

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR-2004-0068; FRL-]

RIN 2060-AK35

**Standards of Performance for
Industrial-Commercial-Institutional Steam Generating
Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: New source performance standards (NSPS) limiting emissions of nitrogen oxides (NO_x) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. The standards limit NO_x emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific NO_x standards for steam generating units which simultaneously combust fossil fuel and chemical by-product waste under certain conditions. The amendments promulgate a facility-specific NO_x standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product waste at the

Weyerhaeuser Company facility located in New Bern, North Carolina.

DATES: The direct final rule will be effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives significant adverse written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE PROPOSED RULE IN THE FEDERAL REGISTER]. If EPA receives such comments, it will publish a timely withdrawal in the Federal Register indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2004-0068, by one of the following methods:

- Federal eRulemaking Portal:
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: air-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B-108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see FOR FURTHER INFORMATION CONTACT).

Instructions: Direct your comments to Docket ID No. OAR-2004-0068. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR

38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Eddinger, Combustion Group, Emission Standards Division (C439-01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919)541-5426; facsimile number (919) 541-5450; electronic mail address eddinge.jim@epa.gov.

SUPPLEMENTARY INFORMATION: Regulated Entities. The only regulated entity that will be affected by the direct final rule amendment is the Weyerhaeuser Company facility located in New Bern, North Carolina.

Comments. We are publishing the direct final rule without prior proposal because we view it as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of today's Federal Register, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of the direct final rule, we will publish a timely withdrawal in the Federal Register informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page

<http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE DIRECT FINAL RULE IN THE FEDERAL REGISTER]. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

I. Background

The objective of the NSPS, promulgated on November 25, 1986, is to limit NO_x emissions from the combustion of fossil fuel. For steam generating units combusting by-product waste, the requirements of the NSPS vary depending on the operation of the steam generating units. During periods when only fossil fuel is combusted, the steam generating unit must comply with the NO_x emission limits in the NSPS for fossil fuel. During periods when only by-product waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit NO_x emissions, but it is not subject to NO_x emission limits under the NSPS. In addition, if the steam generating unit is subject to Federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to NO_x emission limits under the NSPS when it simultaneously combusts fossil fuel and by-product waste.

With the exception noted above, during periods when fossil fuel and by-product waste are simultaneously combusted in a steam generating unit, the unit must generally comply with NO_x emission limits under 40 CFR

60.44b(e) of the NSPS. Under 40 CFR 60.44b(e) the applicable NO_x emission limit depends on the nature of the by-product waste combusted. In some situations, however, "facility-specific" NO_x emission limits developed under 40 CFR 60.44b(f) may apply. The order for determining which NO_x emission limit applies is as follows. A steam generating unit simultaneously combusting fossil fuel and by-product waste is expected to comply with the NO_x emission limit under 40 CFR 60.44b(e); only in a few situations may NO_x emission limits developed under 40 CFR 60.44b(f) apply. An equation in 40 CFR 60.44b(e) is included to determine the NO_x emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and by-product waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and by-product waste is unable to comply with the NO_x emission limit determined under 40 CFR 60.44b(e), might a facility-specific NO_x emission limit under 40 CFR 60.44b(f) apply. That section permits a steam generating unit to petition the Administrator for a facility-specific NO_x emission limit. A facility-specific NO_x emission limit will be proposed and promulgated by the Administrator for the steam

generating unit, however, only where the petition is judged to be complete. To be considered complete, a petition for a facility-specific NO_x standard under 40 CFR 60.44b(f) consists of three components. The first component is a demonstration that the steam generating unit is able to comply with the NO_x emission limit for fossil fuel when combusting fossil fuel alone. The purposes of this provision are to ensure that the steam generating unit has installed best demonstrated NO_x control technology, to identify the NO_x control technology installed, and to identify the manner in which this technology is operated to achieve compliance with the NO_x emission limit for fossil fuel.

The second component of a complete petition is a demonstration that the NO_x control technology does not enable compliance with the NO_x emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical by-product waste under the same conditions used to demonstrate compliance on fossil fuel alone. In addition, this component of the petition must identify what unique and specific properties of the chemical by-product waste are responsible for preventing the steam generating unit from

complying with the NO_x emission limit for fossil fuel.

The third component of a complete petition consists of data and/or analysis to support a facility-specific NO_x standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical by-product waste and operates the NO_x control technology in the same manner in which it would be operated to demonstrate and maintain compliance with the NO_x emission limit for fossil fuel, if only fossil fuel were combusted. This component of the petition must identify the NO_x emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements which will ensure operation of the NO_x control technology and minimize NO_x emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific NO_x standard for the steam generating unit when it simultaneously combusts chemical by-product waste with fossil fuel. The NO_x standard will include the NO_x emission limit(s) and/or operating parameter limit(s) to ensure operation of the NO_x control technology at all times, as well as appropriate testing, monitoring,

reporting and recordkeeping requirements.

The Weyerhaeuser Company has submitted a petition for a facility-specific NO_x standard for the No. 2 Power Boiler at its kraft pulp mill in New Bern, North Carolina. The No. 2 Power Boiler combusts residual oil and a byproduct/waste gas from a foul condensate steam stripper. The foul condensate steam stripper was installed to comply with the maximum achievable control technology (MACT) standards for kraft pulping systems under 40 CFR part 63, subpart S. While the No. 2 Power Boiler complies with Subpart Db of 40 CFR part 60 while firing residual oil, the combustion of stripper off-gas along with residual fuel oil in the No. 2 Power Boiler results in a NO_x emission rate in excess of the NSPS limit for the standard. Based on a review of the Weyerhaeuser Company's petition for an alternative NO_x standard, EPA's Office of Air Quality Planning and Standards has determined the petition to be complete and an alternative facility-specific standard to be appropriate. An alternative NO_x standard is provided in the final rule amendment.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and

Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final rule does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements contained in the standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., at the time the rules were promulgated on November 25, 1986.

This action does not impose any new information collection requirements of the standards and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in

40 CFR part 9 and 40 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, small entity is defined as: (1) a small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt(kW)-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of

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

The EPA has determined that the direct final rule

amendment contains no Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year, nor does the direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of sections of the UMRA do not apply to the direct final rule.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule does not have federalism implications. It will not have new substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action codifies a facility-specific NO_x standard. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

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

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

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

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

The direct final rule is not subject to Executive

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104 - 113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule amendments do not involve technical standards. Therefore, the direct final rule is not subject to NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as added by the Small Business Regulatory Enforcement

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Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the Federal Register. The direct final rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

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List of Subjects in 40 CFR Part 60

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

Dated:

Jeffery R. Holmstead
Assistant Administrator.

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

PART 60--[AMENDED]

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

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

Subpart Db--[AMENDED]

2. Section 60.49b is amended by adding paragraph (x) as follows:

Sec. 60.49b Reporting and recordkeeping requirements.

* * * * *

(x) Facility-specific nitrogen oxides standard for Weyerhaeuser Company's No. 2 Power Boiler located in New Bern, North Carolina:

(1) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in §60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the nitrogen oxides emission limit is 215 ng/J (0.5 lb/million Btu).

(2) *Emission monitoring for nitrogen oxides.* (i) The nitrogen oxides emissions shall be determined by the

compliance and performance test methods and procedures for nitrogen oxides in §60.46b.

(ii) The monitoring of the nitrogen oxides emissions shall be performed in accordance with §60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the No. 2 Power Boiler shall submit a report on any excursions from the limits required by paragraph (x)(2) of this section to the Administrator with the quarterly report required by §60.49b(i).

(ii) The owner or operator of the No. 2 Power Boiler shall keep records of the monitoring required by paragraph (x)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of the No. 2 Power Boiler shall perform all the applicable reporting and recordkeeping requirements of §60.49b.