

The EPA Administrator, Michael S. Regan, signed the following notice on 5/24/2023, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2003-0156. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 60**

**[EPA-HQ-OAR-2003-0156; FRL-7547.2-02-OAR]**

**RIN 2060-AV99**

### **Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Review; Withdrawal of Proposed Provision Removing Pyrolysis/Combustion Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; withdrawal of proposed provision.

**SUMMARY:** On August 31, 2020, the U.S. Environmental Protection Agency (EPA) gave notice that, in accordance with the requirements of the Clean Air Act (CAA), the Agency had performed a 5-year review of the Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Other Solid Waste Incineration (OSWI) Units, which includes certain very small municipal waste combustion (VSMWC) and institutional waste incineration (IWI) units. In the same action, the EPA proposed to modify the OSWI definition of “municipal waste combustion unit,” effectively removing pyrolysis/combustion units from the definition. In this action, the EPA is withdrawing that proposed modification.

**DATES:** EPA withdraws the proposed provision, consisting of the definition for “*Municipal waste combustion unit*” in § 60.2977, published at 85 FR 54178, on August 31, 2020 as of

**[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** The EPA has established a docket for the OSWI rulemaking under Docket ID No. EPA-HQ-OAR-2003-0156. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday (except Federal holidays). The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nabanita Modak Fischer, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5572; and email address: [modak.nabanita@epa.gov](mailto:modak.nabanita@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Organization of this document.* The information in this preamble is organized as follows:

- I. General Information
  - A. Overview
  - B. Why is the EPA withdrawing the proposed provision?
- II. Impacts of the Withdrawal
- III. Statutory Authority

**I. General Information**

*A. Overview*

In 2005, the EPA stated that “pyrolysis/combustion units (two chamber incinerators with a starved air primary chamber followed by an afterburner to complete combustion) within the VSMWC and IWI subcategories are considered OSWI units” (70 FR 74876 and 74877; December 16, 2005). As a result of recent market trends, especially with respect to the increased processing of waste plastics, the EPA received several inquiries about OSWI units and the applicability of OSWI regulations to pyrolysis/combustion units for a variety of process and feedstock types. Based on these requests and the absence of a statutory definition of pyrolysis in the CAA, the Agency believed that there was considerable confusion in the regulated community regarding the applicability of OSWI to pyrolysis/combustion units. Moreover, the term “pyrolysis/combustion” is not defined in the current OSWI regulation, nor is it included in the definition of “Institutional waste incineration unit.” On August 31, 2020, as part of the Agency’s periodic review under the CAA, the EPA proposed, among other things, to revise the OSWI definition of “municipal waste combustion unit” to remove the reference to “pyrolysis/combustion units” (85 FR 54178). The EPA received significant adverse comments on that proposed revision.

In response to the adverse comments received on the August 2020 proposal and ongoing questions about the regulation of pyrolysis/combustion units, the EPA issued an advance notice of proposed rulemaking (ANPRM) on September 8, 2021 (86 FR 50296). The EPA determined that the issuance of the ANPRM was an efficient means for gaining a comprehensive understanding of pyrolysis/combustion units and how they are used. The EPA expected that this action would allow a diverse group of stakeholders to participate and provide information on the details of pyrolysis/combustion units, the use of these units to thermally process various materials, the products of these processes, and the characterization of emissions from these

processes. The Agency received 170 comments on the ANPRM. In addition, the EPA had several discussions with stakeholders during the comment period.

*B. Why is the EPA withdrawing the proposed provision?*

The EPA has been reviewing the information gathered in the ANPRM and is developing the final OSWI rulemaking package. Based on discussions with stakeholders and our review of the comments on the ANPRM and OSWI proposal as well as current scientific literature on the topic it is evident that pyrolysis is a complex process that is starting to be used in many and varied industries. The EPA will need significant time and personnel resources to fully analyze the comments and evaluate all current information sources to gain a technical and regulatory understanding of the pyrolysis process. Concurrently, the EPA is continuing to develop the final OSWI rulemaking pursuant to a schedule set by the court in *Sierra Club v. McCarthy*, No. 1:16-cv-2461 (D.D.C.). It is likely that the Agency's review of the pyrolysis information may need to extend beyond the final rulemaking deadline considering the complex issues, the numerous comments from stakeholders with different viewpoints, and multiple competing priorities resulting from promulgating several different CAA regulations under court-ordered deadlines. Because the EPA proposed to remove pyrolysis/combustion units from the OSWI rule, those units would not be subject to the control requirements in the OSWI rule if the EPA were to finalize the proposal in the absence of a withdrawal of the proposed provision. The EPA does not believe it would be appropriate for those sources to become unregulated emissions sources during the time required for our analysis of pyrolysis/combustion units to be completed, particularly if the Agency ultimately concludes that regulation is needed. To prevent such a

regulatory gap and ensure that public health protection is maintained for pyrolysis/combustion units, the EPA is withdrawing its proposal to revise the definition of “municipal waste combustion (MWC) unit” in the OSWI rule to remove the reference to “pyrolysis/combustion units.”

## **II. Impacts of Withdrawal**

The provision was proposed as a part of the Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Review on August 31, 2020. There is no economic impact associated with the withdrawal of that proposed provision.

## **III. Statutory Authority**

Section 129 of the CAA requires the EPA to establish New Source Performance Standards (NSPS) and Emission Guidelines (EG) pursuant to sections 111 and 129 of the CAA for new and existing solid waste incineration units, including “other categories of solid waste incineration units.” The Administrator is determining that this action is subject to the provisions of CAA section 129 (a)(5) as well as under the general authority of CAA section 301(a)(1). This final rule does not establish new regulatory requirements. Hence, the requirements of Executive Orders that generally apply to rulemakings (*e.g.*, the Unfunded Mandates Reform Act) do not apply to this action.

## **List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations.

**Michael S. Regan,**

*Administrator.*

Accordingly, as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the EPA withdraws the definition for “*Municipal waste combustion unit*” in § 60.2977, which published at 85 FR 54211, on August 31, 2020.