WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Dept. of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W.V. Code §22-5-4 and §22-18-1

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: August 2, 2004 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Division of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943

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

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

John A. Benedict, Director
Division of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943

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

Stephanie R. Timmermeyer

Stephanie R. Timmermeyer, Secretary

$12.30

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

BRIEFING DOCUMENT

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

A. AUTHORITY: W.Va. Code §§22-5-4 and 22-18-6.

B. SUMMARY OF RULE:

The current version of 45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following revised NESHAP standard promulgated as of July 15, 2004: Surface Coating of Automobiles and Light-Duty Trucks, 40 CFR Parts 264 and 265 applicability.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The proposed rule changes are required to maintain consistency with the Office of Waste Management's current rule (33CSR20) and with the current federal regulations. The consistency of 45CSR25, 33CSR20 and federal rules is important for the EPA's authorization of the WV State RCRA Hazardous Waste Management Program.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division 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 W.Va. Code §§22-1A-1 and 3(c), the Secretary 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:

At its June 24, 2004 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Thursday, June 24, 2004
1356 Hansford Street, Charleston, WV
1st Floor Conference Room – OER Conference Room

ATTENDEES:

Advisory Council Members:
Larry Harris (via conference call)
Jackie Hallinan
Rick Roberts
Debra Bias for Lisa Dooley
Bill Raney

DEP:
Joe Dawley, General Counsel
Ken Ellison, Director - Division of Land Restoration
Allyn Turner, Director – Division of Water and Waste Management
Bill Brannon, Division of Water and Waste Management
Mike Dorsey – Division of Water and Waste Management
Mike Zeto – Office of Environmental Enforcement
Joe Parker, Director, DEP Division of Mining and Reclamation
Charlie Sturey – DEP Division of Mining and Reclamation
Cindy Maynard – DEP Office of Environmental Advocate
Laura Crowder – DEP Division of Air Quality
Jim Mason – DEP Division of Air Quality
Connie Graytop Lewis – WV Environmental Council
Liz Garland – WV Rivers Coalition
Jason Bostic – WV Coal Association
Tim Beli – Nelson Brothers
Bruce Gilbert – Nelson Brothers

Joseph M. Dawley, WVDEP – General Counsel, called the meeting to order at 10:00 a.m.
Updates on rules were presented as follows:

Division of Air Quality - Jim Mason and Laura Crowder

- 45CSR14 - PSD rule under Part C of the CAA, 45CSR14 has not been revised since 1995. This rule establishes permit requirements for major sources in attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.
- 45CSR15 - NESHAP incorporation by reference ("IBR) rule under Part 61, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR16 - NSPS IBR rule under Part 60, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR19 - NSR rule under Part D of the CAA, 45CSR19 has not been revised since 1993. This rule establishes permit requirements for major sources in non-attainment areas or that cause or

contribute to non-attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.

- 45CSR25 - Hazardous waste IBR rule is typically updated each year. Revisions to the proposed rule include general annual IBR updates: stylistic, citing and technical corrections, and revisions required to maintain consistency with the DW&WM's rule 33CSR20 and federal counterpart regulation. The consistency of 45CSR25, 33CSR20 and federal counterpart regulation is important to maintain EPA delegation of authority to implement and enforce the West Virginia RCRA Hazardous Waste Management Program.
- 45CSR34 - NESHAP IBR rule under Part 63, is typically updated each year. Revisions to the rule accommodate annual IBR updates.

Bill Raney inquired about the table in which mercury is crossed out. This was deleted from EPA's rule so it was deleted from DEP's rule.
Larry Harris also raised a question regarding the definition of visibility.

Office of Waste Management – presented by Mike Dorsey, Deputy Chief, DEP Division of Water and Waste Management

- 33 CSR 20 - Hazardous Waste Management Rule - The revisions in the proposed rule will adopt by reference federal regulations in effect as of July 1, 2004, primarily clarifications and technical corrections. These revisions allow the State to remain consistent with the federal program and to maintain State authorization of the federal program.
- 33 CSR 31 (Underground Storage Tank Fee Assessments) - This rule will increase the annual registration fee for the Underground Storage Tank Program from $25 per tank to $65 per tank. An emergency rule is already in place to implement the increase in fees.
-

The following were presented by Allyn Turner, Director, DEP Division of Water and Waste Management

- 33 CSR 2 (Sewage Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.
- 33 CSR 8 (Beneficial Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.

Office of Explosives and Blasting – presented by Joe Parker, Acting Director, DEP Division of Mining and Reclamation

- 199 CSR 1 (Surface Mining Blasting Rule) - The revisions include incorporation of several provisions from the Surface Mining Rule (38 SCR 2). These include adding the definitions of "community or institutional building," "public building," and "structure" and including provisions for the erection and maintenance of blasting signs. The proposed rule also includes revisions to the Certified Blaster enforcement provisions to address inconsistencies identified by the Federal Office of Surface Mining. Lastly, the proposed rule includes a provision that allows the Office of Explosives and Blasting to conduct an evaluation of a certified blasters performance.

Bill Raney inquired about page 22/Performance Evaluation – raising point about suspending license procedures. Mr. Raney indicated he would request a meeting to reconcile differences.

Office of Water Resources – presented by Allyn Turner, Director, DEP Division of Water and Waste Management

- 47CSR26 (NPDES Permit Fee Rule) - Proposed revision includes a new permit fee provision for concentrated animal feedlot operations ("CAFO") to implement a new federal permit program for CAFOs.
- 47 CSR 10 (NPDES Permit Rule) - Proposed revisions include provisions to implement the federal Phase II Storm Water program and the CAFO permitting program.

Rick Roberts inquired about the definition of storm water and permitted and non-permitted enforcement strategy. Director Turner indicated that this matter is still in discussion and there is no answer at this point.

Division of Mining and Reclamation

- 38CSR2 (Surface Mining and Reclamation Rule) The proposed revisions (1) change various sections of the rule to be consistent with its federal counterpart, (2) correct sections of the rule not approved by the Federal Office of Surface Mining, and (3) provide clarifications and remove contradictory language. These provisions pertain to the following subject areas: definition of previously mined areas, incidental boundary revisions, design criteria for impoundments, commercial forestry post-mining land use, homestead post-mining land use, revegetation standards, and the water supply replacement waiver.

Environmental Excellence Rule

- Optimistic about proposing at next session.
- Dave Bassage is working on draft, but has nothing to share at this point.

Rule Schedule

- July 28, 2004 – last day for filing proposed rules for public comment.
- August 27, 2004 – Must file rules with Secretary of State and Legislative Rule-Making Review Committee

DEP Division Updates

Division of Water and Waste Management

- Rick Roberts posed question regarding phosphorous and nitrogen in the Potomac River
- Allyn Turner explained about the Chesapeake Bay Program and the Gulf of Mexico Hypoxia actions nutrient criteria working group.

Air Quality

- NT, CT, NJ and PA are suing Allegheny Energy, Inc. – which affects 5 WV plants and three PA plants.
- States assert Allegheny modified power plants in violation of Prevention Significant Deterioration provision of ACT and such modifications caused excess NOx and SO2 emissions damage.
- States allege violations in construction/operation of major modifications to power plans without obtaining pre-construction permits.
- EPA not pursuing enforcement at this time.

- West Virginia previously declined to join in a suit against AEP alleging same type of violations.

Abandoned Mine Lands

Science Advisory Committee Statement

- Agency should have benefit of science before promulgating rules.
- Jackie Hallinan expressed concern about state agencies with political influence and what kind of science they intend to use in rulemaking.
- Ken Ellison wants science to be transparent with supporting and substantiating credit to help make better-informed decisions and move forward so all can see what is happening.

Proposed AML Enhancement Rule distributed.

- Will bring DEP in-line with Office of Surface Mining initiative.

DEP Web Page

- Link with web page not up yet.

Upcoming Advisory Council meetings tentative dates:

- September 16, 2004
- December16, 2004

Joe Dawley adjourned meeting at 12:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 0	$ 0	$ 0	$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

The above estimates reflect that there will be no anticipated changes in costs to administer this rule.

3. Objectives of These Rules:

The proposed rule changes are required to maintain consistency with the Office of Waste Management's current rule (33CSR20) and with the current federal regulations. The consistency of 45CSR25, 33CSR20 and federal rules is important for the EPA's authorization of the WV State RCRA Hazardous Waste Management Program.

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 requirements.

C. Economic Impact on Citizens/Public at Large.

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

Date: June 29, 2004

Signature of Agency Head or Authorized Representative:

John A. Benedict, Director

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

SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. ~~The intent and purpose of this rule is to establish~~ This rule establishes a program of regulation over air emissions from the treatment, storage and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and 22-5-1 et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Secretary that enforcement shall be implemented in accordance with W.Va. Code §22-18-1 et seq., where practicable.

1.1.e. Permit applications ~~filed pursuant to this rule~~ shall be processed in accordance with the permitting procedures as set forth in W.Va. Code §§22-18-1 et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§22-5-4 ~~et seq.~~ and 22-18-1 et seq.

1.3. Filing Date. -- ~~April 30, 2004~~.

1.4. Effective Date. -- ~~June 1, 2004~~.

1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of ~~July 1, 2002~~ July 1, 2004.

1.5.b. This rule also incorporates by

reference the provisions contained in ~~33 CSR 20~~ 33CSR20, effective ~~July 1, 2004~~ June 1, 2005, except for any provisions in ~~33 CSR 20~~ 33CSR20 which incorporate by reference the Code of Federal Regulations.

~~1.5.c. This rule also incorporates by reference the provisions of 40 CFR Part 270 as amended and finalized 67 Federal Register 77687 (December 19, 2002).~~

1.6. Former Rules. -- This legislative rule amends 45CSR25 "To Prevent and Control Air Pollution From ~~Haszardous~~ Hazardous Waste Treatment, Storage, or Disposal" which was filed ~~April 16, 2002~~ April 30, 2004, and which became effective ~~July 1, 2002~~ June 1, 2004.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", "statutory air pollution" has the meaning ascribed to it in W.Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. ~~"BACT",~~ "Best Available Control Technology" or "BACT", means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. §1251 et seq.

2.8. "Department of Environmental Protection" or "DEP" means that Department of the West Virginia Department of Environmental Protection which is created by the provisions of W.Va. Code §§22-1-1 et seq.

2.9. "EPA" means the United States Environmental Protection Agency.

2.10. "Facility mailing list" means the mailing list for a facility maintained by EPA in accordance with 40 CFR §124.10(c)(1)(ix).

2.11. "Infectious Medical Waste" shall have the meaning ascribed to it in ~~64 CSR 56~~ 64CSR56 "Infectious Medical Waste", (July 1, 1999), promulgated by the Division of Health.

2.12. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.13. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.14. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.15. "RCRA Permit" means "West Virginia hazardous waste permit". The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14 ~~of this rule~~. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall control.

2.16. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or §22-1-8.

2.17. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.18. Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W.Va. Code §§22-5-1 et seq., or 22-18-1 et seq., or ~~33 CSR 20~~ 33CSR20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from ~~33 CSR 20~~ 33CSR20 "Hazardous Waste Management Rule", effective ~~July 1, 2004~~ June 1, 2005, are hereby adopted by reference, except for any provisions in ~~33 CSR 20~~ 33CSR20 which incorporate by reference the Code of Federal Regulations.

3.1.a. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the provisions contained in the Code of Federal Regulations, effective ~~July 1, 2002~~ July 1, 2004, as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

3.2.a. Whenever the term "United States" is used, it shall also mean the State of West Virginia.

3.2.b. Whenever the terms "Administrator," "Regional Administrator," "Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" are used, the term means the Secretary of the West Virginia Department of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Department of Environmental Protection.

3.2.d. The distance provisions of 40 CFR §265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. ~~Facility~~ Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33CSR20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the ~~Federal Clean Air Act~~ CAA;

4.1.c. Nonattainment program under ~~West Virginia DEP, Division of Air Quality~~ 45CSR19 or the ~~Federal Clean Air Act~~ CAA and 45CSR19;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR15, 45CSR34 or the ~~Federal Clean Air Act~~ CAA;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the ~~Federal Clean Air Act~~ CAA; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by 40 CFR §264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Secretary with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate such facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 25-A.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 25-A.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 25-A.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of

40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of such potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. Notwithstanding any other provision in 40 CFR §270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Secretary at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice as described under section 7 ~~of this rule~~ and shall include the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted hazardous waste management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it,

4.14.e.5. Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Secretary including, but not limited to, 45CSR6 and 45CSR13.

§45-25-5. Permit Process.

5.1. Pre-application Public Meeting and Notice

5.1.a. Applicability. The requirements of ~~this section~~ subsection 5.1 shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. ~~The~~ These

requirements ~~of this section~~ shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. ~~For the purposes of this section, a~~ A "significant change" is any change that would qualify as a Class 3 permit modification ~~(See~~ pursuant to 40 CFR §270.42 ~~for a description of permit modifications)~~. ~~The~~ These requirements ~~of this section~~ do not apply to permit modifications under 40 CFR §270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under ~~subsection~~ subdivision 5.1.b ~~of this section~~, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40 CFR §270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

5.1.d.1. The applicant shall provide public notice in all of the following forms:

5.1.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in ~~subsection~~ paragraph 5.1.d.2 ~~of this section~~, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

5.1.d.1.B. A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in ~~subsection~~ paragraph 5.1.d.2 ~~of this section~~. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

5.1.d.1.C. A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in ~~subsection~~ paragraph 5.1.d.2 ~~of this section~~, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary.

5.1.d.1.D. A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting agency and the Secretary shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under ~~subsection~~ paragraph 5.1.d.1 ~~of this section~~ must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

5.2. Public Notice Requirements at the Application Stage.

5.2.a. Applicability. The requirements ~~of this section~~ subsection 5.2 shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. ~~The~~ These requirements ~~of this section~~ shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for such units upon the expiration of the existing permit. ~~The~~ These requirements ~~of this section~~ do not apply to permit modifications under 40 CFR §270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification. The Secretary shall provide public notice as required in ~~this section~~ subsection 5.2 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list developed under subparagraph 5.8.d.1.D~~.~~; and

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Secretary and is available for review.

5.2.b.4. Any person otherwise entitled to receive notice under ~~subsection~~ subdivision 5.2.b ~~of this rule~~ may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within a reasonable period of time after the application is received by the Secretary. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required under ~~section~~ subdivision 5.2.b ~~of this section~~, the Secretary must place the permit application and

any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

5.3. Information Repository.

5.3.a. Applicability. The following requirements ~~of this section~~ apply to all ~~applications~~ applicants seeking West Virginia hazardous waste management permits for hazardous waste management units.

5.3.b. The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository.

5.3.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

5.3.d. The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary shall specify a more appropriate site.

5.3.e. The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

5.3.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in ~~section~~ subdivision 5.3.b ~~of this section~~.

5.4. Application for a Permit.

5.4.a. Any person who requires a permit ~~under this rule~~ shall complete, sign, and submit to the Secretary an appropriate application ~~for each permit required under this rule~~. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR §270.60. The Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR §270.11.

5.4.b. The Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant but only when necessary to clarify, modify or supplement

previously submitted materials. Request for such additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of W.Va. Code §§22-18-1 et seq. and 22-5-1 et seq.

5.4.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b ~~of this section~~.

5.4.f. For each application the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

5.4.f 1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing;

5.4.f.4. Issue a final permit.

5.5. Modification, Revocation and Reissuance, or Termination of Permits.

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

5.5.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W.Va. Code §§22B-1-1 et.seq.

5.5.b.1. If the Secretary tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42(c), he or she shall prepare a draft permit under ~~section~~ subsection 5.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

5.5.b.2. In a permit modification ~~under this section~~, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued ~~under this section~~, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §§270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary tentatively decides to terminate a permit under 40 CFR §270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft

permit which follows the same procedures as any draft permit prepared under ~~section~~ subsection 5.6.

5.6. Draft Permits.

5.6.a. Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary tentatively decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as ~~any~~ a draft permit ~~prepared under this section~~. If the Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Secretary tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

5.6.c.1. All conditions under 40 CFR §§270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR §270.33;

5.6.c.3. All monitoring requirements under 40 CFR §270.31; and,

5.6.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Secretary ~~under this section~~ shall be accompanied by a fact sheet if required under ~~subsection~~ subdivision 5.7.a and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall be given by the methods contained in 40 CFR §§270.2, 270.14, 270.30, 270.62, and 270.66.

5.7. Fact Sheet.

5.7.a. A fact sheet shall be prepared for each draft permit which the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall send the fact sheet to the applicant and, on request, to any other person.

5.7.b. The fact sheet shall include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description for reaching a final decision on a draft permit including;

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting

a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision.

5.7.b.6. Name and telephone number of a person to contact for additional information.

5.8. Public Notice of Permit Actions and Public Comment Period.

5.8.a. Scope. The Secretary shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared.

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under ~~section~~ subsection 5.5. Written notice of that denial shall be given to the requester and to the permittee.

5.8.c. Timing. Public notice of the preparation of a draft permit, ~~(~~including a Notice of Intent to Deny a Permit Application~~)~~, required under ~~section~~ subdivision 5.8.a shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. ~~(~~Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.~~)~~

5.8.d. Methods. Public notice of activities described in ~~section~~ subdivision 5.8.a ~~of this section~~ shall be ~~given~~ provided by the following methods:

5.8.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits)~~;~~:

5.8.d.1.A. The applicant~~;~~;

5.8.d.1.B. Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act)~~,~~ ~~or~~ W.Va. Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable~~;~~;

5.8.d.1.D. Persons on a mailing list developed by:

5.8.d.1.D.i. Including those who request in writing to be on the list;

5.8.d.1.D.ii. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing list through periodic public in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary may delete from the lists the name of any person who fails to respond to such request~~.)~~;

5.8.d.1.E.~~i~~. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.~~E.ii~~F. To each state agency having any authority under state law with respect to the construction or operation of such facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations~~.~~;

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially ~~effected~~affected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. All public notices. All public notices issued ~~under this section~~ shall contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit.

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet and the application; and

5.8.e.5. A brief description of the comment procedures required by ~~sections~~ subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision.

5.8.e.6. The location of the administrative record, the times that which the record will be open for public inspection;

5.8.e.7. Any additional information considered necessary or proper.

5.8.f. Public notices for hearings. In addition to the general public notice described in ~~section~~ subdivision 5.8.e~~of this section~~, the public notice of a hearing shall contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing;

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in ~~section~~ subdivision 5.8.e~~of this section~~, all persons identified in ~~section~~ subparagraphs 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C ~~of this section~~ shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

5.9. Public Comments and Requests for Public Hearings. During the public comment period provided under ~~section~~ subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in ~~section~~ subsection 5.13.

5.10. Public Hearings.

5.10.a. The Secretary shall hold a public

hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Secretary may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under ~~section~~ subdivision 5.8.c; whenever possible the Secretary shall schedule a hearing ~~under this section~~ at a location in convenient to the nearest population center to the proposed facility.

5.10.d. Public notice of the hearing shall be given as specified in ~~section~~ subsection 5.8.

5.10.e. Whenever a public hearing will be held the Secretary shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under ~~section~~ subsection 5.8 shall automatically be extended to the close of any public hearing ~~under this section~~. The hearing officer may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing shall be made available to the public.

5.11. Reopening of the Public Comment Period.

5.11.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may take one or more of the following actions:

5.11.a.1. Prepare a new draft permit, appropriately modified, under ~~section~~ subsection 5.6 ~~of this rule~~.

5.11.a.2. Prepare a revised fact sheet under ~~section~~ subsection 5.7 ~~of this rule~~ and reopen the comment period.

5.11.a.3. Reopen or extend the comment period under ~~section~~ subsection 5.11 ~~of this rule~~ to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under ~~section~~ subsection 5.8 ~~of this rule~~ shall define the scope of the reopening.

5.11.c. Public notice of any of the above actions shall be issued under ~~section~~ subsection 5.8 ~~of this rule~~.

5.12. Issuance and Effective Date of Permit.

5.12.a. After the close of the public comment period on a draft permit the Secretary shall issue a final permit decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. ~~For purposes of this section the~~ A final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

5.12.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision;

5.12.b.2. Review is requested or an evidentiary hearing is requested; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

5.13. Response to Comments.

5.13.a. At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response shall:

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments shall be available to the public.

5.14. Administrative Record.

5.14.a. The provisions of a draft permit prepared under subsection 5.6 ~~of this rule~~ shall be based on the administrative record consisting of:

5.14.a.1. The application and any supporting data furnished by the applicant;

5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

5.14.a.3. The fact sheet if required;

5.14.a.4. All documents cited in the fact sheet; and

5.14.a.5. Other documents contained in the supporting file for the draft permit.

5.14.b. The Secretary shall base final permit decisions on the administrative record consisting of:

5.14.b.1. Administrative record for the draft permit;

5.14.b.2. All comments received during the public comment period provided under subsection 5.5 ~~of this rule~~ (, including any extension or reopening under subsection 5.11 ~~of this rule~~);

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10 ~~of this rule~~;

5.14.b.4. Any written material submitted at such hearing;

5.14.b.5. The response to comments required by subsection 5.13 ~~of this rule~~ which identified and supports any change made in the draft permit and any new material placed in the record under ~~that~~ subsection 5.13;

5.14.b.6. Other documents contained in the supporting file for the permit;

5.14.b.7. An addendum to the fact sheet if needed; and

5.14.b.8. The final permit.

5.14.c. The administrative record shall be complete on the date the final permit is issued.

5.14.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 5.14.a and 5.14.b ~~of this rule~~, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public Access to Information.

5.15.a. Any records, reports, or information and any permit, permit applications, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Secretary that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect such records as confidential pursuant to W.Va. Code §§22-18-1-et seq. and ~~W. Va. Code~~ 22-5-1-et seq.

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subsection 5.15 ~~of this rule~~ to comply with the requirements of 45CSR31.

5.16. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W.Va. Code, §§22-18-1 et seq. and 22-5-1 et seq.

§45-25-6. Exclusions and Exemptions.

6.1. Wastes ~~and/or~~ and materials excluded in 33CSR20, are ~~also~~ excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to ~~section 3 of 33CSR20~~ 33CSR§20-3, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4 ~~of this rule~~.

6.3. The provisions of 62 Federal Register 52622-52642, dated October 8, 1997 (Project XL Site-Specific Rulemaking for Merck & Co., Inc., Stonewall Plant, Elkton, VA: Final Rule) are hereby excluded ~~from the provisions of this rule~~. These provisions include 40 CFR §§264.1030(d), 264.1050(g), 264.1080(e), 265.1030(c), 265.1050(f), and 265.1080(e).

§45-25-7. Application ~~Fees~~ Fee.

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

Activity	Fees
a. Hazardous Waste Management Facilities	
Treatment design capacity more than 1,000 ton/yr	$5,000
Treatment design capacity less than 1,000 ton/yr	$5,000
b. Class 2, 3 Modifications or Renewals of Permits and 40 CFR §270.41 for Hazardous Waste Management Facilities	$1,000
c. Class 1 Modifications	$ 500

~~All~~ 7.2. These application fees ~~required under this section~~ shall be in addition to ~~fees~~ any fee required under any other rule of the West Virginia Department of Environmental Protection.

§45-25-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition,

method ~~and~~ or rule.

TABLE 25-A

Item No.	CFR No.	Part No.	Subpart No.	Title
1.	40 CFR	264, 265	O	Incinerator
2.	40 CFR	270.19	B	Specific Requirements for Incinerators
		270.42	D	Permit Modification at the Request of the Permittee
			Appendix	Appendix I
3.	40 CFR	270.62	F	Hazardous Waste Incinerator Permits
4.	40 CFR	270.72	G	Changes During Interim Status
5.	40 CFR	264	X	Miscellaneous Units
6.	40 CFR	270.23	B	Specific Requirements for Miscellaneous Units
7.	40 CFR	264, 265	AA	Air Emission Standards for Process Vents
8.	40 CFR	270.24	B	Specific Requirements for for Process Vents
9.	40 CFR	264, 265	BB	Air Emission Standards for Equipment Leaks
10.	40 CFR	270.25	B	Specific Requirements for Equipment Leaks
11.	40 CFR	264, 265 264.179, 265.178 264.200, 265.202 264.232, 265.231	CC I J K	Air Emission Standards for Tanks, Surface Impoundments, and Containers
		265	Appendix	Appendix VI
12.	40 CFR	270.14(b)(5)	A	General Information
13.	40 CFR	270.27	B	Specific Requirements for Air Emissions Control for Tanks, Surface Impoundments and Containers
14.	40 CFR	265	P	Thermal Treatment

Item No.	CFR No.	Part No.	Subpart No.	Title
15.	40 CFR -	266 -	H -	Hazardous Waste Burned in Boilers and Industrial Furnaces
			Appendices -	Appendix 1 to XIII
16.	40 CFR -	270.22 -	B -	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
17.	40 CFR -	270.66 -	F -	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
18.	40 CFR -	279.23 -	C -	On-site Burning In Space Heater
19.	40 CFR -	279 -	G -	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
20.	40 CFR -	270.14(b)(22) -	B -	Permit Application
21.	40 CFR -	270.1(c)(2)(viii)(C)-	A -	General Information
22.	40 CFR -	270.30(m) -	B -	Information repository
23.	40 CFR -	261.6(c)(1) -	A -	Requirements for Recyclable Materials
		261.4 -	-	Exclusions
24.	40 CFR -	261.38 -	D -	Comparable/Syngas Fuel Exclusion
25.	40 CFR -	262.34(a)(1)(i) &- 262.34(a)(1)(ii)	C -	Accumulation Time
26.	40 CFR -	260.11 -	B -	References
27.	40 CFR -	264.15(b)(4) -	B -	General Inspection Requirement
28.	40 CFR -	264.73(b)(6) -	E -	Operating Records
29.	40 CFR -	270.235 -	I -	Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events.

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Part II

Environmental Protection Agency

40 CFR Parts 63, 264 and 265
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Final Rule

raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline: The following outline is provided to aid in reading the preamble to the final rule:

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The surface coating of automobiles and light-duty trucks category of major sources was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(c)(2) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources, based upon the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing the final NESHAP, we considered control options that are more stringent than the MACT floor, taking into account consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. In the final rule, EPA is promulgating standards for both existing and new sources consistent with these statutory requirements.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

HAP emission sources. Emissions from coating application, drying, and curing account for most of the HAP emissions from automobile and light-duty truck surface coating operations. The remaining emissions are primarily from cleaning of booths and application equipment and purging of spray equipment. Mixing and storage are other sources of emissions. Organic HAP emissions can occur from displacement of organic vapor-laden air in containers used to store organic HAP solvents or to mix coatings containing organic HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing. In most cases, HAP emissions from surface preparation and waste/wastewater operations are relatively small.

Organic HAP. The final NESHAP regulate emissions of organic HAP. Available emission data collected during the development of the NESHAP show that the primary organic HAP emitted from automobile and light-duty truck surface coating operations are toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. These compounds account for over 95 percent of the nationwide HAP emissions from this source category.

Inorganic HAP. Based on information reported during the development of the NESHAP, lead, manganese, and chromium may be contained in some of the coatings used by this source category but are not likely to be emitted due to the coating application techniques used. No inorganic HAP were reported in thinners or cleaning materials. The only use of lead in coatings in this source category is in electrodeposition primers. None of this lead is emitted because these primers are applied by dip coating. Lead is being

reasons and to avoid duplication, if such a collection and transmission system is subject to the final NESHAP then it is exempt from the requirements of subparts BB of 40 CFR parts 264 and 265.

If a facility chooses to include under the NESHAP operations which coat parts intended for use in new automobiles or new light-duty trucks or as aftermarket repair or replacement parts for automobiles or light-duty trucks which would otherwise be subject to the NESHAP for surface coating of miscellaneous metal parts and products (40 CFR part 63, subpart MMMM) or surface coating of plastic parts and products (40 CFR part 63, subpart PPPP), then the captured purge material from these operations are also exempt from the requirements of subparts BB of 40 CFR parts 264 and 265. Many of the coatings applied at facilities subject to the final NESHAP to separate, non-body plastic parts and separate, non-body metal parts for automobiles and light-duty trucks are similar in composition to those applied to automobile and light-duty truck bodies and body parts. The captured purge materials are conveyed to waste tanks in the same fashion as the purged materials from automobile and light-duty truck body coating operations.

B. What Is the Relationship to Other Rules?

Affected sources subject to the final rule may also be subject to other rules. Automobile and light-duty truck surface coating operations that began construction, reconstruction, or modification after October 5, 1979 are subject to new source performance standards (NSPS) under 40 CFR part 60, subpart MM. That rule limits emissions of VOC. The EPA has also published control techniques guidelines which establish reasonably available control technologies for limiting VOC emissions from automobile and light-duty truck surface coating operations. Additional VOC emission limitations may also apply to these facilities through conditions incorporated in State operating permits and permits issued under authority of title V of the CAA. Facilities in this subcategory may also be subject to various emission limitations pursuant to State air toxics rules.

An automobile and light-duty truck surface coating facility may be subject to other NESHAP. Subparts MMMM (for surface coating of miscellaneous metal parts and products) and PPPP (for surface coating of plastic parts and products) of 40 CFR part 63, limit emissions from coating operations conducted on separate, non-body parts. To decrease the burden of complying with multiple surface coating emission limits, the final rule provides that collocated operations that apply surface coating to any automobile and light-duty truck part may be optionally included under the final rule. Surface coating of metal and plastic parts not intended for attachment to automobiles and light-duty trucks remain covered under the relevant subpart, 40 CFR part 63, subpart MMMM for metal parts and 40 CFR part 63, subpart PPPP for plastic parts. We are also amending 40 CFR part 63, subparts MMMM and PPPP to clarify the interaction between these rules and the final rule. Facilities may also be subject to other rules relating to collocated equipment such as foundries and boilers.

The transmission and storage of captured purge materials from coating equipment may also be subject to the RCRA tank system requirements under subparts J of 40 CFR parts 264 and 265, and the Air Emission Standards for Equipment Leaks under subparts BB of of 40 CFR parts 264 and 265. The tank system rules under subparts J apply to hazardous waste storage tanks, all ancillary equipment used to convey hazardous waste to such tanks, and secondary containment systems. The requirements of subparts J are designed to prevent releases from hazardous waste tank systems and to detect and respond to releases from hazardous waste tank systems, thereby ensuring minimal risk of hazardous waste reaching ground water, surface waters, or soils.

The air emission standards for equipment leaks under subparts BB of 40 CFR parts 264 and 265 apply to equipment that contains or contacts RCRA hazardous waste with organic concentrations of at least 10 percent by weight. Subparts BB were designed to minimize air emissions from leaks from equipment such as pumps, valves, flanges, and connections. To avoid duplication between subparts BB and the final NESHAP, we are exempting equipment from subparts BB if it is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP.

C. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The final rule defines the affected source as all of the equipment used to apply coating to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and to dry or cure the coating after application; all storage containers and mixing vessels in which vehicle body coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying vehicle body coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by an automobile and light-duty truck surface coating operation. Operations that apply surface coating to other automobile and light-duty truck parts may be optionally included in the affected source.

The affected source does not include research or laboratory operations or janitorial, building, and facility maintenance operations.

D. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission limits. The final rule limits organic HAP emissions from each new or reconstructed automobile and light-duty truck surface coating facility using the emission limits in Table 2 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES (MONTHLY AVERAGE)

Operation	Limit
Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).	0.036 kilogram (kg) (0.30 pound (lb)) organic HAP/liter (HAP/gallon (gal)) of coating solids deposited).

materials generated by all coating operations for which emission limits are established. The plan must specify practices and procedures to ensure that, at a minimum, the following elements are implemented:

- All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers. The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.
- Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.
- Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.
- Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

You must also develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are established. The plan must specify practices and procedures to ensure that emissions of HAP from the following operations are minimized:

- Vehicle body wiping;
- Coating line purging;
- Flushing of coating systems;
- Cleaning of spray booth grates;
- Cleaning of spray booth walls;
- Cleaning of spray booth equipment;
- Cleaning external spray booth areas; and
- Other housekeeping measures (*e.g.*, keeping solvent-laden rags in closed containers.)

General Provisions. The General Provisions (40 CFR part 63, subpart A) also apply to you as outlined in Table 2 of the final rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that you should be aware of. However, unless specifically overridden in Table 2 of the final rule, all of the applicable General Provisions requirements would apply to you.

E. What Are the Testing and Initial Compliance Requirements?

Existing affected sources must be in compliance with the final rule no later than April 26, 2007. New and reconstructed sources must be in compliance upon initial startup of the affected source or by June 25, 2004, whichever is later. However, affected sources are not required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the monthly organic HAP emission rate.

Compliance with the emission limits is based on a monthly organic HAP emission rate. The initial compliance period, therefore, is the 1-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following month. We have defined "month" as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being "in compliance" means that the owner or operator of the affected source meets all the requirements of the final rule to achieve the emission limit(s) and operating limits by the end of the initial compliance period, and that the facility is operated in accordance with the approved work practice plans. At the end of the initial compliance period, the owner or operator must use the data and records generated to determine whether or not the affected source is in compliance for that period. If it does not meet the applicable limit(s), then it is out of compliance for the entire initial compliance period.

Emission limits. Compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), or the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) is based on mass organic HAP emissions per volume of applied coating solids as calculated monthly using the procedures in the final rule. Compliance with the emission limits for adhesives and sealers (other than glass bonding adhesive) and deadener is based on mass average organic HAP content of materials used each month.

Electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c). Compliance with this emission limit, or if eligible, with the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), is based on calculations detailed in the final rule. You may also use the guidelines presented in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" (EPA–450/3–88–018) (Auto Protocol).

To determine the organic HAP content, the volume solids, and the density of the coatings and thinners, you may rely on manufacturer's data, results from the test methods listed below, or alternative test methods for which you get EPA approval on a case-by-case basis according to the NESHAP General Provisions in 40 CFR 63.7(f). However, if there is any inconsistency between the test results and manufacturer's data, the test results will prevail for compliance and enforcement purposes unless after consultation, you demonstrate to the satisfaction of the enforcement authority that the manufacturer's data are correct.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- You may use nonaqueous volatile matter as a surrogate for organic HAP. If you choose this option, then use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use either ASTM Method D2697–86 (1998) or ASTM Method D6093–97.
- For density, use ASTM Method D1475–98 or information from the

combustion temperature that are consistent with the requirements for thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you use this as the minimum operating limit for a thermal oxidizer, then you must keep the combustion temperature set point on that thermal oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that thermal oxidizer and the average combustion temperature maintained during the performance test for that thermal oxidizer.

For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits for catalytic oxidizers are the average temperature just before the catalyst bed maintained during the performance test and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test, except during periods of low production the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. A low production period is when production is less than 80 percent of production rate during the performance test. As an alternative, if the latest operating permit issued before April 26, 2007 for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the temperature just before the catalyst bed for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed during the performance test of that catalytic oxidizer. If you do not have an operating permit for the catalytic oxidizer at your facility and the latest construction permit issued before April 26, 2007 for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the temperature just before the catalyst bed for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed during the performance test of that catalytic oxidizer. If you use this as the minimum operating limit for the temperature just before the catalyst bed for a catalytic oxidizer, then you must keep the set point for the temperature just before the catalyst bed for that catalytic oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that catalytic oxidizer and the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer. Also, as an alternative for catalytic oxidizers, you may monitor the temperature immediately before the catalyst bed and develop and implement an inspection and maintenance plan.

If you use a solvent recovery system, then you must either: (1) Continuously monitor the outlet concentration of organic compounds, and the operating limit is the average organic compound outlet concentration during the performance test (for each 3-hour period, the average concentration would have to be below this limit); or (2) monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration, in which case the operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a capture system that is not part of a PTE that meets the criteria of 40 CFR 63.3165(a) and is not capturing emissions from a downdraft spray booth or from a flash-off area or bake oven associated with a downdraft spray booth to meet the final standards, you must meet operating limits for each capture device in that capture system. If the emission capture system is a permanent total enclosure, you are required to establish that the direction of flow is into the enclosure at all times. In addition, you must meet an operating limit of either an average facial velocity of at least 3,600 meters per hour (200 feet per minute) through all natural draft openings in the enclosure, or a minimum pressure drop across the enclosure of at least 0.18 millimeter water (0.007 inch water), as established by Method 204 of appendix M to 40 CFR part 51.

If the emission capture system is not a permanent total enclosure, you must establish either the average volumetric flow rate or the duct static pressure in each duct between the capture device and the add-on control device inlet during the performance test. Either the average volumetric flow rate must be maintained above the operating limit for each 3-hour period or the average duct static pressure must be maintained above the operating limit for each 3-hour period.

Work practice standards. You must develop and implement two site-specific work practice plans. One plan must address practices to minimize organic HAP emissions from storage, mixing, and conveying of coatings, thinners, and cleaning materials used in operations for which emission limits are established, as well as the waste materials generated from these operations. A second site-specific work practice plan must address practices to minimize emissions from cleaning operations and purging of coating equipment.

The plans must address specific types of potential organic HAP emission points and are subject to approval of the Administrator. Deviations from approved work practice plans must be reported semiannually.

F. What Are the Continuous Compliance Provisions?

Emission limits. Continuous compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) of the final rule, or if eligible, the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), is based on monthly calculations following the procedures detailed in the final rule. These procedures take into account the amount of each coating used, the organic HAP and volume solids content of each coating used, the transfer efficiency of each coating application system, and the organic HAP abatement from each capture and control system, and provide for calculating monthly mass organic HAP emissions per volume of coating solids deposited.

Continuous compliance with the emission limits for adhesives and sealers (other than components of the windshield adhesive system), and

• Data and documentation used to determine and capture system efficiency or to support a determination that the system is a permanent total enclosure.

• Required work practice plans and documentation to support compliance with the provisions of these plans.

Deviations, as determined from these records, must be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available for inspection if the Administrator requests to see it. The plan must stay in your records for the life of your affected source or until the source is no longer subject to the final standards. If you revise the plan, you must keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you must include them in the report as follows:

• Report each deviation from the emission limit.

• Report each deviation from the work practice plan.

• If you are complying by using a thermal oxidizer, report all times when a 3-hour average temperature is below the operating limit.

• If you are complying by using a catalytic oxidizer, report all times when a 3-hour average temperature increase across the catalyst bed is below the operating limit.

• If you are complying by using oxidizers or solvent recovery systems, report all times when the value of the site-specific operating parameter used to monitor the capture system performance was greater than or less than (as appropriate) the operating limit established for the capture system.

• Report other specific information on the periods of time the deviations occurred.

You must also send us explanations in each semiannual report if a change occurs that might affect your compliance status.

Other Reports. You are required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your SSMP, you report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. What Are the Significant Changes Since Proposal?

A. Applicability

We have provided an option permitting facilities subject to the final rule to include collocated operations involved in surface coating of parts for automobiles and light-duty trucks that would not otherwise be subject to the rule. Surface coating of these non-body parts, such as bumpers, fascias, and brackets at a time when they are not attached to (or otherwise simultaneously coated with) a new automobile or light-duty truck body or body parts would otherwise be subject to the Surface Coating of Miscellaneous Metal Parts and Products NESHAP, 40 CFR part 63, subpart MMMM, and/or the Surface Coating of Plastic Parts and Products NESHAP, 40 CFR part 63, subpart PPPP. Facilities opting to include operations of this type are responsible for obtaining all of the information necessary to determine compliance with the provisions of the final rule. Cleaning and purging operations associated with optionally included collocated surface coating operations would also be covered by the final rule. Collocated operations involved in surface coating of parts that are not related to automobiles and light-duty trucks may not be included, and continue to be regulated under the Surface Coating of Miscellaneous Metal Parts and Products NESHAP, 40 CFR part 63, subpart MMMM, and/or the Surface Coating of Plastic Parts and Products NESHAP, 40 CFR part 63, subpart PPPP. We are also amending subparts MMMM and PPPP to clarify the interaction between these rules and the surface coating automobiles and light-duty trucks rule. We were unable to include these changes in subparts MMMM and PPPP until the final rule was published since the changes to subparts MMMM and PPPP reference the final rule.

The final rule excludes "travel waxes" and other temporary coatings designed to be removed before vehicles are sold, as well as materials applied from touchup bottles.

B. Compliance Demonstration and Monitoring

As an alternative to the temperature monitoring provisions for thermal and catalytic oxidizers in the proposed rule, the final rule allows certain facilities which have been following the temperature monitoring provisions in 40 CFR 60.395(c) to continue to follow those provisions and to set the minimum operating limit for each such oxidizer at the same level as in 40 CFR 60.395(c).

The proposed rule used the average temperature rise across the catalyst during the performance test as one of the minimum operating limits for catalytic oxidizers. The final rule uses 80 percent of the average temperature rise across the catalyst during the performance test as one of the minimum operating limits for catalytic oxidizers, except during periods of low production this minimum operating limit is to maintain a positive temperature gradient across the catalyst bed.

The proposed rule contained operating parameter requirements for all capture systems. The final rule states that such monitoring is not required for downdraft spray booths or for flash-off areas or bake ovens associated with downdraft spray booths.

The proposed rule stated that if your add-on control system deviates from the operating limit specified in Table 1 to subpart IV of 40 CFR part 63, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. We have written the final rule to allow the use of other data to indicate the actual efficiency of the emission capture system and add-on control device, as long as the use of these data is approved by the Administrator.

The proposed rule provided the option of using panel testing to determine bake oven capture efficiency. The final rule maintains this option and provides more detail on the calculations necessary to convert the results of such panel tests into the format needed for the final rule. The final rule also provides an option of using panel tests to determine spray booth capture efficiency.

C. Analytical Methods

The specification of analytical procedures to be employed in compliance demonstration is unchanged. A provision has been added to the final rule providing, in the event of a disagreement between the specified methods and the facility's data, an opportunity for the facility to consult with the enforcement authority and demonstrate to the satisfaction of the enforcement authority that formulation data or data obtained by other means are correct.

standards given their temporary nature and the fact that emissions from these coatings are minimal.

Response: We agree that temporary coatings are applied differently and serve a different function than the coatings intended to be regulated. In addition, the data collected and used in the determination of MACT, did not include temporary coatings. The definition of coating operation has been written to exclude the application of temporary materials such as protective oils and "travel waxes" that are designed to be removed from the vehicle before the vehicle is delivered to the retail purchaser.

Comment: A commenter recommended a minimum threshold cutoff for purposes of applicability of the final rule and suggested that EPA provide an exemption of 250 gal per year, similar to the usage cutoffs in other MACT standards.

Response: The commenter did not provide any data to support the inclusion of this type of exemption in the final rule. The MACT determination took into account emissions and solids from "special colors." These materials are not exempt from the NSPS, and reporting systems to account for them are presently in place at most, if not all, assembly plants. The definition of coating operation in the final rule has been revised to exclude "touchup bottles," which will exempt some materials used in very small quantities.

Comment: Approximately ten automobile and light-duty truck facilities have received permits with case-by-case MACT determinations under 40 CFR 63.40 and section 112(g) of the CAA. One commenter questioned whether the final NESHAP would apply to such facilities or if these facilities will continue to be subject to limits established in their permits under section 112(g). Another commenter stated that the section 112(g) permit requirements are more stringent than the proposed MACT limits for existing sources. This commenter suggested that EPA state in the final rule that the section 112(g) permits are equivalent to the MACT limits for existing sources and provide these facilities with the choice of keeping their section 112(g) permits or having 8 years to comply with the MACT limits for existing sources.

Response: Based upon the process used for making section 112(g) determinations and a brief review of some of the section 112(g) determinations made for facilities in this industry, we expect that the result of a thorough review would be that most or all of the section 112(g) determinations made for facilities in this industry are equivalent to MACT. These reviews and equivalency determinations are best done on a case-by-case basis by the permitting authority.

In accordance with 40 CFR 63.44(c), if the level of control required by the emission standard issued under section 112(d) is less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination pursuant to 40 CFR 63.43, the permitting authority is not required to incorporate any less stringent terms of the promulgated standard in the title V operating permit applicable to the facility. In such a case, the permitting authority may choose to have the section 112(g) MACT determination remain in effect. Alternatively, the permitting authority may choose to have the NESHAP come into effect for the facility in place of the section 112(g) MACT determination. In this case, the facility may be given up to 8 years from the promulgation date of the NESHAP to comply with the NESHAP. The changes in equipment, materials, monitoring, recordkeeping, and reporting necessary to demonstrate compliance with the NESHAP rather than with the section 112(g) determination and the fact that the NESHAP are less stringent than the section 112(g) determination should be taken into account in determining how much time the facility is given to comply with the NESHAP.

In the less likely event that the level of control required by the emission standard issued under section 112(d) is not found to be less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination, then the facility must comply with the NESHAP. In this case, the facility may be given up to 8 years from the promulgation date of the NESHAP to comply with the NESHAP. The changes in equipment, materials, monitoring, recordkeeping, and reporting necessary to demonstrate compliance with the NESHAP rather than with the section 112(g) determination and the fact that the NESHAP are not less stringent than the section 112(g) determination should be taken into account in determining how much time the facility is given to comply with the NESHAP.

As an alternative, if the level of control required by the emission standard issued under section 112(d) is not found to be less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination and the difference in stringency is small, then the permitting authority could amend the facility's operating permit to make it equivalent to the NESHAP and have the section 112(g) MACT determination remain in effect. This approach may be less burdensome on both the facility and the permitting authority than having the NESHAP come into effect for the facility while achieving the same environmental results.

B. Compliance Demonstration, Monitoring, and Emission Limits

Comment: The commenter stated that the CAA, EPA rules, and EPA policy all authorize adoption of a Compliance Assurance Monitoring (CAM) protocol as MACT monitoring for coating sources at automobile and light-duty truck surface coating facilities. The commenter noted that the proposed rule allows the use of the CAM protocol as an option for compliance with certain aspects of the rule, but not for others, such as control equipment effectiveness and monitoring. The commenter stated that it is critical that the compliance provisions for the separate coating MACT standards that are applicable be harmonized, not only with each other, but also with the other coating standards that apply under State Implementation Plan requirements (including reasonably available control technology and best available control technology/lowest achievable emission rate).

Response: The proposed rule referred to the Auto Protocol as an option for compliance demonstration. This Auto Protocol does not include CAM provisions and does not include any guidance for control device efficiency monitoring. A CAM guidance document for automobile and light-duty truck coating is under development, but has not been completed. As described earlier in this preamble, we have provided an option for certain facilities to continue using the thermal and catalytic oxidizer temperature monitoring operating limits in 40 CFR 60.395(c). We have also removed the operating parameter requirements for capture systems which capture emissions from downdraft spray booths or from flash-off areas or bake ovens associated with downdraft spray booths.

Comment: The commenter stated that, for the performance tests required in proposed § 63.3160(a) and (b), EPA should allow prior performance tests, *e.g.*, transfer efficiency, removal efficiency, capture efficiency, destruction efficiency, oven solvent loading, to satisfy the performance tests required by the standards. Since EPA has agreed that HAP emitted from these operations behave in the same way as VOC, there is no reason for redundant

floors for new and existing sources was 1997. These limits are based, in part, on the detection limits (and the precision and accuracy achievable at low concentrations) of available approved chemical analytical methods. The MSDS typically report concentrations of less than 0.01 lb noncarcinogenic HAP per lb material (less than 0.001 lb carcinogenic HAP per lb material) as zero, indicating that the limits suggested by the commenter are equivalent to those of the final rule. The final rule provides that Method 311 is presumed (subject to rebuttal) to take precedence over MSDS or other formulation data. Facilities may be unable to reliably demonstrate that coatings contain "no volatile HAP" by this method.

Comment: A commenter stated that regulations under section 112 of the CAA must include emission standards for each HAP that a category emits and that the proposed regulations failed to comply with that mandate. The commenter stated that even though the EPA states that automobile coating sources emit many different HAP, including metals such as lead, manganese, and chromium compounds, the Agency has proposed standards for only organic HAP.

Response: Most of the coatings used in this subcategory do not contain inorganic HAP. The only use of lead in coatings in this source category is in electrodeposition primers. None of this lead is emitted because these primers are applied by dip coating. Lead is being phased out of electrodeposition primers. For spray applied coatings, most of the inorganic HAP components of these coatings remain as solids in the dry coating film on the parts being coated, are collected by the circulating water under the spray booth floor grates, or are deposited on the walls, floor, and grates of the spray booths and other equipment in which they are applied. The waterwash systems which are present in all primer-surfacer and topcoat spraybooths reduce the amount of coating droplets, and thus inorganic HAP, emitted to the air. These controls have been in place for many years. Facilities cannot operate without these controls. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified. The EPA has no basis upon which to establish MACT for inorganic HAP, and the commenter has supplied no data in support of an emission limit. Including control requirements for waterwash systems in the final rule would not be expected to result in additional emission reductions and would only add to the regulatory burden on the industry.

Comment: A commenter claimed that the requirement to document that a source is in continuous compliance with work practices is confusing and should be modified and streamlined. Continuous documentation of compliance with the work practice plan could be difficult, at best, and appears to be unnecessary. Under the commenter's recommended language, continuous compliance with the work practices would be confirmed by the presence of the work practice plan and the documents used to verify performance of the work practice activities, (*i.e.*, operational or maintenance records, documented inspections or internal audits, third party certifications or similar practices).

Response: Continuous documentation is not required, rather the recordkeeping requirements of § 63.3130(n) call for documentation that you are implementing the plan on a continuous basis. The records cited by the commenter (*i.e.*, operational or maintenance records, documented inspections or internal audits) have been added to § 63.3130(n) of the final rule as examples of documentation that demonstrate you are implementing the plan on a continuous basis.

Comment: A commenter noted that the proposed NESHAP covered fewer operations within the source category than the CAA section 112(g) determinations completed to date. Additional operations covered by section 112(g) determinations include purge and cleanup operations for three facilities, foam and maintenance painting for two facilities, and sound dampening application. The commenter encouraged EPA to include these facilities in the database if they were operating 18 months prior to proposal and were operating during the base year for the floor database. The commenter feels that purge and cleanup operations, foam, and maintenance painting operations should be identified individually in the final rule or identified as part of a grouping of operations with an overall emission limit.

Response: While facilities provided extensive data on purge material usage to EPA in response to information collection requests (ICR), estimates of recovery of these materials were extremely variable, with facilities of similar operation estimating very different recoveries. These data were not reliable enough to establish MACT on a numerical basis. The EPA chose to limit emissions from these operations through work practices. Cleaning material usage data were also provided, however since (a) emissions from these materials are rarely controlled, (b) EPA has no reliable data on the controllability of cleaning operations, and (c) cleaning material usage is not well correlated with vehicle production, EPA chose to limit emissions from these operations through work practices. Foam is injected into body panel cavities primarily for sound deadening and is subject to the emission limit for deadeners. Industry representatives have indicated in recent discussions that, as far as they know there are no HAP emissions associated with foam. Deadener application (for sound control) is subject to a standard based on the reliably demonstratable composition of very low-HAP material. One facility reported the use of cavity wax (no HAP content data were available and the facility assumed that it resulted in essentially zero HAP emissions). We have excluded maintenance coating from the final rule. No data were available upon which to base a MACT floor for this operation.

Comment: A commenter stated that waterwash controls for paint spray booths that are designed for particulate control are being evaluated for VOC control. The commenter also stated that HAP are typically found in large quantities in water-based coatings. With the increased use of water-based coatings, and the requirement for site-specific parameter limits, facilities may want to use the waterwash control as the primary control for HAP. The commenter stated that no EPA test protocol has been designed to address field testing of a waterwash control system and requested that EPA provide industry and the regulatory agencies with either an approved testing protocol or a technical guidance document.

The commenter also stated that if this will be addressed as an "alternate test method," it should be explicitly stated in the final rule and asked what parameter limits EPA envisions for a facility to monitor HAP removed by waterwash systems if capture credit is claimed.

Response: No facilities are presently using the spray booth waterwash as a VOC or organic HAP control device and no specific method for testing has been developed. If a facility wanted to use a device of this type to control HAP, the same methods in 40 CFR part 60, appendix A, presently used for oxidizers and adsorbers might be adapted for this purpose. Alternately, the test methods and operating parameter monitoring applicable to wet scrubbers or wastewater treatment might be adapted for this purpose. A source would be required to obtain approval of an alternate test procedure and

commenter recommended that EPA write the final rule to reflect that operations in accordance with SSMP are not deviations and are not reported as such.

Response: Proposed § 63.3163(h) provided that consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). According to § 63.6(e), any affected source must at all times meet the emission standard or comply with the SSMP.

E. Definitions

Comment: Commenter submits that the definition of "initial startup" does not accurately describe what constitutes the startup of a new source and recommended that the phrase "the first time equipment is brought online in a facility" in the proposed definition be written to "the first time a salable product is produced." Otherwise the term would include periods that are not representative of normal operation.

Response: We agree with the commenter that periods of equipment testing and calibration prior to the time that production is commenced may not be representative of the emissions reductions and control device performance achievable in normal operation. The definition of "initial startup" in the final rule has been written to refer to the first time a salable product is coated.

Comment: The commenter stated that the term "container" is used repeatedly throughout the proposed rule and that the rule covers "all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored and mixed." It is not clear whether the term container would include tanks used to store certain solvents and coatings.

Response: A definition of container has been added to the final rule, covering coatings, solvents, and cleaning materials.

F. Amendment of RCRA Rule

Comment: A commenter noted that EPA states that currently air emissions from the collection, transmission, and storage of purged paint and solvent at these sources are regulated under RCRA. However, in its proposed rule, EPA exempts these wastes from RCRA and transfers the regulation under the CAA. The EPA further explains that "this exemption is considered to be less stringent than existing RCRA regulations." The EPA also proposes to establish work practice standards to control these emissions rather than numeric emission standards.

The commenter submits that the CAA mandates floors that reflect "the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information). "Also, EPA may only propose a work practice standard MACT if the Agency demonstrates that it is "not feasible to prescribe or enforce an emission standard." The commenter asserts that EPA does not demonstrate it is infeasible to prescribe or enforce an emissions standard for the collection, transmission, and storage of purged paint and solvent and thus, the proposed rule is unlawful. Also, EPA fails to explain whether existing sources subject to RCRA are reducing their HAP emissions and, if so, whether the existing RCRA requirements could serve as the basis for establishing a MACT floor. Finally, the commenter claims the Agency's proposal is arbitrary and capricious because it fails to explain the consequences of transferring regulatory authority from RCRA to CAA, how the shift in regulatory authority results in less stringency, or identify the Agency's legal authority to exempt HAP emissions from RCRA.

The commenter urges EPA to establish a MACT floor that considers the emissions reductions at those sources currently subject to RCRA and properly determine whether an emission standard, instead of work practice standard, is appropriate for these sources.

Response: The NESHAP address both the capture of purged materials and the transport and storage of purged materials after they have been captured. This is more comprehensive than the existing RCRA rule being amended which only addresses the transport and storage of purged materials after they have been captured. The requirements of the final NESHAP are, therefore, at least as effective as the requirements of the existing RCRA rule. The language in the preamble to the proposed rule cited by the commenter was not an assessment of the effect of the proposed NESHAP on activities covered by the existing RCRA rule, nor was it a comparison of the proposed NESHAP and the existing RCRA rule.

The language cited by the commenter was characterizing the proposed revision to the RCRA rule as less stringent than the existing RCRA rule. This comparison was made in the context of discussing whether States would be required to adopt the revised RCRA rule. We consider an exemption from RCRA rules to be less stringent than the retention of those rules. Since it would be less stringent, States would not be required to adopt the revised rule in their RCRA programs (RCRA section 3009). If we had considered the revision to be more stringent, States then would be required to adopt and seek authorization for those provisions (section 3006 of RCRA).

G. Risk Based Approaches

The preamble to the proposed rule requested comment on whether there might be further ways to structure the final rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment. Specifically, we requested comment on the technical and legal viability of two risk-based approaches: (1) an applicability cutoff for threshold pollutants under the authority of CAA section 112(d)(4); and (2) subcategorization and delisting under the authority of CAA sections 112(c)(1) and 112(c)(9). We indicated that we would evaluate all comments before determining whether either approach would be included in the final rule. Numerous commenters submitted detailed comments on these risk-based approaches. These comments are summarized in the Response-to-Comments document.

Based on our consideration of the comments received and other factors, we have decided not to include the risk-based approaches in today's final rule. The risk-based approaches described in the proposed rule and addressed in the comments we received raise a number of complex issues. In addition, we are under time pressure to complete the final rule, because the statutory deadline for promulgation has passed and a deadline suit has been filed against EPA. (See Sierra Club v. Whitman, Civil Action No. 1:01CV01537 (D.D.C.).) Given the range of issues raised by the risk-based approaches and the need to promulgate a final rule expeditiously, we feel that it is appropriate not to include any risk-based approaches in today's final rule. Nonetheless, we expect to continue to consider risk-based approaches in connection with other NESHAP where we have described and solicited comment on such approaches. This

are more stringent or broader in scope than existing Federal requirements. The RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. (See also 40 CFR 271.1(i)). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

B. Authorization of States for Today's Amendments

Currently, the air emissions from the collection, transmission, and storage of captured purged paint and solvent at automobile and light-duty truck assembly plants are regulated under the authority of RCRA (see 40 CFR parts 264 and 265, subparts BB). Today's amendments will exempt these wastes from regulation under RCRA and defer regulation to the final NESHAP. This exemption is considered to be less stringent than the existing RCRA regulations and, therefore, States are not required to adopt and seek authorization for today's exemption. However, EPA strongly encourages States to adopt today's amended RCRA provisions and seek authorization for them to prevent duplication with the NESHAP.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. 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 the final rule is a "significant regulatory action," because it could have an annual impact on the economy of over $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final standards do not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 33,436 labor hours per year at a total annual cost of $982,742. This estimate includes a one-time performance test and report (with repeat tests where needed) for those affected sources that choose to comply through the installation of new capture systems and control devices; one-time purchase and installation of CPMS for those affected sources that choose to comply through the installation of new capture systems and control devices; preparation and submission of work practice plans; one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual excess emission reports; maintenance inspections; notifications; and recordkeeping. There are no additional capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR. The monitoring related operation and maintenance costs over this same period are estimated at $7,000.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. For purposes of assessing the impacts of today's rule on small entities for the automobile and light-duty truck surface coating industry, a small entity is defined as: (1) A small business according to Small Business Administration size standards for companies identified by NAICS codes 33611 (automobile manufacturing) and 33621 (light-duty truck and utility vehicle manufacturing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the above definition, there are no small entities presently engaged in automobile and light-duty truck surface coating.

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This is based

people are exposed to a lifetime cancer risk above 1 in a million as a result of emissions from these facilities. The final rule is not expected to have any significant impact on cancer risk. A more refined risk assessment will be performed as part of the residual risk analysis which is required to occur within 8 years after promulgation of the final rule.

The control technology to reduce the level of HAP emitted from automobile and light-duty truck coating operations is also expected to reduce emissions of criteria pollutants, particularly VOC. Specifically, the final rule achieves a 12,000 to 18,000 tpy reduction in VOC. This represents a significant reduction of VOC emissions from these sources, but less than 1 percent of national VOC emissions. The VOC is a precursor to tropospheric (ground-level) ozone and a small percentage also precipitate in the atmosphere to form particulate matter (PM).

Although we were not able to estimate the monetary value associated with VOC reductions, the health and welfare effects from exposure to ground-level ozone are well documented. Elevated concentrations of ground-level ozone primarily may result in acute respiratory-related impacts such as coughing and difficulty breathing. Chronic exposure to ground-level ozone may lead to structural damage to the lungs, alterations in lung capacity and breathing frequency, increased sensitivity of airways, eye, nose, and throat irritation, malaise, and nausea. Adverse ozone welfare effects include damage to agricultural crops, ornamental plants, and materials damage. Though only a small fraction of VOC forms PM, exposure to PM can result in human health and welfare effects, including excess deaths, morbidity, soiling and materials damage, as well as reduced visibility.

To the extent that reduced exposure to HAP and VOC reduces the instances of the above described health effects, benefits from the final rule will be realized by society through an improvement in environmental quality.

Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the final rule and any disproportionate budgetary effects. We do not feel that there will be any disproportionate budgetary effects of the final rule on any particular areas of the country, State, or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments.

Effects on the National Economy

The UMRA requires that we estimate the effect of the rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the final rule is presented in the EIA. That analysis provides estimates of the effect of the rule on some of the categories mentioned above.

The estimated direct cost to the automobile and light-duty truck manufacturing industry of compliance with the final rule is approximately $154 million (1999 dollars) annually. Indirect costs of the final rule to industries other than the automobile and light-duty truck manufacturing industry, governments, tribes, and other affected entities are expected to be minor. The final rule is expected to have little impact on domestic productivity, economic growth, full employment, energy markets, creation of productive jobs, and the international competitiveness of United States goods and services.

Consultation With Government Officials

Although the final rule does not affect any State, local, or tribal governments, we have consulted with State and local air pollution control officials. The EPA has held meetings on the final rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, and other interested parties. The EPA has added materials to the docket to document these meetings.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that the final rule does not have "federalism implications" because it does not meet the necessary criteria. Thus, Executive Order 13132 does not apply to the final rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. The EPA is not aware of tribal governments that own or operate automobile and light-duty truck surface coating facilities. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22,

rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a major rule as defined by 5 U.S.C. 804(2). The final rule will be effective 60 days after April 26, 2004.

List of Subjects in 40 CFR Part 63

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

Dated: February 26, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, parts 63, 264, and 265 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding and reserving new paragraph (b)(35), adding new paragraphs (b)(36), (37), and (38), and revising paragraphs (b)(24), (25), (26), and (32), and (i)(3) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," IBR approved for §§ 63.3161(f)(1), 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(25) ASTM D6093–97 (Reapproved 2003), "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," IBR approved for §§ 63.3161(f)(1), 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(26) ASTM D1475–98 (Reapproved 2003), "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products," IBR approved for §§ 63.3151(b), 63.3941(b)(4), 63.3941(c), 63.3951(c), 63.4141(b)(3), 63.4141(c), and 63.4551(c).

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(32) ASTM D5965–02, "Standard Test Methods for Specific Gravity of Coating Powders," IBR approved for §§ 63.3151(b) and 63.3951(c).

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(35) [Reserved]

(36) ASTM D5066–91 (Reapproved 2001), "Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis," IBR approved for § 63.3161(g).

(37) ASTM D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," IBR approved for §§ 63.3165(e) and 63.3176, appendix A.

(38) ASTM D6266–00a, "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," IBR approved for § 63.3165(e).

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(i) * * *

(3) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 63.9323(a)(3).

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■ 3. Part 63 is amended by adding subpart IIII to read as follows:

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

Sec.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or June 25, 2004, whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or April 26, 2007, whichever is later.

(d) You must meet the notification requirements in § 63.3110 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3090 What emission limits must I meet for a new or reconstructed affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.036 kilogram (kg)/liter (0.30 pound (lb)/gallon (gal)) of coating solids deposited during each month, determined according to the requirements in § 63.3161.

(b) If you meet the operating limits of § 63.3092(a) or (b), you must either meet the emission limits of paragraph (a) of this section or limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171. If you do not have an electrodeposition primer system, you must limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171.

(c) You must limit average organic HAP emissions from all adhesive and sealer materials other than materials used as components of glass bonding systems to no more than 0.010 kg/kg (lb/lb) of adhesive and sealer material used during each month.

(d) You must limit average organic HAP emissions from all deadener materials to no more than 0.010 kg/kg (lb/lb) of deadener material used during each month.

(e) For coatings and thinners used in coating operations added to the affected source pursuant to § 63.3082(c):

(1) Adhesive and sealer materials that are not components of glass bonding systems are subject to and must be included in your demonstration of compliance for paragraph (c) of this section.

(2) Deadener materials are subject to and must be included in your demonstration of compliance for paragraph (d) of this section.

(3) All other coatings and thinners are subject to and must be included in your demonstration of compliance for paragraphs (a) or (b) of this section.

(f) If your facility has multiple paint lines (*e.g.*, two or more totally distinct paint lines each serving a distinct assembly line, or a facility with two or more paint lines sharing the same paint kitchen or mix room), then for the operations addressed in paragraphs (a) and (b) of this section:

(1) You may choose to use a single grouping under paragraph (a) of this section for all of your electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations.

(2) You may choose to use a single grouping under paragraph (b) of this section for all of your primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations as long as each of your electrodeposition primer systems meets the operating limits of § 63.3092(a) or (b).

(3) You may choose to use one or more groupings under paragraph (a) of this section for the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from one or more of your paint lines; and one or more groupings under paragraph (b) of this section for the primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from the remainder of your paint lines, as long as each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). For example, if your facility has three paint lines, you may choose to use one grouping under paragraph (a) of this section for two of the paint lines; and a separate grouping under paragraph (b) of this section for the third paint line, as long as the electrodeposition primer system associated with the paint line you include in the grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). Alternatively, you may choose to use one grouping for two of the paint lines and a separate grouping of the same type for the third paint line. Again, each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b).

(4) You may choose to consider the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from each of your paint lines as a separate grouping under either paragraph (a) or paragraph (b) of this section. The electrodeposition primer system associated with each paint line you choose to consider in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b). For example, if your facility has two paint lines, you may choose to use the grouping under paragraph (a) of this section for one paint line and the grouping under paragraph (b) of this section for the other paint line.

§ 63.3091 What emission limits must I meet for an existing affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in

electrodeposition primer bake oven(s) so that they meet the operating limits specified in Table 1 to this subpart.

(d) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3094 What work practice standards must I meet?

(a) [Reserved]

(b) You must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d). The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) You must develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d).

(1) The plan shall, at a minimum, address each of the operations listed in paragraphs (c)(1)(i) through (viii) of this section in which you use organic-HAP-containing materials or in which there is a potential for emission of organic HAP.

(i) The plan must address vehicle body wipe emissions through one or more of the techniques listed in paragraphs (c)(1)(i)(A) through (E) of this section, or an approved alternative.

(A) Use of solvent-moistened wipes.

(B) Keeping solvent containers closed when not in use.

(C) Keeping wipe disposal/recovery containers closed when not in use.

(D) Use of tack-wipes.

(E) Use of solvents containing less than 1 percent organic HAP by weight.

(ii) The plan must address coating line purging emissions through one or more of the techniques listed in paragraphs (c)(1)(ii)(A) through (D) of this section, or an approved alternative.

(A) Air/solvent push-out.

(B) Capture and reclaim or recovery of purge materials (excluding applicator nozzles/tips).

(C) Block painting to the maximum extent feasible.

(D) Use of low-HAP or no-HAP solvents for purge.

(iii) The plan must address emissions from flushing of coating systems through one or more of the techniques listed in paragraphs (c)(1)(iii)(A) through (D) of this section, or an approved alternative.

(A) Keeping solvent tanks closed.

(B) Recovering and recycling solvents.

(C) Keeping recovered/recycled solvent tanks closed.

(D) Use of low-HAP or no-HAP solvents.

(iv) The plan must address emissions from cleaning of spray booth grates through one or more of the techniques listed in paragraphs (c)(1)(iv)(A) through (E) of this section, or an approved alternative.

(A) Controlled burn-off.

(B) Rinsing with high-pressure water (in place).

(C) Rinsing with high-pressure water (off line).

(D) Use of spray-on masking or other type of liquid masking.

(E) Use of low-HAP or no-HAP content cleaners.

(v) The plan must address emissions from cleaning of spray booth walls through one or more of the techniques listed in paragraphs (c)(1)(v)(A) through (E) of this section, or an approved alternative.

(A) Use of masking materials (contact paper, plastic sheet, or other similar type of material).

(B) Use of spray-on masking.

(C) Use of rags and manual wipes instead of spray application when cleaning walls.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vi) The plan must address emissions from cleaning of spray booth equipment through one or more of the techniques listed in paragraphs (c)(1)(vi)(A) through (E) of this section, or an approved alternative.

(A) Use of covers on equipment (disposable or reusable).

(B) Use of parts cleaners (off-line submersion cleaning).

(C) Use of spray-on masking or other protective coatings.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vii) The plan must address emissions from cleaning of external spray booth areas through one or more of the techniques listed in paragraphs (c)(1)(vii)(A) through (F) of this section, or an approved alternative.

(A) Use of removable floor coverings (paper, foil, plastic, or similar type of material).

(B) Use of manual and/or mechanical scrubbers, rags, or wipes instead of spray application.

(C) Use of shoe cleaners to eliminate coating track-out from spray booths.

(D) Use of booties or shoe wraps.

(E) Use of low-HAP or no-HAP content cleaners.

(F) Controlled access to cleaning solvents.

(viii) The plan must address emissions from housekeeping measures not addressed in paragraphs (c)(1)(i) through (vii) of this section through one or more of the techniques listed in paragraphs (c)(1)(viii)(A) through (C) of this section, or an approved alternative.

(A) Keeping solvent-laden articles (cloths, paper, plastic, rags, wipes, and similar items) in covered containers when not in use.

(B) Storing new and used solvents in closed containers.

(C) Transferring of solvents in a manner to minimize the risk of spills.

(2) Notwithstanding the requirements of paragraphs (c)(1)(i) through (viii) of this section, if the type of coatings used in any facility with surface coating operations subject to the requirements of this section are of such a nature that the need for one or more of the practices specified under paragraphs (c)(1)(i) through (viii) is eliminated, then the plan may include approved alternative or equivalent measures that are applicable or necessary during cleaning of storage, conveying, and application equipment.

(d) As provided in § 63.6(g), we, the Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

(e) The work practice plans developed in accordance with paragraphs (b) and

(11) You must include the information specified in paragraphs (c)(11)(i) through (iii) of this section.

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the procedure followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports unless requested.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(12) A statement of whether or not you developed and implemented the work practice plans required by § 63.3094(b) and (c).

§ 63.3120 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (9) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the CAA, as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3160 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (iv) of this section, and the information specified in paragraphs (a)(4) through (9) and (c)(1) of this section that are applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31.

(iv) Identification of the compliance option specified in § 63.3090(b) or § 63.3091(b) that you used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) in the affected source during the initial compliance period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practices in §§ 63.3090, 63.3091, 63.3092, 63.3093, and 63.3094 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used control devices to comply with the emission limits, and there were no periods during which the CPMS were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: adhesive, sealer, and deadener.* If there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) The beginning and ending dates of each month during which the monthly average organic HAP content exceeded the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d).

(ii) The volume and organic HAP content of each material used that is subject to the applicable organic HAP content limit.

(iii) The calculation used to determine the average monthly organic HAP content for the month in which the deviation occurred.

(iv) The reason for the deviation.

(6) *Deviations: combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive, or combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).* If there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b),

tests no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, and malfunction reports.* If you used add-on control devices and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3130 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP, the density and the volume fraction of coating solids for each coating, the mass fraction of organic HAP and the density for each thinner, and the mass fraction of organic HAP for each cleaning material. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. If you use the results of an analysis conducted by an outside testing lab, you must keep a copy of the test report. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each month, the records specified in paragraphs (c)(1) through (6) of this section.

(1) For each coating used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations and for each coating, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), a record of the volume used in each month, the mass fraction organic HAP content, the density, and the volume fraction of solids.

(2) For each thinner used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations and for each thinner, except for thinner used for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), a record of the volume used in each month, the mass fraction organic HAP content, and the density.

(3) For each deadener material and for each adhesive and sealer material, a record of the mass used in each month and the mass organic HAP content.

(4) A record of the calculation of the organic HAP emission rate for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(a) or § 63.3091(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(5) A record of the calculation of the organic HAP emission rate for primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(b) or § 63.3091(b), and a record of the weight fraction of each organic HAP in each material added to the electrodeposition primer system if subject to the limitations of § 63.3092(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(6) A record, for each month, of the calculation of the average monthly mass organic HAP content of:

(i) Sealers and adhesives; and

(ii) Deadeners.

(d) A record of the name and volume of each cleaning material used during each month.

(e) A record of the mass fraction of organic HAP for each cleaning material used during each month.

(f) A record of the density for each cleaning material used during each month.

(g) A record of the date, time, and duration of each deviation, and for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(h) The records required by § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(i) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.3165(a).

specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.7638 truncates to 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When neither test data nor manufacturer's data for solvent blends are available, you may use the default values for the mass fraction of organic HAP in the solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the data from Table 3 or 4 are correct.

(b) *Determine the density of each material used.* Determine the density of each material used during the compliance period from test results using ASTM Method D1475–98 (Reapproved 2003), "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products" (incorporated by reference, see § 63.14), or for powder coatings, test method A or test method B of ASTM Method D5965–02, "Standard Test Methods for Specific Gravity of Coating Powders," (incorporated by reference, see § 63.14), or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 (Reapproved 2003) test results or ASTM Method D5965–02, test method A or test method B test results and the supplier's or manufacturer's information, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(c) *Determine the volume of each material used.* Determine the volume (liters) of each material used during each month by measurement or usage records.

(d) *Determine the mass average organic HAP content for each group of materials.* Determine the mass average organic HAP content of the materials used during the initial compliance period for each group of materials for which an emission limit is established in § 63.3090(c) and (d) or § 63.3091(c) and (d), using Equations 1 and 2 of this section.

(1) Calculate the mass average organic HAP content of adhesive and sealer materials other than components of the glass bonding system used in the initial compliance period using Equation 1 of this section:

$$C_{avg,as} = \frac{\sum_{j=1}^{r} \left(Vol_{as,j}\right)\left(D_{as,j}\right)\left(W_{as,j}\right)}{\sum_{j=1}^{r} \left(Vol_{as,j}\right)\left(D_{as,j}\right)} \quad \text{(Eq. 1)}$$

Where:

$C_{avg,as}$ = Mass average organic HAP content of adhesives and sealer materials used, kg/kg.

$Vol_{as,j}$ = Volume of adhesive or sealer material, j, used, liters.

$D_{as,j}$ = Density of adhesive or sealer material, j, used, kg per liter.

$W_{as,j}$ = Mass fraction of organic HAP in adhesive or sealer material, j, kg/kg.

r = Number of adhesive and sealer materials used.

(2) Calculate the mass average organic HAP content of deadener materials used in the initial compliance period using Equation 2 of this section:

supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limits in § 63.3091(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3168; and documentation of whether you developed and implemented the work practice plans required by § 63.3094(b) and (c).

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system (either a previous stack test or a previous panel test) or control device. You are not required to conduct an initial test to determine transfer efficiency if you receive approval to use the results of a test that has been previously conducted. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section.

(1) The previous test must have been conducted using the methods and conditions specified in this subpart.

(2) Either no process or equipment changes have been made since the previous test was performed or the owner or operator must be able to demonstrate that the results of the performance test reliably demonstrate compliance despite process or equipment changes.

(3) Either the required operating parameters were established in the previous test or sufficient data were collected in the previous test to establish the required operating parameters.

§ 63.3161 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093, using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (o) of this section to demonstrate compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a). You may also use the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22) in making this demonstration.

(e) *Determine the mass fraction of organic HAP, density and volume used.* Follow the procedures specified in § 63.3151(a) through (c) to determine the mass fraction of organic HAP and the density and volume of each coating and thinner used during each month.

(f) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liter of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (f)(1) and (2) of this section. If test results obtained according to paragraph (f)(1) of this section do not agree with the information obtained under paragraph (f)(2) of this section, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(1) *ASTM Method D2697–86 (Reapproved 1998) or ASTM Method D6093–97 (Reapproved 2003).* You may use ASTM Method D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings" (incorporated by reference, see § 63.14), or ASTM Method D6093–97 (Reapproved 2003), "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer" (incorporated by reference, see § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-surfacer and topcoat coating, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM Method D5066–91 (Reapproved 2001), "Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis" (incorporated by reference, see § 63.14), or the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may conduct transfer efficiency testing on representative coatings and for representative spray booths as described in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray.

(h) *Calculate the total mass of organic HAP emissions before add-on controls.* Calculate the total mass of organic HAP emissions before consideration of add-on controls from all coatings and thinners used during each month in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using Equation 1 of this section:

$$H_{BC} = A + B \qquad \text{(Eq. 1)}$$

Where:

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 2A of this section.

$$A_c = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 2A)}$$

Where:

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 2B of this section.

$$B_c = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 2B)}$$

Where:

B_C = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg per kg.

n = Number of different thinners used.

(3) Calculate the mass of organic HAP in the coatings used in the controlled coating operation during deviations specified in § 63.3163(c) and (d), using Equation 2C of this section:

$$A_{unc} = \sum_{i=1}^{m} (VOLD_i)(D_i)(W_i) \quad \text{(Eq. 2C)}$$

Where:

A_{unc} = Total mass of organic HAP in the coatings used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg.

$VOLD_i$ = Total volume of coating, i, used in the controlled coating operation during deviations, liters.

D_i = Density of coating, i, kg per liter.

W_i = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = Number of different coatings.

(4) Calculate the mass of organic HAP in the thinners used in the controlled coating operation during deviations specified in § 63.3163(c) and (d), using Equation 2D of this section:

$$B_{unc} = \sum_{j=1}^{n} (VOLD_j)(D_j)(W_j) \quad \text{(Eq. 2D)}$$

Where:

B_{unc} = Total mass of organic HAP in the thinners used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg.

$VOLD_j$ = Total volume of thinner, j, used in the controlled coating operation during deviations, liters.

D_j = Density of thinner, j, kg per liter.

W_h = Mass fraction of organic HAP in thinner, j, kg organic HAP per kg coating.

n = Number of different thinners.

(k) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (k)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (k)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (k)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3151(b).

(5) Measure the volume of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 3 of this section:

$V_{s,i}$ = Volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = Transfer efficiency of coating, i, determined according to § 63.3161(g), expressed as a decimal, for example 60 percent must be expressed as 0.60.

m = Number of coatings used during the month.

(m) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 6 of this section.

$$H_{HAP} = H_{BC} - \sum_{i=1}^{q} \left(H_{Cn,i}\right) - \sum_{j=1}^{r} \left(H_{CSR,j}\right) - \sum_{k=1}^{q} \sum_{m=1}^{Sk} \left(H_{DEV,k,m}\right) \quad \text{(Eq. 6)}$$

Where:

H_{HAP} = Total mass of organic HAP emissions for the month, kg.

H_{BC} = Total mass of organic HAP emissions before add-on controls from all the coatings and thinners used during the month, kg, determined according to paragraph (h) of this section.

$H_{Cn,i}$ = Total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, excluding all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred, for the controlled coating operation during the month, from Equation 2 of this section.

$H_{CSR,j}$ = Total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 4 of this section.

$H_{DEV,k,m}$ = Mass of organic HAP emission reduction, based on the capture system and control device efficiency approved under paragraph (p) of this section for period of deviation, m, for controlled coating operation, k, kg, as determined using Equation 8 of this section.

q = Number of controlled coating operations not using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

S_k = Number of periods of deviation in the month for which non-zero capture and control device efficiencies have been approved for controlled coating operation, k.

(n) *Calculate the organic HAP emission rate for the month.* Determine the organic HAP emission rate for the month, kg organic HAP per liter coating solids deposited, using Equation 7 of this section:

$$H_{rate} = \left(H_{HAP}\right)/\left(V_{sdep}\right) \quad \text{(Eq. 7)}$$

Where:

H_{rate} = Organic HAP emission rate for the month compliance period, kg organic HAP per liter coating solids deposited.

H_{HAP} = Mass of organic HAP emissions for the month, kg, determined according to Equation 6 of this section.

V_{sdep} = Total volume of coating solids deposited during the month, liters, from Equation 5 of this section.

(o) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must be less than or equal to the applicable emission limitation in § 63.3090(a) or § 63.3091(a). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a) and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

(p) You may request approval from the Administrator to use non-zero capture efficiencies and add-on control device efficiencies for any period of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation occurred.

(1) If you have manually collected parameter data indicating that a capture system or add-on control device was operating normally during a CPMS malfunction, a CPMS out-of-control period, or associated repair, then these data may be used to support and document your request to use the normal capture efficiency or add-on control device efficiency for that period of deviation.

(2) If you have data indicating the actual performance of a capture system or add-on control device (*e.g.*, capture efficiency measured at a reduced flow rate or add-on control device efficiency measured at a reduced thermal oxidizer temperature) during a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation, then these data may be used to support and document your request to use these values for that period of deviation.

(3) The organic HAP emission reduction achieved during each period of deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation for which the Administrator has approved the use of non-zero capture efficiency and add-on control device efficiency values is calculated using Equation 8 of this section.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3100(f).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3130 and 63.3131.

§ 63.3164 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3160 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3165. You must conduct each performance test of an add-on control device according to the requirements in § 63.3166.

§ 63.3165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3160. For purposes of this subpart, a spray booth air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the spray booth air seal and the spray booth is into the spray booth. For purposes of this subpart, a bake oven air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. You may use lightweight strips of fabric or paper, or smoke tubes to make such demonstrations as part of showing that your capture system is a PTE or conducting a capture efficiency test using a temporary total enclosure. You cannot count air flowing from a spray booth air seal into a spray booth as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that spray booth air seal as a natural draft opening. You cannot count air flowing from a bake oven air seal into a bake oven as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that bake oven air seal as a natural draft opening.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off and coating curing and drying occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the five procedures described in paragraphs (c) through (g) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied, and all areas where emissions from these applied coatings and thinners subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating and thinner used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = Total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may conduct panel testing to determine the capture efficiency of flash-off or bake oven emissions using ASTM Method D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, see § 63.14), ASTM Method D6266–00a, "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, see § 63.14), or the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may conduct panel testing on representative coatings as described in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). The results of these panel testing procedures are in units of mass of VOC per volume of coating solids deposited and must be converted to a percent value for use in this subpart. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the volume of coating solids deposited per volume of coating used and for the mass of VOC per volume of coating, and average values for the group of coatings for volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density, and mass fraction VOC in Equations 4 through 6 of this section. Panel test results expressed in units of mass of VOC per volume of coating solids deposited must be converted to percent capture efficiency using Equation 4 of this section. (An alternative for using panel test results expressed in units of mass of VOC per mass of coating solids deposited is presented in paragraph (e)(3) of this section.)

$$CE_i = (P_i)(V_{sdep,i})(100)/(VOC_i) \qquad \text{(Eq. 4)}$$

Where:

CE_i = Capture efficiency for coating, i, or for the group of coatings including coating, i, for the flash-off area or bake oven for which the panel test is conducted, percent.

P_i = Panel test result for coating, i, or for the coating representing coating, i, in the panel test, kg of VOC per liter of coating solids deposited.

$V_{sdep,i}$ = Volume of coating solids deposited per volume of coating used for coating, i, or composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, liter of coating solids deposited per liter of coating used, from Equation 5 of this section.

VOC_i = Mass of VOC per volume of coating for coating, i, or composite mass of VOC per volume of coating for the group of coatings including coating, i, kg per liter, from Equation 6 of this section.

(1) Calculate the volume of coating solids deposited per volume of coating used for coating, i, or the composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, used during the month in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted using Equation 5 of this section:

$$V_{sdep,i} = (V_{s,i})(TE_{c,i}) \qquad \text{(Eq. 5)}$$

Where:

$V_{sdep,i}$ = Volume of coating solids deposited per volume of coating used for coating, i, or composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, liter of coating solids deposited per liter of coating used.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, or average volume fraction of coating solids for the group of coatings including coating, i, liter coating solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = Transfer efficiency of coating, i, or average transfer efficiency for the group of coatings including coating, i, in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted determined according to § 63.3161(g), expressed as a decimal, for example 60 percent must be expressed as 0.60. (Transfer efficiency also may be determined by testing representative coatings. The same coating groupings may be appropriate for both transfer efficiency testing and panel testing. In this case, all of the coatings in a panel test grouping would have the same transfer efficiency.)

(2) Calculate the mass of VOC per volume of coating for coating, i, or the composite mass of VOC per volume of coating for the group of coatings including coating, i, used during the month in the spray booth(s) preceding

described in appendix A to subpart KK of this part.

(g) *Panel testing to determine the capture efficiency of spray booth emissions from solvent-borne coatings.* You may conduct panel testing to determine the capture efficiency of spray booth emissions from solvent-borne coatings using the procedure in appendix A to this subpart.

§ 63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3160. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]" (incorporated by reference, see § 63.14), may be used as an alternative to Method 3B.

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million by volume (ppmv) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppmv or less at the control device outlet.

(3) Use Method 25A if the add-control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = Total gaseous organic emissions mass flow rate, kg per hour (kg/h).

C_c = Concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmv, dry basis.

Q_{sd} = Volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters per hour (dscm/h).

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{f_i}}(100) \qquad \text{(Eq. 2)}$$

Where:

DRE = Organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = Total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = Total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3167 How do I establish the add-on control device operating limits during the performance test?

During the performance test required by § 63.3160 and described in §§ 63.3164 and 63.3166, you must establish the operating limits required by § 63.3093 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3093.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limit according to paragraphs (a)(1) through (3) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use all valid data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(3) As an alternative, if the latest operating permit issued before April 26, 2007, for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the combustion temperature that are consistent with the requirements for thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you do not have an operating permit for the thermal oxidizer at your facility and the latest construction permit issued before April 26, 2007, for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the combustion temperature that are consistent with the requirements for

and fuel supply lines for problems and, as necessary, adjustment of the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed and conduct a new performance test to determine destruction efficiency according to § 63.3166.

(c) *Regenerative carbon adsorbers.* If your add-on control device is a regenerative carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use all valid data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) and (2)of this section.

(1) During the performance test, you must monitor and record the desorption gas inlet temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use all valid data collected during the performance test to calculate and record the average desorption gas inlet temperature. The minimum operating limit for the concentrator is 8 degrees Celsius (15 degrees Fahrenheit) below the average desorption gas inlet temperature maintained during the performance test for that concentrator. You must keep the set point for the desorption gas inlet temperature no lower than 6 degrees Celsius (10 degrees Fahrenheit) below the lower of that set point during the performance test for that concentrator and the average desorption gas inlet temperature maintained during the performance test for that concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3165(a) and that is not capturing emissions from a downdraft spray booth or from a flash-off area or bake oven associated with a downdraft spray booth, establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.3160 and described in §§ 63.3164 and 63.3165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device, using all valid data. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally-spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position

operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Compliance Requirements for the Combined Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Limitations and the Separate Electrodeposition Primer Emission Limitations

§ 63.3170 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of § 63.3160.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of § 63.3160.

§ 63.3171 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); and the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093, using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in § 63.3161(e) through (n), excluding materials used in electrodeposition primer operations, to demonstrate compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b). You must follow the procedures in paragraph (e) of this section to demonstrate compliance with the emission limit in § 63.3092(a), or paragraphs (f) through (g) of this section to demonstrate compliance with the emission limitations in § 63.3092(b).

(e) *Determine the mass fraction of each organic HAP in each material used in the electrodeposition primer operation.* You must determine the mass fraction of each organic HAP for each material used in the electrodeposition primer operation during the compliance period by using one of the options in paragraphs (e)(1) through (3) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of each organic HAP.

(2) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1) and (2) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If there is a disagreement between such information and results of a test conducted according to paragraph (e)(1) or (2) of this section, then the test method results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(f) *Capture of electrodeposition bake oven emissions.* You must show that the electrodeposition bake oven meets the criteria in sections 5.3 through 5.5 of Method 204 of appendix M to 40 CFR part 51 and directs all of the exhaust gases from the bake oven to an add-on control device.

(g) *Control of electrodeposition bake oven emissions.* Determine the efficiency of each control device on each electrodeposition bake oven using the procedures in §§ 63.3164 and 63.3166.

(h) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) was less than or equal to the applicable emission limit in § 63.3090(b) or § 63.3091(b), and the organic HAP emissions from the electrodeposition primer operation met the applicable emissions limitations in § 63.3092(a) or (b), and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

§ 63.3172 [Reserved]

§ 63.3173 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b), the organic HAP emission rate for each compliance period determined according to the procedures in § 63.3171 must be equal to or less than the applicable emission limit in § 63.3090(b) or § 63.3091(b). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3170 is a compliance period consisting of that month. You must perform the calculations in § 63.3171 on a monthly basis.

(b) If the organic HAP emission rate for any 1 month compliance period exceeded the applicable emission limit in § 63.3090(b) or § 63.3091(b), this is a deviation from the emission limitation for that compliance period and must be

retail purchaser is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating.

Container means a receptacle, such as a can, vessel, tote, or tank, in which coatings, solvents or cleaning materials are held, stored, mixed, or carried.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart; used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Day tank means tank with agitation and pumping system used for mixing and continuous circulation of coatings from the paint storage area to the spray booth area of the paint shop.

Deadener means a specialty coating applied to selected vehicle surfaces for the purpose of reducing the sound of road noise in the passenger compartment.

Deadener material means deadener and thinner added to deadener.

Deposited solids means the coating solids which remain on the substrate or object being painted.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard; fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or fails to meet any emission limit or operating limit or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. A deviation is not always a violation.

Electrodeposition primer or electrocoating primer means a process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Also referred to as E-Coat, Uni-Prime, and ELPO Primer.

Emission limitation means an emission limit, operating limit, or work practice standard.

Final repair means the operations performed and coating(s) applied to completely-assembled motor vehicles or to parts that are not yet on a completely assembled motor vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat sensitive components on completely assembled motor vehicles.

Flash-off area means the portion of a coating process between the coating application station and the next coating application station or drying oven where solvent begins to evaporate from the coated vehicle.

Glass bonding adhesive means an adhesive used to bond windshield or other glass to an automobile or light-duty truck body.

Glass bonding primer means a primer applied to windshield or other glass, or to body openings to prepare the glass or body openings for the application of glass bonding adhesive, or the installation of adhesive bonded glass.

Guide coat means *Primer-surfacer.*

In-line repair means the operation performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled motor vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. Also referred to as high bake repair or high bake reprocess. In-line repair is considered part of topcoat.

Light-duty truck means vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 lbs or less.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in §§ 63.3151 and 63.3161. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per mass of coating material.

Paint line means a set of coating operations which includes a topcoat operation and, if present, includes electrodeposition primer, primer-surfacer, final repair, glass bonding primer and glass bonding adhesive operations in which the same new automobile or new light-duty truck bodies, or body parts for new automobiles, or new light-duty trucks are coated. The most typical paint line consists of a set of electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations in which the same new automobile or new light-duty truck bodies are coated.

Paint shop means the collection of all areas at the facility in which new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks are phosphated and coated (including application, flash-off, drying and curing of electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, glass bonding adhesive, deadener, adhesives and sealers); all coating operations added to the affected source pursuant to § 63.3082(c); all areas at the facility in which substrates or equipment are cleaned relating to the coating of new automobile or new light-duty truck bodies, the coating of body parts for new automobiles or new light-duty trucks, or coating operations added to the affected source pursuant to § 63.3082(c); and all areas at the facility used for storage, mixing, conveying and waste handling of coatings, thinners and cleaning materials related to the coating of new automobile or new light-duty truck bodies, the coating of body parts for new automobiles or new light-duty trucks, or coating operations added to the affected source pursuant to § 63.3082(c). If there is no application of topcoat to new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks at the facility, then for purposes of this subpart the facility does not have a paint shop.

TABLE 1 TO SUBPART IIII OF PART 63.—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by
	b. Ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.3167(b)(2); or.	i. Collecting the temperature data according to § 63.3168(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature difference at or above the temperature difference limit; or
	c. Develop and implement an inspection and maintenance plan according to § 63.3167(b)(4).	i. Maintaining an up-to-date inspection maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.3167(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. Regenerative carbon adsorber.	a. The total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.3167(c). b. The temperature of the carbon bed after completing each regeneration and any cooling cycle must not exceed the carbon bed temperature limit established according to § 63.3167(c).	i. Measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.3168(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit. i. Measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.3168(d); and ii. Operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. Condenser	a. The average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.3167(d).	i. Collecting the condenser outlet (product side) gas temperature according to § 63.3168(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. Concentrators, including zeolite wheels and rotary carbon adsorbers.	a. The average desorption gas inlet temperature in any 3-hour period must not fall below the limit established according to § 63.3167(e).	i. Collecting the temperature data according to § 63.3168(f); ii. Reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
6. Emission capture system that is a PTE.	a. The direction of the air flow at all times must be into the enclosure; and either. b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or. c. The pressure drop across the enclosure must be at least 0.007 inch water, as established in Method 204 of appendix M to 40 CFR part 51.	i. Collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.3168(g)(1) or the pressure drop across the enclosure according to § 63.3168(g)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
7. Emission capture system that is not a PTE.	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3167(f).	i. Vollecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3168(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.3168.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart IIII does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes	
63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.3168.
§ 63.8(c)(4)	CMS	No	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.89(c)(5)	COMS	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.8(c)(7)	CMS Out-of-Control Periods	No	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting	No	Section 63.3120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3167 and 63.3168 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.3130 and 63.3131.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, and malfunction records only apply to capture systems and add-on control devices used to comply with the standards.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	

TABLE 3 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 4 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic [c]	0.06	4% Xylene; 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart, and you only know whether the blend is aliphatic or aromatic.
[b] *E.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.
[c] *E.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

Appendix A to Subpart IIII of Part 63—Determination of Capture Efficiency of Automobile and Light-Duty Truck Spray Booth Emissions From Solvent-borne Coatings Using Panel Testing

1.0 Applicability, Principle, and Summary of Procedure.

1.1 Applicability.

This procedure applies to the determination of capture efficiency of automobile and light-duty truck spray booth emissions from solvent-borne coatings using panel testing. This procedure can be used to determine capture efficiency for partially controlled spray booths (*e.g.*, automated spray zones controlled and manual spray zones not controlled) and for fully controlled spray booths.

1.2 Principle.

1.2.1 The volatile organic compounds (VOC) associated with the coating solids deposited on a part (or panel) in a controlled spray booth zone (or group of contiguous controlled spray booth zones) partition themselves between the VOC that volatilize in the controlled spray booth zone (principally between the spray gun and the part) and the VOC that remain on the part (or panel) when the part (or panel) leaves the controlled spray booth zone. For solvent-borne coatings essentially all of the VOC associated with the coating solids deposited on a part (or panel) in a controlled spray booth zone that volatilize in the controlled spray booth zone pass through the waterwash and are exhausted from the controlled spray booth zone to the control device.

1.2.2 The VOC associated with the overspray coating solids in a controlled spray booth zone partition themselves between the VOC that volatilize in the controlled spray booth zone and the VOC that are still tied to the overspray coating solids when the overspray coating solids hit the waterwash. For solvent-borne coatings almost all of the VOC associated with the overspray coating solids that volatilize in the controlled spray booth zone pass through the waterwash and are exhausted from the controlled spray booth zone to the control device. The exact fate of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash is unknown. This procedure assumes that none of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash are captured and delivered to the control device. Much of this VOC may become entrained in the water along with the overspray coating solids. Most of the VOC that become entrained in the water along with the overspray coating solids leave the water, but the point at which this VOC leave the water is unknown. Some of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash may pass through the waterwash and be exhausted from the controlled spray booth zone to the control device.

1.2.3 This procedure assumes that the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone, passes through the waterwash and is exhausted from the controlled spray booth zone to the control device is equal to the portion of the VOC associated with the coating solids deposited on a part (or panel) in that controlled spray booth zone that volatilizes in the controlled spray booth zone, passes through the waterwash, and is exhausted from the controlled spray booth zone to the control device. This assumption is equivalent to treating all of the coating solids sprayed in the controlled spray booth zone as if they are deposited coating solids (*i.e.*, assuming 100 percent transfer efficiency) for purposes of using a panel test to determine spray booth capture efficiency.

1.2.4 This is a conservative (low) assumption for the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone. Thus, this assumption results in an underestimate of conservative capture efficiency. The overspray coating solids have more travel time and distance from the spray gun to the waterwash than the deposited coating solids have between the spray gun and the part (or panel). Therefore, the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone should be greater than the portion of the VOC associated with the coating solids deposited on a part (or panel) in that controlled spray booth zone that volatilizes in that controlled spray booth zone.

1.3 Summary of Procedure.

1.3.1 A panel test is performed to determine the mass of VOC that remains on the panel when the panel leaves a controlled spray booth zone. The total mass of VOC associated with the coating solids deposited on the panel is calculated.

1.3.2 The percent of the total VOC associated with the coating solids deposited on the panel in the controlled spray booth zone that remains on the panel when the panel leaves the controlled section of the spray booth is then calculated from the ratio of the two previously determined masses. The percent of the total VOC associated with the coating solids deposited on the panel in the controlled spray booth zone that is captured and delivered to the control device equals 100 minus this percentage. (The mass of VOC associated with the coating solids deposited on the panel which is volatilized and captured in the controlled spray booth zone equals the difference between the total mass of VOC associated with the coating solids deposited on the panel and the mass of VOC remaining with the coating solids

4.1 If you panel test representative coatings, then you may convert the panel test result for each representative coating from section 3.3 of this appendix A either to a unique percent capture efficiency value for each coating grouped with that representative coating by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A, or to a composite percent capture efficiency value for the group of coatings by using the average values for the group of coatings for mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. The mass fraction of VOC in the coating and the mass fraction of solids in the coating must be determined by Method 24 (appendix A to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

4.2 The percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating solids deposited on the panel that remains on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested is calculated using Equation A–4.

$$Pvoc_{pan,i} = (P_{m,i})(W_{s,i})(100)/(Wvoc_{c,i}) \qquad \text{(Eq. A-4)}$$

Where:

$Pvoc_{pan,i}$ = Percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating solids deposited on the panel that remains on the wet panel when the wet panel leaves the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, percent.

$P_{m,i}$ = Mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested per mass of coating solids deposited on the panel, grams of VOC remaining per gram of coating solids deposited.

$W_{s,i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, grams coating solids per gram coating, determined by Method 24 (appendix A to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings including coating, i, grams VOC per grams coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

4.3 The percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating sprayed in the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested that is captured in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, $CE_{zone,i}$ (percent), is calculated using Equation A–5.

$$CE_{zone,i} = 100 - Pvoc_{pan,i} \qquad \text{(Eq. A-5)}$$

Where:

$CE_{zone,i}$ = Capture efficiency for coating, i, or for the group of coatings including coating, i, in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested as a percentage of the VOC in the coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, percent.

4.4 Calculate the percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the entire volume of coating, i, or with the total volume of all of the coatings grouped with coating, i, sprayed in the entire spray booth that is captured in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, using Equation A–6. The volume of coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, and the volume of coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth may be determined from gun on times and fluid flow rates or from direct measurements of coating usage.

$$CE_i = (CE_{zone,i})(V_{zone,i})/(V_{booth,i}) \qquad \text{S(Eq. A-6)}$$

Where:

CE_i = Capture efficiency for coating, i, or for the group of coatings including coating, i, in the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested as a percentage of the VOC in the coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth in which the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, percent.

$V_{zone,i}$ = Volume of coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, liters.

$V_{booth,i}$ = Volume of coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth containing the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, liters.

4.5 If you conduct multiple panel tests for the same coating or same group of coatings in the same spray booth (either because the coating or group of coatings is controlled in non-contiguous zones of the spray booth, or because you choose to conduct separate panel tests for contiguous controlled spray booth zones), then you may add the result from section 4.4 for each such panel test to get the total capture efficiency for the coating or group of coatings over all of the controlled zones in the spray booth for the coating or group of coatings.

The procedures for calculating the facility-specific emission limit are specified in § 63.4490. In calculating a facility-specific emission limit, you must include coating activities that meet the applicability criteria of other surface coating NESHAP and constitute more than 1 percent of total coating activities at your facility. You must not consider any surface coating activity that is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) in determining a facility-specific emission limit for your facility. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the calculation of the facility-specific emission limit but must be included in the compliance calculations.

■ 7. Section 63.4510 is amended by revising paragraph (b) to read as follows:

§ 63.4510 What notifications must I submit?

* * * * *

(b) *Initial notification.* You must submit the initial notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after April 19, 2004, whichever is later. For an existing affected source, you must submit the initial notification no later than 1 year after April 19, 2004. If you are using compliance with the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (subpart IIII of this part) as provided for under § 63.4481(d) to constitute compliance with this subpart for any or all of your plastic parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those plastic parts coating operations. If you are complying with another NESHAP that constitutes the predominant activity at your facility under § 63.4481(e)(2) to constitute compliance with this subpart for your plastic parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those plastic parts coating operations.

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PART 264—[AMENDED]

■ 8. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925, *et seq.*

■ 9. Section 264.1050 is amended by adding paragraph (h) after paragraph (g) and before the note to read as follows:

§ 264.1050 Applicability.

* * * * *

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

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PART 265—[AMENDED]

■ 10. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935, *et seq.*

■ 11. Section 265.1050 is amended by adding paragraph (g) after paragraph (f) and before the note to read as follows:

§ 265.1050 Applicability.

* * * * *

(g) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

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