

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[AD-FRL-6706-1]

National Emission Standards for Hazardous Air Pollutants for Source Categories**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interpretative rule.

SUMMARY: This interpretative rule clarifies the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA), and of the regulations implementing these provisions for stationary combustion turbines in Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j).

Specifically, EPA has determined that case-by-case maximum achievable control technology (MACT) determinations under subpart B must be made for all new or reconstructed major source stationary combustion turbines, regardless of whether they are part of a combined cycle system. Waste heat recovery units, including duct burners, which are part of a combined cycle system are considered to be steam generating units. New or reconstructed waste heat recovery units would not be subject to case-by-case MACT determinations under subpart B if they are electric utility steam generating units.

Elsewhere in today's **Federal Register**, EPA is withdrawing the interpretative rule as published on April 21, 2000, at 65 FR 21636. This final interpretative rule supersedes the interpretative rule erroneously published at 65 FR 21636.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5263, facsimile: (919) 541-5450, electronic mail address: roy.sims@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities. Stationary combustion turbines which meet the criteria for major sources are the regulated entities addressed by this interpretative rule.

I. Why Is EPA Issuing This Interpretative Rule?

The EPA has decided to issue this interpretative rule to resolve an

ambiguity in the construction of the exclusion for electric utility steam generating units set forth in 40 CFR 63.40(c). That provision states, "The requirements of [40 CFR part 63, subpart B] do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the Act." This applicability exclusion was intended to limit the need for case-by-case MACT determinations for new or reconstructed sources under CAA section 112(g) and 40 CFR 63.40-63.44, but the same exclusion would also generally apply to case-by-case MACT determinations for new and existing sources pursuant to CAA section 112(j).

The term "electric utility steam generating unit" is defined in CAA section 112(a)(8) and at 40 CFR 63.41, as follows:

The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

The EPA explained its reasoning for the electric utility steam generating unit exclusion in the preamble to the final rule implementing CAA section 112(g) for new and reconstructed major sources (61 FR 68387, December 27, 1996). We noted that CAA section 112(n)(1) required us to perform a study of the hazards to public health associated with hazardous air pollutants (HAP) emissions from electric utility steam generating units. After completing the required study and considering the results, we are authorized to regulate such units under CAA section 112 if we determine such regulation is appropriate and necessary. We have not at this time made a determination whether such regulation is appropriate and necessary, but we are required by court order to make a determination by December 15, 2000. We excluded electric utility steam generating units from case-by-case MACT determinations under section 112(g) because we concluded that such determinations should only be made for sources which would otherwise be subject to section 112 MACT standards.

Stationary combustion turbines were included on the list of source categories issued pursuant to CAA section 112(c)(1), and we are, therefore, required to issue a MACT standard applicable to this category pursuant to

CAA section 112(d). Proposal of the MACT standard for this source category is anticipated in late 2000, with promulgation in early 2002.

Stationary combustion turbines may be used to generate electricity. These stationary combustion turbines are sometimes combined with waste heat recovery units which generate steam by extracting heat from the exhaust gases (*i.e.*, combined cycle systems). The fact that stationary combustion turbines can be used to generate electricity has created some ambiguity about whether combustion turbines used in this manner are considered electric utilities.

On the one hand, EPA believes that the most reasonable construction of the statutory definition of electric utility steam generating units would not include any stationary combustion turbine, regardless of whether it is used by an electric utility to generate electricity, and regardless of whether it is attached to a waste heat recovery unit which generates steam. Accordingly, we are developing a MACT standard to regulate emissions from all stationary combustion turbines pursuant to CAA section 112(d).

On the other hand, we also recognize that the first sentence of the statutory definition creates ambiguity concerning whether an electric utility unit must even generate steam to be included. This ambiguity has been compounded by the language in the preamble to the final section 112(g) rule, which predicates the exclusion for electric utilities based on the study performed pursuant to CAA section 112(n)(1). That study did, in fact, include some very limited consideration of stationary combustion turbines. In light of these ambiguities, different permitting authorities have reached differing conclusions concerning whether a case-by-case MACT determination under section 112(g) is required for new or reconstructed major source stationary combustion turbines. At various times, offices within EPA have also given differing interpretations concerning whether a case-by-case MACT determination is required for such facilities.

This interpretative rule is intended to clearly resolve the ambiguity in the construction of 40 CFR 63.40(c) as applied to stationary combustion turbines. This interpretative rule will become legally effective and binding on June 26, 2000. After that date, all EPA offices and permitting authorities must adhere to this interpretative rule. Those EPA offices and permitting authorities who become aware of this interpretative rule, or the construction of the statute set forth herein, prior to the effective

date should adopt this construction to the full extent it is practicable to do so. However, EPA will not seek to revisit the legality of, or to otherwise reconsider, any final actions previously taken in good faith based on a conclusion that stationary combustion turbines used to generate electricity fall within the exclusion.

II. What Is the Agency's Interpretation?

The EPA construes the term "electric utility steam generating unit," as defined by CAA section 112(a)(8) and 40 CFR 63.41, to exclude all stationary combustion turbines, regardless of whether or not such turbines are utilized to generate electricity or utilized by an electric utility, and regardless of whether or not such turbines are utilized in conjunction with waste heat recovery units (*i.e.*, combined cycle systems). Therefore, a case-by-case MACT determination is required for each new or reconstructed stationary combustion turbine which is a major source.

The phrase "steam generating unit" in the term "electric utility steam generating unit" is critical to interpreting which types of combustion units are covered by this definition and which types are not. The definition clearly covers a conventional fossil fuel fired steam generating unit (*e.g.*, coal-fired boiler) which extracts heat from the combustion of fuel and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

However, we do not believe this term was intended to cover a stationary combustion turbine which extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. Such a combustion turbine does not extract heat to generate steam. In fact, there is no steam generated at all in a combustion turbine. Hence, we conclude that the term "electric utility steam generating unit" does not include any stationary combustion turbine, and that such turbines must be regulated under a section 112(d) MACT standard or a section 112(j) determination. Moreover, a case-by-case MACT determination under section 112(g) is required for any new or reconstructed stationary combustion turbine which is a major source.

This reasoning can be further applied to combined cycle systems. For purposes of this discussion, a combined cycle system is a combination of a stationary combustion turbine and a waste heat recovery unit.

In a combined cycle system, a combustion turbine extracts shaft power

from the combustion of fuel and spins an electric generator to generate electricity. The hot exhaust gases from the combustion turbine are then routed to a separate "waste heat recovery unit." The waste heat recovery unit extracts heat from the gases and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

The combustion turbine in a combined cycle system does not generate steam. It is not a "steam generating unit" and, therefore, is not an "electric utility steam generating unit."

However, we also conclude that, because the waste heat recovery unit in a combined cycle system does generate steam, it is a steam generating unit. Whether a waste heat recovery unit in a new or reconstructed combined cycle system is subject to a case-by-case MACT is a moot point in many cases because the waste heat recovery unit is not an emission source. The emissions from the combustion turbine pass through the waste heat recovery unit, but the waste heat recovery unit is not a source of additional emissions.

There is another type of combined cycle system, however, in which the waste heat recovery unit does contribute additional emissions. In these types of combined cycle systems, fuel is burned in the duct, through the use of "duct burners," just before the gases enter the waste heat recovery unit.

These duct burners are analogous to the burners in steam generating units (*i.e.*, boilers). Their only purpose is to burn fuel to generate more heat for extraction by the waste heat recovery unit in order for it to generate more steam. As a result, duct burners (where they are used) are considered part of the waste heat recovery unit in a combined cycle system—just as the burners in a boiler are considered part of the boiler.

Duct burners in combined cycle systems normally burn natural gas. Although it is unlikely that sufficient natural gas would be burned in a duct burner in a combined cycle system to result in emissions that would themselves exceed the major source threshold, a combined cycle system may have aggregate emissions which exceed the major source threshold. Therefore, in each instance where a stationary combustion turbine in a combined cycle system must meet MACT requirements because it is a major source of HAP, an associated duct burner will also be subject to MACT requirements unless it is found to be an electric utility steam generating unit. It is also possible that there could be instances where emissions from a duct burner in a waste heat recovery unit which is not an

electric utility steam generating unit could cause the total emissions from a combined cycle system to exceed the major source threshold.

If the waste heat recovery unit in a combined cycle system operates with duct burners, and more than one-third of the potential electrical output capacity of the duct burners and more than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit is an electric utility steam generating unit and is not subject to case-by-case MACT determinations unless and until such units are added to the source category list pursuant to CAA section 112(c)(5). However, if the waste heat recovery unit in a combined cycle system operates with duct burners and less than one-third of the potential electrical output capacity of the duct burners or less than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit must also meet MACT requirements if the aggregate HAP emissions from the combined cycle system exceed the major source threshold.

III. What Additional Information Is Available?

As mentioned above, EPA is developing MACT standards for stationary combustion turbines. This effort has resulted in collection of information regarding the performance, as well as the costs, associated with the use of various technologies to reduce emissions of HAP from stationary combustion turbines.

In conjunction with today's interpretative rule, EPA is making available two memoranda, the first entitled, "Hazardous Air Pollutant (HAP) Emission Control Technology for New Stationary Combustion Turbines," and the second entitled, "Oxidation Catalyst Costs for New Stationary Combustion Turbines." These two memoranda compile and summarize information collected by EPA and may be of assistance in making any required case-by-case MACT determinations. These memoranda may be obtained by contacting EPA as shown under **FOR FURTHER INFORMATION CONTACT** or downloaded directly by logging on to the following EPA website: <http://www.epa.gov/ttn/uatw/combust/turbine/turbpg.html>.

IV. Why Is EPA Withdrawing the Interpretative Rule Published on April 21, 2000?

An error by EPA led to publication of a preliminary draft of the interpretative rule on April 21, 2000 at 65 FR 36321.

V. What Are the Impacts Associated With This Interpretative Rule?

As mentioned above, this interpretative rule simply resolves current ambiguity concerning the applicability of CAA section 112 to new or reconstructed major source stationary combustion turbines. It is not intended to subject these entities to any new or additional regulatory requirements.

VI. What Is the Applicability of Other Review Requirements?

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this interpretative rule is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant 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 (64 FR 43255, August 10, 1999).

This interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action does not involve technical standards;

thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule interpreted herein is discussed in the March 29, 1996 **Federal Register** document (61 FR 14029).

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. We have established an effective date of June 26, 2000. The 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 rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants, Combustion turbines.

Dated: May 18, 2000.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6706-2]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of interpretative rule.

SUMMARY: The EPA is withdrawing the interpretative rule published in the **Federal Register** on April 21, 2000, at 65 FR 21363. That interpretative rule was intended to clarify the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA) to all stationary combustion turbines and waste heat recovery units in combined cycle systems.

An administrative error led to publication of a preliminary draft of the interpretative rule, rather than the final interpretative rule EPA intended to publish. Concurrent with this withdrawal of the incorrect version of the interpretative rule published on April 21, 2000, EPA is publishing elsewhere in today's **Federal Register** a corrected version of the interpretative rule.

DATES: On May 25, 2000, EPA hereby withdraws the interpretative rule published at 65 FR 21363. The corrected interpretative rule will become legally effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5263, facsimile: (919) 541-5450, electronic mail address: roy.sims@epa.gov.

Dated: May 18, 2000.

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