

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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U.S. EPA Finalizes Revisions to Boiler, Process Heater and Incineration Unit Rules

Numerous sources, from elementary schools to chemical manufacturers will be affected by recently finalized rules governing boilers, process heaters and incineration units. In late December 2012, the U.S. Environmental Protection Agency (EPA) signed the long-awaited final revisions to its combustion air rules affecting boilers, process heaters, incinerators and kilns at a wide variety of facilities and institutions. This rulemaking package includes a revised: (1) Major Source Boiler Rule; (2) Area Source Boiler Rule; (3) Commercial and Industrial Solid Waste Incineration (CISWI) Units Rule; and (4) Non-Hazardous Secondary Materials (NHSM) Rule. After nearly two years of deliberation and legal challenges, the EPA published the final revisions in the *Federal Register* in late January and early February. The changes to the regulations are effective on different dates.

EPA issued the four rules together because they are interrelated. The two Boiler Rules control emissions of hazardous air pollutants from boilers and process heaters located at industrial, commercial and institutional facilities, while the CISWI Rule controls air pollutants from devices at commercial and industrial facilities (regardless of Major or Area Source designation) that combust “solid waste.” The NHSM Rule defines “solid waste” for purposes of determining which air pollution control rule applies, whether it be the CISWI Rule or one of the Boiler Rules. If, for example, a boiler located at a Major Source facility combusts “solid waste,” which the NHSM Rule defines broadly to include liquids, semi-solids and contained gases, then the boiler is subject to the CISWI Rule—not the Major Source Boiler Rule. Generally, the regulated community has preferred to avoid the CISWI Rule, because it imposes tougher requirements than the Boiler Rules’ regime.

The recent revisions should prompt owners and operators of boilers and other combustion devices to evaluate whether their devices are subject to one of these rules. Potentially affected facilities should consider conducting and documenting an applicability analysis for any type of combustion device. This applicability analysis is complicated because it requires the gathering of facts and consideration of the various applicability and exemption provisions in the rules. Several factors are significant, such as a device’s fuel type (including whether any “solid waste” is combusted), date of construction or reconstruction and heating capacity. Designation of the facility as a Major Source or Area Source is also significant.

Depending upon the outcome of an applicability analysis, the relevant rule may impose emission limitations for mercury and other pollutants, operating limits and/or work practice standards such as a regular boiler tune-up. Demonstrating compliance with an emission limit could involve performance stack testing, fuel analyses or continuous monitoring systems (CMS). Some units may trigger the obligation to have a qualified energy assessor perform an assessment to identify energy saving opportunities. There are also requirements relating to monitoring, recordkeeping and reporting. A proper applicability analysis will enable facility owners and operators to determine precisely which of these and other substantive requirements must be satisfied and by what deadline.

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