

6560.50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2004-0490; FRL-8784-4]

RIN 2060-A023

Standards of Performance for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the sulfur dioxide air emission standards for stationary combustion turbines that burn biogas (landfill gas, digester gas, etc.). Without these amendments, owners/operators of new stationary combustion turbines burning biogas containing relatively low amounts of sulfur-containing compounds will be required to install pretreatment facilities to remove the sulfur compounds prior to combustion or to install post combustion controls to lower sulfur dioxide emissions. It was not EPA's intent to require the use of either of these approaches, and the costs associated with either approach are substantially greater than the environmental benefit resulting from the decrease in sulfur dioxide emissions.

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives relevant adverse

comment by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the amendments in this rule will not take effect.

ADDRESSES: Comments: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0748 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: a-and-r-docket@epa.gov and fellner.christian@epa.gov.
3. Facsimile: (202) 566-9744.
4. Mail: U.S. Postal Service, send comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
5. Hand Delivery: Deliver in person or by courier to: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, 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.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2084-0748. EPA's policy is that all comments received

will be included in the public docket without change and may be made available online at www.regulations.gov. This includes any personal information provided, unless the comment contains 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 www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2008-0748. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then electronically identify within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The www.regulations.gov website is an "anonymous

access" system, 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 www.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 the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the National Emission

Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, EPA/DC, EPA West, Room 3334, 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. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-4003, facsimile number (919) 541-5450, electronic mail (e-mail) address: fellner.christian@epa.gov.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

- I. Why is EPA using a direct final rule?
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- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. Why is EPA using a direct final rule?

We are publishing the rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. As explained below, this action amends the sulfur dioxide emission limit for the stationary combustion turbine new source performance standards, subpart KKKK of 40 CFR part 60, to account for the lower heating value of biogas relative to distillate oil. Without these amendments, the rule will require owners/operators of new stationary combustion turbines burning biogas containing relatively low concentrations of sulfur-containing compounds to either install pretreatment facilities to remove the sulfur from the gas prior to combustion or post combustion controls to lower sulfur dioxide emissions. This requirement is problematic for a number of reasons. First, we did not intend this outcome. Second, since the outcome was not intended, it was not reflected in the proposed rule (70 FR 3814) thereby depriving people of a meaningful opportunity to comment on the requirement. Third, we have concluded that the costs associated with either of these options are substantially greater than any environmental benefit resulting from the

decrease in sulfur dioxide emissions.

If we receive relevant adverse comment on this direct final rule, we will publish a timely withdrawal in the Federal Register informing the public that the amendments in this rule will not take effect. Any parties interested in commenting must do so at this time.

II. Does this action apply to me?

The categories and entities potentially regulated by this direct final rule include, but are not limited to, the following:

Category	NAICS ¹	Examples of regulated entities
Industry	2211	Electric services
	486210	Natural gas transmission
	211111	Crude petroleum and natural gas
	211112	Natural gas liquids
	221	Electric and other services, combined

¹ North American Industry Classification System (NAICS) code.

III. Where can I get a copy of this document?

In addition to the docket, an electronic copy of this final action will be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address:

<http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

IV. Why are we amending the rule?

The proposal for subpart KKKK (70 FR 8314) included a fuel-based sulfur dioxide (SO₂) limit of 500 parts per million by weight (ppmw) sulfur. The rule, as adopted, (71 FR 38482) contains a fuel-based SO₂ limit of 0.060 pounds per million British thermal units (lb/MMBtu). The adopted SO₂ limit was based on the potential SO₂ emissions rate of natural gas containing 20 grains of sulfur per 100 standard cubic feet and 500 ppmw sulfur distillate oil. The change from a fuel-based limit to a potential SO₂ emission rate was not intended to substantially change the stringency of the standard. However, fuels with low energy density, such as biogas, have a higher potential SO₂ emission rate relative to the sulfur concentration in the fuel because of their lower heating value. As a result, this change in format is causing difficulties for owners/operators of new stationary combustion turbines planning to burn landfill gas. We did not intend, in adopting the rule, to require biogas projects (landfill gas, digester gas, etc.) burning fuel with less than 500 ppmw sulfur, but having a potential SO₂ emission rate of greater than 0.060 lb/MMBtu due to the low heating value of the gas, to install an SO₂ control device.

Much of the biogas generated in the United States has a potential SO₂ emissions rate of less than 0.060 lb/MMBtu; however, this is not true in all cases. It was not our

intent to require owners/operators of biogas projects containing higher, but still moderate, amounts of sulfur-containing compounds to install additional controls. The control requirement was not supported by our impacts analysis or by public comments received on the proposal. Furthermore, the costs associated with installing and operating any such controls substantially outweigh any environmental benefits resulting from lower sulfur emissions.

Most of stationary combustion turbine projects burning biogas are small sources of criteria pollutant emissions and produce less than 10 megawatts of power. Biogas projects that use moderate amounts of sulfur-containing compounds would have less attractive economic returns if required to achieve an emissions rate of 0.060 lb SO₂/MMBtu due to the substantial costs associated with installing and operating the necessary controls and may be cancelled. Unless an alternate use for biogas is found, it is often flared or directly vented to the atmosphere. Stationary combustion turbines that burn biogas have comparable emissions to landfill flares and have the added benefit of using an opportunity fuel that would otherwise be wasted, thereby reducing emissions. Accordingly, we are concerned that requiring biogas burning units to comply with the 0.060 lb SO₂/MMBtu standard will result in a worse environmental

outcome and will waste energy resources and thus would not constitute best demonstrated technology for such units.

V. What amendments are we making to the rule?

As currently written, §60.4330(a)(2) requires owners/operators of stationary combustion turbines burning biogas containing more than approximately 180 ppm hydrogen sulfide (H₂S) to install SO₂ controls, which was neither proposed nor intended. To remedy this, we are establishing a new subcategory for owners/operators of stationary combustion turbines burning over fifty percent biogas. The new subcategory will have an SO₂ limit of 0.15 lb/MMBtu (closer to the original fuel-based 500 ppm sulfur limit) for new units, i.e., those for which construction, reconstruction, or modification is commenced after the effective date of this rule, and units presently subject to subpart KKKK. We are also adding a definition for biogas.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments result in no

changes to the information collection requirements of the existing standards of performance and will have little or no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. However, OMB has previously approved the information collection requirements contained in the existing regulations (subpart KKKK, 40 CFR part 60) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060-0582 (ICR 2177.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 proposed

amendments on small entities, small entity is defined as:

(1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Although this direct final rule will not have a

significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. If adopted, the amended sulfur dioxide limit for owners and operators of turbines burning biogas will reduce the compliance burden of the rule.

Therefore, EPA has concluded that this direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This direct final rule reduces burden and does not contain a 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. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of UMRA.

This direct final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. If adopted, the amended sulfur dioxide limit for owners and operators of turbines burning biogas will reduce the regulatory burden for small governments that own or operate stationary combustion turbines burning biogas.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR

43255, August 10, 1999), requires EPA 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" is 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."

This direct final rule 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, as specified in Executive Order 13132. This direct final rule will not impose substantial direct compliance costs on State or local governments; it will not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). EPA is not aware of any stationary combustion turbine owned by an Indian tribe. In the event that an

Indian tribe does own a stationary combustion turbine burning biogas, the amendments will benefit the tribe to the same extent as any other owner/operator. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action 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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory 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, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

These direct final rule amendments do not involve technical standards as defined in the NTTAA. Therefore, this direct final rule is not subject to NTTAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practical and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection

for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population including any minority or low-income population. In the absence of the proposed amendments, the biogas would likely either be flared or combusted in reciprocating internal combustion engines. Emissions from either of these options would be similar or higher than the proposed amended limits for stationary combustion turbines burning biogas.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. EPA will submit a report containing this 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. 804(2). The direct final rule is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Sulfur oxides.

Dated: March 16, 2009

Lisa Jackson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended 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 KKKK--[AMENDED]

2. Section 63.4330 is amended by revising paragraph (a) to read as follows:

§60.4330 What emission limits must I meet for sulfur dioxide (SO₂)?

(a) If your turbine is located in a continental area, you must comply with either paragraph (a)(1), (a)(2), or (a)(3) of this section. If your turbine is located in Alaska, you do not have to comply with the requirements in paragraph (a) of this section until January 1, 2008.

(1) You must not cause to be discharged into the atmosphere from the subject stationary combustion turbine any gases which contain SO₂ in excess of 110 nanograms per Joule (ng/J) (0.90 pounds per megawatt-hour (lb/MWh)) gross output;

(2) You must not burn in the subject stationary combustion turbine any fuel which contains total potential sulfur emissions in excess of 26 ng SO₂/J (0.060 lb

SO₂/MMBtu) heat input. If your turbine simultaneously fires multiple fuels, each fuel must meet this requirement; or

(3) For each stationary combustion turbine burning at least 50 percent biogas on a calendar month basis, as determined based on total heat input, you must not cause to be discharged into the atmosphere from the affected source any gases that contain SO₂ in excess of 65 ng SO₂/J (0.15 lb SO₂/MMBtu) heat input.

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3. Section 60.4420 is amended by adding the definition of "Biogas" in alphabetical order to read as follows:

§60.4420 What definitions apply to this subpart?

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Biogas means gas produced by the anaerobic digestion or fermentation of organic matter including manure, sewage sludge, municipal solid waste, biodegradable waste, or any other biodegradable feedstock, under anaerobic conditions. Biogas is comprised primarily of methane and CO₂.

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