

E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The increments of progress are described in section V.E of this preamble.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than April 5, 2004. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting

The Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of subpart III contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provided opportunity for public participation in adopting the plan. No requests for a

public hearing were received by the EPA.

J. Progress Reports

Under the Federal plan, the EPA's Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan are also required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

IV. Significant Issues and Changes Since Proposal

A. Applicability of the Standards

A commenter (IV-D-05) representing electric utilities providing service to more than 95% of the nation's consumers of electricity commented in support of proposed rules. In particular, the commenter endorsed the EPA's proposed definitions of "commercial and industrial solid waste incineration unit" and the corresponding definition of "commercial and industrial waste." The commenter said that, taken together, these two definitions will ensure that the proposed Federal plan requirements do not inadvertently encompass combustion units, including electric utility boilers, that burn materials for energy recovery. The commenter amplified this endorsement noting his organization's opinion that the proposed rules clarify that the section 129 program was not intended by Congress to encompass electric utility boiler combustion practices, including those circumstances where electric utility boilers co-combust non-hazardous solid waste with fossil fuels during normal production operations. According to the commenter, it was clear from the legislative history of section 129 that Congress meant only for the EPA to regulate units whose primary function is to incinerate nonhazardous solid waste, not electric utility boilers that co-combust small amounts of

nonhazardous waste with fuel during the production of electric power. The commenter sought to underscore that, for purposes of this rulemaking, the EPA correctly adopted the same definitions of CISWI and commercial and industrial waste incorporated in the EG, thereby excluding from the CISWI Federal plan combustion units, including electric utility boilers, that engage in energy recovery.

The EPA notes that a comment letter endorsing a proposed action typically requires no response on our part. Here, we remind the reader that after promulgating the final rule establishing the NSPS and the EG for the CISWI category, the EPA received and granted a petition for reconsideration related specifically to the definition of "commercial and industrial solid waste incineration unit". Thus, the EPA will undertake additional notice and comment proceedings related to this definition. Additionally, as discussed above, the EPA accepted a voluntary remand (without vacature) on the underlying NSPS and EG in connection with a petition for review filed in the Federal Court of Appeals for the D.C. Circuit. We clearly acknowledged this fact also in the proposal for this Federal plan. The EPA intends to take final action on this definitional issue in conjunction with the EPA's response to the remand. As we noted at proposal, however, since the current EG remain in effect, we have proceeded to develop a Federal plan as required by section 129(b)(3) of the CAA.

Since the Federal plan must mirror the substantive requirements of the EG, we will promulgate a Federal plan which includes the definitions endorsed by the commenter. To the extent that we might take action in the future that results in changes to the definitions in the underlying CISWI EG, we will simultaneously propose amendments to the Federal plan to reflect any such changes. If changes become necessary, interested parties, including the commenter, will have the opportunity to provide comments. We will reasonably accommodate concerns of commenters as appropriate.

One commenter (IV-D-01) representing a State air pollution control agency noted a discrepancy between the proposed Federal plan and EG requirements for air curtain incinerators (ACI) regarding the types of wastes qualifying for the exemption of ACI from CISWI emission limits. The commenter observed that the proposed plan specifies certain requirements if the ACI's burn only 100 percent wood waste and clean lumber. By contrast, the EG and NSPS specify certain