

B. Does the proposed action apply to me?

Regulated entities. The proposed Federal plan will apply to the owner or operator of an existing OSWI unit that was constructed on or before August 31, 2020, have not been modified or reconstructed after August 29, 2025, and that is not subject to an approved and effective State plan as of the effective date of the final Federal plan notification.³ The Federal plan would apply to the OSWI unit until the EPA approves a State or Tribal plan that regulates the OSWI unit and that plan becomes effective.⁴

Table 1 of this preamble presents categories and entities that are the subject of this proposal. Table 1 is not intended to be exhaustive but rather provides a guide for readers regarding the entities that this proposed rulemaking is likely to affect. To determine if this action affects your facility, you should examine the applicability criteria in 40 CFR 62.15460 through 62.15480 of 40 CFR part 62, subpart KKK being proposed here.⁵ If you have any questions regarding the applicability of any aspect of this proposed action,

³ The Federal plan will become effective 30 days after final promulgation.

⁴ A State plan is effective on the date specified in the document published in the *Federal Register* announcing the EPA's approval of the plan.

⁵ See the memorandum, *Proposed Regulatory Text for Subpart KKK—Federal Plan Requirements for Other Solid Waste Incineration Units Constructed on or Before August 31, 2020 and Have Not Been Modified or Reconstructed After August 29, 2025*, which is available in the docket (see Docket EPA-HQ-OAR-2025-3028) for this rulemaking.

please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Table 1. Examples of Potentially Regulated Entities

Source Category	NAICS Code	Examples of potentially regulated entities
Any State, local, or Tribal government using a very small municipal waste combustion (VSMWC) unit	562213, 92411	Solid waste combustion units burning municipal solid waste (MSW)
Any correctional institutions using an institutional waste incineration (IWI) unit	922, 7213	Correctional institutions
Any nursing or residential care facilities using an OSWI unit	623	Any nursing care, residential intellectual and developmental disability, residential mental health and substance abuse, or assisted living facilities
Any Federal Government agency using an OSWI unit	928, 7121	Department of Defense (labs, military bases, munition facilities) and National Parks
Any educational institution using an OSWI unit	6111, 6112, 6113	Primary and secondary schools, universities, colleges, and community colleges
Any church or convent using an OSWI unit	8131	Churches and convents
Any civic or religious organization using an OSWI unit	8134	Civic associations and fraternal associations
Any industrial or commercial facility using a VSMWC unit	114, 211, 212, 221, 486	Oil and gas exploration operations; mining; pipeline operators; utility providers; fishing operations

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 rulemaking is available on the EPA website. Following signature by the EPA Administrator, the EPA will post a copy of this proposed rulemaking at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of the proposal and key technical documents on the same web page.

A memorandum showing the rulemaking edits that would be necessary to incorporate the changes to 40 CFR part 62, subpart KKK proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2025-3028). Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

II. Background Information

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

The CAA requires the EPA to promulgate NSPS and EG for solid waste incineration units pursuant to CAA sections 129 and 111.^{6,7} The EPA promulgated NSPS and EG for OSWI units on December 16, 2005 (2005 OSWI rule).⁸ Following that final rule, the Administrator received a petition for reconsideration of the 2005 OSWI rule, and on June 28, 2006, the EPA announced reconsideration of the final OSWI rule.⁹ After consideration of comments and information received through the reconsideration process, we concluded that no additional changes were necessary to the final OSWI rule.¹⁰

In addition to the administrative reconsideration petition, some entities petitioned for judicial review of the 2005 OSWI rule. The judicial review proceedings were initially stayed and, ultimately, the EPA requested a voluntary remand of the OSWI NSPS and EG. By an order dated April 21, 2016, the D.C. Circuit granted the EPA's request for a remand.¹¹ The remand was requested to allow the EPA to consider potential revisions, if

⁶ 42 U.S.C. 7429(a) (citing 42 U.S.C. 7411).

⁷ 42 U.S.C. 7429(b) (citing 42 U.S.C. 7411).

⁸ 70 FR 74870, (December 16, 2005).

⁹ 71 FR 36726, (June 28, 2006).

¹⁰ 72 FR 2620, (January 22, 2007).

¹¹ Order, *Sierra Club v. EPA*, No. 06-1066 (D.C. Cir. April 21, 2016).

any, to the OSWI NSPS and EG that might be appropriate in light of certain legal developments, including 2007 and 2008 decisions from the D.C. Circuit.¹²

The CAA section 129(a)(5) requires the EPA to review and, if appropriate, revise the requirements for solid waste incineration units no later than five years following the initial promulgation of any performance standards and at periodic five year intervals after that. In 2018, the Sierra Club filed suit against the EPA, alleging the agency, among other things, failed to perform its nondiscretionary duty under CAA section 129(a)(5) to review the 2005 OSWI NSPS and EG. In response to that suit, the EPA was ordered to complete such review by June 30, 2025.¹³ The EPA fulfilled this obligation and promulgated the 2025 revised OSWI NSPS and EG.

The CAA section 129(b)(3) requires the EPA to develop, implement, and enforce a Federal plan for existing solid waste incineration units in any State or area of Indian country without an EPA-approved plan.¹⁴ In 2023, the Sierra Club filed suit against the EPA alleging the agency failed to issue a Federal plan following the promulgation of the 2005 EG.¹⁵ The dispute culminated in a consent decree entered by the court in 2024, which requires the EPA to propose by June 30, 2026 and finalize by June 30, 2027 a Federal plan implementing EG for existing OSWI facilities located in any State without an approved State plan.¹⁶ Accordingly, in this proposed rulemaking, the EPA is proposing the Federal plan to implement the 2025 revised OSWI EG.

¹² *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007) (vacating EPA regulations setting national emission standards for brick and clay ceramics kilns under section 112 on the basis that CAA section 112(d)(3) “requires floors based on the emission level actually achieved by the best performers (those with the lowest emission levels).”); *NRDC v. EPA*, 489 F.3d 1250 (D.C. Cir. 2007)) (vacating a CAA section 129 rule defining the term “commercial and industrial solid waste incineration unit” and related CAA section 112 standards for boilers); *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) (vacating provisions exempting major sources from compliance with CAA section 112 standards during startup, shutdown, and malfunction).

¹³ Order, *Sierra Club v. Wheeler*, no. 16-2461 (D.D.C. filed November 7, 2023) (extending the EPA’s deadline to promulgate a final rule to June 30, 2025).

¹⁴ 42 U.S.C. 7429(B)(3).

¹⁵ *Sierra Club v. Regan*, No. 23-cv-00424 (D.D.C. 2023).

¹⁶ *Id.* Dkt. No. 23.

In this proposal, the EPA is soliciting comment only on the proposed Federal plan implementing the 2025 revised OSWI EG (Question 1). The EPA is not reopening the underlying EG for public comment and does not intend to address any comments on the underlying OSWI EG.

B. What is the purpose of this action?

The CAA section 129 relies upon States as the preferred implementers of the EG for existing OSWI units. States with existing OSWI units subject to the 2025 revised OSWI EG are to submit State plans that are at least as protective as the revised EG to the EPA within one year following promulgation of the revised EG. States without any existing OSWI units are directed to submit to the Administrator a letter of negative declaration certifying that there are no OSWI units in the State.¹⁷ No plan is required for States that do not have any OSWI units.¹⁸

This proposed OSWI Federal plan will implement the 2025 revised OSWI EG in those States that do not have an approved State plan in place by the effective date of this Federal plan. If a State or Tribal plan is approved in part, the Federal plan will apply to the affected OSWI units in lieu of the disapproved portions of the State or Tribal plan until the State or Tribe addresses the deficiencies in the State or Tribal plan and the revised State or Tribal plan is approved by the EPA.

C. What is the status of State plan submittals?

The CAA sections 111(d) and 129(b)(3), 42 U.S.C. 7411(d) and 7429(b)(3), authorize and require the EPA to develop and implement a Federal plan for OSWI units located in States with no approved and effective State plan implementing the 2025 revised OSWI EG. The EPA will include in the preamble of the final Federal plan a list of the States that have an EPA-approved plan in effect on the date the final Federal plan

¹⁷ 40 CFR 60.2982.

¹⁸ *Id.*

is signed by the EPA Administrator. The EPA will continue to review and approve or disapprove State plans after the promulgation of the OSWI Federal plan. The regulation at 40 CFR part 62 identifies the approval and promulgation of CAA sections 111(d) and 129(b) State plans for designated facilities in each State. Whenever an EPA Regional office approves a State plan, it would also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify its approval. These lists will help OSWI unit owners and operators determine whether their OSWI units are affected by a State plan or the Federal plan. Owners and operators of OSWI units can also contact the EPA Regional office for the State in which their units are located to determine whether there is an approved and effective State plan in place. The names, email addresses, and telephone numbers of the EPA Regional office contacts and the States and territories that they cover will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

III. Affected Facilities

A. What is an OSWI unit?

The OSWI units are either a VSMWC units that has the capacity to combust less than 35 TPD of municipal solid waste or refuse-derived fuel, or an IWI units that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste. The 2025 OSWI rule further subcategorized VSMWC and IWI units based on size—including units that have capacities greater than 10 TPD and units that have capacities less than or equal to 10 TPD. The affected facility under OSWI unit is each individual OSWI unit.

B. Does the Federal plan apply to me?

The proposed Federal plan will apply to the owner or operator of an existing OSWI unit that was constructed on or before August 31, 2020, have not been modified or reconstructed after August 29, 2025, and that is not subject to an approved and effective

State plan as of the effective date of the final Federal plan notice.¹⁹ The Federal plan would apply to the OSWI unit until the EPA approves a State or Tribal plan that regulates the OSWI unit and that plan becomes effective.²⁰ While the Federal plan applies to OSWI units owned or operated by Indian Tribes that are not regulated by State or Tribal plans, the EPA is currently unaware of any OSWI units owned or operated by Indian Tribes and so does not anticipate any direct effects of the Federal plan on Indian Tribes. The EPA is proposing to codify the specific applicability of the proposed Federal plan at 40 CFR 62.15460 through 62.15480 of the proposed 40 CFR part 62, subpart KKK.

This action will not preclude States from submitting a State plan at a later date. If a State or Tribal agency submits a plan after the promulgation of the OSWI Federal plan, the EPA will review and approve or disapprove the State or Tribal plan.²¹ If the EPA approves a plan, the OSWI Federal plan will no longer apply to OSWI units covered by the State or Tribal plan after the effective date of the plan. If a State or Tribe overlooked an OSWI unit and submitted a negative declaration letter, the OSWI unit would then be subject to this Federal plan.

C. How do I determine if my OSWI unit is covered by an approved and effective State plan?

In the regulations at 40 CFR part 62 identifies the approval and promulgation of sections 111(d) and 129(b) State plans for designated facilities in each State. However, the print version of 40 CFR part 62 is updated only once per year. Thus, if 40 CFR part 62 does not indicate that a State has an approved and effective plan, please contact your State environmental agency's air director or the EPA's Regional Office (*see* section II.C of this preamble) to determine if approval occurred since publication of the most recent

¹⁹ The Federal plan will become effective 30 days after final promulgation.

²⁰ A State plan is effective on the date specified in the document published in the *Federal Register* announcing the EPA's approval of the plan.

²¹ An approved State plan is a plan developed by a State that the EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B, to implement 40 CFR part 60, subpart FFFF.

version of 40 CFR part 62. Also note that the Electronic Code of Federal Regulations (<https://www.ecfr.gov/>) is updated periodically and may be a better source to obtain an update on State plan status.

IV. Elements of the OSWI Federal Plan

The basic elements of the proposed Federal Plan include: (1) identification of legal authority and enforcement mechanism; (2) inventory of affected OSWI units; (3) emissions inventory; (4) compliance schedules; (5) emissions limits and operating limits; (6) operator training and qualification; (7) testing, monitoring, recordkeeping, and reporting; (8) public hearing; and (9) progress reporting. This section of the preamble describe each plan element as it relates to the proposed OSWI Federal plan.

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. The CAA sections 111(d) and 129(b)(3) direct the EPA to develop a Federal plan for States that do not submit approvable State plans. Pursuant to CAA section 129(b)(3), the Federal plan must assure that each unit subject to the Plan is in compliance with all provisions of the EG not later than five years after the relevant EG are promulgated (*i.e.*, by July 1, 2030).

2. EPA's Legal Authority in Indian country

The CAA sections 301(a) and (d) provide the EPA with the authority to administer Federal programs in Indian country. The CAA section 301(d)(4) authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. The EPA is proposing this Federal regulation under the legal authority of the CAA to implement the EG in those States and Tribal areas not covered by an approved plan. As discussed in section VII of this preamble, implementation and enforcement of the Federal

plan may be delegated to eligible Tribal, State, or local agencies when requested and when the EPA determines that such delegation is appropriate.

B. Inventory of Affected OSWI Units

The docket for the proposed Federal plan includes an inventory of the OSWI units that may potentially be covered by this Federal plan in the absence of approved State plans. (See Docket ID No. EPA-HQ-OAR-2025-3028). This inventory contains 60 OSWI units in 12 States. It is based on information collected from EPA Regions, States, OSWI facilities, and review of existing OSWI inventories, title V permits, emissions test reports, and facility websites. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this proposed Federal plan may include, but are not limited to, the OSWI units listed in Docket No. EPA-HQ-OAR-2025-3028. Any unit that meets the applicability criteria in the final Federal plan rule will be subject to the Federal plan, regardless of whether it is listed in the inventory. The EPA requests that States, Tribes, or individuals identify additional sources for inclusion on the list during the comment period for this proposal (Question 2).

C. Inventory of Emissions

This proposed Federal plan includes an emissions estimate for existing OSWI units. For this proposal, the EPA has estimated the emissions from each known OSWI units that may be covered by the proposed Federal plan for the nine pollutants regulated by the EG and covered by the proposed Federal plan. The pollutants inventoried are cadmium (Cd), carbon monoxide (CO), polychlorinated dibenzo-p-dioxins/ polychlorinated dibenzofurans (PCDD/PCDF), hydrogen chloride (HCl), lead (Pb), mercury (Hg), particulate matter (PM), nitrogen oxides (NO_x) and sulfur dioxide (SO₂).

The emissions inventory is based on available information about the OSWI units and typical emissions rates developed for calculating nationwide air impacts of the 2025 revised OSWI EG. Refer to the inventory memorandum in Docket No. EPA-HQ-OAR-

2025-3028 for the complete updated emissions inventory. We are soliciting comments on additional data regarding the emission inventory for existing OSWI units (Question 3).

D. Compliance Schedules

Section 129(f)(2) of the CAA requires standards and requirements for existing sources be effective as soon as practicable but not later than three years after approval of a State plan or promulgation of a Federal Plan, or five years after the effective date of the 2025 revised OSWI EG (i.e., July 1, 2030), whichever is earlier. The EPA aims to take final action on this proposal in 2027 and, thus, proposes to allow the maximum time statutorily permitted for compliance with the Federal plan, that is until July 1, 2030. The proposed Federal plan requires owners and operators of OSWI units to come into compliance by July 1, 2030.

E. Waste Management Plan Requirements

The proposed Federal plan requires the owner and operator of an OSWI unit to submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must also identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have. The waste management plan must be submitted no later than the date 60 days after the initial performance test. The EPA proposes to codify these requirements at 40 CFR 62.15505 through 62.15515. The memorandum showing the

rulemaking edits that would be necessary to incorporate the changes to 40 CFR part 62, subpart KKK proposed in this action is available in the docket.

F. Operator Training and Qualification Requirements

The proposed Federal plan requires that owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. This proposed Federal plan also contains operator training and qualification requirements that correspond to the 2025 revised OSWI EG. The EPA proposes to codify these requirements at 40 CFR 62.15520 through 62.15550. The memorandum showing the rulemaking edits that would be necessary to incorporate the changes to 40 CFR part 62, subpart KKK proposed in this action is available in the docket.

G. Emissions Limits and Operating Limits

The proposed Federal plan contains emissions limits that correspond to the 2025 revised OSWI EG. The EPA proposes to codify these requirements at 40 CFR 62.15555 through 62.15565. The memorandum showing the rulemaking edits that would be necessary to incorporate the changes to 40 CFR part 62, subpart KKK proposed in this action is available in the docket. The emissions limits in this proposed Federal plan are the same as those contained in the 2025 revised OSWI EG. (*See* proposed tables 5 and 6 of this preamble.). Section V.C of this preamble discusses the 2025 revised OSWI EG emissions limits.

H. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. These proposed requirements correspond with the 2025 revised OSWI EG. Testing, monitoring, recordkeeping and reporting requirements will assure initial and ongoing compliance. The EPA proposes to codify these requirements at 40 CFR 62.15570 through 62.15705. The memorandum showing the rulemaking edits that

would be necessary to incorporate the changes to 40 CFR part 62, subpart KKK proposed in this action is available in the docket.

I. Record of Public Hearings

This proposed Federal plan provides an opportunity for public participation in adopting the plan. If requested to do so, the EPA will hold a public hearing via virtual platform. A record of the public hearing, if any, will appear in Docket ID No. EPA-HQ-OAR-2025-3028. If a public hearing is requested and held, the EPA may ask clarifying questions during the oral presentation, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

The proposed Federal plan requests that the EPA Regional Offices prepare annual progress reports to show the progress of OSWI units toward implementation of the EG. States that have been delegated the authority to implement and enforce this Federal plan will be required to submit annual progress reports to the appropriate EPA Regional Office as part of their delegation (*See* section VII.B of this preamble).

Each progress report must include the following items: (1) status of enforcement actions; (2) identification of sources that have shut down or started operation; (3) emissions inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (4) additional data as necessary to update previously submitted source and emissions information; and (5) copies of technical reports on any performance testing and monitoring.

V. Summary of Proposed OSWI Federal Plan Requirements

The proposed OSWI Federal plan requirements are described in table 3. Table 3 lists each element of the proposed OSWI Federal Plan and identifies where the EPA

proposes these elements to be located or codified within the new proposed 40 CFR part 62, subpart KKK.

TABLE 3—Elements of the Proposed OSWI Federal Plan

Element of the OSWI Federal Plan	Proposed Location
Legal authority and enforcement mechanism	CAA sections 129(b)(3), 111(d), 301(a), and 301(d)(4)
Inventory of affected OSWI units	Docket ID No. EPA-HQ-OAR-2025-3028
Inventory of emissions	Docket ID No. EPA- EPA-HQ-OAR-2025-3028
Compliance schedules	40 CFR 62.15485 to 62.15500
Waste management plan requirements	40 CFR 62.15505 to 62.15515
Operator training and qualification requirements	40 CFR 62.15520 to 62.15550
Emissions limits and operating limits	40 CFR 62.15555 to 62.15565
Testing, monitoring, recordkeeping and reporting	40 CFR 62.15570 to 62.15705
Record of public hearings	Docket ID No. EPA-HQ-OAR-2025-3028
Progress reports	Section IV.J. of this preamble

A. Proposed Applicability Requirements

The proposed Federal plan applicability reflects the 2025 revised OSWI EG. The EPA proposes to include applicability requirements in the Federal plan at of 40 CFR 62.15460. The Federal plan would apply to existing OSWI units meeting the proposed applicability of 40 CFR 62.15460 that are located in any State that does not currently have an approved State plan in place. Existing units are all OSWI units for which construction commenced on or before August 31, 2020 and have not been modified or reconstructed after August 29, 2025. All OSWI units for which construction commenced after August 31, 2020, or for which modification or reconstruction commenced after December 29, 2025, are new sources subject to NSPS emissions limits (40 CFR part 60, subpart EEEE).

The Federal plan requirements apply to owners and/or operators of OSWI units. The EPA proposes to define OSWI units at 40 CFR 62.15735. The proposed Federal plan, which adopts the model rule standards and associated requirements, subcategorize

IWI and VSMWC units based on size: VSMWC units with a capacity to combust less than or equal to 10 TPD of MSW or refuse-derived fuel; VSMWC units with a capacity to combust greater than 10 TPD but less than 35 TPD of MSW or refuse-derived fuel; IWI units with a capacity to combust less than or equal to 10 TPD of institutional waste; and IWI units with a capacity to combust greater than 10 TPD of institutional waste. The subcategories for VSMWC and IWI units are summarized in table 4 of this preamble.

Table 4 — OSWI CATEGORIES AND NEW SUBCATEGORIES

2025 Revised OSWI Rule			
Subcategory	Capacity	Additional Subcategory	Capacity
VSMWC	<35 TPD	VSMWC with capacity \leq 10 TPD	\leq 10 TPD
		VSMWC with capacity >10 TPD	>10 but <35 TPD
IWI	No capacity threshold	IWI with capacity \leq 10 TPD	\leq 10 TPD
		IWI with capacity >10 TPD	>10 TPD

B. Proposed Compliance Schedules

The proposed Federal plan requires owners and operators of OSWI units to come into compliance by July 1, 2030. The 2025 revised OSWI EG included increments of progress in the compliance schedule. However, we are not including increments of progress as a compliance pathway for the proposed Federal plan. Increments of progress were included in the EG to establish obligations that would apply to sources planning to take more than one year from approval of the State plan to comply. The increments would help ensure that sources planning to take more than one year to comply would make some incremental progress toward compliance after the first year. The increments of progress contained in the 2025 revised OSWI EG do not require any additional action within one year of promulgation of a Federal plan. Thus, including the increments of

progress in this Federal plan would serve no meaningful purpose and may create confusion. For this reason, the EPA is not proposing to include increments of progress in the Federal plan.

If an OSWI unit does not achieve final compliance by July 1, 2030, the proposed Federal plan requires the OSWI unit to shut down by July 1, 2030, complete the retrofit while not operating, and be in compliance upon restarting. An OSWI unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

C. Proposed Emissions and Operating Limits

This action proposes to incorporate the emission from the 2025 revised OSWI EG into the OSWI Federal plan. The EPA proposes to codify these emission limits in tables 1 and 2 of 40 CFR part 62, subpart KKK. Tables 5 and 6 of this preamble summarizes the emissions limits included in 40 CFR part 60, subpart FFFF tables 2 and 2a being incorporated in the Federal Plan. Existing sources may comply with either the PCDD/PCDF toxicity equivalence or total mass balance emission limits. These standards apply at all times.

Table 5 —Summary of Emissions Limits That Apply to OSWI Units With Capacities Less Than or Equal to 10 Tons per Day

Pollutant (units) ¹	Concentration units	VSMWC and IWI
Cd	µg/dscm	2,000
CO	ppmvd	220
DF (TMB) ²	ng/dscm	4,700
DF (TEQ) ²	ng/dscm	86
HCl	ppmvd	500
Pb	µg/dscm	32,000
Hg	µg/dscm	69
NO _x	ppmvd	210
PM	mg/dscm	280
SO ₂	ppmvd	130

¹ All emission limits are expressed as concentrations corrected to 7 percent O₂.

² For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

Table 6 — Emission Limitations for That Apply to OSWI Units With Capacities Greater Than 10 Tons per Day

Pollutant (units) ¹	Concentration units	VSMWC and IWI
Cd	µg/dscm	18
CO	ppmvd	40
DF (TMB) ²	ng/dscm	33
HCl	ppmvd	15
Pb	µg/dscm	226
Hg	µg/dscm	74
NO _x	ppmvd	103
PM	mg/dscm	30
SO ₂	ppmvd	3.1

¹ All emission limits are expressed as concentrations corrected to 7 percent O₂.

² For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

The EPA is also proposing to incorporate operating limits from the 2025 revised OSWI EG into the OSWI Federal plan. The EPA proposes to codify these operating limits in table 4 of 40 CFR part 62, subpart KKK. Facilities will be required to establish site-specific operating limits derived from the results of performance testing. The site-specific operating limits are established as the minimum (or maximum, as appropriate) operating parameter value measured during the performance test. These operating limits will result in achievable operating ranges that will ensure that the control devices used for compliance will be operated to achieve continuous compliance with the emissions limits. Further discussion on performance testing can be found in section V.D of this preamble.

D. Proposed Performance Testing and Monitoring Requirements

In this preamble section we describe the performance testing and monitoring requirements finalized in the 2025 revised OSWI EG that are being proposed in the OSWI Federal plan.

The EPA proposes in the Federal plan to require all existing OSWI units to demonstrate initial and continuous compliance with the 2025 revised OSWI EG emission limits and operating limits as being incorporated in the Federal plan. The proposal also requires initial and annual performance tests and initial and annual inspections of scrubbers, fabric filters (FF), and other air pollution control devices that are used to meet the emission limits. All existing OSWI units are required to demonstrate initial and annual compliance with the emission limits using EPA-approved emission test methods. Owners and operators may conduct performance tests less often than annually for a given pollutant if they are able to demonstrate compliance with the emissions limitations for three consecutive annual tests. Owners and operators of an OSWI unit with a capacity greater than 10 TPD must install, calibrate, maintain, and operate CEMS for carbon monoxide and oxygen. The oxygen concentration must be monitored at each location where carbon monoxide is monitored. The EPA is proposing to incorporate the requirements for CEMS from the 2025 revised OSWI EG into the OSWI Federal plan. The EPA proposes to codify these requirements in table 6 of 40 CFR part 62, subpart KKK.

The proposed Federal plan incorporates by reference four alternatives to the EPA reference test methods, ASTM D6522-11 and ASTM D6522-20, “Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers” and ASTM D7520-2016 and ASTM D7520-16 (2023), “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere”. These tests are discussed further in section X.J of this preamble. titled, “National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51.”

Consistent with the 2025 revised OSWI EG, the Federal plan is proposing the SMCD for VSMWC and IWI units with capacities less than or equal to 10 TPD. The SMCD provides an alternative to the general testing and monitoring requirements for VSMWC and IWI units with capacities less than or equal to 10 TPD. Owners and operators of OSWI units with capacity less than or equal to 10 TPD who have not previously submitted testing meeting the requirements of the final standards would have the option to submit detailed information about their units including: (1) the make, model and manufacturer of the unit; (2) the type and capacity of the unit; (3) the unit's air pollution control devices (if any), (4) the type and quantity of waste incinerated; and (5) the charge rate. They would then identify a representative performance test in the EPA's WebFIRE database.

A representative performance test must be conducted on an OSWI unit that has similar throughput, method of processing and burning waste, operating temperatures, types of wastes or supplemental fuels burned, and waste profiles. A representative performance test must be conducted consistent with the requirements in the OSWI rule; demonstrate compliance with the OSWI standards; and include the following information in the report: unit design (including air pollution control devices), charge rate during the test, type of operation, combustion temperature during the test, types of waste burned during the test and the relative amount of each waste to the total waste burned (waste profile), type and amount of supplemental fuels used during the test, and, if the tested unit has an air pollution control device, the operating parameter data for the control device during the test. If there is no representative performance test available in the WebFIRE database, the OSWI unit with capacity less than or equal to 10 TPD cannot use the SMCD and must instead conduct its own initial performance test.

To use this substitute option for demonstrating initial compliance, owner and operator must submit the following information: a notice of intent to use the SMCD;

waste profile information; and a representative performance test.²² Each of these elements is discussed below.

a. Notice of Intent

The proposed Federal plan provisions offer two options for initial performance tests for VSMWC and IWI units with capacities less than or equal to 10 TPD: conducting an individual initial performance test or using the SMCD described below. Owners and operators of existing VSMWC and IWI units with capacities less than or equal to 10 TPD are not required to submit a notice of intent to the EPA. However, they are required to either identify the results of an existing performance test in the EPA's WebFIRE database that is representative of their type of OSWI unit, if they intend to use the SMCD, or conduct an initial performance test; this must happen no later than 3 years after a State plan is approved or no later than July 1, 2030, whichever date is earlier.

b. Waste Profile Information

The SMCD relies on the availability of the results of performance tests conducted on potentially representative sources in the EPA's WebFIRE database. We anticipate that owners and operators using the SMCD will need time to meet its conditions and therefore encourage them to submit their notices of intent to use the substitute means of compliance and collect data for waste characterization as soon as possible. The waste profile information will record the unit's differing waste streams and waste variability in order to develop a representative waste profile. The unit's profile can then be used to identify a representative performance test for the unit's SMCD.

c. Representative Testing

The proposed Federal plan provide provisions that will allow owners and operators of VSMWC and IWI units with capacities less than or equal to 10 TPD to

²² This information must be submitted through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI).

identify a representative performance test in the WebFIRE database and submit information about the representative performance test and documentation of how the performance test is representative for their unit (*e.g.*, based on the unit type and design, charge rate, operating temperatures, types of waste burned, and any air pollution control devices) to the Administrator through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). Owners and operators must maintain a record of the representative performance test report (acquired from the EPA's WebFIRE database) and the submitted documentation of how the test is representative. The EPA encourages owners and operators to find similar sources by reviewing the notices of intent to use the SMCD and/or performance tests, available in the EPA's WebFIRE database. The EPA still anticipates that similar sources will coordinate to develop test protocols and find cost sharing opportunities by having representative sources conduct a performance test that can be used by all sources in that group.

If owners and operators of existing VSMWC and IWI units with capacities less than or equal to 10 TPD choose to use the SMCD, we are requiring them to submit SMCD information identifying the representative performance test through CDX using CEDRI beginning no later than March 30, 2027 or 60 days after the OSWI unit reaches the maximum charge rate at which it will operate, but no later than 180 days after initial startup, whichever date is later. This period will allow the owner or operator time for reviewing notices available on the EPA's WebFIRE database, finding and coordinating with similar sources, developing a testing protocol that will work for all sources within a group, conducting the performance tests, and electronically submitting the results of the test through CEDRI (*See* section V.E of this preamble for a discussion of electronic reporting). The period will also allow time for the EPA to transfer these results to the

EPA's WebFIRE database and for owners and operators to find a representative performance test and submit information on how it is representative to the Administrator.

Given the time needed to identify and coordinate similar source groups or develop test protocols, and because the compliance date for new sources is earlier than the compliance date for existing sources and it is uncertain how many tests will be conducted, owners and operators of existing sources are encouraged to start collecting information that would be useful for identifying similar sources and submit this information as soon as possible. This will greatly increase the likelihood that a representative test will be available in the WebFIRE database prior the compliance deadline.²³ Owners and operators who do not provide their initial waste characterization data in a timely manner could miss the opportunity to avail themselves of this option due to the amount of planning, time, and resources required for similar sources to coordinate and perform performance tests. Owners and operators who cannot find a representative test conducted for a unit that is similar to their unit must conduct their own initial performance tests.

d. Continuous Compliance Demonstration

The proposed Federal plan provides an alternative waste characterization (AWC) option for demonstrating continuous compliance available to all VSMWC and IWI units with capacities less than or equal to 10 TPD. In lieu of conducting annual performance tests, this alternative demonstration of continuous compliance will require recordkeeping. The recordkeeping requirements include recording the source-specific waste profiles and incinerator unit operating parameters, including the daily average charge rate and the 3-hour average combustion chamber temperature of the unit. The facility is required to use

²³ The distinction between a new and existing unit does not in itself preclude the use of a performance test. If a new unit is similar in design and operation to an existing unit, the new unit may use a performance test conducted by an existing unit and vice versa. However, if a performance test is conducted on an existing unit, it must, among other things, demonstrate initial compliance with the emissions limits for new units for a new unit to use it as a representative performance test.

its records at the end of each calendar quarter to demonstrate that the waste combusted is consistent, within +/- 15 percent by weight, with the percentage established for the components of the waste stream according to the waste profiles established during the facility's initial performance test or established in the representative initial performance test for units using the SMCD.²⁴ The facility must report any deviations from the quarterly average waste profile requirements in its deviation report. Additionally, the records must demonstrate that the unit is operated within the charge rate and temperature ranges established during the initial performance test or the representative performance test.

If the facility anticipates combusting a waste stream with a different profile, the owner/operator must conduct a performance test of the unit with a waste stream representative of the new waste profile, or alternatively, must identify a representative performance test report in the WebFIRE database and submit the information required by the SMCD, before combusting the modified waste stream.²⁵ Similarly, if the facility anticipates exceeding or operating outside of the established operating parameter ranges, the owner/operator must conduct a performance test of the unit while it is operating at the new parameter limits, or find a representative performance test with those operating parameter limits in the WebFIRE database and submit the information required by the SMCD, to confirm that the unit continues to meet the OSWI emission standards under the new operating parameter limits. Failure to comply with the retesting requirement is a deviation from the OSWI standards.

²⁴ If, for example, the paper component of the waste stream during initial testing was 20 percent, then burning waste streams with a paper component between 5 and 35 percent of the total waste stream would be acceptable quarterly operation and, assuming all other requirements are met, additional testing would not be required for the source.

²⁵ To use a representative test, the owner or operator of a unit must show that the representative test is of a unit having a similar throughput, method of processing and burning waste, charge rate, operating temperatures, waste management plan, estimated waste variability, and waste profile as its unit.

The proposed Federal plan includes operating limits and operating parameter monitoring requirements for additional controls that may be employed for OSWI units, including dry scrubbers, electrostatic precipitators, and fabric filters. OSWI units that use an alternate method for air pollution control beyond a wet scrubber, dry scrubber, electrostatic precipitator, or fabric filter, including other methods such as material balance, may petition the EPA for specific operating parameter limits in these cases. The proposed Federal plan adds flexibility for facilities by expanding the control options available.

In addition, the proposed Federal plan revises the requirements for owners and operators of OSWI units using control options to require that the minimum operating parameters (*e.g.*, combustion operating chamber temperature, pressure drop, liquid flow rate) established for initial compliance are calculated based on the lowest 1-hour average as measured during the most recent performance test (or representative performance test) demonstrating compliance. Similarly, the proposed Federal plan revises the continuous compliance requirements to specify the averaging times for continuous compliances for operating parameters for the extended control options (generally, 3-hour rolling averages).

Moreover, the proposed Federal plan removes the requirement for CO and O₂ CEMS for VSMWC and IWI units with capacities less than or equal to 10 TPD that use the AWC option in lieu of complying with the annual performance testing requirements. Owners and operators may use CO CEMS data in lieu of initial and annual testing for CO, provided the CEMS has been previously certified and is meeting the ongoing quality assurance/quality control requirements. Facilities that opt to use CO CEMS data to demonstrate continuous compliance must use a 12-hour rolling average of the 1-hour arithmetic average CEMS data to determine compliance with the CO emission limitations. However, the initial performance evaluation (CEMS certification) must be

completed prior to collecting CEMS data for the initial compliance demonstration. Under the 2025 revised OSWI EG, such units could also use CO CEMS data in lieu of conducting an annual performance test for CO. This change provides flexibility for sources and reduces the cost burden associated with testing, while assuring compliance based on continuously measured emissions data.

For OSWI units that choose to conduct annual testing, the proposed Federal plan revises the compliance timeline for the annual performance test. The proposed Federal plan requires annual performance tests to be conducted within 14 months following the initial performance test and, subsequently, within 14 months from the prior years' tests.

E. Proposed Recordkeeping and Reporting Requirements?

The EPA is proposing recordkeeping and reporting requirements that reflect those finalized in the 2025 revised OSWI EG. The Federal plan requires that records of all initial and all subsequent stack, performance specification (PS) tests or SMCD, deviation reports, operating parameter data, continuous monitoring data, maintenance and inspections of air pollution control devices, monitoring plan, and operator training and qualification must be maintained for five years. The results of the stack tests and PS test and values for operating parameters are required to be included in initial and subsequent compliance reports. Any incident of deviation, resumed operation following shutdown, force majeure, intent to stop or start use of continuous monitoring systems (CMS), and intent of conducting or rescheduling a performance test are required to be reported to the Administrator. Furthermore, final compliance reports are required following the completion of each requirement and identifying any missed requirement. *See* section V.B of this preamble for a more detailed discussion of the compliance schedules.

For units using the SMCD to demonstrate initial compliance, owners and operators must maintain the following records: the notice of intent to use the SMCD, along with documentation of the unit's design, operation, and capacity; initial waste

characterization and operating data; and documentation of how the selected substitute test is representative of the unit.

Owners and operators using the AWC option for demonstrating continuous compliance must maintain records on: start and end times of the unit's operation; the amount or weight of each waste type (*e.g.*, pounds of solid waste, food waste, wood, or yard waste); the percentage of each type of waste burned; the 3-hour average temperature and charge rate; and operating records for units using air pollution controls such as a wet scrubber, dry scrubber, electrostatic precipitator, or fabric filters. Unit owners and operators must also keep records of periods when the waste profile does not meet the requirements as tested. These recordkeeping requirements will help ensure that VSMWC and IWI units with capacities less than or equal to 10 TPD choosing the AWC option can demonstrate compliance with the emission and operating limits of the OSWI standards. The recordkeeping will also help to demonstrate that the percentage of waste components burned by VSMWC and IWI units with capacities less than or equal to 10 TPD is within ± 15 percent of the percentages established for each waste category incinerated at a unit according to the profiles established during the initial performance test or representative performance test. Owners and operators must include in annual reports a statement that there were no deviations from the waste characterization requirements and that the unit has been operated within the operating parameter limits. These recordkeeping and reporting requirements are intended to help ensure that there is adequate information available with which to determine compliance with the standards; to ascertain the severity of any failure to meet a standard; and to further assure compliance with the standards at all times.

Owners and operators who choose the SMCD must submit annual compliance reports. Annual compliance reports must be submitted no later than 12 months after you submit the representative initial performance test and description of how the test is

representative for the OSWI unit. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in 40 CFR 62.15680 through 62.15690.

In this proposal, the EPA is describing a process to increase the ease and efficiency of performance test data submittal while improving data accessibility. Specifically, the EPA is proposing that owners and operators of OSWI units submit electronic copies of certain required performance test reports, performance evaluation reports, deviation reports, and annual compliance reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The proposed OSWI Federal plan requires that performance test results be submitted in the format generated through the use of the EPA's Electronic Reporting Tool (ERT) or an electronic file consistent with the extensible markup language (XML) schema on the ERT website.²⁶ Similarly, performance evaluation results of CEMS that include a relative accuracy test audit must be submitted in the format generated through the use of the ERT or an electronic file consistent with the XML schema on the ERT website.

For deviation reports and annual compliance reports, the proposed OSWI Federal plan requires owners and operators to use the appropriate spreadsheet template to submit information to CEDRI. The final version of the template for these reports will be located on the CEDRI website.²⁷ If the reporting template specific to this subpart is not available in CEDRI at the time that the report is due, facilities must submit the report to the Administrator at the appropriate address listed in 40 CFR 60.4. Once the form has been available in CEDRI for at least one year, facilities must submit all subsequent reports via CEDRI. Furthermore, the proposed Federal plan allow facility operators to seek

²⁶ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

²⁷ <https://www.epa.gov/electronic-reporting-air-emissions/cedri>.

extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.*, for a possible outage in the CDX or CEDRI (*see* 40 CFR 62.15700(d)) or, for a force majeure event, *see* 40 CFR 62.15700(e) in the time just prior to a report's due date, as well as provisions outlining the process to assert such a claim.

F. Other Proposed Requirements

The OSWI Federal plan proposes other requirements that reflect those finalized in the 2025 revised OSWI EG. First, owners and operators of existing OSWI units are required to meet operator training and qualification requirements, which include: Ensuring that at least one operator or supervisor per facility complete the operator training course, that qualified operator(s) or supervisor(s) complete an annual review or refresher course specified in the regulation, and that they maintain plant-specific information, updated annually, regarding training. Another such requirement is that owners and operators of existing OSWI units are required to submit a monitoring plan for any CMS or bag leak detection system used to comply with the rule.

VI. OSWI Units That Have or Will Shut Down

A. Units That Plan to Close Rather Than Comply

The proposed Federal plan establishes that if owners and operators plan to permanently close currently operating OSWI units, they must do so and submit a closure notification to the Administrator by the date the final control plan is due. The proposed requirements for closing an OSWI unit will be set forth at 40 CFR 62.15495, subpart KKK. Until such time as a unit is permanently closed, it must comply with any applicable requirements of the Federal plan. In addition, while still in operation, the OSWI unit is subject to the same requirements for title V operating permits that apply to units that will continue to operate.

B. Inoperable Units

The proposed Federal plan provides that in cases where an OSWI unit has already shut down permanently and has been rendered inoperable (*e.g.*, waste charge door is welded shut, stack is removed, combustion air blowers removed, burners or fuel supply equipment are removed), the OSWI unit may be left off the source inventory in a State plan or this proposed Federal plan. An OSWI unit that has been rendered inoperable would not be covered by the Federal plan.

C. OSWI Units That Have Shut Down

The proposed Federal plan includes any OSWI unit that are known to have already shut down (but are not known to be inoperable) in the source inventory.

1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive OSWI unit plans to restart before the final compliance date, the owner or operator must achieve final compliance by July 1, 2030.

2. Restarting After the Final Compliance Date

Under the proposed Federal plan, if the owner and operator of an OSWI unit closes the OSWI unit but restarts the unit after the final compliance date, the owner or operator must complete emission control retrofits and meet the emissions limits on the date the OSWI unit restarts operation. Initial performance test must be conducted within 30 days of restarting the OSWI unit.

VII. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under CAA sections 111(d) and 129(b), the EPA is required to promulgate EG for existing solid waste incineration units. These EG are implemented when the EPA approves a State plan or adopts a Federal plan that implements and enforces the EG. As discussed above, if finalized, the proposed Federal plan would regulate OSWI units in States that do not have approved plans to implement the 2025 revised OSWI EG.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies.²⁸ Although CAA section 129(b)(3) directs the EPA to develop, implement and enforce a Federal plan for States that fail to submit approvable State plans,²⁹ States may submit plans after promulgation of the OSWI Federal plan.³⁰ States may also request delegation of the Federal plan.³¹

B. Delegation of the Federal Plan and Retained Authorities

If a State, Tribe, or local agency intends to take delegation of the Federal plan, the State, Tribe, or local agency should submit to the appropriate EPA regional office a written request for delegation of authority. The State, Tribe, local agency should explain how it meets the criteria for delegation. For more information, *see* generally “Good Practices Manual for Delegation of NSPS and NESHAP”.³² The letter requesting delegation of authority to implement the Federal plan should: (1) demonstrate that the State, Tribe, or local agency has adequate resources, as well as the legal authority to administer and enforce the program, (2) include an inventory of affected OSWI units, which includes those that have ceased operation, but have not been dismantled or rendered inoperable, and an inventory of the affected units’ air emissions and a provision for State progress reports to the EPA, (3) certify that a public hearing is held on the State, Tribe, or local agency delegation request, and (4) include a memorandum of agreement between the State, Tribe, or local agency and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement and the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional office

²⁸ 42 U.S.C. 7401(a)(3).

²⁹ 42 U.S.C. 7429(b)(3).

³⁰ 40 CFR 60.2985(b).

³¹ See 40 CFR 60.3078 (“[f]or Federal CAA section 111(d)/129 plans, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task”).

³² U.S. EPA. (1983). *Good Practices Manual for Delegation of NSPS and NESHAP*. Available at: https://www.epa.gov/sites/default/files/2015-05/documents/epa_good_pract_man_ch1-5.pdf.

would publish an approval notice in the *Federal Register*, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If a State, Tribe, or local agency does not have an EPA approved plan to implement the OSWI EG or delegated authority to implement the Federal plan, the EPA will implement the Federal plan for that State, Tribe, or locality. Also, if a State, Tribe, or local agency fails to properly implement a delegated portion of the Federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State, Tribe, or local agency even when the agency has received delegation of the Federal plan. In all cases where the Federal plan is delegated, the EPA will not transfer to a State, Tribe, or local agency authorities the EPA has retained in 40 CFR 60.2990 of the EG, which are specified in 40 CFR 62.15720 of subpart KKK being proposed in this action. OSWI owners and operators who wish to petition the Agency for any alternative requirement should submit a request to the Regional Administrator with a copy sent to the appropriate State.

C. Implementing Authority

The EPA Regional Administrators have been delegated the authority for implementing the OSWI Federal plan. All reports required by the Federal plan should be submitted to the appropriate Regional Administrator. The names, email addresses, and telephone numbers of the EPA Regional office contacts and the States and territories that they cover will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

D. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State, Tribal, and local agencies: (1) the EPA approval of a State plan after the Federal plan is in effect; and (2) if a State does not submit or obtain approval of its own plan, the EPA delegation to a State, Tribe, or local agency with the authority to implement certain

portions of this Federal plan to the extent appropriate and if allowed by State law. Both of these options are described in more detail below.

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

Where a State or Tribal agency does not have an approved plan in place and existing OSWI units within that State or Tribe become subject to the Federal plan, the State or Tribal agency may still adopt and submit State or Tribal plans to the EPA for approval. If the EPA determines that the State or Tribal plan is as protective as the 2025 revised OSWI EG, the EPA will approve the State or Tribal plan. If the EPA determines that the plan is not as protective as the 2025 revised OSWI EG, the EPA may approve the portions of the plan that are consistent with the 2025 revised OSWI EG. If a State or Tribal plan is approved in part, the Federal plan will apply to the affected OSWI units in lieu of the disapproved portions of the State plan unless and until the State or Tribe addresses the deficiencies in its plan and the revised plan is approved by the EPA. Upon the effective date of a State or Tribal plan, the Federal plan would no longer apply to OSWI units covered by such a plan and the State, Tribe, or local agency would implement and enforce the State plan in lieu of the Federal plan. Whenever an EPA regional office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State, Tribe, Territory, or Local Agency Taking Delegation of the Federal Plan

The EPA, in its discretion, may delegate to States, Tribes, or local agencies the authority to implement this Federal plan. The EPA believes that States, Tribes, and local agencies have the practical knowledge and enforcement experience with respect to OSWI units within their jurisdiction and are therefore well suited to undertake administrative and substantive roles in implementing the Federal plan. These functions include administration and oversight of compliance, reporting and recordkeeping requirements, OSWI unit inspections and preparation of draft notices of violation but will not include

any authorities retained by the EPA. Where agencies have taken delegation, the EPA retains its authority for bringing enforcement actions against sources violating Federal plan provisions.

VIII. Title V Operating Permits

All existing OSWI units regulated under State, Tribal, or Federal plans implementing the 2025 revised OSWI EG must operate in a manner consistent with a title V operating permit that assures compliance with all federally applicable requirements for any regulated OSWI units, including all applicable CAA section 129 requirements.³³

The permit application deadline for a CAA section 129 source applying for a title V operating permit depends on when the source first becomes subject to the relevant title V permit program. Because existing major sources are subject to title V,³⁴ major source facilities that contain existing OSWI units should already have a title V permit. In such cases, the source must comply with the title V permit revision provisions of the relevant State title V program instead of applying for a title V permit. In contrast, the application deadline would be important to OSWI units at facilities that are not subject to the title V permit program for other reasons. Such sources with an existing OSWI unit subject to this proposed Federal plan must submit a complete title V permit application by the earliest of the following dates:

- Twelve (12) months after the effective date of any applicable EPA-approved CAA sections 111(d)/129 plan (*i.e.*, approved State or Tribal plan that implements the 2025 revised OSWI EG)³⁵; or
- Twelve (12) months after the effective date of any applicable Federal plan³⁶; or
- Thirty-six (36) months after the June 30, 2025, revisions to 40 CFR part 60, subpart FFFF³⁷ (*i.e.*, July 1, 2028).

³³ 42 U.S.C. 7429(e) and 40 CFR 70.2, 70.6(a)(1), 71.2, and 71.6(a)(1).

³⁴ 42 U.S.C. 7661b(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1)(i), 71.3(a) and (b), and 71.5(a)(1)(i).

³⁵ 42 U.S.C. 7661b(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).

³⁶ *Id.*

³⁷ 42 U.S.C. 7429(e).

For any existing OSWI unit not subject to an earlier permit application deadline, the application deadline of July 1, 2028, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable CAA sections 111(d)/129 plan is approved by the EPA and becomes effective. (*See* CAA sections 129(e), 503(c), 503(d), 502(a), and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).)

If the OSWI unit is subject to title V as a result of some triggering requirement(s) other than those mentioned above (for example, an OSWI unit may be a major source or part of a major source), then the owner/operator of the source may be required to apply for a title V permit prior to the deadlines specified above. If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month time frame for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V.³⁸

A. Title V and Delegation of a Federal Plan

As noted previously, issuance of a title V permit is not equivalent to the approval of a State or Tribal plan or delegation of a Federal plan.³⁹ Legally, delegation of a standard or requirement results in a delegated State, local, or Tribal agency standing in for the EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a State, Tribal, or local agency (except for functions that the EPA retains for itself) upon delegation.⁴⁰ Although a State, local, or Tribal agency may have the authority under State, local, or Tribal law to incorporate CAA section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the CAA section 111/129 Federal plan, the State, local, or Tribal agency is not

³⁸ CAA section 503(c) and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 71.3(a) and (b) and 71.5(a)(1)(i).

³⁹ *See, e.g.*, the "Title V and Delegation of a Federal Plan" section in the final Federal plan for CISWI, December 11, 2024, (89 FR 100092, 100102).

⁴⁰ If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, *e.g.*, alternative methods of demonstrating compliance.

standing in for the EPA as a matter of Federal law in this situation. Where a State, Tribe, territory, or local agency does not take delegation of a CAA section 111/129 Federal plan, obligations that a source has to the EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA maintains that an approved 40 CFR part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State, local, or Tribal agency.

IX. Request for Comments

We solicit comment on all aspects of this proposed action. In this proposal, the EPA is soliciting public comment only on the implementation of the OSWI EG through the proposed Federal plan.

Question #1: Are there any general comments on the proposed Federal plan implementing the 2025 revised OSWI EG?

Question #2: Are there additional sources that should be added to the inventory of affected OSWI units?

Question #3: Is there additional data that could be used regarding the emission inventory for existing OSWI units?

X. 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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not expected to be an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0562. This action results in no changes to the information collection requirements of the 2025 OSWI rule. OMB control number 2060-0562 encompasses all information collection described in this proposed action.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. EG for owners of existing OSWI units were established by the June 30, 2025, final rule (90 FR 27910), and that rule was certified as not having a significant economic impact on a substantial number of small entities. This action establishes a Federal plan to implement and enforce those requirements in those States that do not have their own EPA-approved State plan for implementing and enforcing the requirements. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The costs

involved in this action are estimated not to exceed \$187 million in 2024 dollars (\$100 million in 1995 dollars adjusted for inflation using the GDP implicit price deflator) or more in any one year.

F. Executive Order 13132: Federalism

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. It will neither impose direct compliance costs on federally recognized Tribal governments nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this action. The EPA is not aware of any OSWI owned or operated by Indian Tribal governments at the time of the publication of this document. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Therefore, this action is not subject to Executive Order 13045 because it implements a previously promulgated

emission guidelines. Furthermore, the EPA's Policy on Children's Health does not apply to this action because it implements a technology-based standard and does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Orders 12866.

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

This action involves technical standards. Two voluntary consensus standards (VCS) were identified as an acceptable alternative to the EPA test methods for the purposes of this rule.

The EPA proposes to use ASTM D6522-11 and ASTM D6522-20, "Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers" for determining nitrogen oxides, carbon monoxide, and oxygen concentrations in emissions as acceptable alternatives to EPA Methods 3A and 10. The EPA determined that these standards are reasonably available because it is available for purchase. This method is available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428-2959, (877) 909-2786, <http://www.astm.org/>.

The VCS, ASTM D7520-2016 and ASTM D7520-16 (2023), "Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere" were identified as acceptable alternatives to EPA Method 9, but only if these conditions are followed: (1) during the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520-2013 and ASTM D7520-16 (2023), you 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/or 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 D7520-2013 and ASTM D7520-16 (2023); (3) you must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1), subpart A, for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination; and (4) you or the DCOT vendor must have a minimum of four independent technology users successfully 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.

The EPA proposes to use the VCS, ASTM D7520-2016 and ASTM D7520-16 (2023), “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere” as acceptable alternatives to EPA Method 9. These methods describe procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a DCOT that consists of a digital still camera, analysis software, and the output function’s content to obtain and interpret digital images to determine and report plume opacity. With the conditions identified above, we found that the technical sampling and analytical procedures are an equivalent method to EPA Method 9. This method is available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959, 877) 909-2786, <http://www.astm.org/>. The EPA’s approval of these methods as alternatives to EPA Method 9 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/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 is on the facility, DCOT operator, and DCOT vendor.

While the EPA also identified 22 VCS that were potentially applicable for this rule in lieu of the EPA methods, the Agency is not proposing to use these standards. After reviewing the available standards, the EPA determined that the 22 candidate methods would not be practical due to lack of equivalency, documentation, validation data, and other important technical and considerations. For additional information, *see* the memorandum, Voluntary Consensus Standard Results for Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units; Proposed Rule, which is available in the docket for this action.

Lee Zeldin,

Administrator.

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