WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: "Standards of Performance for New Stationary Sources"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Streeet East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief
Office Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

John H. Johnston

10.40

BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

Michael P. Miano
COMMISSIONER

June 15, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Karen Watson, OAQ

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

This rule adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section111(b) of the federal Clean Air Act, as amended. It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. This revised rule incorporates by reference additional provisions relating to nonmetallic minerals processing plants, flares, metals emissions, and the phosphate fertilizer industry.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Any person who constructs, modifies, or reconstructs an affected facility after the effective date of any New Source Performance Standard (NSPS) under 40 CFR Part 60 must comply with the NSPS. The final adoption of the proposed rule amendment will enable the WVDEP to become the primary enforcement authority for NSPS subparts promulgated by U.S. EPA as of June 1, 1998. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

The proposed amendments to this rule will be reviewed by the Advisory Council during its meeting in July, 1998. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 3, 1998 filing with the Secretary of State's Office and Legislative Rulemaking Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

Type of Rule: __X__ Legislative _____ Interpretive _____ Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
Estimated Total Cost	Increase	Decrease	Current	Next	There-after
	$ 0	$ 0	$ 0	$ 0	$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates: Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 60 as of June 1, 1998 will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, under 45CSR30 authorized by the Legislature during the 1994 session and approved (interim approval) by the U.S. Environmental Protection Agency by Final Rule issued on November 16, 1995.

3. Objectives of these rules: This rule adopts standards of performance for new stationary sources promulgated by the USEPA under the federal Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

No impact above that resulting from the currently applicable federal standards.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal standards.

Date: June 16, 1998

Signature of Agency Head or Authorized Representative

John H. Lehrl

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60

§45-16-1. General.

1.1. Scope. -- This rule adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency ~~under~~pursuant to 42 U.S.C. 7411(b) [C.A.A. §111(b)] of the federal Clean Air Act, as amended. It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- ~~May 30, 1997.~~

1.4. Effective Date. -- ~~June 1, 1997.~~

1.5. Incorporation By Reference -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998.

§45-16-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, modified, or operated a New Source Performance Standard (NSPS) source which results or will result in violations of this rule.

§45-16-3. Adoption of Standards.

3.1. Standards. -- ~~Standards of performance for new stationary sources including associated reference methods, performance specifications and other test methods which are appended to such standards promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. 7411(b) [C.A.A. §111(b)]of the federal Clean Air Act, as amended, as of June 15, 1996, and contained in 40 CFR Part 60 are hereby adopted in their entirety and incorporated herein by reference~~The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 60 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

3.1.a. Part 60.9 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31.

3.1.b. Sub-parts B, C, Ca, Cb, Cc, Ce, Ea, Ec, and ~~Ea~~WWW of 40 CFR Part 60 shall be excluded.

§45-16-4. Director.

4.1. Any and all references in said 40 CFR Part 60 to the "Administrator" of the United States Environmental Protection Agency ~~is~~are amended to be the "Director" of the West Virginia Division of Environmental Protection except ~~in the following references which such references shall remain "Administrator of the United States Environmental Protection Agency"~~as follows:

4.1.a. ~~Part 60.2~~where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State..

4.1.b. ~~Part 60.4.~~where provisions occur which refer to:

4.1.b.1. alternate means of emission limitations

4.1.b.2. alternate control technologies

4.1.b.3. innovative technology waivers

4.1.b.4. alternate test methods

4.1.b.5. alternate monitoring methods

4.1.b.6. waivers/adjustments to recordkeeping and reporting

4.1.b.7. emissions averaging

4.1.b.8. applicability determinations

4.1.b.9. the authority to require testing under Section 114 of the Clean Air Act, as amended.

4.1.c. ~~Part 60.8(b)(2)~~where the context of the regulation clearly requires otherwise.

~~4.1.d. Part 60.8(b)(3).~~

~~4.1.e. That sentence of part 60.8(b) which deals with the authority of the Administrator to require testing under Section 114 of the Clean Air Act, as amended.~~

~~4.1.f. Part 60.11(e)2).~~

~~4.1.g. Part 60.13(c).~~

~~4.1.h. Part 60.45(a).~~

~~4.1.i. Part 60.194(d).~~

~~4.1.j. Part 60.332(a).~~

~~4.1.k. Part 60.335(f)(1).~~

~~4.1.l. Part 60.335(f)(1).~~

~~4.1.m. Part 60.33b(d)(2)~~

~~4.1.n. Part 60.39b(b)~~

~~4.1.o. Part 60.50b(n)~~

~~4.1.p. Part 60.51b~~

~~4.1.q. Part 60.53b(b)(2)~~

~~4.1.r. Part 60.53b(c)(2)~~

~~4.1.s. Part 60.58b(c)(14)~~

~~4.1.t. Part 60.58b(h)(12)~~

§45-16-5. Permits.

5.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

§45-16-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

SUMMARY OF NSPS ACTIONS
Federal Registers
June 15, 1996 - June 1, 1998

- Subject -	- Class -	- Summary -
May 4, 1998		**Vol. 63, No. 85**
NSPS: General Provisions	Direct Final Rule	This action amends the General Control Device Requirements applicable to flares in 40 CFR Part 60 which were issued as a final rule on January 21, 1986.
February 9, 1998		**Vol. 63, No. 26**
NSPS: Addition of Method 29, "Determination of Metals Emissions from Stationary Sources" to Appendix A of Part 60	Final Rule	This action changes the effective date of this rule from April 25, 1996 to February 9, 1998.

SUMMARY OF NSPS ACTIONS
Federal Registers
June 15, 1996 - June 1, 1998

- Subject -	- Class -	- Summary -
June 9, 1997		**Vol. 62, No. 110**
NSPS: Nonmetallic Mineral Processing Plants	Final Rule	This action promulgates revisions and clarifications to several provisions of the standards of performance for nonmetallic mineral processing plants, which were proposed on June 27, 1996. The affected industries and numerical emission limits remain unchanged.
April 15, 1997		**Vol. 62, No. 72**
NSPS: Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	Final Rule	This action clarifies the coverage of the NSPS to limit its applicability to those facilities which store fresh GTSP.

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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 rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. § 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, *Hydrocarbons, Carbon monoxide, Particulate matter,* Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 by adding paragraph (c)(82)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(82) * * *

(i) * * *

(E) Maricopa County.

(*1*) Ordinance P–7, Maricopa County Trip Reduction Ordinance, adopted May 26, 1994.

* * * * *

[FR Doc. 98–11759 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5980–9]

Technical Amendments to Approval and Promulgation of Implementation Plans; Minnesota; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On July 22, 1997 (62 FR 39120), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving a revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area located in Ramsey County, Minnesota, which established an effective date of September 22, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 260–5585.

Supplementary Information:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 22, 1997, **Federal Register** document, by operation of law, the rule did not take effect on September 22, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 22, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental

justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 22, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11542 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–6003–7]

RIN 2060–AH94

Standards of Performance for New Stationary Sources: General Provisions; National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the General Control Device Requirements applicable to flares in 40 CFR Part 60 which were issued as a final rule on January 21, 1986, and the Control Device Requirements applicable to flares in 40 CFR Part 63 which were issued as a final rule on March 16, 1994. This action amends existing specifications to permit the use of hydrogen-fueled flares. For additional information concerning comments, see the parallel proposal found in the Proposed Rules Section of this **Federal Register**.

DATES: This direct final rule is effective June 23, 1998 without further notice unless the Agency receives relevant adverse comments by June 3, 1998. Should the Agency receive such comments, it will publish a document withdrawing this rule. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 23, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–97–48 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to Mr. Robert Rosensteel (see **FOR FURTHER INFORMATION CONTACT** section for address). Comments may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for these amendments has been established under docket number A–97–48. A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESS** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–48. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in Docket No. A–97–48, or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5384, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Entities affected by this direct final rule include:

Category	Examples of regulated entities
Industry	Synthetic Organic Chemical Manufacturing Industries; and Petroleum Refining Industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background

The General Control Device Requirements of 40 CFR 60.18 were issued as a final rule on January 21, 1986 and are applicable to control devices complying with New Source Performance Standards (NSPS) promulgated by the Agency under Section 111 of the Clean Air Act (CAA), and National Emission Standards for Hazardous Air Pollutants (NESHAP) issued under the authority of Section 112 prior to the CAA Amendments of 1990. The Control Device Requirements of 40 CFR 63.11 were issued as a final rule on March 16, 1994 and are applicable to control devices used to comply with NESHAP issued under the authority of the CAA Amendments of 1990, for the control of hazardous air pollutants (HAP). These existing control device requirements contain specifications defining required operating conditions of control devices generally. Specifically, 40 CFR 60.18(b) through (d), and 40 CFR 63.11(b) contain the operating conditions for flares (i.e., existing flare specifications). Flares operating in accordance with these specifications destroy volatile organic compounds (VOC) or volatile HAP with a destruction efficiency of 98 percent or greater. These existing flare specifications were written for flares combusting organic emission streams. The current regulations do not permit the use of flares not meeting these specifications to satisfy control requirements under the CAA.

E.I. du Pont de Nemours and Company (DuPont) representatives requested that the EPA either add specific limits for hydrogen-fueled flares to the existing flare specifications or approve their hydrogen-fueled flares as alternate means of emission limitation under 40 CFR 61.484, 40 CFR 61.12(d) and 40 CFR 63.6(g) (Docket No. A–97–48, Item No. II–D–2). DuPont subsequently sponsored a testing program to demonstrate that hydrogen-fueled flares in use at DuPont destroy emissions with greater than 98 percent efficiency. The test program demonstrated that these hydrogen-fueled flares achieved greater than 98 percent destruction efficiency. Further, the EPA judged the conditions of the test program to be universally applicable under the specifications contained in these amendments. Therefore, this notice provides the background and rationale for this action to add specifications for hydrogen-fueled flares to the existing flare specifications.

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

A. Existing Flare Specifications

Flares are commonly used in industry to safely combust VOC and volatile HAP. Flares can accommodate fluctuations in VOC or volatile HAP concentrations, flow rate, heating value, and inerts content. Further, flares are appropriate for continuous and intermittent flow applications. Some organic emission streams can be flared without the need for supplemental fuel. However, the use of supplemental organic fuel such as natural gas to ensure the complete combustion of emissions is common.

The EPA determined the destruction efficiency of flares combusting organic emissions in the early 1980's and developed the existing flare specifications as a result of this work. The testing was conducted with a nominal 8-inch diameter flare head furnished by a vendor (Docket No. A–97–48, Item No. I–II–12) and pilot-scale flares (Docket No. A–97–48, Item No. I–II–5). From destruction efficiency testing under a wide variety of velocities, gas compositions, tip diameters, air and steam assistance, and the presence or absence of a pilot burner, it was concluded that the destruction efficiency of flares was above 96 percent when operated within the conditions of the flare specifications. These specifications list the minimum heat content of the flame (British thermal units per standard cubic feet of gas, or Btu/scf), and the tip velocity (feet per second, or ft/s) allowed for steam-assisted, air-assisted and nonassisted flares.

B. DuPont's Request for Specifications for Hydrogen-Fueled Flares

DuPont operates six flares at three facilities which are used to combust waste gases containing hydrogen (from 13 to 22 mol percent), VOC and volatile HAP. These waste streams also contain other combustible waste gases, inerts, and oxygen. All of DuPont's hydrogen-fueled flares are nonassisted and use pilot burners.

The concentrations of the combustible gases are low, and since the heating value of hydrogen per unit of volume is low, the DuPont emission streams have lower volumetric heat contents than the streams of flares meeting the existing flare specifications. Because DuPont's six flares do not meet the existing flare specifications, and three of these flares are used to control emissions for HAP sources currently subject to NESHAP, DuPont initiated a process to demonstrate that their hydrogen-fueled flares achieve the same destruction efficiency as flares complying with the existing flare specifications. DuPont began the process by investigating the literature on hydrogen-fueled flares (Docket No. A–97–48, Item No. II–I–2). The objective of this investigation was to find any data that may exist in earlier hydrogen-fueled flare test reports that would support their assertion that hydrogen-fueled flares achieve a control efficiency for VOC and volatile HAP of 98 percent or greater. The investigation concluded that no such historical data exist.

At this point, DuPont wrote a letter to the EPA, discussed in the introduction to this section, asking the EPA to consider either adding specific limits for hydrogen-fueled flares to the existing specifications, or approving their hydrogen-fueled flares as an alternate means of emission limitation. DuPont stated that they would provide testing to support this request, and the EPA's Office of Air Quality Planning and Standards (OAQPS) and Office or Research and Development (ORD) agreed to review their test plan, observe testing and review the test report.

II. DuPont Test Program for Hydrogen-Fueled Flares

A. Summary of Earlier Relevant Hydrogen-Fueled Flares Tests

There has been previous testing of hydrogen-fueled flares. In 1970, a study was conducted to evaluate the stability of hydrogen-fueled flares (Docket No. A–97–48, Item No. II–I–6). In this study the velocity gradient and the volume percent hydrogen were correlated with the observation of blow out (i.e., when the flame is completely extinguished) for diffusion flares with hydrogen concentrations in the 50 to 100 volume-percent range. The velocity gradient is defined as the change in velocity at the boundary of the fuel and air. A critical velocity gradient for a given volume-percent of hydrogen was identified, above which the flame was unstable. The significance of this study was that the stability of hydrogen-rich flares (i.e., 50 to 100 volume-percent) was able to be predicted by calculating the velocity gradient. Another study was conducted in 1984 (Docket No. A–97–48, Item No. II–I–9), where the velocity gradient and predictions of flame stability were investigated, but in the range of hydrogen concentrations from 4 to 75 volume-percent hydrogen. However, data were not collected in these tests sufficient to determine destruction efficiencies.

B. Objectives of the DuPont Test Program

The primary objective of DuPont's hydrogen-fueled flare testing program was to demonstrate that the hydrogen-fueled flares used at their facilities were achieving a volatile HAP and VOC destruction efficiency equal to or greater than that of flares meeting the existing flare specifications. Specific technical objectives to support this primary objective were:

(1) To determine the limits of velocity and hydrogen content within which hydrogen-fueled flares are stable, and;

(2) To measure the destruction efficiencies of a surrogate for HAP under conditions corresponding to those in industrial hydrogen-fueled flares.

C. Design and Implementation of DuPont Test Program

The results of the testing program form the basis of these flare specification amendments. The testing program used a nominal 3-inch pipe flare with a hood and a stack suspended over the flare to capture the plume. Stability and destruction efficiency tests were performed on the test flare.

The first portion of the testing consisted of stability testing. To determine the flare's stability limit, a stable flame was first established, then the hydrogen flow rate was slowly reduced while holding the tip velocity constant. Hydrogen readings were recorded when the flame lifted off, and again when the flame completely blew out. This procedure was repeated at different tip velocities in the 16 to 130 ft/s range, for flares with and without pilot burners.

The destruction efficiency of the flare was tested at high gas velocities and hydrogen contents in the stable range. The gases in the waste gas stream and in the hood stack were sampled and analyzed for concentrations of the compound chosen as a surrogate for HAP. Since the surrogate is a VOC this destruction efficiency also demonstrates the destruction efficiency of VOC. Destruction efficiencies were then calculated from these results.

D. Results of the Test Program

1. *Flare Stability*

The measurements of the hydrogen volume percent at lift off and blow out for the piloted and unpiloted nominal 3-inch (2.9 inch inner diameter) pipe flare are shown in Figure 1 as a function of velocity. Because the hydrogen content at lift off was essentially the same for flares with and without a pilot burner, a single line was fit to the data sets of lift off measurements for piloted and unpiloted flares, this is represented by the upper curve in Figure 1. The data point in the far upper right corner of the figure is an unexplained outlier that is inconsistent with all other data points and was excluded from the linear regression analysis of the lift off data set. The middle and lower curves in Figure 1 are the blow out curves without and with a pilot, respectively.

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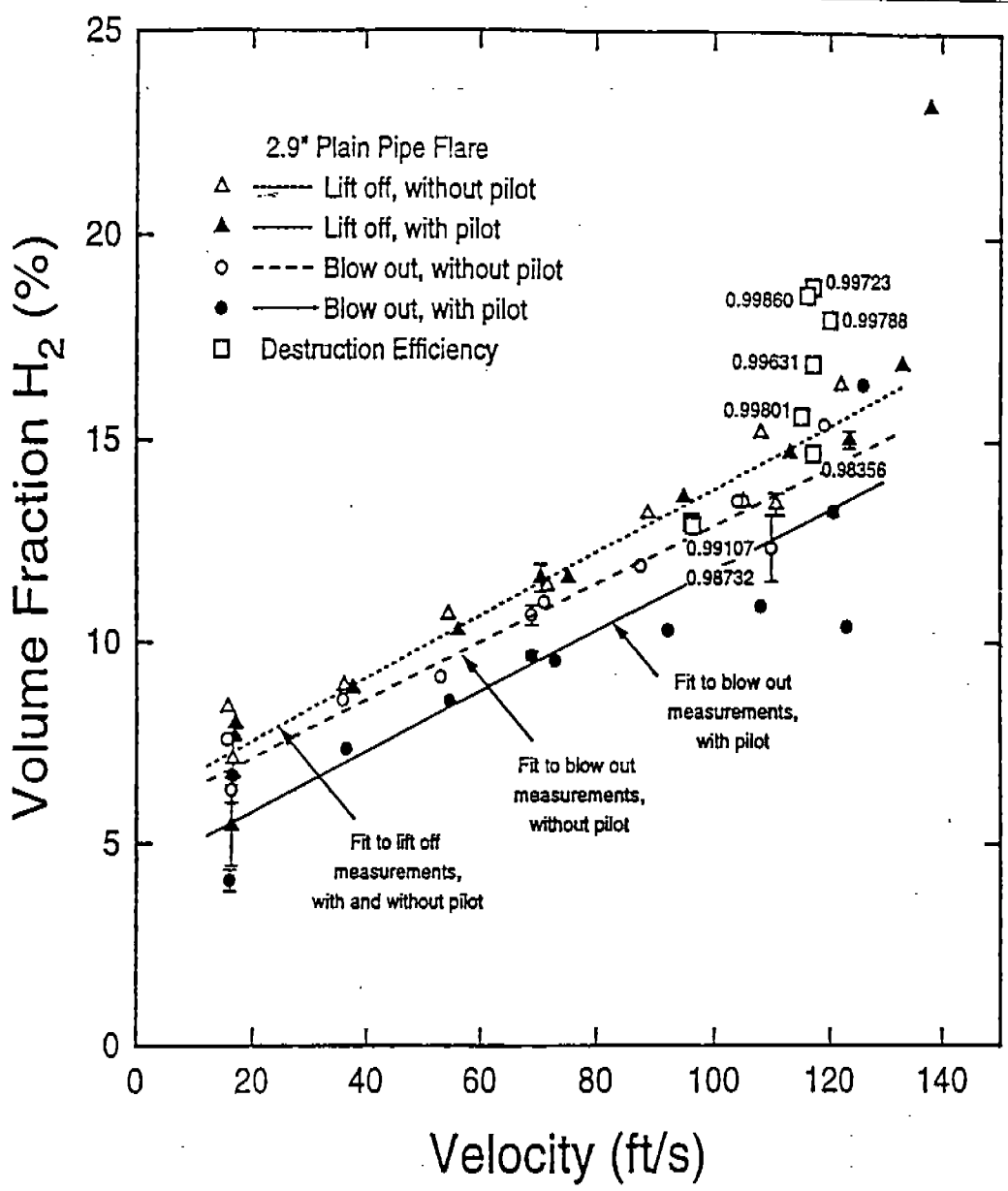

Figure 1. Hydrogen volume fractions measured at lift off and blow out on the nominal 3-inch plain pipe flare, with and without pilot flame (Docket No. A-97-48, II-I-1).

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2. Destruction Efficiency

The measured mean destruction efficiencies and destruction efficiencies at the 95 percent confidence level are shown in Figure 1. All the measurements of destruction efficiencies at conditions more stable than lift off were above 99 percent. Further, control efficiencies greater than 98 percent were found at hydrogen contents below the lift off curve.

III. Rationale

A. The Need for Specifications for Hydrogen-Fueled Flares

The EPA is taking this action to amend 40 CFR 60.18 and 40 CFR 63.11 since the EPA sees the need to permit the use of hydrogen-fueled flares to meet the EPA control requirements. As discussed below, hydrogen has a lower heat content than organics commonly combusted in flares meeting the existing flare specifications and cannot, therefore, be used to satisfy current control requirements. However, since the combustion of hydrogen is different than the combustion of organics, and the test report demonstrates a destruction efficiency greater than 98 percent, the EPA believes that hydrogen-fueled flares meeting the specifications outlined in the amendments will achieve a control efficiency of 98 percent or greater. This level of control is equivalent to the level of control achieved by flares meeting the existing specifications. In addition to achieving the same destruction efficiency of VOC or organic HAP, the adoption of these amendments has the added advantage of reducing the formation of secondary pollutants; since the combustion of supplemental fuel would not be required by hydrogen-fueled flares to meet the existing flare specifications.

1. The Heat Content of Hydrogen

The heat content of a substance is a measure of the amount of energy stored within the bonds between atoms in each molecule of the substance. Hydrogen is a simple molecule consisting of two hydrogen atoms held together by weak, hydrogen bonds, thus resulting in a low heat content. In comparison, organic chemicals are larger chains (or rings) of carbons with hydrogens and other atoms attached to them. These molecules are held together with a combination of ionic, covalent and hydrogen bonds, which contain substantially more energy (i.e., higher heat content) than the hydrogen bond in the hydrogen molecule.

2. The Difference in Combustion Between Hydrogen and Organics

The first phenomenon to explain the difference in combustion between hydrogen and organics is related to the thermodynamics of the combustion reaction. In order for the hydrogen atom to react in the combustion/oxidation reaction, the weak hydrogen bond between the two hydrogen atoms must first be broken. Because there is less energy holding the hydrogen atoms together, less energy (heat) is required to separate them. Once the hydrogen bonds are broken, the hydrogen atoms are free to react in the combustion reaction.

The second phenomenon explaining the difference in combustion between hydrogen and organics is due to hydrogen's upper and lower flammability limits. The flammability limits are the minimum (lower) and maximum (upper) percentages of the fuel in a fuel-air mixture that can propagate a self-sustaining flame. The lower and upper flammability limits of hydrogen are 4.0 and 74.2 percent, respectively, which is the second widest range of lower and upper limits of substances typically combusted in flares (Docket No. A–97–48, Item No. II–I–2).

The third phenomenon explaining the difference in combustion between hydrogen and organics is the relative difference in diffusivity between hydrogen and organics in air. Diffusivity refers to how easily molecules of one substance mix with molecules of another. Further, the quicker the fuel and air in a flare mix, the quicker the combustion reaction occurs. The measure of how quickly a substance mixes with another substances is expressed in terms of the diffusivity coefficient. The larger the diffusivity coefficient, the quicker the mixing. The diffusivity coefficient for the mixture of hydrogen and air is an order of magnitude higher than those for the mixture of air and volatile HAP with readily available diffusivity coefficients. Therefore, hydrogen is more diffuse in air compared to organics and more quickly enters the flammability range than organics.

B. Use of DuPont Test Results as the Basis for Hydrogen-Fueled Flare Specifications

These tests were conducted by DuPont primarily for their flaring conditions. However, after reviewing the test plan, observing the testing, and thoroughly reviewing the test report supplied by DuPont, the EPA concluded that the test results were applicable to all nonassisted flares with a hydrogen content of 8.0 percent (by volume) or greater, and a diameter of 3 inches or greater. The EPA believes that the test results are universally applicable since all the effective data points demonstrated a destruction efficiency greater than 98 percent, with the majority achieving greater than 99 percent destruction. Therefore, if the test flare can achieve these destruction efficiencies, then the EPA expects industrial flares meeting the flare specifications in these amendments to achieve a destruction efficiency of 98 percent or greater.

In selecting the conditions under which the pilot flare testing was to be conducted and interpreting the results of the testing, a "conservative" decision was made for each choice, that is the condition that would most likely assure that a full-scale flare would achieve at least as high and possibly higher destruction efficiency was chosen. This approach applied to the selection of flare tip design, flare tip diameter, pilot burner heat input, and characteristics of the surrogate for HAP for destruction testing. It also applied to the evaluation of stability testing and destruction efficiency results, as well as the selection of operating limits applying to hydrogen concentration and tip discharge velocity.

1. The Selection of the Flare Type

A nonassisted, plain-tip flare was used in the testing program because all of DuPont's flares are nonassisted. A nonassisted flare is a flare tip without any auxiliary provision for enhancing the mixing of air into its flame. The plain-tip means no tabs or other devices to redistribute flow were added to the rim of the flare. Because the presence of tabs improves the stability of the flare by channeling the flare's flow and improving mixing of fuel and air, it was concluded that the lack of tabs (i.e., plain tip) would result in the least stable test conditions.

2. The Comparison of the Selected Flare with the Existing Flare Specifications

A 3-inch flare was selected for the emission test since this was the same size flare used for the testing to establish the basis for the existing flare specifications in 40 CFR 60.18 and 40 CFR 63.11. Stability tests were conducted using propane to determine if the flare was operating properly and could meet the existing flare specifications. Test results demonstrated that this flare was stable when it was expected to be stable and not stable when it was not expected to be (i.e., as indicated by the existing flare specifications).

3. The Size of the Test Flare

Another reason for using the 3-inch flare for these tests is because a 3-inch flare is small, relative to the size of flares in industry (as a point of reference, the DuPont flares are 16 to 48 inches in diameter). Research indicates that smaller flares are less stable than larger flares (Docket No. A–97–48, Item No. II–I–1, Sec 4, page 6). Specifically, the physical parameter known as the velocity gradient can be used to predict when a flame will blow out by plotting the velocity gradient versus the volume-percent hydrogen. The larger the boundary velocity gradient, the more unstable the flame. Further, the velocity gradient is inversely proportional to the diameter of the pipe. Therefore, at a given velocity, the larger the pipe, the smaller the boundary velocity, and the more stable the flame. The EPA concludes that if a stable flame can be maintained with a smaller flare pipe, then a larger flare would be expected to be stable at lower hydrogen concentrations and higher velocities. Therefore, the EPA believes that 3-inch or larger flares that meet these specifications will have destruction efficiencies as high or higher than those obtained from the 3-inch pipe flares.

4. The Selection of the Size of the Pilot Burner

The amount of heat input from the pilots on DuPont's full-scale hydrogen-fueled flares are in the range from 0.05 to 0.6 percent of the total heat input to the flares. A venturi burner turned down to approximately one third of its 9,000 Btu/hr capacity was used for the tests described in this document, and the heat input was equal to 0.3 to 0.6 percent of the pilot flare's total heat input during the stability and destruction efficiency tests. Therefore, the heat input from the pilot during the tests was comparable to the heat input for the full-scale flares operated by DuPont.

The relatively small proportion of heat input from the venturi burner compared to the total heat input to the test flare would not be expected to have a significant effect on either the stability or destruction efficiency results, because this amount of heat is insignificant compared to the flare's total heat content. Also, the use of a pilot burner is consistent with EPA's flare specification which requires that the pilot flame be present at all times.

5. The Selection of Ethylene as the Surrogate for HAP to be used in the testing

For this study it was desired to select a surrogate for HAP that was more difficult to destroy than the volatile HAP present in the large scale flare waste streams, and which could be measured at a concentration of 10 parts per billion by volume and higher. In general, the difficulty of destruction for organics increases as the molecular weight decreases, but the limit of detection decreases as the molecular weight decreases. It is obvious then that there may be some compromise necessary in selecting a surrogate for HAP.

In order to compare the relative difficulty to destroy various species, a linear multiple regression model was used that calculates a destruction temperature using parameters describing the molecular structure, autoignition temperature, and residence time as inputs to the model. The destruction temperatures obtained are theoretical temperatures for plug flow reactors to achieve specified destruction allowing a comparison to be made among various chemical species to estimate relative destructibility (Docket No. A–97–48, Item No. II–I–14). As a first step the destruction temperatures were calculated for all the chemical species that were identified as present in DuPont's full-scale flare waste streams. The next step was to calculate destruction temperatures for the surrogates for HAP under consideration. (The results from this analysis are presented in Tables 4–3 and Table 4–4 of Docket Item II–I–14).

In comparing the model's destruction temperature estimates for candidate surrogates for HAP present in DuPont's flare streams, the best choice as a surrogate was methane, but the detection limit was too high to be accepted for the field study. The next choice was methanol but not only is the detection limit high, it is a HAP and it is also a liquid at ambient temperatures, presenting handling difficulties. The next candidate considered was ethylene which was selected for the study. It has a higher destruction temperature than all the organic HAP in the study, except methanol, and has an acceptable limit of detection. Therefore, the most difficult to destroy substance was chosen for the study that was feasible to use.

6. The Criteria for a Stable Flame

The hydrogen content reported when lift off was first observed was selected as the criterion for a stable flame, because it was easy and precise to identify. The EPA concluded that this was a conservative estimate for the stability limit because destruction efficiencies greater than 98 percent were noted even for hydrogen contents below the lift off level.

Another reason why the EPA concluded that lift off was a conservative criterion for a stable fla was based on a correlation between th stability ratio and the destruction efficiency observed in earlier flare testing conducted in the 1980's (Docket No. A–97–48, Item No. II–I–5). At that time it was demonstrated that the destruction efficiencies were directly proportional to the ratio of the flare gas heating value to the minimum heating value for flame stability (i.e., stability ratio). Regardless of the substance being combusted, it was observed that the destruction efficiency plateaued to greater than 98 percent destruction when the stability ratio was above approximately 1.2. For this test program, the destruction efficiency versus the ratio of actual hydrogen to hydrogen at lift off (analogous with the stability ratio, and referred to as the hydrogen ratio) was plotted for this test program. The curve of the data was similar to those obtained from the flare test programs in the 1980's. Three data points demonstrated that at stability ratios below 1.0, with the lowest stability ratio of 0.955, destruction efficiencies greater than 98 percent were achieved. Since the amendments for these flare specifications require a stability ratio of 1.0 or greater, it is assumed that a 98 percent or greater destruction efficiency will be achieved.

7. The Operating Parameters Used for Testing the Destruction Efficiency (i.e., Hydrogen Content and Flare Tip Velocity)

The destruction efficiency of ethylene for the hydrogen-fueled flares was tested at high tip velocities (i.e., approximately 100 to 120 ft/sec) because this is the velocity range expected to produce lower destruction efficiencies. Therefore, if acceptable destruction efficiencies are observed at high tip velocities, then at least as high or even higher destruction efficiencies are expected at lower tip velocities.

The expectation to observe decreased destruction efficiency at high tip velocities is explained by two phenomena. The first phenomenon is due to the increased fuel flow. The increased volume of fuel flow entrains more air, and more eddies are formed at the boundary between the fuel and the air. These eddies tend to strip off some of the gases' flow, even before the flame is able to combust the substances, so uncombusted or incompletely combusted substances may be lost to the ambient air.

Another phenomenon explaining the expectation of decreased destruction efficiency at increased tip velocities

results from comparisons of stability ratios at different tip velocities. For this test program the ratio of the hydrogen content at lift off to the hydrogen content at blow out with a pilot was used as an analogous ratio to the previously mentioned stability ratio. Further, the value of hydrogen at blow out was used as the minimum hydrogen content, since at essentially this level of hydrogen, the destruction efficiencies were above 98 percent for tip velocities of 100 and 120 ft/sec. The DuPont test program's data revealed a trend where the hydrogen ratios were lower at higher velocities compared to lower tip velocities, 1.15 to 1.17 versus 1.3, respectively. Since the test programs in the 1980's demonstrated that the destruction efficiency is directly proportional to the stability ratio, then it could be expected that the same or higher destruction efficiencies would be experienced at lower tip velocities where the hydrogen ratios are larger.

C. Selection of the Specifications for Hydrogen-Fueled Flares

The operating specification for hydrogen-fueled flares in these amendments is the maximum tip velocity for a given hydrogen content, from the equation of the line fitting the data from the stability testing at lift off conditions as seen in Figure 1. The equation in these amendments comes directly from the test report. This equation is presented in the appropriate form in Section IV of this preamble with the units changed to metric.

There are safety requirements that must be carefully considered for all flare installations, and this is the case for the user of these hydrogen-fueled flare amendments. As an example, if the discharge velocity is too low under certain conditions, the flame could propagate back into the process with potentially catastrophic results. These amendments only specify a maximum discharge velocity for the purpose of assuring efficient destruction of pollutants in waste streams and do not address any aspect of safe operation. The user of any EPA flare specifications should carefully consider all features of this application, not just the limitation on maximum discharge velocity, and implement all necessary measures to assure a safe operation. Safe operating conditions are always the responsibility of the owner/operator at each facility to assure that all applicable safety requirements are adhered to whether they are company, consensus and/or governmental requirements.

The EPA did not think that extrapolating the data outside the range of values tested to be prudent; therefore, the hydrogen-fueled flare specifications have been restricted to the confines of the conditions used for the test program. The following restrictions are included in the hydrogen-fueled flare specifications:

1. Nonassisted Flares

The amendments are applicable to only nonassisted flares because that is the only type of flare tested for these amendments.

2. Continuous Flame

The existing flare specifications require the presence of a continuous flame where reliable ignition is obtained by continuous pilot burners designed for stability. To ensure that the pilot is continuously lit, a flame detection device is required. These amendments incorporate the same requirements for the same reason, to ensure flame stability.

3. Minimum Flare Diameter

The testing was conducted on 3-inch flares, therefore this is the minimum flare diameter for the amendments.

4. Minimum Hydrogen Content

The minimum hydrogen content in the gas streams tested was rounded to the nearest whole number, 8.0 volume percent, and set as the defining minimum hydrogen concentration cutoff for a hydrogen-fueled flare.

5. Maximum Tip Velocity

The maximum tip velocity was set at 37.2 m/sec (122 ft/s), because that was the highest tip velocity tested.

6. Flame Stabilizers

Flame stabilizers (often called flame holders) are allowed because stability and destruction efficiency testing was conducted without them, so if these tabs stabilize the flame even better mixing, and potentially greater destruction efficiencies can be achieved.

7. Minimum Flare Tip Velocity

A minimum flare tip velocity was not listed since evidence indicates that performance will not be diminished due to lower tip velocities (See the preceding discussion concerning safety responsibilities).

D. Decision To Proceed With Direct Final Rulemaking

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

IV. Summary of the Amendments to the Flare Specifications

The amendments to the flare specifications add requirements for nonassisted flares that combust 8.0 percent (by volume) or greater of hydrogen in the stream and have a 3-inch or greater diameter. The amendments present an equation that calculates the maximum allowable flare tip velocity for a given volume percent of hydrogen. This equation format is similar to the one used for air-assisted flares in the existing flare specifications. The specific equation for the maximum tip velocity for hydrogen-fueled flares is:

$V_{max}=(X_{H2}—K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77.

This direct final rule adds specifications for hydrogen-fueled flares to both 40 CFR 60.18 and 63.11. The amendments to the General Provisions for NSPS are contained in 40 CFR 60.18. In addition, 40 CFR 60.18 (c)(4)(i) was revised to correct an earlier published typographical error. The amendments to the General Provisions for NESHAP are contained in 40 CFR 63.11(b)(9). 40 CFR 63.11(b)(8) was also revised to make the number of significant figures consistent throughout the specifications.

IV. Impacts

The impacts discussed in this section are only for six DuPont flares that are required by current or pending EPA regulations to meet the existing flare specifications. The EPA does not have information, and cannot estimate

impacts for other hydrogen-fueled flares in the United States. Therefore, the following estimates are limited to these six DuPont flares.

A. Primary Air Impacts

The amended flare specifications will reduce emissions by the same amount (i.e., 98 percent or greater) as emissions would be reduced by using flares meeting the existing flare specifications.

B. Other Environmental Impacts

The Agency estimates that these amendments to the flare specifications will reduce secondary emissions of pollutants since the combustion of supplemental organic fuel will no longer be required; therefore, there will be no emissions resulting from the combustion of a supplemental fuel. It is estimated that these flare specification amendments will reduce annual emissions from the six affected DuPont flares by 147 megagrams (161 tons per year) of criteria pollutants (i.e., 124 megagrams (136 tons per year) of carbon monoxide, and 22.7 megagrams (25 tons per year) of nitrogen oxides) and 39,900 megagrams (44,000 tons per year) of carbon dioxide.

In addition to these secondary emission reductions, there may also be State regulations that require owners/operators to follow the existing flare specifications, and by allowing the owners/operators to meet the specifications in these amendments, there may be further reductions in secondary air emissions. Therefore, these impacts are a minimal estimate of the potential secondary air emission reductions.

C. Energy Impacts

These amendments to the flare specifications are expected to decrease the amount of energy used by DuPont's six hydrogen-fueled flares since these flares will no longer be required to combust secondary fuel. The expected energy savings is estimated to be 7.75×10^8 cubic feet of natural gas annually (7.75×10^{11} Btu/yr) .

D. Cost and Economic Impacts

Cost savings will be realized due to these amendments by not requiring the combustion of supplemental fuel (to comply with the original heat content requirements), and by not requiring the subsequent resizing of the existing flares that would result from a requirement to combust supplemental fuel in order to accommodate the additional flow of supplemental fuel. The cost of natural gas as supplemental fuel for the six affected flares is estimated to be $2.8 million per year. The capital investment to replace a smaller flare tip with a larger one is estimated to be approximately $667,000 per flare or $4 million for all six flares. The total annual savings achieved by allowing hydrogen-fueled flares that fulfill the specifications of these amendments are the sum of the annual fuel cost savings, and the annualization of the capital savings (calculated to be $280,000 per year). Therefore, total annual savings for the six affected DuPont flares are estimated to be $3.08 million per year. Since sources using these hydrogen-fueled flare specifications will experience savings, no adverse economic impacts will result from this action.

E. Summary of Impacts

This section discussed the cost savings, emission reduction of secondary pollutants, and energy savings from only the six DuPont flares subject to current or pending regulations. These flare specification amendments have the potential to reduce emissions and save money and fuel from hydrogen-fueled flares of which the EPA is not yet aware.

VI. Administrative

A. Paperwork Reduction Act

This rule does not contain any information collection subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, are not subject to review by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, because this rule imposes no additional regulatory requirements, but merely expands the types of flares that may be used to meet the requirements of 40 CFR 60 and 40 CFR 63.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final rule.

E. Submission to Congress and the Comptroller General

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 rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference.

Dated: April 17, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 60.17 is amended by revising paragraph (a)(6) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(6) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(c)(3)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4), 60.664(d)(2)(ii), 60.664(d)(4), 60.564(f), 60.704(d)(2)(ii) and 60.704(d)(4).

* * * * *

3. Section 60.18 is amended by revising paragraphs (c)(3) and (c)(4)(i), and by adding paragraphs (c)(3)(i) and (c)(3)(ii) to read as follows:

§ 60.18 General control device requirements.

* * * * *

(c) * * *

(3) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (c)(3)(ii) of this section and the maximum tip velocity specifications in paragraph (c)(4) of this section, or adhering to the requirements in paragraph (c)(3)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{max}, as determined by the following equation:

$V_{max}=(X_{H2}-K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77. (Incorporated by reference as specified in § 60.17).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (f)(4) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (f)(3) of this section.

(4)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(4) of this section, less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (c)(4)(ii) and (iii) of this section.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 63.11 is amended by revising paragraphs (b)(6) and (b)(8), and by adding paragraphs (b)(6)(i) and (b)(6)(ii) to read as follows:

§ 63.11 Control device requirements.

* * * * *

(b) * * *

(6) An owner/operator has the choice of adhering to the heat content specifications in paragraph (b)(6)(ii) of this section, and the maximum tip velocity specifications in paragraph (b)(7) or (b)(8) of this section, or adhering to the requirements in paragraph (b)(6)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume) or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity V_{max}, as determined by the following equation:

$V_{max}=(X_{H2}-K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77. (Incorporated by reference as specified in § 63.14).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(7)(i) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 M/scm (200 Btu/scf) or greater if the flares is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant=

$$1.740\times10^{-7}\left(\frac{1}{\text{ppmv}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

* * * * *

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$V_{max}=8.71 + 0.708(H_T)$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.71=Constant.

0.708=Constant.

H_T=The net heating value as determined in paragraph (b)(6)(ii) of this section.

* * * * *

[FR Doc. 98–11262 Filed 5–1–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–598–6]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On June 3, 1997 (62 FR 30270), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving a July 2, 1993, request by the Governor of Texas to revise the geographical boundaries of seven Air Quality Control Regions (AQCRs) in the State of Texas to conform with the Texas Natural Resource Conservation Commission (TNRCC) regional boundaries, which established an effective date of August 4, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the June 3, 1997, **Federal Register** document, by operation of law, the rule did not take effect on August 4, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 3 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executives Orders for the underlying rule is discussed in the June 3, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11544 Filed 5–1–98; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5987–9]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; correction of effective date under CRA.

SUMMARY: On July 3, 1997 (62 FR 35972), the Environmental Protection Agency published in the **Federal Register** a direct final action to correct entries to the table in § 81.331 of Title 40 of the Code of Federal Regulations (CFR) for "New Jersey-Carbon Monoxide," which established an effective date of July 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 250–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO) EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 3, 1997, **Federal Register** document, by operation of law, the rule did not take effect on July 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 3, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 3, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11546 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5999–7]

Amendments to the Test Procedures for Heavy-Duty Engines, and Light-Duty Vehicles and Trucks and Amendments to the Emission Standard Provisions for Gaseous Fueled Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 5, 1997, EPA promulgated a direct final rulemaking that amended several sections of the heavy-duty engine test procedure regulations. These changes were needed in order to accommodate the use of new testing equipment, to provide greater flexibility in the type of testing equipment used and to ensure uniform calibration and use of the testing equipment. EPA stated that it would withdraw any provisions that received adverse or critical comments. EPA also published a notice of proposed rulemaking at that time proposing the same amendments. Due to adverse comments that were received regarding three provisions of the final rule, EPA is removing those three provisions in this action. The Agency intends to issue in the near future a final rule addressing these provisions.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–96–07, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (734) 668–4574.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On September 5, 1997, EPA published a direct final rule (62 FR 47114) and accompanying notice of proposed rule

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.* EPA, 427 U.S. 246, 25566 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Dated: January 9, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region VI.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(108) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(108) A revision to the Texas State Implementation Plan to adopt an alternate control strategy for the surface coating processes at Raytheon TI Systems, Inc., Lemmon Avenue Facility.

(i) Incorporation by reference.

(A) Commission Order Number 96–1180–SIP issued and effective December 4, 1996, for Texas Instruments, Inc., prior owner of the Lemmon Avenue facility, approving an Alternate Reasonably Available Control Technology (ARACT) demonstration for its Lemmon Avenue facility. Raytheon TI Systems assumed operating responsibility for this facility on July 3, 1997.

(B) A letter from the Governor of Texas dated January 9, 1997, submitting the TI ARACT to the Regional Administrator.

(ii) Additional material. The document prepared by the Texas Natural Resource Conservation Commission titled "A Site-Specific Revision to the SIP Concerning the Texas Instruments Lemmon Avenue Facility."

[FR Doc. 98–3180 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

49 CFR Parts 60 and 61

[FRL–5960–4] NSPS;

Technical Amendments to Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants Addition of Method 29 to Appendix A of Part 60 and Amendments to Method 101A of Appendix B of Part 61; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On April 25, 1996 (61 FR 18260), the Environmental Protection Agency published in the **Federal Register** a final rule adding Method 29, "Determination of Metals Emissions from Stationary Sources," to appendix A of part 60, and making amendments to Method 101A of appendix B of part 61, which established an effective date of April 25, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register February 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Tom Eagles, OAR, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on April 25, 1996 (61 FR 18260) by operation of law, the rule did not take effect on April 15, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since April 25, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the April 25, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the April 25, 1996, **Federal Register** document

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3016 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5959–1]

Technical Amendments to Clean Air Act Final Interim Approval of Operating Permits Programs; Delegation of Section 112 Standards; State of Massachusetts; Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval correction; correction of effective date under CRA.

SUMMARY: On May 15, 1996, EPA promulgated interim approval of the 40 CFR part 70 Operating Permits Program for the Commonwealth of Massachusetts. That document correctly identified the effective date of the approval as May 15, 1996. The May 15, 1996, document also amended the text of 40 CFR part 70, Appendix A, to reflect the effective date of the interim approval; however, an incorrect date was added to Appendix A. On June 20, 1996 (61 FR 31442) EPA published a final rule amending 40 CFR part 70, Appendix A, to correct the effective date in Appendix A to May 15, 1996. This document corrects the effective date of the June 20, 1996, rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robyn McCarville, EPA Region I, at (617) 565–9128.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the June 20, 1996, rule as required; thus, although the rule was promulgated on June 20, 1996 (61 FR 31442) by operation of law, the rule did not take effect. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the June 20, 1996, rule consistent with the provisions of the CRA. The effective date of the May 15, 1996, interim approval (61 FR 24460) is not changed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements

state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, EPA certifies future conversion to a disapproval would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor would it substitute a new federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1997.

Filing a petition for reconsideration by the Administrator of this final interim rule, does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Reporting and record keeping requirements.

Dated: May 21, 1997.

Patricia D. Hull,

For Acting Regional Administrator, Region VIII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

SUBPART TT–UTAH

2. Section 52.2348 is added to Subpart TT to read as follows:

§ 52.2348 National Highway Systems Designation Act Motor Vehicle Inspection and Maintenance (I/M) Programs

On March 15, 1996 the Governor of Utah submitted a revised I/M program for Utah County which included a credit claim, a basis in fact for the credit claimed, a description of the County's program, draft County ordinances, and authorizing legislation for the program. Approval is granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. If Utah County fails to start its program by November 15, 1997 at the latest, this approval will convert to a disapproval after EPA sends a letter to the State. At the end of the eighteen month period, the approval will lapse. At that time, EPA must take final rulemaking action upon the State's SIP, under the authority of section 110 of the Clean Air Act. Final action on the State/County's plan will be taken following EPA's review of the State/County's credit evaluation and final regulations (State and County) as submitted to EPA.

[FR Doc. 97–14986 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[IL–64–2–5807; FRL–5836–2]

RIN 2060–AG33

Standards of Performance for New Stationary Sources; Standards of Performance for Nonmetallic Mineral Processing Plants; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates revisions and clarifications to several provisions of the standards of performance for nonmetallic mineral processing plants, which were proposed in the Federal Register on June 27, 1996 (61 FR 33415). This action presents the final revisions to the applicability, definitions, test methods and procedures, and reporting and recordkeeping requirements of the standards, and the basis for those revisions. The affected industries and numerical emission limits remain unchanged.

EFFECTIVE DATE: June 9, 1997. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–95–46, containing information considered by the EPA in development of the promulgated revisions to the new source performance standards (NSPS) is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (MC–6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. William Neuffer at (919) 541–5435, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by EPA's final action on this promulgated rule are new, modified, or reconstructed affected facilities in nonmetallic mineral processing plants that process any of the 18 nonmetallic minerals listed in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Crushed and broken stone, sand and gravel, clay, rock salt, gypsum, sodium compounds, pumice, gilsonite, talc and pyrophyllite, boron, barite, fluorospar, feldspar, diatomite, perlite, vermiculite, mica, and kyanite processing plants.
Federal Government	Same as above
State/Local/ Tribal	Same as above

The provisions of this final rule apply to the following affected facilities at fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. To determine whether your facility is regulated by this final action, you should examine the applicability criteria in § 60.670 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the revised requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background and Public Participation

Standards of performance for nonmetallic mineral processing plants were promulgated in the **Federal Register** on August 1, 1985 (50 FR 31328). These standards implement section 111 of the Clean Air Act and require all new, modified, and reconstructed nonmetallic mineral processing plants to achieve emission levels that reflect the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

On January 26, 1995, the National Stone Association (NSA) petitioned the EPA, pursuant to the Clean Air Act and the Administrative Procedures Act, to review the existing NSPS for nonmetallic mineral processing plants (40 CFR part 60, subpart OOO). In its petition, the NSA and its member companies requested the EPA to review and consider revising, in particular, the provisions in the NSPS that pertain to the test methods and procedures. Also, the NSA requested that several of the recordkeeping and reporting requirements be reduced or eliminated.

Before proposal of the amendments to the NSPS, meetings were held with representatives of several companies regulated under the NSPS for nonmetallic mineral processing plants and the NSA to discuss potential changes to the NSPS (subpart OOO). The EPA also received input from representatives of State and local environmental agencies before the proposed amendments were published in the **Federal Register**.

The amendments to the new source performance standards (NSPS) for nonmetallic mineral processing plants were proposed on June 27, 1996 (61 FR 33415). The public comment period ended on August 26, 1996. Industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed revisions and to provide additional information during the public comment period that followed proposal. A public hearing was offered at proposal to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amended rule. However, no one requested a hearing and, therefore, no hearing was held. Forty-three comment letters were received. The commenters included industry, one national and several State trade associations, several State regulatory agencies, and one environmental consultant. These comments were considered and, today's final amended rule reflects consideration of these comments. The public comments that were received along with EPA's responses to the comments on the proposed amended rule are summarized in this preamble. The summary of comments and responses serves as the basis for the revisions that have been made to the final amended rule between proposal and promulgation. The following section discusses changes made as a result of public comments on the proposed amendments to the NSPS. A more detailed discussion of comments and responses is contained in the docket (Docket No. A–95–46; Item V–C–1.)

II. Comments and Changes to the Proposed Revisions to the NSPS

A. Summary of Changes to the Proposed Revisions to the NSPS

There was general support for the amendments which reduced or eliminated several of the paperwork requirements on the industry, greatly reduced the costs of emission testing without sacrificing air quality, provided a table specifying the applicability of subpart A (General Provisions for part 60) to subpart OOO affected facilities, and clarified that facilities located in underground mines are not subject to the NSPS. The commenters requested further clarification of the applicability of the NSPS to certain operations, additional reductions in the Method 9 test duration for certain affected facilities, and further reductions in the reporting and recordkeeping requirements.

The following is a summary of the changes made to the proposed revisions as a result of EPA's evaluation of the public comments. Some of these changes are clarifications of EPA's original intent. The rationale for these changes is discussed in section II.B.

1. Section 60.670, Applicability and designation of affected facility, is revised:

(a) To clarify the original intent of the NSPS that stand-alone screening operations at plants without crushers or grinding mills are not subject to the NSPS;

(b) To clarify the original intent of the NSPS that crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement, and subsequent affected facilities in the production line up to, but not including, the first storage silo or bin are subject to the NSPS; and

(c) To remove the exemption of wet screening and associated belt conveyors from all provisions of this subpart

except reporting and recordkeeping because these sources are subject to all provisions of this subpart except for Method 9 opacity tests.

2. Section 60.671, Definitions, is revised to add a definition of wet mining operation and to make minor changes in the proposed definition of wet screening operation.

3. Section 60.672, Standard for particulate matter, is revised to require no visible emissions from

(a) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors in the production line that process saturated materials up to the next crusher, grinding mill, or storage bin in the production line;

(b) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

4. Section 60.675, Test methods and procedures, is revised:

(a) To exempt from the initial requirement in § 60.11 for Method 9 emission testing;

(i) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors in the production line that process saturated materials up to the next crusher, grinding mill, or storage bin in the production line;

(ii) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

(b) To correct typographical error in paragraph (b).

(c) To allow crushers without emission capture systems to reduce the duration of Method 9 observations of fugitive emissions for compliance from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) if there are no individual readings greater than 15 percent opacity and there are no more than 3 readings of 15 percent for the first 1-hour period.

(d) To add wording to clarify that if qualifying conditions are not met by affected facilities subject to applicable fugitive emission limits, then 3 hours, rather than 1 hour, of Method 9 testing would be required to determine compliance.

5. Section 60.676, Reporting and recordkeeping, is revised:

(a) To require that both the address of the home office and the current address/location of the portable aggregate plant be included in the notification of the actual date of initial startup;

(b) To require the reporting within 30 days of any affected facility that changes the saturated or unsaturated nature of the material being processed. The affected facility is then subject to the provisions of the standard applicable to the type of material being processed.

B. Responses to Comments

Several commenters remarked that the proposed changes to the rule were an important milestone in EPA's partnering efforts with the regulated community to help reduce the administrative burden of subpart OOO while maintaining protection of the health and welfare of the general public.

The comments, the issues they address, and the EPA's responses to comments are presented in the following sections according to the following topics: (1) Applicability; (2) Definitions; (3) Standard for Particulate Matter; (4) Test Methods and Procedures; and (5) Reporting and Recordkeeping.

1. Applicability

(a) *Comment.* One commenter disagreed with the Agency's clarification to exempt nonmetallic mineral processing facilities located in underground mines from subpart OOO.

Response. Underground mining operations will continue to be exempted from this regulation. As stated in the preamble to the proposed amendments to the new source performance standards (NSPS) for nonmetallic mineral processing plants, this regulation does not apply to facilities located in underground mines because emissions from crushers or other facilities in underground mines are vented in the general mine exhaust and cannot be distinguished from emissions from drilling and blasting operations which are not covered by the regulation. In addition, a response to a comment in the background information document for the original promulgated standards (EPA–450/3–83–001b, April 1985, page 2–44) stated specifically that mining operations are not covered under the proposed or final standards for nonmetallic mineral processing plants.

(b) *Comment.* Four commenters were concerned whether "wet mining operations" and subsequent processing of the mineral material should be subject to this NSPS. Two of these commenters requested EPA to include wet dredging operations/equipment in the definition of "wet screening operation" to exempt those operations from all NSPS requirements except for the reporting and recordkeeping requirements. One of the two commenters suggested that the equipment exemption include all screening, crushing and transfer operations (conveyors) associated with dredging operations up to, but not including, the next crusher, grinding mill or dry screening operation in the production line of the plant. According to the commenter, fugitive dust emissions from wet dredging operations have never been recorded during any site visit by this State agency.

One of the previously mentioned commenters requested that overland conveyor systems that are transporting sand and gravel that has been mined below the water table be exempted from testing requirements. An alternative performance testing program for these field conveyor systems previously approved by an EPA Regional Office was recommended. This alternative testing program consisted of reducing the Method 9 testing from 3 hours to 1 hour; conducting the Method 9 test at the first and last transfer points in a series of transfer points; and waiving the performance test for all intermediate transfer points if no visible emissions are observed at the first and last transfer points. Another commenter requested an exemption from emission testing requirements or total exemption for facilities, such as sand and gravel, dredge, and marine limestone, that mine and process a "wet" product with an inherent natural moisture content that does not have the potential to create emissions. This commenter stated that many State agencies already offer testing exemptions for these types of facilities.

Another commenter suggested adding a definition of "wet mining operation" in the regulation and revising the rule to exempt operations at mining facilities that extract limestone, dolomite or sand and gravel from deposits below the water table and saturated with water except for reporting requirements.

Response. The EPA has considered these comments and agrees that there is no potential for emissions from belt conveyors transporting nonmetallic minerals that are saturated with water. Also, there is no potential for emissions from other processes such as screens and bucket elevators that handle nonmetallic minerals that are saturated with water. Therefore, belt conveyors, screening operations and bucket elevators that process materials saturated with water from wet mining operations up to the first crusher, grinding mill, or stockpile in the production line are exempted from the initial Method 9 performance testing under § 60.11 but are required to have no visible emissions from these sources.

The no visible emission standard would allow plant and enforcement officials to verify that the materials being processed were indeed saturated with water.

If an affected facility that processes saturated material later processes unsaturated material, a report of this change shall be sent to EPA within 30 days of this change. Also, this affected facility becomes subject to the Method 9 opacity test requirements of this subpart and the 10 percent opacity limit in § 60.672(b).

As recommended by the last mentioned commenter, a definition of "Wet mining operation" has been added to "Definitions" in § 60.671 to identify which affected facilities are exempt from Method 9 emission testing. To assure no emissions are possible, the definition will state that the nonmetallic mineral must be saturated.

Crushers reduce the size of the process material and in so doing increase the surface area of the material being processed. This crushed material then has new surfaces which are not saturated and have the potential to create air emissions. Therefore, crushers at dredging operations are not exempt.

(c) *Comment.* A commenter requested clarification whether the NSPS applies to stand-alone screening operations at plants without any crushers.

Response. The commenter is correct that EPA did not intend to regulate stand-alone screening operations at plants that have no crushers. Subpart OOO affected facilities begin with the initial crushing or grinding operation at the plant. Plants that do not employ crushing or grinding, by definition, are not considered nonmetallic mineral processing plants and thus are not subject to subpart OOO.

(d) *Comment.* One commenter supported the proposed exemption of wet screening operations and associated conveyors and recommended that the wet screening exemption be expanded to include all pieces of equipment where the use of water is necessary to the operation of the process, such as pugmills. Another commenter believed that the term "dry" in the definition of wet screening operation was confusing because a screen operated downstream from a wash screen will handle material that is saturated by the wash process. Also, another commenter recommended that the wet screening operations and associated downstream conveyors exemption be expanded to include loadout bins and other wet process operations.

Response. Equipment other than crushers and grinding mills where the use of water may be necessary to the operation, such as pugmills used for reblending of materials at the end of the process, are not affected facilities and therefore not subject to subpart OOO. Therefore, no further change has been made to expand the wet screening exemption as requested by the first-mentioned commenter.

Screening is the process by which material is separated according to size. Screening may be performed either wet or dry. Wet screening where the product is saturated with water removes material from the product, such as silt, clay, grit, etc., or separates marketable fines by a washing process and there is no potential for air emissions.

Wet screening operations, which use a washing process, and subsequent screening operations, bucket elevators, and belt conveyors up to the next crusher, grinding mill, or storage bin are also exempt from Method 9 initial performance tests per § 60.11 and are required to meet a no visible emissions standard. To assure there is no potential for emissions from these operations following the wet screens, the material that is being processed is required to be saturated. The no visible emission standard is a means for both plant and enforcement personnel to verify that the material being processed is indeed saturated.

If an affected facility processes saturated material later processes unsaturated material, a report of this change shall be sent to EPA within 30 days of this change. Also, this affected facility becomes subject to the Method 9 opacity test requirements of this subpart and the opacity limit in § 60.672(b).

(e) *Comment.* A commenter requested clarification as to whether recycled asphalt operations are covered under the NSPS. The commenter attached a memo from an EPA Region which stated that during a visit to a recycled asphalt facility, nonmetallic minerals of two to three inches within the recycled asphalt were being crushed to less than half an inch. The Region stated if the nonmetallic mineral is crushed or ground by a recycled asphalt crusher, the crusher would be subject to this NSPS.

Response. The EPA concurs with this determination as this is the intent of the rule. A new, modified or reconstructed asphalt crusher or grinding mill that reduces the size of a nonmetallic mineral embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the storage silo or bin at a hot mix asphalt facility are subject to subpart OOO. A sentence has been added to § 60.670 Applicability that such a crusher or grinding mill is subject to this NSPS.

2. Definitions

(a) *Comment.* Three commenters fully supported the Agency's exemption of wet screening operations, except for reporting and recordkeeping from the NSPS, but requested that the definition of "wet screening operation" be revised to remove the term "completely" in the definition because they believe it gives the connotation that the rock is wet throughout and because the term is subject to various interpretations by industry and regulatory personnel. In addition, one commenter requested that the Agency change the term "unwanted material to "fines" in the definition. Quite often the "unwanted material," or fines, that are washed from the rock surface on a washing screen are collected and sold as a natural or manufactured sand or other marketable product. Also, one commenter suggested that the definition of wet screening operation be changed to a definition of "wet process" to include other wet process operations such as log washers, classifiers, sand screws, pugmills, belt presses, and dewatering screens. However, if this change is not made, then he recommended further defining the terms "saturated" and "unwanted material" to avoid numerous interpretation conflicts.

Response. After review and consideration of these comments, the EPA has decided to make changes in the definition of "wet screening operation." The term "completely" has been deleted from the definition. "Saturated" is defined as "to soak or load to capacity" and therefore the term "completely" is not necessary to convey the intent. Also, the revised definition includes the separation of marketable fines and now more closely describes the types of screening operations in the wet/wash end of a nonmetallic minerals processing plant without changing the original intent of the definition. It is not necessary to define "unwanted material" in the definition, which could include silt, grit, etc., as requested.

"Wet screening operation" is the appropriate term to be defined, not "wet process" as suggested by one of the commenters. The other processes cited are not affected facilities and therefore are not subject to this NSPS. As stated in the preamble to the proposed amendments, there is no potential for air emissions from either screening or conveying operations in the wash process.

3. Test Methods and Procedures

(a) *Comment.* Several commenters maintained that the cost of dual compliance tests for both the stack

emission limit and stack opacity standard was prohibitive to the industry and requested that Method 9 testing be the sole test for compliance of any affected facility. In addition, another commenter disagreed with the dual stack emission testing of particulate and opacity which he believes greatly increases the testing costs with no data to support the environmental benefits.

Response. This NSPS requires an initial performance test to measure the concentration of particulate matter in stack emissions for each affected facility because the EPA has found that facilities with similar control devices may not have the same emissions characteristics due to variables in the processes, process operating conditions, and control system design, installation, and operation. Because of this variability, performance tests are necessary to demonstrate the capability of each facility to meet the PM emission limit. The stack opacity test is used as a continuing compliance tool during any subsequent inspections by State and local air pollution agency personnel. During the development of this NSPS, the cost of performance testing was estimated and found to be reasonable and no new data was submitted by the commenter.

(b) *Comment.* Two national trade associations and one State trade association stated that many nonmetallic mineral producers that use enclosed aggregate storage bins often have more than one of these bins ducted to a fabric filter collection system and requested that the NSPS require only Method 9 testing for single fabric filter systems that control emissions from more than one enclosed storage bin.

Response. As stated in the preamble to the proposed amendments to the NSPS, Method 5 testing cannot be performed for baghouses that only control emissions from individual, enclosed storage bins due to very low air flows from individual, enclosed storage bins. However, if emissions from multiple storage bins are ducted to a single fabric collection system, the air flow is high enough for Method 5 testing, accordingly, the combined emissions are subject to both Method 5 stack emission testing and Method 9 opacity testing for determining compliance. This requirement is specified in § 60.672(g).

(c) *Comment.* A commenter referred to the original proposed rule for subpart OOO that was published on August 31, 1983 (48 FR 39574), which stated that "Performance tests would not be required for fugitive emission sources." Fugitive emissions as defined in that proposal include emissions from crushers, conveyors, and screens that have no capture system. According to the commenter, neither the current rule nor the proposed amended rule for subpart OOO contain language that would require performance testing immediately after startup for fugitive emission sources. According to the commenter, §§ 60.675 (b) and (c) explain only how to determine compliance for the fugitive emission limitations, not that performance testing is required. The State agency requested that the wording, and true intent, of subpart OOO be clarified so as to explicitly state whether performance testing for fugitive emissions is required.

Response. The intent of subpart OOO is to require initial compliance testing for fugitive emissions from applicable affected facilities. The commenter referred to the statement in the proposed rule published on August 31, 1983 at page 48 FR 39574. This statement was in regard to performance tests by Method 5, which are not applicable to fugitive emission sources. It was not intended to exempt fugitive emission sources from initial compliance using Method 9 or Method 22 as appropriate.

Section 60.8 of the General Provisions for 40 CFR part 60 requires performance testing for affected facilities in each subpart (regulation) and § 60.11 contains requirements for compliance with opacity standards. Each subpart specifies the applicable test methods and any additional test procedures or exemptions specific to the affected facility being regulated. The test methods and procedures for affected facilities under subpart OOO, § 60.675, require performance tests on fugitive emission sources. This is also indicated by the General Provisions requirements which are included in Table 1 of § 60.670 in these amendments to this NSPS. This Table has been added to make clear in the regulation itself the requirements of this NSPS.

(d) *Comment.* There was total support in the public comments for the proposed reduction of visible emission testing from 3 hours to 1 hour (subject to the level of visible emissions observed during the first hour) for fugitive emission sources. However, one commenter stated that since crushers without capture systems are allowed 15 percent opacity, a 3-hour test should not be required if three 10 percent opacity readings are observed in the first hour. The commenter asserted that a crusher operating uniformly at 5 percent opacity with several 10 percent puffs or constantly at 10 percent is well within compliance. Several commenters also strongly believe that affected facilities should be allowed to demonstrate compliance during the 1-hour test with the existing opacity limits that are applicable for each affected facility, i.e., 15 percent for crushers at which a capture system is not used and 10 percent for other affected facilities as required in the NSPS.

Response. The proposed revised rule did not change the existing 15 percent opacity limit for crushers without capture systems as interpreted by several of the commenters, nor did the proposed revised rule allow the Method 9 test reduction from 3 hours to 1 hour for these crushers. However, the EPA's review of visible emission data submitted by a State agency for crushers without capture systems showed that these crushers generally had no emissions during 1-hour Method 9 observations. The visible emission data was from crushers using wet suppression and from screens and conveyor transfer points without capture systems. The test data showed 3 crushers with all Method 9 readings at 0 percent and 1 crusher with a few readings at 5 percent; 1 conveyor (prior to crushing) test showed several readings at 10 percent and some at 15 percent. Therefore, based on this test data, the Method 9 emission test period for crushers without capture systems is reduced from 3 hours to 1 hour to demonstrate compliance with the 15 percent fugitive emissions limit if there are no individual readings greater than 15 percent opacity and there are no more than 3 readings of 15 percent for the first 1-hour period. If these qualifying conditions are not met during the first hour, then testing of crushers without capture systems would be required for 3 hours.

(e) *Comment.* According to one commenter, the proposed revisions fail to specify what an inspector or industry personnel must do to demonstrate compliance if visible emissions are seen using Method 22 outside a building which does not comply with § 60.672(e). The commenter stated that the inspector must enter the building in these cases. As an example, the commenter cited an incident that took place after promulgation of the original rule in which an EPA inspector found it impossible to read opacity inside a building located at a rock crushing plant due to the lack of proper visibility. The commenter stated that in some cases there was no room for an inspector to enter, much less read the opacity from affected facilities. The commenter also referred to OSHA rules which define such structures as confined spaces and caution against exposing personnel to

such dangers. The commenter recommended that if visible emissions are seen outside the building and it is unsafe to enter the building then Method 9 readings should be taken outside the building. The recommended opacity limit would be the same as allowed under § 60.672 (b) or (c).

Response. The commenter was concerned that the original rule failed to address what must be done if the visible emission requirements that apply to emissions observed outside the building are not met. Section 60.672(e)(standard for particulate matter) clearly states that compliance is shown by complying with either § 60.672 (a), (b) and (c) or by complying with § 60.672(e). Also, the requirements are discussed in the preamble for the final rule published on August 1, 1985; at 50 FR 31333 and 31334. Accordingly, no change is required to the regulation.

This NSPS is a national standard and it is impossible to prepare a regulation that addresses every possible situation. This NSPS gives industry flexibility by giving them the option of complying with § 60.672(e) or with § 60.672 (a), (b) and (c). Section 60.672(e) allows no visible emissions from a building except from a vent. Emission limits from a vent are the same as for any stack emissions; 0.05 g/dscm and 7 percent opacity. Thus, by complying with § 60.672(e) no one is required to enter the building. Sections 60.672 (a),(b) and (c) limit the stack emissions as mentioned above as well as setting Method 9 opacity limits for fugitive emissions from individual affected facilities. If Method 9 limits are set for the building as suggested by the commenter, there is the potential of allowing dilution air to be added to general building ventilation. Also, the Method 9 opacity limits for fugitive emissions as shown in §§ 60.672 (b) and (c) are based on emission test data obtained while observing emissions from individual affected facilities such as crushers and belt conveyors and not from buildings containing these affected facilities. Therefore, there will be no change made to the proposed revisions based on this comment.

(f) *Comment.* One commenter recommended waiving the Method 9 opacity compliance testing requirement for screens and conveyor transfer points subject to this NSPS pursuant to § 60.8(b)(4) of the General Provisions, subpart A (which waives the requirement for performance tests because an owner or operator has demonstrated compliance to EPA by other means). The commenter based this request on more than 80 emissions evaluations performed at nonmetallic mineral processing plants during the past nine years which demonstrate that these affected facilities are in compliance with the opacity standard for fugitive emissions. If a waiver of the initial testing requirement is not granted, it was suggested that the cut-off point as applied to the testing requirement for 3 hours of testing be 50 percent of the largest applicable federally enforceable opacity standard.

A Regional Air Pollution Control Agency provided copies of a number of actual Method 9 observation sheets that illustrated their experience of gathering mostly "zeros" when conducting the subpart OOO visible emission readings and offered these as corroboration that the proposed Method 9 testing reduction from 3 hours to 1 hour, if there is not a visible emission problem, should be promulgated. The visible emission data were from crushers using wet suppression and from screens and conveyor transfer points.

Response. With regard to the first comment, the EPA does not believe that a waiver of the initial compliance testing requirement for screening operations and conveyor transfer points is justified under § 60.8(b)(4). A Method 9 performance test is only required one time (initially) under the regulation. This performance test is necessary to demonstrate that the capture system is properly designed, installed and operated to comply with this NSPS. The emission test data submitted by the local agency support the use of this performance test. As to the suggestion that the cut-off point for requiring 3 hours of testing be 50 percent of the largest applicable federally enforceable opacity standard, the EPA believes that the proposed qualifying conditions in § 60.675(d) (no reading greater than 10 percent or 3 readings equal to 10 percent) are more appropriate since these were based on several emission tests submitted by industry and air pollution control agencies. No emission test data were submitted by the commenter.

(g) *Comment.* A commenter requested further consideration of alternate testing procedures for periodic operations such as enclosed storage bins and loadout stations. The commenter provided procedures approved previously by an EPA Regional Office and requested that these procedures be incorporated into the final rule. The EPA Regional Office agreed that if a storage tank's baghouse exhaust is in compliance with this NSPS by using Method 9, Method 5 particulate emission testing would not be required. Also the EPA Regional Office approved Method 9 testing that was conducted over two or three loading cycles of the product storage tank in lieu of 3 hours of Method 9 observations. For truck loadout stations, 30 minutes of visible emission testing were allowed.

Response. As noted by the commenter, the proposed amended rule, 60.672(f), requires individual, enclosed storage bins to only comply with the opacity standard. Also, the testing period has been reduced from three hours to one hour. Section 60.8(b) of the General Provisions allows the use of alternatives to performance testing based on the review and approval by EPA of relevant supporting information. The supporting data and information in requests for alternative testing are evaluated for approval by EPA on a case-by-case basis. Even though these alternate testing procedures that reduced the duration of Method 9 testing were approved by EPA under certain conditions for certain affected facilities, no emission test data were submitted to warrant incorporating these changes into the final rule for regulating such affected facilities throughout the entire industry.

4. Reporting and Recordkeeping Requirements

(a) *Comment.* Several commenters were opposed to the requirement under § 60.4(a) of the General Provisions that all notifications, reports, etc. be sent in duplicate to both the EPA Regional Office and one copy to the State regulatory agency, provided the State has been delegated authority for the NSPS. Also, the commenters recommended that if the State has been delegated authority for this NSPS, notifications, reports, etc. should only be sent to the States. According to the commenters, for those States not delegated NSPS authority, notifications and correspondence should be sent only to the appropriate EPA Regional Office.

Response. The submittals of duplicate copies of notifications, reports, etc. to the EPA Regional Offices and a copy to State agencies with delegated authority are needed so that both groups can keep track of this NSPS.

The commenters are correct that if a State has not been delegated authority; notifications, reports, etc. are required to be sent only to the appropriate EPA Regional Office.

(b) *Comment.* One commenter suggested that EPA consider the use of fax or telephone notifications to States of the date of actual construction and initial start-up.

Response. On September 11, 1996 (61 FR 47840), revisions to the General Provisions, subpart A, 40 CFR parts 60, 61, and 63, were proposed allowing the use of electronic notifications if

approved by the relevant permitting authority.

(c) *Comment.* One commenter supported the proposed revision that allowed a single notification for the actual date of initial startup for multiple affected facilities that plan to begin initial startup simultaneously (on the same day), in circumstances where, due to delays and the time required to install the affected facilities, startup of every affected facilities does not occur at the same time. Due to these different startup times, the commenter requested a single notification of startup for all affected facilities that startup within a 30-day timeframe.

Response. If a 30-day window were allowed, sufficient prior notification to the State or local agencies for the first affected facilities that commence operations would not be provided. Companies that choose to submit a single notification of initial startup for multiple affected facilities must do appropriate planning to avoid such simultaneous equipment installation delays. If such equipment installation delays cannot be avoided, then a notification of initial startup for each affected facility is required. Accordingly, a change to accommodate this request is not appropriate.

(d) *Comment.* One commenter requested that the Agency eliminate the notification in subpart A, General Provisions, § 60.7(a)(1), of the date of when construction commences of an affected facility (postmarked no later than 30 days after construction commences) because the company did not believe it served any useful purpose.

Response. The requirement under the General Provisions, § 60.7(a)(1), for an owner or operator to notify the EPA or State agencies of the date of construction of an affected facility is necessary for tracking purposes and enforcement. The EPA or State agencies enforcing the standards have to track, or keep records of, new equipment at both new plants and capacity expansions at existing plants. Administrative reporting and recordkeeping requirements for these standards are similar to those for other NSPS.

(e) *Comment.* One commenter suggested that under § 60.676(i), the current address/location be included in the notification of the actual date of initial startup of each affected facility. Many aggregate processing plants are portable, and are routinely moved from place-to-place. In the past, this has led to confusion on where the plant is located and where the visible emission observations are going to take place. Currently, portable aggregate processing plants in the particular State retain the identification address from the owner/operator's business headquarters. When the portable plant is relocated, it is still identified with that home office address even though it is actually located elsewhere.

Response. The EPA agrees that, in the case of portable plants that are routinely moved from place to place, the current address/location should be included in the notification of the actual date of initial startup of such portable plants. Therefore, § 60.676(i) of the final amended rule has been revised to require both the home office address and the current address/location of the portable plant.

(f) *Comment.* One aggregate company requested 14 days lead time, in lieu of 30 days for notifications of relocation of portable plants and other notifications such as emission testing and date of construction because portable plants have trouble anticipating the new location 30 days in advance.

Response. Notifications of relocations of portable plants are a requirement of individual State and local agencies. For notifications of emission testing, these agencies need adequate notice so that they can observe opacity and emission testing. Personnel from these agencies have stated they need 30 days prior notice to adequately plan to attend opacity and emission testing. The requirements for other notifications have decreased. The notification requirement of the actual date of initial startup under § 60.7(a)(2) is already 15 days and the anticipated date of initial startup requirement under § 60.7(a)(2) has already been waived under subpart OOO. Therefore, no additional changes in notification lead times have been made for portable plants.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this final rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the official record in case of judicial review (except for interagency review materials (section 307(d)(7)(A) of the Act)).

B. Clean Air Act Procedural Requirements

1. The effective date of this revised regulation is June 9, 1997. Section 111(b)(1)(B) of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, June 27, 1996.

2. Administrator Listing—Under section 111 of the Act, establishment of standards of performance for nonmetallic mineral processing plants was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

3. External Participation—In accordance with section 117 of the Act, publication of the final revisions to the NSPS was preceded by consultation with a national trade association composed of 570 member companies and several States.

4. Economic Impact Assessment—Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. Today's final amended rule is for clarifications and minor revisions to the applicability, definitions, test methods and procedures, and reporting and recordkeeping sections of the regulation. No additional controls or other costs are being incurred as a result of these revisions. The final amended rule would result in a cost savings for the industry (reduction of certain testing and recordkeeping and reporting requirements) and the EPA and State/local agencies (reduction in staff time needed to review fewer reports). Therefore, no economic impact assessment for the proposed or final revisions to the rule was conducted.

C. Office of Management and Budget Reviews

1. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an "information collection request" (ICR) document has been prepared by the EPA (ICR No. 1084.05) to reflect the revised/reduced information requirements of the final revised regulation and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

Under the existing NSPS, the industry recordkeeping and reporting burden and costs for an owner or operator of a new

nonmetallic mineral processing plant were estimated at 820 hours and $27,060 for the first year of operation. The vast majority of the estimated hours (670) was attributed to required Method 5 and Method 9 performance testing of affected facilities. Under the final revised NSPS, a 1-hour Method 9 test is allowed in lieu of the Method 5 test for individual, enclosed storage bins. In addition, the duration of Method 9 tests for fugitive emission sources has been reduced from 3 hours to 1 hour if qualifying conditions are met as discussed in Section II.3.3.d. Also, plant owners or operators are allowed to submit one notification of actual startup for several affected facilities in a production line that begin operation the same day, in lieu of multiple notifications for each affected facility. The final revised NSPS is also waiving the General Provisions requirement to submit a notification of anticipated startup for each affected facility. Therefore, the revised annual estimated industry recordkeeping and reporting burden and costs for an owner or operator of a new nonmetallic mineral processing plant are 480 hours and $16,000, the majority of which is due to performance testing. This represents an estimated reduction in the average annual recordkeeping and reporting burden of 340 hours and $11,000 per plant. This collection of information is estimated to have an average annual government recordkeeping and reporting burden of 320 hours over the first 3 years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

2. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the final regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final revisions to the NSPS are "not significant" because none of the above criteria are triggered by the final revisions. The final amended rule would decrease the cost of complying with the revised NSPS.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that today's action, which promulgates revisions and clarifications to the existing regulation, decreases the cost of compliance with this final revised regulation. Also, the final revised regulation does not contain any requirements that apply to State, local or tribal governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final action.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Clean Air Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. The impact of this regulation upon small businesses was analyzed as part of the economic impact analysis performed for the proposed standards for the nonmetallic minerals processing plants (48 FR 39566, August 31, 1983). As a result of this analysis, plants operating at small capacities were exempted from the requirements of the standards. Today's final revisions to the standards do not affect these exempted small plants; that is, they continue to be exempted from the standards. In addition, the main thrust of the final revisions to the standards is a reduction of the reporting and recordkeeping requirements for owners and operators of all affected facilities.

Thus, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nonmetallic mineral processing plants, Reporting and recordkeeping requirements.

Dated: May 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 60, subpart OOO is amended to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 60.670 is amended by revising paragraphs (a) and (d)(2), and adding paragraph (f) to read as follows:

§ 60.670 Applicability and designation of affected facility.

(a)(1) Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of this subpart.

(2) The provisions of this subpart do not apply to the following operations: All facilities located in underground mines; and stand-alone screening operations at plants without crushers or grinding mills.

* * * * *

(d) * * *

(2) An owner or operator complying with paragraph (d)(1) of this section shall submit the information required in § 60.676(a).

* * * * *

(f) Table 1 of this subpart specifies the provisions of subpart A of this Part 60 that apply and those that do not apply to owners and operators of affected facilities subject to this subpart.

TABLE 1.—APPLICABILITY OF SUBPART A TO SUBPART OOO

Subpart A reference	Applies to Subpart OOO	Comment
60.1, Applicability	Yes.	
60.2, Definitions	Yes.	
60.3, Units and abbreviations	Yes.	
60.4, Address:		
(a)	Yes.	
(b)	Yes.	
60.5, Determination of construction or modification.	Yes.	
60.6, Review of plans	Yes.	
60.7, Notification and recordkeeping	Yes	Except in (a)(2) report of anticipated date of initial startup is not required (§ 60.676(h)).
60.8, Performance tests	Yes	Except in (d), after 30 days notice for an initially scheduled performance test, any rescheduled performance test requires 7 days notice, not 30 days (§ 60.675(g)).
60.9, Availability of information	Yes.	
60.10, State authority	Yes.	
60.11, Compliance with standards and maintenance requirements.	Yes	Except in (b) under certain conditions (§§ 60.675 (c)(3) and (c)(4)), Method 9 observation may be reduced from 3 hours to 1 hour. Some affected facilities exempted from Method 9 tests (§ 60.675(h)).
60.12, Circumvention	Yes.	
60.13, Monitoring requirements	Yes.	
60.14, Modification	Yes.	
60.15, Reconstruction	Yes.	
60.16, Priority list	Yes.	
60.17, Incorporations by reference	Yes.	
60.18, General control device	No	Flares will not be used to comply with the emission limits.
60.19, General notification and reporting requirements.	Yes.	

3. Section 60.671 is amended by adding in alphabetical order the definitions of *Wet mining operation* and *Wet screening operation* to read as follows:

§ 60.671 Definitions.

* * * * *

Wet mining operation means a mining or dredging operation designed and operated to extract any nonmetallic mineral regulated under this subpart from deposits existing at or below the water table, where the nonmetallic mineral is saturated with water.

Wet screening operation means a screening operation at a nonmetallic mineral processing plant which removes unwanted material or which separates marketable fines from the product by a washing process which is designed and operated at all times such that the product is saturated with water.

* * * * *

4. Section 60.672 is amended by removing the word "or" and adding the word "and" after paragraph (a)(1); by revising paragraphs (b) and (c); and by adding paragraphs (f), (g), and (h) to read as follows:

§ 60.672 Standard for particulate matter.

* * * * *

(b) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator subject to the provisions of this

subpart shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity, except as provided in paragraphs (c), (d), and (e) of this section.

(c) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than 15 percent opacity.

* * * * *

(f) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator shall cause to be discharged into the atmosphere from any baghouse that controls emissions from only an individual, enclosed storage bin, stack emissions which exhibit greater than 7 percent opacity.

(g) Owners or operators of multiple storage bins with combined stack emissions shall comply with the emission limits in paragraph (a)(1) and (a)(2) of this section.

(h) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup, no owner or operator shall cause to be discharged into the atmosphere any visible emissions from:

(1) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin.

(2) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where such screening operations, bucket elevators, and belt conveyors process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

5. Section 60.675 is amended by revising paragraph (b), introductory text, redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1), (c)(1)(i), (ii), and (iii) and adding new paragraphs (c)(2), (c)(3), (c)(4), (g), and (h) to read as follows:

§ 60.675 Test methods and procedures.

* * * * *

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.672(a) as follows:

* * * * *

(c) * * *

(2) In determining compliance with the opacity of stack emissions from any baghouse that controls emissions only from an individual enclosed storage bin under § 60.672(f) of this subpart, using Method 9, the duration of the Method 9 observations shall be 1 hour (ten 6-minute averages).

(3) When determining compliance with the fugitive emissions standard for any affected facility described under § 60.672(b) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:

(i) There are no individual readings greater than 10 percent opacity; and

(ii) There are no more than 3 readings of 10 percent for the 1-hour period.

(4) When determining compliance with the fugitive emissions standard for any crusher at which a capture system is not used as described under § 60.672(c) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:

(i) There are no individual readings greater than 15 percent opacity; and

(ii) There are no more than 3 readings of 15 percent for the 1-hour period.

* * * * *

(g) If, after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting any rescheduled performance test required in this section, the owner or operator of an affected facility shall submit a notice to the Administrator at least 7 days prior to any rescheduled performance test.

(h) Initial Method 9 performance tests under § 60.11 of this part and § 60.675 of this subpart are not required for:

(1) wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to, but not including the next crusher, grinding mill or storage bin.

(2) screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

6. Section 60.676 is amended by removing and reserving paragraph (b); revising paragraph (f); revising and redesignating paragraph (g) as paragraph (j); and adding new paragraphs (g), (h) and (i) to read as follows:

§ 60.676 Reporting and recordkeeping.

* * * * *

(b) [Removed and reserved.]

* * * * *

(f) The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in § 60.672 of this subpart, including reports of opacity observations made using Method 9 to demonstrate compliance with § 60.672(b), (c), and (f), and reports of observations using Method 22 to demonstrate compliance with § 60.672(e).

(g) The owner or operator of any screening operation, bucket elevator, or belt conveyor that processes saturated material and is subject to § 60.672(h) and subsequently processes unsaturated materials, shall submit a report of this change within 30 days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the 10 percent opacity limit in § 60.672(b) and the emission test requirements of § 60.11 and this subpart. Likewise a screening operation, bucket elevator, or belt conveyor that processes unsaturated material but subsequently processes saturated material shall submit a report of this change within 30 days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the no visible emission limit in § 60.672(h).

(h) The subpart A requirement under § 60.7(a)(2) for notification of the anticipated date of initial startup of an affected facility shall be waived for owners or operators of affected facilities regulated under this subpart.

(i) A notification of the actual date of initial startup of each affected facility shall be submitted to the Administrator.

(1) For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the owner or operator to the Administrator. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

(2) For portable aggregate processing plants, the notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

(j) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected facilities within the State will be relieved of the obligation to comply with the reporting requirements of this section, provided that they comply with requirements established by the State.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5836–8]

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 7, 1995 (60 FR 62930), the EPA promulgated National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions from Wood Furniture Manufacturing Operations under section 112 of the Clean Air Act (CAA), 42 U.S.C. 7412. The national emission standards for hazardous air pollutants (NESHAP) requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants. This action revises the definition of wood furniture component in the NESHAP to exclude foam seat cushions not made at a wood furniture manufacturing facility from this definition. The revisions clarify the applicability of the final rule to eliminate potential overlapping requirements with other NESHAP.

DATES: The direct final rule will be effective August 8, 1997 unless significant adverse comments are received by July 9, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) on the proposed changes to the NESHAP to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Mr. Robert Marshall, Manufacturing Branch, Office of Compliance, (2223A), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in wood furniture manufacturing operations and that are major sources as defined in 40 CFR Part 63, subpart A, section 63.2. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities which are manor sources of hazardous air pollutants and manufacture wood furniture or wood furniture components.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in section 63.800 of the NESHAP for Wood Furniture Manufacturing Operations that was promulgated in the **Federal Register** on December 7, 1995 (60 FR 62930) and codified at 40 CFR part 63, subpart JJ. If you have questions regarding the applicability of this action to a particular entity, consult Mr. Robert Marshall at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Any significant and timely adverse comments received on any portion of this direct final rule will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. If no significant and timely adverse comments are received on this direct final rule, then the direct final rule will become effective August 8, 1997 and no further action will be taken on the parallel proposal published today.

The information presented below is organized as follows:

I. Background

On December 7, 1995 (60 FR 62930), the EPA promulgated the NESHAP for Wood Furniture Manufacturing Operations. These standards were codified as subpart JJ in 40 CFR part 63. These standards established emission limits for, among other things, coating and gluing of wood furniture and wood furniture components. Wood furniture components were defined to include "seat cushions," some of which are made of foam and are manufactured and glued to the wood furniture at the wood furniture manufacturing facility. Others are manufactured off-site at a foam fabrication facility, and provided to the wood furniture manufacturing facility to include with the final wood furniture product.

This action clarifies the applicability of the final rule by revising the definition of "wood furniture component" to exclude from this definition, seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operations. The manufacture of these foam seat cushions will be subject to a different NESHAP as discussed in more detail below.

II. Summary of and Rationale for Rule Changes

The EPA has revised the definition of "wood furniture component" in the Wood Furniture Manufacturing NESHAP to exclude foam seat cushions not made at a wood furniture manufacturing facility from this

definition. The following is the revised definition for wood furniture component:

Wood furniture component means any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

The EPA is currently developing a separate NESHAP for foam fabricators which will cover facilities that manufacture foam seat cushions at foam fabricating plants for a variety of industries, including wood furniture manufacturers. To avoid duplicative requirements for such facilities, these foam seat cushions are no longer covered by this subpart. This will ensure that these facilities would not be subject to one set of requirements for seat cushions sold to the wood furniture industry and a different set of requirements for seat cushions sold to other industries. However, wood furniture manufacturing facilities that manufacture their foam seat cushions on-site or perform other upholstery operations still will be subject to the emission limits for the application of contact adhesives included in this subpart.

III. Administrative Requirements

A. Docket

Docket A–93–10 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serves as the record in case of judicial review (except for interagency review materials) (§ 307(d)(7)(A) of the CAA, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in these amendments to the final rule. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

C. Executive Order 12866

Under Executive Order 12866, the EPA is required to determine whether a regulation is "significant" and therefore subject to Office of Management and Budget review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order.

D. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis for this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This notice makes clarifying amendments to the Wood Furniture Manufacturing Operations NESHAP, including applicability and definitions. These amendments will not place any additional requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the CAA, 42 U.S.C. 7412(d)(6) and 7412(f)(2), this regulation will be reviewed within 8 years of the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and recordkeeping and reporting requirements.

F. Unfunded Mandates Act

The economic impact analysis performed for the original rule showed that the economic impacts from implementation of the promulgated standards would not be "significant" as defined in Executive Order 12866. No changes are being made in these amendments that would increase the economic impacts. The EPA prepared the following statement of the impact of the original rule in response to the requirements of the Unfunded Mandates Reform Act.

There are no Federal funds available to assist State, local, and Tribal governments in meeting these costs. There are important benefits from volatile organic compounds and hazardous air pollutant emission reductions because these compounds have significant adverse impacts on human health and welfare and on the environment. The rule does not have any disproportionate budgetary effects on any particular region of the nation, State, local, or Tribal government, or urban, rural, or other type of community. On the contrary, the rule will result in only a minimal increase in the average product rates (less than 1 percent). Moreover, the rule will not have a material effect on the national economy.

Throughout the regulatory negotiation process prior to issuing the final rule on December 7, 1995, the EPA provided numerous opportunities for consultations with interested parties (e.g., public comment period; opportunity for a public hearing [none was requested]; meetings with industry, trade associations, State and local air pollution control agency representatives, environmental groups, State, local, and Tribal governments, and concerned citizens). Although small governments are not significantly or uniquely affected by this rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

Prior to the promulgation of the rule in 1995, the EPA considered several regulatory options. The final rule represents the least costly and least burdensome alternatives currently available for achieving the objectives of section 112 of the CAA. All of the regulatory options selected are based on pollution prevention measures. Finally, after careful consideration of the costs, the environmental impacts, and the comments, the EPA decided that the MACT floor was the appropriate level of control for this regulation.

an alternate reserved transit slot, in the following situations:

(1) If for whatever reason Canal authorities cancel or significantly delay the transit of a vessel booked for transit that is otherwise ready to proceed as scheduled;

(2) If for whatever reason Canal authorities delay the transit of a vessel booked for transit to such a degree that the delay is likely to cause the vessel to be unable to meet its required arrival time for a later, second reserved transit, booked before the delay of the first reserved transit occurred; or

(3) If a vessel is booked for transit on the assumption that the vessel will pay the booking fee prescribed by § 104.6(a) or (b) but, subsequently, a change in traffic conditions occurs triggering the higher booking fee prescribed by § 104.6(c).

(b) A vessel booked for transit will be deemed to have transited the Canal on its reserved transit date if the vessel arrives at the first set of locks at either terminus of the Canal prior to 2400 hours that day and its in-transit time (ITT) is 18 hours or less. ITT begins when the vessel enters the first set of locks at either Canal terminus and ends when the vessel departs the last set of locks at the opposite terminus. No booking fee will be charged if ITT, through no fault of the vessel, exceeds 18 hours.

§ 104.9 Cancellations.

(a) A vessel agent may cancel the transit reservation of a vessel by giving notice prescribed by Canal authorities. In such event, and except as otherwise provided, a cancellation fee will be charged. The amount of the fee will depend on the amount of notice (days or hours) received by Canal authorities in advance of the vessel's required arrival time, according to the following schedule:

Advance notice periods	Cancellation fee (the greater of)
31 days or more	None
30 to 11 days	20% of booking fee or $500
10 to 7 days	40% of booking fee or $750
6 to 2 days	60% of booking fee or $1,000
1 day to 8 hours	80% of booking fee or $1,200

(b) Receipt of notice of cancellation of a transit reservation by Canal authorities after the vessel's required arrival time will result in levy of a cancellation fee equal to the entire prescribed booking fee.

§ 104.10 Regular transits.

Vessels not booked for transit will be scheduled for movement through the Canal on the date and in the order determined by Canal authorities. In establishing the daily schedule of vessels to be moved through the Canal, the order in which vessels arrive is only one of several considerations. In general, regular transits will equal or exceed in number, one-half the total number of daily vessel transits.

§ 104.11 Temporary suspension of system.

(a) Canal authorities may temporarily suspend, in whole or in part, for whatever period of time deemed necessary, the vessel transit reservation system established by this part, whenever Canal authorities determine that such action is necessary to ensure continued safe and efficient operation of the Canal.

(b) No penalty or fee shall be levied against any vessel booked for transit whose reserved transit slot is cancelled by reason of a temporary suspension of the system pursuant to this section.

§ 104.12 Further implementation.

(a) In order to ensure safe and efficient operation of the system, Canal authorities may establish additional policies and procedures, define additional terms and issue clarifications and interpretations not inconsistent with the provisions of this part, which will be published and distributed periodically to Canal customers through notices to shipping or other appropriate means.

(b) In the event any provision of this part conflicts with any implementation provision issued pursuant to this section, the provisions of this part shall govern.

Dated: April 10, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 97–9631 Filed 4–14–97; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5811–1]

RIN 2060–AH16

Revision of New Source Performance Standards for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 6, 1975 the Environmental Protection Agency (Agency) promulgated new source performance standards (NSPS) to limit emissions of total fluoride compounds from several affected facilities in the phosphate fertilizers industry. Amongst the affected facilities covered by the NSPS were triple superphosphate plants and granular triple superphosphate (GTSP) storage facilities. The NSPS for GTSP fertilizer storage facilities in 40 CFR Part 60, Subpart X were promulgated for the purpose of limiting total fluoride emissions resulting from the continuation during storage of the chemical reactions through which GTSP is manufactured. After an initial curing period, the GTSP fertilizers cease to emit appreciable quantities of fluorides. As now written, the NSPS cover all GTSP storage facilities and there is no provision to exempt facilities storing only cured fertilizers.

Today's action clarifies the coverage of the NSPS to limit its applicability to those facilities which store fresh GTSP. As a result of today's action, the NSPS will include a work practice through which manufacturers will hold fresh GTSP in storage until it has cured prior to shipment to their customers. This limits the testing and recordkeeping requirements of Subpart X to only those facilities associated with the manufacture of GTSP and, thereby, removes any recordkeeping burden currently imposed upon downstream distributors and users of this product.

DATES: This rule is effective June 16, 1997 unless notice is received by May 15, 1997 that adverse or critical comments will be submitted, or that an opportunity to submit such comments at a public hearing is requested. If adverse comments are received, the effective date will be delayed and timely notice will be published in the **Federal Register.**

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–97–4 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, D.C. 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this rulemaking. For

additional information on the availability of electronic information, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this action, contact Mr. David Painter (telephone number (919) 541–5515), Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Today's action amends Subpart X by limiting its applicability to those facilities which store fresh GTSP. The practical effect of the revision is to apply the provisions of the NSPS to those storage facilities which are co-located with GTSP production facilities. This is accomplished by a work practice through which manufacturers will hold fresh GTSP in storage until it has cured prior to shipment to their customers. In effect, this action excludes from coverage those facilities which store and distribute cured GTSP.

Electronic Information

An electronic copy of this document is available on the Technology Transfer Network (TTN), one of Agency's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

The information in this document is organized as shown below.

I. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

II. Background

On August 6, 1975 (40 FR 33152), the Agency promulgated NSPS to limit emissions of total fluoride compounds from several affected facilities in the phosphate fertilizers industry including GTSP storage facilities. The main concern which prompted that inclusion was the continued off-gassing of fluorides from fresh GTSP during storage subsequent to the initial reactions associated with the manufacture of GTSP. For the purposes of the NSPS, fresh GTSP was defined as that produced within the past ten days. Recently, representatives of the Missouri Farmers Association (MFA) have advised the Agency that a literal interpretation of the NSPS could lead to application of the NSPS to its distribution facilities which store only cured GTSP and which are located far from the point of manufacture. The MFA posited that application of the NSPS in this instance would provide no appreciable benefit to the environment while imposing unproductive paperwork. To support their position, the MFA provided the Agency test data which indicated that one of their warehouses, which is typical of distribution facilities, emits less than one pound per year of total fluorides.

As a part of the Agency's consideration of the concerns raised by the MFA, it obtained data from two companies that manufacture and store GTSP. Those data were developed using methods which differed from those employed by the MFA and gave the same results. That is, emissions of fluorides were associated with storage of fresh GTSP and those emissions were inconsequential after three days. The Agency concluded that cured GTSP stored by facilities such as those of the MFA does not emit appreciable quantities of fluorides and that no practical benefit could be derived by applying Subpart X to distribution facilities which store cured GTSP. Consequently, today's action limits the applicability of Subpart X to only those facilities which store fresh GTSP.

III. Selection of Revised Standards

The purpose of establishing the existing NSPS was to control emissions of total fluoride originating from storage buildings containing fresh GTSP. The total fluoride emissions result from continuation of the chemical reactions employed in the manufacture of GTSP. These reactions cause the formation and release of a variety of fluoride compounds. The reactions continue for a period of time after newly manufactured GTSP is placed into storage and are referred to as "curing" of the fertilizer. Thus, the need for controlling emissions during storage coincides with the curing period.

When the NSPS were developed, conventional wisdom was that curing of fresh GTSP occurred over a period of three to five days. Test data which was then available was for buildings storing GTSP that was ten days old. The test data became the technical basis for the current standard which defines fresh GTSP as that which is produced no more than ten days prior to a performance test.

In recent discussions with interested parties, the Agency found consensus that the language of the NSPS should be amended to specifically limit their applicability to those facilities storing fresh GTSP. The most direct approach to resolving the issue raised by MFA is to include in the NSPS a work practice that eliminates the shipment of fresh GTSP from the manufacturer. This approach clearly ensures that downstream customers such as MFA will not be storing fresh GTSP.

When the Agency first discussed this approach with the manufacturers of GTSP, they raised concerns about storing fertilizer longer than needed because of the definition of fresh fertilizer in the current rule. They provided the Agency with data which directly relate the age of GTSP to its potential for emissions of total fluorides. After discussing the new data with State agency and industry technical staffs, the Agency concluded that curing reactions causing significant air emissions are complete within three days of the completion of the manufacturing process. Thus, today's action changes the definition of fresh GTSP such that GTSP is defined as fresh for three, instead of ten, days after production. In keeping with this updated definition, today's action also changes the amount of fresh GTSP that will satisfy the performance testing requirement from 20 to six percent of the amount of GTSP in storage. This change is proportional to the change in the number of days during which GTSP is defined as fresh. The manufacturers have indicated that they find the approach of holding GTSP in storage until it is cured to be an acceptable resolution to the problem raised by the MFA. That is, this approach clearly limits coverage of the standards to only the time period when emissions are actually occurring and relieves their customers, such as MFA, from the paperwork burden associated with the NSPS as now implemented.

IV. Impacts of Revised Standards

A. Applicability

Today's action will limit the applicability of Subpart X to only those facilities that store fresh GTSP. The intent of today's action is to remove from the coverage of the NSPS those facilities storing cured GTSP.

B. Air Quality Impacts

Today's action will have no impact upon air quality in relation to that which was estimated for the NSPS when they were first promulgated. The original impact estimates of the NSPS were based upon the assumption that only those GTSP storage buildings located at production facilities would be subject to the standards. Further, today's action will have no measureable impact upon actual air quality.

C. Nonair Environmental and Energy Impacts

There will be no nonair environmental and energy impacts.

D. Cost and Economic Impacts

There will be a cost savings resulting from removal of recordkeeping and reporting burdens associated with the NSPS as now implemented. The Agency has no information available upon which to base an estimate of the savings that will result.

V. Administrative Requirements

A. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. However, in a separate document in this issue of the **Federal Register**, the Agency is proposing to revise the NSPS should adverse or critical comments be filed. Thus, today's direct final action will be effective June 16, 1997 unless the Agency receives notice by May 15, 1997 that adverse or critical comments will be submitted or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If the Agency receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The Agency will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 16, 1997.

B. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995 (109 Stat. 48), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

D. Regulatory Flexibility

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This determination has been made because the effect of today's action is to clarify the NSPS to ensure that there are no impacts upon small entities.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Paperwork Reduction Act

This regulation does not impose any new information collection requirements and results in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0037 (EPA ICR # 1061.06). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Phosphate fertilizers production, Reporting and recordkeeping requirements.

Dated: April 8, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 60 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, 7411, 7414, 7416, 7601 and 7602.

Subpart X—[Amended]

2. In § 60.241, paragraphs (a) and (d) are revised to read as follows:

§ 60.241 Definitions.

* * * * *

(a) *Granular triple superphosphate storage facility* means any facility curing or storing fresh granular triple superphosphate.

* * * * *

(d) *Fresh granular triple superphosphate* means granular triple superphosphate produced within the preceding 72 hours.

3. In § 60.242, paragraph (b) is added to read as follows:

§ 60.242 Standard for fluorides.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

4. In § 60.243, paragraphs (b) and (c) are revised and paragraph (d) is added to read as follows:

§ 60.243 Monitoring of operations.

* * * * *

(b) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 60.244(c)(3), times the total mass of granular triple superphosphate stored.

(c) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across any process scrubbing system. The monitoring device shall have an accuracy of ± 5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of demonstrating compliance with § 60.242 (b).

5. In § 60.244, paragraph (a)(2) is revised to read as follows:

§ 60.244 Test methods and procedures.

(a) * * *

(2) Fresh granular triple superphosphate is at least six percent of the total amount of triple superphosphate, or

* * * * *

[FR Doc. 97–9583 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–74]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Memorandum Opinion and Order on Reconsideration, (Order) released March 11, 1997, affirms and clarifies the Commission's rules implementing section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs to offer long-term number portability in accordance with requirements prescribed by the Commission in the *First Report and Order*, 61 FR 38605 (July 25, 1996). The *First Report & Order* also requires all LECs to implement long-term number portability in the 100 largest Metropolitan Statistical Areas (MSAs) according to a five-phase deployment schedule that commences October 1, 1997, and concludes December 31, 1998. The Commission herein concludes, first, that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed thereunder, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers.

DATES: Effective May 15, 1997. Information collections, however, which are subject to approval by the Office of Mangement and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Jeannie Su, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Analysis

This is a summary of the Commission's Order on Reconsideration