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

Form #1

Do Not Mark In This Box

FILED

2002 JUN 12 P 4:35

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WVDEP - Division of Air Quality TITLE NUMBER: 45

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

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: 45CSR25 - "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: July 15, 2002 TIME: 6:00 p.m.

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

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

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Stephanie Timmermeyer, Director
Division of Air Quality
7012 MacCorkle Avenue, SE
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

Authorized Signature

SCANNED

$15.00

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 §§22-18-1 et seq.

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.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on September 30, 1999, and revised the regulation July 10, 2000, May 14, 2001, and again on July 3, 2001. These standards were included in 45CSR25, previously filed and made effective July 1, 2002. The purpose of this rule revision is to incorporate by reference the recent amendments to these standards which were finalized in 67 Federal Register 6792 (February 13, 2002) and 67 Federal Register 6968 (February 14, 2002). In addition, the proposed rule changes are required to maintain consistency with the Division of Waste Management's rule (33CSR20) and with the federal regulations. The consistency of 45CSR25, 33CSR20 and federal regulations is important for final 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 §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 5, 2002 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

Wednesday, June 5, 2002
DMR Conference Room - 10 McJunkin Road, Nitro, WV

ATTENDEES:

Advisory Council Members:

Larry Harris
Bill Samples
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

Bill Adams
Lewis Halstead
James Martin
Brett Loflin
Allyn Turner
Charles Sturey
Ken Ellison
Bill Brannon
Mike Zeto
Greg Adolfson
Jim Mason
Karen Watson

Citizens:

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

Welcome/Opening Remarks - Bill Adams

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his reqrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council

members, an explanation of what group or interest each member represents.

PRESENTATION OF PROPOSED RULES

Division of Mining and Reclamation

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council.
Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

Division of Water Resources

Bill Brannon presented rules 47CSR20 and 47CSR26 to the Council. He stated that general stormwater fees would be $300 rather than the $500 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a $300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

Office of Innovation

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

Division of Waste Management

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council.
Mr. Ellison explained that these two rules are now identical to the federal regulations.

Environmental Enforcement

Mike Zeto presented rule 33CSR8 to the Council.
Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

Office of Oil and Gas

James Martin was introduced as the Chief of the Office of Oil and Gas.
Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

Division of Air Quality

Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.
Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

OTHER BUSINESS

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave

little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.
Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 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 there will be no anticipated changes in costs to administer this rule.

3. Objectives of These Rules:

Amendment of this rule is sought to adopt by reference the Interim Standards rule for Hazardous Air Pollutants for Hazardous Waste Combustors at 67 FR 6792 (2/13/02) and Standards for Hazardous Air Pollutants for Hazardous Waste Combustors at 67 FR 6968 (2/14/02). The proposed rule changes are important for EPA approval/authorization of the WV 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: _____

Signature of Agency Head or Authorized Representative:

_____

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TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION 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 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 §§22-5-1 et seq. and 22-18-1 et seq.

1.3. Filing Date. -- ~~April 16, 2002.~~

1.4. Effective Date. -- ~~July 1, 2002.~~

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, ~~2000~~ 2001.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, ~~2001~~2003, except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts ~~261,~~ 264, 265, 266 and 270 as amended and finalized in ~~65 Federal Register 42292 (July 10, 2000), 66~~

~~Federal Register 24270 (May 14, 2001) and~~ 66 Federal Register 35087 (July 3, 2001), 67 Federal Register 6792 (February 13, 2002) and 67 Federal Register 6968 (February 14, 2002).

§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' 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. "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.~~

~~2.9.~~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.

~~2.10.~~2.9. "EPA" means the United States Environmental Protection Agency.

~~2.11.~~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).

~~2.12.~~2.11. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (July 1, 1999), promulgated by the Division of Health.

~~2.13.~~2.12. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

~~2.14.~~2.13. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

~~2.15.~~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.

~~2.16.~~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 "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 "Hazardous Waste Management Rule", effective July 1, ~~2001~~2003, are hereby adopted by reference, except for any provisions in 33 CSR 20 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 Office of 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, ~~2000~~2001, 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," ~~or~~ "Regional Administrator," "~~The~~ Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" ~~is~~ 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;

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

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

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the Federal Clean Air Act; 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, 45 CSR 6 and 45 CSR 13.

§45-25-5. Permit Process.

5.1. Pre-application Public Meeting and Notice

5.1.a. *Applicability.* The requirements of this section 5.1. shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The 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 "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR 270.42 for a description of permit modifications). The 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 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 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 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 5.1.~~5~~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 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 5.2. shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The 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 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 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 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 5.2.~~6~~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 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 requirements of this section apply to all applications 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 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 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 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 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 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 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 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 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 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 5.8.a. of this section shall be given 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. 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 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 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 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 5.8.e. of this section, all persons identified in section 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 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 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 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 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 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 5.6. of this rule.

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

5.11.a.3. Reopen or extend the comment period under section 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 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 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 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;

5.14.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. 22-5-1 et seq.

§45-25-6. Exclusions and Exemptions.

6.1. Wastes and/or 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, 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.

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 fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

§45-25-8. Inconsistency Between Rules.

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

TABLE 25-A

Item No.	CFR No.		Part No.		Subpart No.		Title
1.	40 CFR	-	264, 265	-	O	-	Incinerator
2.		-	270.19	-	B	-	Specific Requirements for Incinerators
		-	270.42~~(j)~~	-	D	-	Permit Modification at the Request of the Permittee
~~3.~~			~~270.42~~	-	Appendix	-	Appendix I
3.		-	270.62~~, 270.62(b)(6)-270.62(d)~~		F	-	Hazardous Waste Incinerator Permits
4.		-	270.72~~(b)(8)~~	-	G	-	Changes During Interim Status
~~4.~~5.	40 CFR	-	264	-	X	-	Miscellaneous Units
~~5.~~6.		-	270.23	-	B	-	Specific Requirements for Miscellaneous Units
~~6.~~7.	40 CFR	-	264, 265	-	AA	-	Air Emission Standards for Process Vents
~~7.~~8.		-	270.24	-	B	-	Specific Requirements for for Process Vents
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			Appendices	Appendix 1 to XIII
~~14.~~16.	40 CFR	270.22	B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
~~15.~~17	40 CFR	270.66 ~~270.66(d)(3)~~ ~~270.66(g)~~	F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
~~16.~~18.	40 CFR	279.23	C	On-site Burning In Space Heater
~~17.~~19.	40 CFR	279.~~60~~ ~~279.61~~ ~~279.62~~ ~~279.63~~	G	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
~~18.~~20.	40 CFR	270.14(b)(22)	B Application	~~Part B application~~ Permit
		~~270.24(b)(5)~~		~~General Requirements~~
21.	40 CFR	270.1(c)(2)(viii)(C)-	A	General Information
~~19.~~22.	40 CFR	270.30(m)	B	Information repository
~~20.~~23.	40 CFR	261.6(c)(1)	A	Requirements for Recyclable Materials
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24.	40 CFR	261.38	D	Comparable/Syngas Fuel Exclusion
~~21.~~25.	40 CFR	262.34(a)(1)(i) & 262.34(a)(1)(ii)	C	Accumulation Time
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~~24.~~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.

Federal Register

Wednesday,
February 13, 2002

Part II

Environmental Protection Agency

40 CFR Part 63 et al.
NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264, 265, 266, 270, and 271

[FRL–7143–3]

RIN 2050–AE79

NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 30, 1999, EPA promulgated standards to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. A number of parties sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. In its decision, the Court invited EPA or any of the parties that challenged the regulations to file a motion with the Court to request either that the current standards remain in place, or that EPA be allowed time to develop interim standards, pending further time in which EPA develops standards complying with the Court's opinion. On October 19, 2001, EPA, together with all other petitioners, jointly moved the Court to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The motion contemplates that EPA will issue final standards by June 14, 2005. The joint motion also details other actions EPA intends to take. These actions include promulgating, by February 14, 2002, a rule with amended interim emission standards and several compliance and implementation amendments to the rule which EPA proposed on July 3, 2001. The Court has granted this motion and stayed issuance of its mandate until February 14, 2002.

Today's rule amends the September 1999 emission standards, with certain provisions amended as set out in the parties' joint motion. The rule also adopts the compliance and implementation amendments described in that motion. Although this Interim Standards Rule results in emission reductions that are less stringent than those of the September 1999 rule, we believe it achieves most of the emission gains of that rule. Promulgation of the rule now, before the Court issues its mandate, also avoids the severe problems relating to developing the Maximum Achievable Control Technology (MACT) on a source-by-source basis pursuant to section 112(j)(2) of the Clean Air Act, which applies if there are no national standards in place. We believe that adopting this Interim Standards Rule now best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry and affected state and federal administrative agencies.

DATES: Effective Date: This final rule is effective on February 13, 2002.

Compliance Date: You are required to comply with these promulgated standards by September 30, 2003.

ADDRESSES: You may view the docket to this rulemaking in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket number is F–2002–RC7F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Frank Behan at 703–308–8476, *behan.frank@epa.gov*, or Michael Galbraith at 703–605–0567, *galbraith.michael@epa.gov*, or write to them at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Acronyms Used in the Rule

APCD—Air pollution control device
ASME—American Society of Mechanical Engineers
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
COMS—Continuous opacity monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency dscf—Dry standard cubic feet dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
NESHAP—National Emission Standards for HAPs ng—Nanograms
NIC—Notice of Intent to Comply
NOC—Notification of compliance
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
TEQ—Toxicity equivalence

Official Record. The official record is the paper record maintained at the address in **ADDRESSES** above.

Supporting Materials Availability on the Internet. Supporting materials are available on the Internet. To access the information electronically from the World Wide Web, type *http://www.epa.gov/epaoswer/hazwaste/combust.*

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Part One—What Events Led Up to This Rule?

I. What Is the Background?

A. What Is the Phase I Rule?

Today's notice finalizes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants, pursuant to section 112(d) of the Clean Air Act (CAA) to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed presently (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA) (and may ultimately be imposed under section 112(f) of the Clean Air Act as well).

Section 112(d) of the CAA requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's rule, we refer to these three categories collectively as hazardous waste combustors (HWC).

B. How Did the Court's Opinion To Vacate Challenged Portions of the Rule and the Parties' Joint Motion To Stay the Mandate Affect Phase I and Today's Rule?

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the Phase I rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. *Cement Kiln Recycling Coalition v. EPA*, 255 F. 3d 855 (D.C. Cir. 2001). The Court held that EPA had not demonstrated that the standards met the statutory requirement of being no less stringent than (1) the average emission limitation achieved by the best performing 12 percent of existing sources and (2) the emission control achieved in practice by the best controlled similar source for new sources. 255 F.3d at 861, 865–66. As a remedy, the Court, after declining to rule on most of the issues presented in the Industry petitions for review, vacated the "challenged regulations," stating that: "[W]e have chosen not to reach the bulk of industry petitioners" claims, and leaving the regulations in place during remand would ignore petitioners' potentially meritorious challenges." *Id.* at 872. Examples of the specific challenges the Court indicated might have merit were provisions relating to compliance during start up/shut down and malfunction events, including emergency safety vent openings, the dioxin standard for lightweight aggregate kilns, and the semi-volatile metal standard for cement kilns. *Id.* However, the Court stated, "[b]ecause this decision leaves EPA without standards regulating [hazardous waste combustor] emissions, EPA (or any of the parties to this proceeding) may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards." *Id.*

Acting on this invitation, all parties moved the Court jointly to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The interim standards will replace the vacated standards temporarily, until final standards are promulgated.

The motion indicates that EPA would issue final standards which fully comply with the Court's opinion by June 14, 2005, and it indicates that EPA and Petitioner Sierra Club intend to enter into a settlement agreement requiring us to promulgate final rules by that date, and that date be judicially enforceable. The joint motion also details other actions we agreed to take, including issuing a one-year extension to the September 30, 2002 compliance date (66 FR 63313, December 6, 2001), and promulgating by February 14, 2002 several of the compliance and implementation amendments to the rule which we proposed on July 3, 2001 (66 FR 35126). These final amendments will be published in tomorrow's **Federal Register**. The joint motion can be viewed and downloaded from EPA's Hazardous Waste Combustion Website: *http://www.epa.gov/epaoswer/hazwaste/combust/preamble.htm.*

We believe that implementation of today's interim standards will be beneficial to the regulated community, the state implementing programs, and the environment. Compliance with these interim standards will result in emissions reductions sooner than if the hazardous waste combustion standards were vacated. It also provides a more orderly transition to final standards than if the current rules were vacated without replacement standards being in place due to the operation of the so-called hammer provisions of section 112(j)(2) and 112(g)(2) of the CAA. These hammer provisions are discussed in the next section.

II. Good Cause for Issuing the Rule

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.[1] EPA so finds here.[2]

First, the regulated community and environmental community have had actual notice of the contents of this rule, and opportunity to comment upon it, due to the exhaustive negotiations leading to filing of the joint motion on October 19, 2001, which motion recited the projected contents of this Interim Standards Rule. It is well-settled that actual notice satisfies all obligations to provide notice and opportunity for comment as to those persons. *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F. 2d 506, 548 (D.C. Cir. 1983).

Second, with respect to entities that were not part of this negotiating process, EPA finds that there is good cause to issue the rule without prior proposal in order to avoid the consequences of not having a standard in place. The consequence of vacating the present rule before EPA promulgates a replacement rule is that the statutory "hammer" provisions would operate with respect to major sources, and that there would be no CAA standards for area sources.[3] Congress required that EPA promulgate national standards to control emissions of hazardous air pollutants by designated dates. Congress also added the hammer provisions to create a strong incentive to assure that those standards are adopted and go into force. Section 112(j)(2) of the Act thus provides that "[i]n the event that the Administrator fails to promulgate a standard for a category * * * of major sources by the date established pursuant to subsection (e)(1) and (3) of this section," prescribed consequences occur. 42 U.S.C. 7412(j)(2). The first of these is that "18 months after such date, the owner or operator of any major source in such category * * * shall submit a permit application." *Id.* Permit writers (either federal or state) must then establish emission limitations for each major source which they "determin[e], on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)." *Id.* 42 U.S.C. 7412(j)(5). These site-specific permit limitations can be superseded by subsequently promulgated national standards. Should such a standard be promulgated, the permitting authority "shall revise such permit upon the next renewal to reflect the standard * * * providing such a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the [site-specific emission standard], whichever is earlier." *Id.* § 7412(j)(6). Thus there could be considerable delay before sources are subject to a national CAA section 112(d) standard once a section 112(j)(5) permit is issued.

There are significant adverse consequences of vacating the existing rule and allowing the section 112(j) hammer to operate:

A. Failure To Control Area Sources

The hammer requirement applies only to major sources of hazardous air pollutants. We determined, pursuant to CAA section 112(c)(3), however, that regulation of all hazardous waste combustor area sources (*i.e.*, sources below the major source threshold) is necessary because of the threat of potential adverse effects to human health or the environment posed by these sources. 64 FR at 52837–52838. If this Interim Standards Rule is not adopted now, before the mandate issues, these area sources would not be subject to any CAA standards for hazardous air pollutants until the compliance date for the projected 2005 rule.

B. No National Standards for Major Sources for a Long Period

If this Interim Standards Rule is not issued now, major hazardous waste combustor sources would not be subject to national CAA MACT standards for a prolonged period. Even if the case-by-case permitting process goes smoothly, permitting authorities have up to 18 months to issue such permits after a complete application is filed. See 40 CFR 70.4(b)(6). The permitting authority could then allow up to a 3-year compliance date (42 U.S.C. 7412(j)(5)), so that sources may not be subject to emission standards until 2006. Yet these sources were to have been subject to national standards no later than November 2003. CAA sections 112(e)(1) and (i)(3).

C. Case-by-Case Permit Standards Delaying Compliance With More Stringent National Standards

Case-by-case permit limitations do not have to be modified to reflect more stringent subsequent national standards until the permit is renewed or until 8 years from the date the national standard is promulgated or 8 years from the time the permit is issued, whichever is earlier. CAA section 112(j)(6). A scenario thus could result where major sources receive case-by-case permits in 2004 before EPA issues a national rule, and then might not have to comply with a national standard until 2012. This result is again far later than the expected 2003 date for compliance with national section 112(d) standards.

D. Inconsistent Permit Standards

The case-by-case permitting process, with its hundreds of separate determinations, necessarily raises the prospect of potentially inconsistent determinations. The general statutory scheme, however, is that sources in a category or subcategory will be subject to a common standard. Such inconsistency could also lessen the degree of emission reduction Congress contemplated in requiring that sources be subject to national technology-based standards developed pursuant to section 112(d).

E. Adverse Consequences to Regulated Sources

The case-by-case permitting process also poses adverse consequences for regulated sources. The immediate burden is to submit permit applications to federal or state permit-writing authorities. Some industry sources may also face the possibility that individual permit limits could be so inconsistent with later national standards that the source will have to develop a new strategy for achieving emission reductions (with consequent loss of investment in the equipment needed to comply with the case-by-case permit), and the prospect of continuing to comply with Resource Conservation and

[1] Section 553 of the Administrative Procedure Act does apply here, even though issues of rulemaking procedure under the Clean Air Act are normally controlled by CAA section 307(d). See CAA section 307(d)(1) final sentence, indicating that the CAA provisions do not apply to rules covered by section 553(b)(B) of the Administrative Procedure Act.

[2] EPA notes as well that certain of the provisions adopted today (those dealing with the revised standards and compliance provisions) are the subject of prior notice and opportunity for comment, so that no good cause finding is required for such provisions. In addition, for all of the provisions of the rule which we are repromulgating in existing form, notice and opportunity for comment is unnecessary since these provisions have already been the subject of exhaustive notice and comment rulemaking.

[3] EPA's interpretation that the hammer provisions apply is based on the statutory language and evident Congressional purpose to create a default mechanism whenever there are no national Clean Air Act section 112(d) standards in place on or after the hammer date. See also *Steel Mfr's Ass'n* v. *EPA*, 27 F. 3d 642, 647–48 (D.C. Cir. 1994) holding that EPA reasonably construed analogous hammer provisions of the Resource Conservation and Recovery Act to apply if a rule is issued but vacated so as not to be in place on the hammer date.

Recovery Act (RCRA) permit conditions for air emissions.

F. Administrative Burdens

The administrative burdens on EPA and on States administering CAA permit programs likewise will be significant if a case-by-case permitting process is triggered if this rule is not promulgated by the mandate issuance date. Processing many permit applications from hazardous waste combustors, and trying to develop standards equivalent to maximum achievable control technology on a case-by-case basis, can only further complicate an already exceedingly difficult permit-issuance task.

EPA notes further that in the scarce time between the Court issuing an order staying its mandate and the present, we have used best efforts to provide notice of this projected Interim Standards Rule. We posted the joint motion and appendices on websites, and also solicited comment on these documents in the section 112(g) settlement notice published in the **Federal Register** on November 16, 2001. 66 FR 57715. We have responded to all of the comments received on that notice. However, it has proved impossible to provide further notice and opportunity for comment given the lack of time before issuance of the mandate, and the need for EPA to focus on development of the 2005 final standards, which will implement MACT for these sources.

Therefore, in light of the fact that Congress intended for national standards to already be in place for hazardous waste combustors, and that a case-by-case permitting regime for those combustors could have adverse consequences for regulated sources, state and federal permitting authorities, and for the environment, we believe that there is good cause for this rule to issue without additional notice and opportunity for comment. *Small Refiner Lead Phase-Down Task Force*, 705 F.2d at 545–46 (inviting EPA to issue an interim standards rule to avoid a regulatory gap and noting that there probably exists "good cause" under 5 U.S.C. 553(b)(B) to issue the rule without prior notice and opportunity for comment). EPA also finds that good cause exists under U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

III. What Is Included in This Rule?

In this rulemaking, we are retaining the existing Part 63, Subpart EEE, regulations, except for the following changes:

- We are revising certain emission standards as follows: (a) The semi-volatile metals standard for new incinerators; (b) the semi-volatile metals standard for existing cement kilns; (c) the mercury standard for new cement kilns; (d) the dioxin standard for new and existing lightweight aggregate kilns; (e) the mercury standard for new and existing lightweight aggregate kilns; (f) the hydrochloric acid/chlorine gas standard for new and existing lightweight aggregate kilns.
- We are providing an alternative means for lightweight aggregate kilns and cement kilns to comply with the mercury standard to allow sources to comply with a hazardous waste mercury feedrate limit in lieu of complying with an emission standard. Sources electing to comply with this option will be required to notify the RCRA permitting authority that they are complying with this option.
- We are revising the startup, shutdown and malfunction ("SSM") provisions to provide that emission standards and operating requirements set forth in the rule apply at all times except during periods of startup, shutdown and malfunction. The revised rule subjects hazardous waste combustors to the same general MACT SSM provisions that apply to most sources, except that revised automatic waste feed cutoff requirements continue to apply during most SSM events, and sources must determine whether the SSM plan should be revised if excessive exceedances of operating requirements when hazardous waste is in the system occur during these events. Such exceedances will not constitute violations of the operating requirements. In addition, owners and operators of hazardous waste combustors must select either RCRA option or a CAA option to control emissions from startup, shutdown, and malfunctions. Under the RCRA options, operating conditions in the RCRA permit will minimize emissions during these events. Under the CAA option, the SSM plan must be proactive in minimizing emissions from these events, and must be submitted to the delegated CAA authority for review and approval. Finally, we are revising the emergency safety vent ("AESV") opening provisions to provide that if there is hazardous waste in the combustion chamber, and there is an ESV opening that is not a malfunction, the source must document whether it remains in compliance with applicable standards, and file a report if there is noncompliance.

In addition, we are making the following regulatory revisions to compensate for the possibility that sources may be required to comply with permanent replacement emission standards (i.e., the final standards that comply with the Court's opinion and that must be promulgated by June 14, 2005) that are significantly different than the Interim Standards in today's rulemaking. Such an outcome could result in loss of capital investment. As a result, we believe these provisions are appropriate since they could lessen this potentially negative financial impact.

- Amending the performance testing requirements of 40 CFR 63.1207 to allow previously collected data, regardless of age, to serve as documentation of compliance with the interim emission standards provided that these data meet quality assurance requirements and are sufficient to establish operating parameter limits;
- Amending the performance testing provisions such that all subsequent comprehensive performance tests (that is, those after the initial comprehensive performance test) for the interim standards are automatically waived; and,
- Amending the confirmatory performance testing provisions to eliminate the requirement to conduct confirmatory performance testing during the period that the interim standards are in effect.

Part Two—What Revisions Are We Making in This Rule?

I. What Are the Interim Standards?

In today's rulemaking, we are replacing the vacated emission standards temporarily until final standards are promulgated by June 14, 2005.[4] EPA notes that this Interim Standards Rule does not respond to the Court's mandate regarding the need to demonstrate that EPA's methodology reasonably predicts the performance of the average of the best performing twelve percent of sources (or best-performing source). EPA intends to address those issues in a subsequent rule, which will necessarily require a longer time to develop, propose, and finalize. However, some type of Interim Standards Rule is needed now, for the reasons explained in Part One, Section II above. These standards, to some degree, represent negotiated interim levels agreed to by the parties to the Joint Motion (both industry and environmental, as well as EPA). In EPA's view, these standards preserve critical parts of the September 30, 1999

[4] In a final rule published on December 6, 2001, we extended for one year the compliance date requirement of § 63.1206(a) for the interim emission standards until September 30, 2003. See 66 FR 63313.

rule unchanged, and achieve approximately 93 percent of the emissions reductions for existing sources which the original rule would have attained. Given the need to expeditiously adopt an Interim Standards Rule to avoid outright vacature (with the attendant adverse consequences described in the previous section), and the fact that the Court indicated that some of the industry challenges had potential merit (so that repromulgating all of the September 30,1999 rule was not a realistic possibility), EPA believes that this rule represents a reasonable interim measure. The numerical values of most existing emission standards are being retained except for the changes outlined above and discussed below. Given that the emission standards will be vacated when the Court issues an order called a mandate (expected on or after February 14, 2002), we are repromulgating the emissions standards of §§ 63.1203 through 63.1205, not just those standards that are being revised.

A. New and Existing Incinerators

The interim emission standards for new and existing hazardous waste incinerators are identical to the standards promulgated on September 30, 1999, except that the semivolatile metals standard for new incinerators is revised to 120 µg/dscm. We are revising § 63.1203(b)(3) and repromulgating § 63.1203 accordingly.

We are also correcting two typographic errors in § 63.1203(c)(2). In the second sentence of this paragraph, we are replacing the word "tetro-" with the word "tetra-." We are also inserting the word "to" before the word "calculate" in the third sentence of the paragraph.

The interim emission standards are summarized below.

INTERIM STANDARDS FOR EXISTING AND NEW INCINERATORS

Hazardous air pollutant or hazardous air pollutant surrogate	Interim emission standard [1]	
	Existing sources	New sources
Dioxin/Furan	0.20 ng TEQ [2] dscm; or 0.40 ng TEQ/dscm and temperature at inlet to the initial particulate matter control device ≤400° F.	0.20 ng TEQ/dscm.
Mercury	130 µg/dscm	45 µg/dscm.
Particulate Matter	34mg/dscm (0.015gr/dscf)	34mg/dscm (0.015gr/dscf).
Semivolatile Metals	240 µg/dscm	120 µg/dscm.
Low Volatile Metals	97 µg/dscm	97 µg/dscm.
Hydrochloric Acid/Chlorine Gas	77 ppmv	21 ppmv.
Hydrocarbons [3 4]	10 ppmv (or 100 ppmv carbon monoxide)	10 ppmv (or 100 ppmv carbon monoxide).
Destruction and Removal Efficiency	For existing and new sources, 99.99% for each principal organic hazardous constituent (POHC) designated. For sources burning hazardous wastes F020, F021, F022, F023, F026, or F027, 99.9999% for each POHC designated.	Same as for existing incinerators.

[1] All emission levels are corrected to 7 percent oxygen.
[2] Toxicity equivalent quotient, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8–TCDD.
[3] Hourly rolling average. Hydrocarbons are reported as propane.
[4] Incinerators that elect to continuously comply with the carbon monoxide standard must demonstrate compliance with the hydrocarbon standard of 10 ppmv during the comprehensive performance test.

B. New and Existing Cement Kilns

The interim emission standards for new and existing hazardous waste burning cement kilns are identical to the standards promulgated on September 30, 1999, with two exceptions. The semivolatile metals standard for existing cement kilns and the mercury standard for new cement kilns are revised to 330 µg/dscm and 120 µg/dscm, respectively. In today's rule, we are revising §§ 63.1204(a)(3) and (b)(2) and repromulgating § 63.1204 accordingly.

We are also correcting two typographic errors in § 63.1204(c)(2). In the second sentence of this paragraph, we are replacing the word "tetro-" with the word "tetra-." We are also inserting the word "to" before the word "calculate" in the third sentence of the paragraph.

Finally, we are providing an alternative means for new and existing cement kilns to comply with the interim mercury standard. Under this alternative, new and existing cement kilns are allowed to comply with a hazardous waste maximum theoretical emissions concentration [5] of mercury of 120 µg/dscm. This new operating requirement for mercury from cement kilns is conceptually similar to the alternative mercury standard provisions that we promulgated in the September 30, 1999 rule. See § 63.1206(b)(10) (alternative standard where source demonstrates that it cannot meet emission standard as a result of mercury levels in raw material feedstocks). The feedrate operating requirement alternative ensures that the hazardous waste mercury contribution to emissions—MACT control for cement kilns as promulgated in the final rule—will always be below the mercury standard.

The alternative to the interim mercury standard is based on the combined hazardous waste feedstreams to the kiln and may be expressed either as a maximum theoretical emissions concentration or as a restriction on maximum hazardous waste mercury mass feedrate and minimum gas flow rate. Sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emissions concentration limit. In addition, sources are not required to monitor for mercury in their raw material for compliance purposes. Sources are also required to notify the RCRA permitting authority that they are electing to comply with this option. See § 63.1206(b)(15). The RCRA permitting authority may determine on a case-by-case basis under § 270.32(b)(2) that additional operating requirements may be needed to ensure protection of human health and the environment.

The interim emission standards are summarized below.

[5] Maximum theoretical emissions concentration or MTEC is a term to compare metals and chlorine feedrates across sources of different sizes. MTEC is defined as the metals or chlorine feedrate divided by the gas flow rate and is expressed in units of µg/dscm.

INTERIM STANDARDS FOR EXISTING AND NEW CEMENT KILNS

Hazardous air pollutant or hazardous air pollutant surrogate	Interim emission standard [1]	
	Existing sources	New sources
Dioxin and Furan	0.20 ng TEQ/dscm; or 0.40 ng TEQ/dscm and control of flue gas temperature not to exceed 400°F at the inlet to the particulate matter control device.	0.20 ng TEQ/dscm; or 0.40 ng TEQ/dscm and control of flue gas temperature not to exceed 400°F at the inlet to the particulate matter control device.
Mercury	120 µg/dscm	120 µg/dscm.
Particulate Matter [2]	0.15 kg/Mg dry feed and 20% opacity	0.15 kg/Mg dry feed and 20% opacity.
Semivolatile Metals	330 µg/dscm	180 µg/dscm.
Low Volatile Metals	56 µg/dscm	54 µg/dscm.
Hydrochloric Acid and Chlorine Gas	130 ppmv	86 ppmv.
Hydrocarbons: Kilns without By-pass [3,6]	20 ppmv (or 100 ppmv carbon monoxide) [3]	Greenfield kilns: 20 ppmv (or 100 ppmv carbon monoxide and 50 ppmv [5] hydrocarbons). All others: 20 ppmv (or 100 ppmv carbon monoxide) [3].
Hydrocarbons: Kilns with By-pass; Main Stack. [4,6]	No main stack standard	50 ppmv [5].
Hydrocarbons: Kilns with By-pass; By-pass Duct and Stack. [4,6]	10 ppmv (or 100 ppmv carbon monoxide)	10 ppmv (or 100 ppmv carbon monoxide).
Destruction and Removal Efficiency	For existing and new sources, 99.99% for each principal organic hazardous constituent (POHC) designated. For sources burning hazardous wastes F020, F021, F022, F023, F026, or F027, 99.9999% for each POHC designated.	

[1] All emission levels are corrected to 7% O_2, dry basis.
[2] If there is an alkali by-pass stack associated with the kiln or in-line kiln raw mill, the combined particulate matter emissions from the kiln or in-line kiln raw mill and the alkali by-pass must be less than the particulate matter emissions standard.
[3] Cement kilns that elect to comply with the carbon monoxide standard must demonstrate compliance with the hydrocarbon standard during the comprehensive performance test.
[4] Measurement made in the by-pass sampling system of any kiln (e.g., alkali by-pass of a preheater and/or precalciner kiln; midkiln sampling system of a long kiln).
[5] Applicable only to newly-constructed cement kilns at greenfield sites (see discussion in Part Four, Section VII.D.9). The 50 ppmv standard is a 30-day block average limit. Hydrocarbons are reported as propane.
[6] Hourly rolling average. Hydrocarbons are reported as propane.

C. New and Existing Lightweight Aggregate Kilns

The interim emission standards for new and existing hazardous waste burning lightweight aggregate kilns are identical to the standards promulgated on September 30, 1999, with the following exceptions. The dioxin and furan standard for both new and existing lightweight aggregate kilns is revised to 0.20 ng TEQ/dscm or rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) to 400°F or lower. This interim emission standard for dioxin and furans preserves the intent of the standard promulgated on September 30, 1999. That is, the temperature limitation of 400°F ensures that each lightweight aggregate kiln will be operating, at a minimum, consistent with sound operational practices for controlling dioxin and furan emissions. Accordingly, we are revising §§ 63.1205(a)(1) and (b)(1). We are also revising the mercury standard for new and existing sources of §§ 63.1205(a)(2) and (b)(2) to 120 µg/dscm. Finally, we are revising the hydrochloric acid/chlorine gas standard for new and existing lightweight aggregate kilns to 600 ppmv. See revised §§ 63.1205(a)(6) and (b)(6).

We are also correcting two typographic errors in § 63.1205(c)(2). In the second sentence of this paragraph, we are replacing the word "tetro-" with the word "tetra-." We are also inserting the word "to" before the word "calculate" in the third sentence of the paragraph.

Finally, we are providing the same alternative means for new and existing lightweight aggregate kilns to comply with the interim mercury standard as finalized in today's rule for cement kilns (discussed above). Under this alternative, new and existing lightweight aggregate kilns are allowed to comply with a hazardous waste maximum theoretical emissions concentration of mercury of 120 µg/dscm. See § 63.1206(b)(15).

We are today repromulgating § 63.1205 with these changes, as summarized below.

INTERIM STANDARDS FOR EXISTING AND NEW LIGHTWEIGHT AGGREGATE KILNS

Hazardous air pollutant or hazardous air pollutant surrogate	Interim emission standard [1]	
	Existing sources	New sources
Dioxin/Furan	0.20 ng TEQ/dscm; or rapid quench of the flue gas at the exit of the kiln to less than 400°F.	0.20 ng TEQ/dscm; or rapid quench of the flue gas at the exit of the kiln to less than 400°F.
Mercury	120 µg/dscm	120 µg/dscm.
Particulate Matter	57 mg/dscm (0.025 gr/dscf)	57 mg/dscm (0.025 gr/dscf).
Semivolatile Metals [2]	250 µg/dscm	43 µg/dscm.
Low Volatile Metals [3]	110 µg/dscm	110 µg/dscm.
Hydrochloric Acid/Chlorine Gas	600 ppmv	600 ppmv.
Hydrocarbons [2,4]	20 ppmv (or 100 ppmv carbon monoxide)	20 ppmv (or 100 ppmv carbon monoxide).

INTERIM STANDARDS FOR EXISTING AND NEW LIGHTWEIGHT AGGREGATE KILNS—Continued

Hazardous air pollutant or hazardous air pollutant surrogate	Interim emission standard [1]	
	Existing sources	New sources
Destruction and Removal Efficiency	For existing and new sources, 99.99% for each principal organic hazardous constituent (POHC) designated. For sources burning hazardous wastes F020, F021, F022, F023, F026, or F027, 99.9999% for each POHC designated.	

[1] All emission levels are corrected to 7% O_2, dry basis.
[2] Hourly rolling average. Hydrocarbons are reported as propane.
[3] Lightweight aggregate kilns that elect to continuously comply with the carbon monoxide standard must demonstrate compliance with the hydrocarbon standard of 20 ppmv during the comprehensive performance test.

II. What Are the Revisions to the Startup, Shutdown, and Malfunction Requirements?

The September 1999 final rule requires compliance with the emission standards and operating requirements at all times that hazardous waste is in the combustion system (i.e., before the hazardous waste residence time has transpired), including during startup, shutdown, and malfunctions. See § 63.1206(b)(1)(i). This requirement was intended to create an incentive to minimize exceedances when burning hazardous waste during startup, shutdown, and malfunctions. For example, to minimize the frequency and severity of exceedances during malfunctions, you could take various measures including providing for spare parts and redundant systems.

Industry stakeholders note that requiring compliance with emission standards and operating requirements during startup, shutdown, and malfunctions is inconsistent with the General Provisions of Subpart A, Part 63, that apply to MACT sources.[6] Although requirements for particular source categories can be more or less stringent than the General Provisions (which provisions serve as a default), stakeholders state that requiring compliance with emission standards and operating requirements during malfunctions is not appropriate. The purpose of the startup, shutdown, and malfunction plan required under § 63.1206(c)(2), and by reference § 63.6(e)(3), is: (1) To ensure that the combustor, including emission control equipment, is operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by the standards; (2) to ensure that owners and operators are prepared to correct malfunctions as soon as practicable; and (3) to minimize the reporting burden associated with excess emissions. Stakeholders conclude that it is inappropriate to penalize a source for exceeding emission standards and operating requirements during malfunctions because some exceedances are unavoidable and they are already required to take the corrective measures prescribed in the startup, shutdown, and malfunction plan to minimize emissions.

In response to stakeholder concerns, today's rule: (1) Exempts you from the Subpart EEE emission standards and operating requirements during startup, shutdown, and malfunctions; (2) continues to subject sources to RCRA requirements during malfunctions, unless they comply with alternative MACT requirements including expanding the startup, shutdown, and malfunction plan to minimize the frequency and severity of malfunctions, and submit the plan to the delegated CAA authority for review and approval; (3) continues to subject sources that burn hazardous waste during startup and shutdown to RCRA requirements for startup and shutdown, unless they comply with alternative MACT requirements, and requires them to include waste feed restrictions and operating conditions and limits in the startup, shutdown, and malfunction plan; (4) requires sources to include in the startup, shutdown, and malfunction plan a requirement to comply with the automatic hazardous waste feed cutoff system during startup, shutdown, and malfunctions; and (5) makes conforming revisions to the emergency safety vent opening requirements.

A. What Are the Revised Requirements for Malfunctions?

We agree with stakeholders that the startup, shutdown, and malfunction plan should minimize emissions during malfunctions and are revising the rule to conform with the General Provisions. The revised rule exempts you from the MACT emission standards and operating requirements during startup, shutdown, and malfunctions, even if hazardous waste is in the combustion system during such events. See revised § 63.1206(b)(1)(i).

We are concerned, however, that even though following the corrective measures in response to malfunctions that you prescribe in the startup, shutdown, and malfunction plan should minimize emissions during these events, the plan may not minimize the frequency and severity[7] of exceedances, and thus may not minimize emissions from these events. In other words, the startup, shutdown, and malfunction plan is largely reactive to malfunctions rather than proactive. Thus, we are concerned that our RCRA mandate to ensure protection of human health and the environment may not be achieved without additional controls. In fact, existing RCRA regulations require compliance with emission standards and operating requirements at all times that hazardous waste is in the combustion chamber (see § 264.345(a) for incinerators and § 266.102(e)(1) for cement and lightweight aggregate kilns), and EPA has found that this provision is necessary to protect human health and the environment.[8] Thus, any replacement to the existing standards must (at a minimum) provide an equivalent degree of protection to satisfy RCRA requirements. Accordingly, today's rule gives you the option of complying with RCRA requirements or CAA requirements that achieve the equivalent objective of minimizing emissions during malfunctions.

We discuss below how these options work for various RCRA permitting situations.

1. Facilities With Existing RCRA Permits

When a source with a RCRA permit for the combustion unit documents

[6] Joint Brief of Industry Petitioners, US Court of Appeals for the District of Columbia Circuit, No. 99–1457 et al. *Cement Kiln Recycling Coalition, et al.*, v. *USEPA*, Aug. 16, 2000, p. 86.

[7] The duration and magnitude of excess emissions from a particular type of malfunction can be minimized by proactive as well as reactive measures.

[8] Specific hazardous wastes under specific conditions may be exempt from the emission standards and operating requirements, however. See § 264.340(c) for incinerators, and §§ 266.108 and 266.109 for cement and lightweight aggregate kilns.

compliance with the MACT standards and requests that duplicative permit conditions be removed from the permit, the source must comply with one of the following options to minimize emissions during malfunctions: (1) The requirements of § 264.345(a) for incinerators and § 266.102(e)(1) for cement and lightweight aggregate kilns; or (2) revised RCRA permit conditions that minimize emissions from malfunctions; or (3) the procedures you prescribe in a startup, shutdown, and malfunction plan that is expanded to be proactive as well as reactive to minimize emissions from malfunctions,[9] and that is subject to review and approval by the delegated CAA authority. See new § 270.235(a)(1). We have also made conforming revisions to §§ 264.340(b)(1), 265.340(b)(1), 266.100(b)(2)(i), 270.19(e), 270.22 (introductory text), 270.62 (introductory text), and 270.66 (introductory text) to require compliance with §§ 264.345(a) and 266.102(e)(1) only during malfunctions and only if you elect the option that requires compliance with those provisions (i.e., § 270.235(a)(1)(i)).

Similarly, the rule requires sources that are being reissued a RCRA permit for the combustion unit (and that have documented compliance with the MACT standards) to comply with options that parallel those discussed above to minimize emissions during malfunctions. See new §§ 270.235(a)(2).

a. How Does the RCRA Option Work to Minimize Emissions during Malfunctions? Under the RCRA option to minimize emissions during malfunctions, a source with a RCRA permit (and that has documented compliance with the MACT standards) and that is requesting that duplicative RCRA permit conditions be removed from the permit must either: (1) Remain subject to the RCRA permit conditions implementing § 264.345(a) for incinerators and § 266.102(e)(1) for cement and lightweight aggregate kilns during malfunctions [10] while hazardous waste is in the combustion chamber; or (2) request that the current RCRA permit conditions be revised to provide alternative means of ensuring that emissions from malfunctions are minimized.[11] [12] See new §§ 270.235(a)(1)(i) and (a)(1)(ii).

The rule allows you to revise the current RCRA permit conditions to control emissions during malfunctions because, for example, you may want to request to comply with a subset of your existing permit conditions, or you may want to request to comply with a limit on the number of exceedances during malfunctions when hazardous waste is in the combustion chamber in lieu of complying with all of the RCRA emission standards and associated operating limits during malfunctions.

Under this option when you request to revise your RCRA permit conditions, the permit writer will consider information including whether your startup, shutdown, and malfunction plan is both proactive and reactive, and the source's design and operating history. Because the permit writer's decision to revise your permit conditions addressing emissions from malfunctions is based, in part, on review of the startup, shutdown, and malfunction plan and the design of the source, the rule also requires that you notify the delegated RCRA authority in writing within 5 days of making a change to the plan or design of the source that may significantly increase emissions of toxic compounds [13] from malfunctions. In addition, you must recommend revisions to permit conditions necessary as a result of the change to minimize emissions of toxic compounds from malfunctions. The delegated RCRA authority may revise the permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized from malfunctions upon permit renewal, or if warranted, by modifying the permit under §§ 270.41(a) or 270.42.

A source that is being reissued a permit for the combustor (and that has documented compliance with the MACT standards) must address RCRA permit conditions to control emissions during malfunctions under any of three options that parallel those discussed above for a permitted source that is requesting that duplicative RCRA permit conditions be removed from the permit. See new § 270.235(a)(2). Under "RCRA Option A," the delegated RCRA authority will include in the (reissued) permit conditions that ensure compliance with § 264.345(a) for incinerators and § 266.102(e)(1) for cement and lightweight aggregate kilns during malfunctions. See § 270.235(a)(2)(i). Under "RCRA Option B," the delegated RCRA authority will include in the permit conditions that ensure emissions of toxic compounds are minimized from malfunctions. These permit conditions could be a subset of the permit conditions that would be required to comply with §§ 264.345(a) or 266.102 (e)(1). Because permit officials will consider information including the startup, shutdown, and malfunction plan, you must notify the delegated RCRA authority of changes to the plan that may significantly increase emissions of toxic compounds from malfunctions. The notification procedures and consideration of permit revisions as a result of changes to the plan are identical to those discussed above. See § 270.235(a)(2)(ii).

b. How Does the CAA Option Work to Minimize Emissions during Malfunctions? Under the CAA option, you must develop a proactive startup, shutdown, and malfunction plan and submit the plan to the delegated CAA authority for review and approval. Because the plan is both proactive and reactive, it is equivalent to the incentive provided by the RCRA options discussed above (i.e., exceedances of RCRA emission standards or associated operating limits while hazardous waste is in the combustion chamber is a violation) to minimize emissions of hazardous air pollutants from malfunctions when hazardous waste is in the combustion chamber.[14] Accordingly, for a source with a RCRA permit (and that has documented compliance with the MACT standards) that selects this option to address emissions during malfunctions, the delegated RCRA authority will remove relevant permit conditions addressing malfunctions when the source requests that duplicative RCRA permit conditions be removed from the permit. See § 270.235(a)(1)(iii). Similarly, for a source that is in a permit reissuance

[9] That is, the plan must identify actions you are taking to minimize the frequency and severity of malfunctions as well as the corrective measures you will take during a malfunction.

[10] When using the term "malfunction" with respect to RCRA requirements, we mean the definition of malfunction provided by § 63.2.

[11] Please note a change to the design or operation of the combustor that could increase emissions of toxic compounds from burning hazardous waste during malfunctions must be approved through a permit modification under §§ 270.41(a) or 270.42. Under the permit modification, RCRA permit officials will determine whether the permit conditions relevant to controlling emissions from malfunction must be revised.

[12] When retaining or revising RCRA permit conditions to control emissions during malfunctions, the delegated RCRA authority will ensure that the permit contains only those conditions relevant to controlling emissions during malfunctions. For example, under the option where RCRA permit conditions are revised, the permit could retain a subset of the RCRA emission standards and operating limits necessary to comply with §§ 264.345(a) and 266.102(e)(1) during malfunctions. But, permit officials could also consider whether the RCRA monitoring, recordkeeping and reporting requirements should be revised to be more consistent with the MACT requirements.

[14] Please note RCRA permit writers also generally require owners and operators to take proactive measures to minimize emissions from malfunctions.

proceeding (and that has documented compliance with the MACT standards) and that selects this option to address emissions during malfunctions, the delegated RCRA authority will omit from the permit conditions addressing malfunctions upon permit reissuance. See § 270.235(a)(2)(iii).

To implement this option, you include in the startup, shutdown, and malfunction plan a description of potential causes of malfunctions and actions you are taking to minimize the frequency and severity of malfunctions. See revised § 63.1206(c)(2)(ii). You may develop a fault tree analysis, for example, to identify malfunctions and develop measures to minimize the frequency and severity of those malfunctions. Examples of measures would be providing spare parts and redundant systems.

In addition, you must submit the startup, shutdown, and malfunction plan to the delegated CAA authority for review and approval to ensure that it is complete and both proactive and reactive to minimize emissions of hazardous air pollutants from malfunctions. The delegated CAA authority also will ensure that the potential malfunctions identified in the plan are bona fide malfunctions. Malfunctions are events that are a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless or improper operation (including improper or inadequate characterization of feedstreams) are not malfunctions.[15] See definition of malfunction in § 63.2.

The procedures for approving the startup, shutdown, and malfunction plan provide you the opportunity to revise the plan if the delegated CAA authority intends to disapprove the plan. The delegated CAA authority will notify you of approval or intention to deny approval within 90 calendar days after receipt of the approval request, and within 60 calendar days after receipt of any supplemental information that you submit. Before disapproving the plan, the delegated CAA authority will notify you of the intention to disapprove the plan together with the basis for intending to disapprove the plan and notice of opportunity for you to present additional information before final action on disapproval of the plan.

Further, if you change the plan in a manner that may significantly increase emissions of hazardous air pollutants from malfunctions, you must request approval from the delegated CAA authority within 5 days after making the change, under the same procedures described above for initial approval of the plan.

2. Interim Status Facilities

Sources operating under the interim status standards of Part 265, Subpart O, or § 266.103 must comply with either of the following options to minimize emissions during malfunctions after they document compliance with the MACT standards by conducting a comprehensive performance test and submitting a Notification of Compliance: (1) A RCRA option where the source continues to comply with the interim status emission standards and operating requirements relevant to control of emissions from malfunctions and where those standards and requirements apply only during malfunctions; or (2) a CAA option where the owner or operator is exempt from the interim status standards relevant to control of emissions of toxic compounds during malfunctions upon submittal of written notification and documentation to the delegated RCRA authority that the startup, shutdown, and malfunction plan has been approved by the Administrator. See new § 270.235(b)(1). These options parallel the options discussed above and work as discussed above.

When a source operating under the interim status standards of Part 265, Subpart O, or § 266.103 (and that has documented compliance with the MACT standards) submits a RCRA permit application, the source must comply with one of the three options provided for sources that are being reissued a RCRA permit, as discussed above. See new § 270.235(b)(2). These situations are analogous because the source is being issued a new permit in both cases.

B. Why Does the Revised Rule Require You To Include the Automatic Waste Feed Cutoff Requirements in the Startup, Shutdown, and Malfunction Plan?

We are revising the rule to require compliance with the automatic waste feed cutoff requirements during malfunctions. You must include the automatic waste feed cutoff requirements in the startup, shutdown, and malfunction plan by reference. This requirement applies irrespective of whether you choose the RCRA or CAA approach under § 270.235 to minimize emissions from malfunctions, as discussed above.

We conclude that compliance with the automatic waste feed cutoff requirements is necessary to comply with § 63.6(e)(3)(i)(A) which requires you to operate in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards. Good operating practices during a malfunction includes cutting off the hazardous waste feed.

An exceedance of a Subpart EEE emission standard or operating requirement during a malfunction identified in your startup, shutdown, and malfunction plan would not be a violation, however, provided that you followed the corrective measures prescribed in a plan that meets the requirements of § 63.6(e)(3).

In addition, today's rule requires you to reevaluate your startup, shutdown, and malfunction plan if you experience 10 exceedances of a Subpart EEE emission standard or operating parameter limit during malfunctions in a 60-day block period while hazardous waste remains in the combustion chamber (i.e., when the hazardous waste residence time has not transpired). You must complete, within 45 days of the 10th exceedance, an investigation of the cause of each exceedance and evaluation of approaches to minimize the frequency, duration, and severity of each exceedance, and revise the startup, shutdown, and malfunction plan as warranted by the evaluation. Finally, you must record the results of the investigation and evaluation in the operating record and include a summary of the findings, and any changes to the startup, shutdown, and malfunction plan, in the excess emissions report required under § 63.10(e)(3).

C. What Are the Revised Requirements for Burning Hazardous Waste During Startup and Shutdown?

As discussed above, the revised rule exempts you from the MACT emission standards and operating requirements during startup, shutdown and malfunctions. See revised § 63.1206(b)(1)(i). We are concerned, however, that burning hazardous waste during startup and shutdown can be problematic. During startup and shutdown, a combustor is not operating under steady-state conditions. For example, the combustion chamber temperature fluctuates during startup and shutdown and at times will be lower than required to achieve good combustion and minimize emissions of

[15] Operations during a failure that are not malfunctions are subject to the applicable emission standards and operating requirements of Subpart EEE. See § 63.1206(b)(1)(i). Thus, an exceedance of an applicable emission standard or operating limit as a result of a failure that is not a malfunction is a violation irrespective of whether hazardous waste is in the combustion chamber.

organic hazardous pollutants. Because hazardous waste combustors can burn fuels that are not hazardous wastes (e.g., fossil fuel) during startup and shutdown, it generally is not appropriate to burn hazardous waste at these times. Accordingly, RCRA regulations require compliance with the RCRA emission standards and operating limits during startup and shutdown (which, as a practical matter, prohibits burning hazardous waste at these times), except for only one or two narrow exemptions. See § 264.345(c) for incinerators and § 266.102(e)(2)(iii) for cement and lightweight aggregate kilns.

By exempting you from the MACT emission standards and operating requirements during startup and shutdown (and malfunctions), today's revised rule allows you to continue burning those specific hazardous wastes that are currently allowed under RCRA to be burned during startup and shutdown. This is reasonable because there may be situations where burning hazardous wastes containing low levels of toxic compounds during startup and shutdown may result in equivalent or lower emissions of hazardous air pollutants than burning fossil fuels. For example, hazardous spent solvents may combust more completely during startup and shutdown than coal or No. 6 fuel oil which is the alternative fuel for many combustors. In these situations, you may be able to burn hazardous waste during startup and shutdown while meeting the requirements of § 63.6(e)(3)(i)(A) (which requires you to operate at all times in a manner consistent with good air pollution control practices for minimizing emissions at least to levels required by all relevant standards).

Given that today's rule exempts you from the MACT emission standards and operating requirements during startup and shutdown, the rule provides the following alternative requirements for sources that burn hazardous waste during startup and shutdown. When a source with a RCRA permit for the combustion unit documents compliance with the MACT standards and requests that duplicative permit conditions be removed from the permit, the source must comply with one of the following options to minimize emissions during startup and shutdown: (1) the requirements of § 264.345(c) for incinerators and § 266.102(e)(2)(iii) for cement and lightweight aggregate kilns restricting the types of hazardous waste that can be burned during startup and shutdown; or (2) revised RCRA permit conditions that meet the objective of those provisions (i.e., to minimize emissions during startup and shutdown); or (3) the waste feed restrictions (e.g., type and quantity) and other operating conditions and limits that you include in the startup, shutdown, and malfunction plan, which is subject to review and approval by the delegated CAA authority. See new § 270.235(a)(1).[16] We have made conforming revisions to §§ 264.340(b)(1), 265.340(b)(1), 266.100(b)(2)(i), 270.19(e), 270.22 (introductory text), 270.62 (introductory text), and 270.66 (introductory text) to require compliance with §§ 265.345(c) and 266.102(e)(1) only during startup and shutdown and only if you elect the option that requires compliance with those provisions (i.e., § 270.235(a)(1)(i)).

Thus, similar to the requirements for malfunctions, today's rule gives you the option of using either a RCRA or CAA approach to ensure that you minimize emissions from startup and shutdown. These options work as discussed above for malfunctions. You may retain or revise your RCRA permit requirements that control emissions during startup and shutdown, or, under the CAA option, you may request that the RCRA permit requirements be deleted.

The rule also requires you to comply with the automatic waste feed cutoff system to minimize emissions during startup and shutdown. See § 63.1206(c)(2)(v)(B). You must interlock operating limits you establish to minimize emissions during startup and shutdown with the automatic waste feed cutoff system. To implement this requirement, you must include the waste feed restrictions (e.g., type and quantity) and other operating conditions and limits that are necessary to minimize emissions while feeding waste during startup and shutdown. See § 63.1206(c)(2)(v)(B)(*1*).

Finally, the rule allows sources in other RCRA permitting situations to comply with RCRA options or a CAA option to minimize emissions during startup and shutdown after they document compliance with the MACT standards. These situations are: (1) Permit reissuance; (2) complying with MACT while operating under RCRA interim status; and (3) interim status sources submitting a RCRA permit application. The RCRA and CAA options for these situations are identical to those discussed above to control emissions during malfunctions.

[16] Please note § 63.1206(c)(2)(v)(B) requires sources that feed hazardous waste during startup or shutdown to include waste feed restrictions and other appropriate operating conditions and limits in the startup, shutdown, and malfunction plan irrespective of which option the source selects to minimize emissions during those events. Under the RCRA options for controlling emissions during startup and shutdown, however, you are not required to submit the startup, shutdown, and malfunction plan to the delegated CAA authority for review and approval.

D. What Are the Conforming Revisions to the Emergency Safety Vent Opening Requirements?

Emergency safety vents are designed to allow combustion gases to bypass the emission control system during emergencies to preclude catastrophic consequences such as explosions or fires in the emission control equipment. We are revising the emergency safety vent opening requirements under § 63.1206(c)(4) to conform to the revisions to the startup, shutdown, and malfunction plan requirements. Under today's revision, the MACT emission standards and operating requirements do not apply to openings that occur as a result of a malfunction. See revised § 63.1206(b)(1)(i).

In addition, we are revising the rule to no longer presume that an emergency safety vent opening under operations other than a malfunction defined in the startup, shutdown, and malfunction plan (i.e., when the emission standards and operating requirements continue to apply) is evidence of failure to comply with an emission standard. See revised § 63.1206(c)(4)(i). For example, if feedrates of metals and chlorine were well below their limits when the safety vent opened under operations other than a malfunction, the metals and chlorine emission standards may not be exceeded. Rather, the revised rule places the burden on you to document in the operating record whether you remain in compliance with the emission standards when the emergency safety vent opens. In addition, as required by the current rule, you must submit to the delegated CAA authority a written report within 5 days of an ESV opening that results in failure to meet the emission standard documenting the result of the investigation of the cause of the opening and corrective measures taken. See §§ 62.1206(c)(4)(iii) and (iv).

III. What Changes Are We Making to the Performance Testing Requirements for the Interim Standards Rule?

We are amending three performance test provisions in today's rule. First, we are revising the "data in lieu of the initial comprehensive performance test" provision to allow you to submit test data irrespective of when the test was conducted. Second, we are amending the comprehensive performance testing frequency provisions such that you will only be required to conduct one comprehensive performance test for the interim standards. Third, we are not requiring you to conduct dioxin/furan

confirmatory tests for the interim standards. See revised § 63.1207(c) and (d).

A. Why Are We Revising the Data in Lieu Provisions?

The September 1999 final rule allows you to request that previous emissions test data serve as documentation of conformance with the emission standards provided that the previous testing was initiated after March 30, 1998 and provided the data is sufficient to establish appropriate operating parameter limits. This date was subsequently changed to March 30, 1999 as a result of extending the compliance date one year. See 66 FR 63313. Today we are amending this requirement to allow you to submit test data even though the testing was initiated prior to March 30, 1999, i.e., prior to four years and eight months before the compliance date.

Stakeholders indicated that some sources have emissions data that were collected before March 30, 1999 that could be used to demonstrate compliance with the MACT standards and establish appropriate operating limits. Stakeholders reason that the age restriction on data-in-lieu emissions tests should be waived for the initial test in order to counter the additional costs associated with having to comply with two potentially different sets of emission standards at different times. We agree, noting that these sources were in compliance with the MACT standards well before the compliance date. However, we emphasize that, consistent with the existing requirements, these data must: (1) meet the appropriate quality assurance objectives; (2) originate from testing conditions that satisfy the operating condition requirements of § 63.1207(g)(1); and (3) be sufficient to establish all appropriate operating parameter limits required pursuant to § 63.1209.

B. Why Are We Waiving Periodic Comprehensive Performance Testing Under the Interim Standards?

The September 1999 final rule requires you to begin subsequent comprehensive testing no later than 61 months after the date of commencing the initial comprehensive performance test. Today we are waiving the requirement to conduct periodic comprehensive performance testing for the interim standards. You are required to conduct only one comprehensive performance test for the duration of the interim standards. See new § 63.1207(d)(4)(i).

Pursuant to the settlement agreement with the Sierra Club (see 66 FR 57715, November 16, 2001), EPA must promulgate permanent standards that replace today's interim standards no later than June 14, 2005. Following this schedule, your new compliance date for the replacement standards could be approximately June of 2008, in which case you would have to conduct your test to demonstrate compliance with these replacement standards no later than June of 2009.[17] This would roughly coincide with the deadline for conducting your second comprehensive performance test under today's interim standards, absent today's revision.

We conclude that a second interim standards comprehensive test would not be needed given that, by that time, the interim standards will have already been replaced with the permanent replacement standards. It would not be appropriate to require you to prepare (e.g., submit a performance test plan a year in advance of the scheduled test date) to conduct a second compliance test under today's interim standards that no longer apply while also requiring you to prepare to conduct the initial compliance test for the replacement standards shortly thereafter. We conclude this amendment is necessary to assure a smooth transition between the interim standards and the permanent replacement standards.

C. Why Are We Waiving the Dioxin/Furan Confirmatory Test Under the Interim Standards?

The September 1999 final rule requires you to begin your initial dioxin/furan confirmatory test no later than 31 months after the date of commencing your initial comprehensive performance test. Today we are waiving the dioxin/furan confirmatory performance testing requirement under the interim standards. See new § 63.1207(d)(4)(ii). You are not required to conduct a confirmatory compliance test while the interim standards are in effect.

Absent this amendment, you would have to commence your first confirmatory compliance test under the interim standards no later than October of 2006. As discussed above, we project that the compliance date for the standards that will replace today's interim standards could be about June of 2008. Some sources may be in process of upgrading their facility in October of 2006 to comply with the permanent replacement standards. We conclude that it would be problematic to require sources to simultaneously upgrade their facility and conduct a dioxin/furan confirmatory compliance test under the interim standards. Thus, to conclude that exempting sources from the confirmatory compliance test requirements while the interim standards are in effect is reasonable and appropriate.

IV. Why Are We Deleting the Minimum Power Requirement for Ionizing Wet Scrubbers?

Today's rule deletes the limit on minimum total power to an ionizing wet scrubber. See § 63.1209(m)(1)(i)(D). Until we promulgate compliance assurance procedures for ionizing wet scrubbers, sources and permitting officials should use the alternative monitoring provisions of § 63.1209(g) to identify appropriate controls on a site-specific basis.

On May 14, 2001, we issued a final rule implementing, among other things, a court order to vacate operating parameter limits for electrostatic precipitators and baghouses. 66 FR at 24272. The Agency voluntarily requested that the Court vacate the operating parameter limits at §§ 63.1209(m)(1)(ii) and (m)(1)(iii) because the Agency inadvertently did not provide opportunity for public comment on revisions to the proposed operating parameter limits.

One of the vacated operating parameter limits was a limit on minimum secondary power to each field of an electrostatic precipitator. We had proposed a minimum limit on only total secondary power to the precipitator in May 1996. But, we determined after review of comments and further investigation that a limit on minimum total power will not ensure that collection efficiency of a multistage electrostatic precipitator is maintained. Rather, we concluded that a limit on minimum secondary power to each field of the precipitator is needed. Consequently, we declined to replace the vacated minimum limit on power to each field of the precipitator with a limit on total power to the precipitator, as originally proposed. Subsequently, in July 2001, we proposed to reinstate the limit on minimum secondary power to each field of the precipitator, but also discussed other compliance assurance alternatives that may provide equivalent or better compliance assurance, and requested comment on those alternatives. 66 FR at 35143–35144.

In the July 3, 2001 proposal regarding compliance assurance approaches for electrostatic precipitators, we

[17] This assumes sources will be allowed to conduct the comprehensive performance test not later than one year after the compliance date for the permanent replacement standards.

inadvertently neglected to propose to delete the minimum total power operating parameter limit for ionizing wet scrubbers at § 63.1209(m)(1)(i)(D) and propose those same compliance assurance alternatives for ionizing wet scrubbers. An ionizing wet scrubber is essentially an electrostatic precipitator integrated with a packed bed scrubber where particulate matter is collected on both the plates of the precipitator and the bed packing material.

Today's final rule simply deletes the requirement to establish an operating limit on minimum total power to an ionizing wet scrubber at § 63.1209(m)(1)(i)(D). We are not replacing the total power limit with a limit on minimum power to each field of the ionizing wet scrubber, as we proposed on July 3, 2001 for electrostatic precipitators, because we need additional time to review and evaluate comments received on the compliance assurance alternatives we discussed in that proposal. Until we promulgate compliance assurance requirements for ionizing wet scrubbers and electrostatic precipitators, sources and regulatory officials should use the alternative monitoring provisions under § 63.1209(g) to establish appropriate compliance requirements on a site-specific basis.

V. What Are the Monitoring Requirements for Carbon Beds?

We are deleting the requirement to establish a limit on the useful life of a carbon bed or bed segment and associated requirements to verify compliance with the dioxin/furan (and mercury) emission standard prior to the end of the life of the bed. See (deleted) § 63.1209(k)(7)(i). In lieu of that requirement, the revised rule requires you to monitor performance of the bed according to manufacturer's specifications to ensure that the bed has not reached the end of its useful life.

The existing rule allowed you to use the manufacturer's specification to establish the limit on carbon bed age rather than the actual age of the bed during the performance test when demonstrating compliance with the dioxin/furan (and mercury) emission standard during the initial comprehensive performance test. If you used the manufacturer's specification for bed age, you were required to recommend in the initial comprehensive performance test plan a schedule for subsequent dioxin/furan emissions testing to demonstrate that the initial limit on maximum bed age ensures compliance with the dioxin/furan (and mercury) emission standard.

In response to stakeholders' concerns with the existing rule, we proposed amendments to these provisions to clarify our intent regarding confirmatory testing to verify compliance with the dioxin/furan emission standard prior to the end of the bed's life. See 66 FR at 35141–35142 (July 3, 2001).

Several commenters state that the proposed requirement to perform confirmatory testing to verify that the source is in compliance with emission standards at the manufacturer's recommended bed age may be burdensome and unnecessary. Emissions testing to confirm bed age may either require testing in addition to periodic comprehensive performance testing and dioxin/furan confirmatory testing or that a source replace the bed on the anniversary of the comprehensive performance test or the dioxin/furan confirmatory test, even though the manufacturer may recommend a longer bed life.

In addition, one commenter is concerned that infrequent (e.g., once every several years) emissions testing to confirm compliance with the dioxin/furan and mercury emissions standards does not ensure the carbon bed is operated and maintained "in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards," as required by § 63.6(e)(3)(i)(A). The commenter recommends use of manufacturer's specifications and recommendations for periodic, frequent monitoring to ensure the bed is performing as designed.

We agree with commenters and are deleting the requirement to establish a limit on maximum bed life and the associated requirement to conduct emissions testing to confirm compliance with the dioxin/furan and mercury standards.[18] Instead, we are substituting the following requirements consistent with the comments we received. You must: (1) Monitor performance of the carbon bed consistent with manufacturer's specifications to ensure the carbon bed (or bed segment for beds with multiple segments) has not reached the end of its useful life to minimize dioxin/furan and mercury emissions at least to the levels required by the emission standards; (2) document the monitoring procedures in the operation and maintenance plan; (3) record results of the performance monitoring in the operating record; and (4) replace the bed or bed segment before it has reached the end of its useful life. See revised § 63.1209(k)(7)(i) and conforming revisions to § 63.1209(l)(4).

VI. Can a Source Be Granted an Extension of Compliance for the Interim Standards?

As a result of the uncertainty created by the Court's opinion, we previously determined that it was not appropriate to require sources to comply with the regulatory schedule promulgated in the September 30, 1999 rule. Accordingly, we recently extended the compliance date requirement of § 63.1206(a) for one year until September 30, 2003. See 66 FR 63313 (December 6, 2001). We are clarifying today that the recent change to the compliance date requirements of § 63.1206(a) do not preclude a source from requesting an extension of compliance with the emission standards as provided in §§ 63.6(i) and 63.1213. See § 63.1206(b)(4). Sections 63.6(i) and 63.1213 allow the Administrator or State with an approved title V program to grant an extension of compliance of up to one year for a source that cannot complete system retrofits or pollution prevention and waste minimization measures by the compliance date despite a good faith effort to do so.

VII. Why Are We Repromulgating the Hourly Rolling Average Temperature Limit at a Dry Particulate Matter Control Device To Control Dioxin/Furan Emissions?

The provision finalized in the September 1999 rule that requires you to maintain compliance with the dioxin/furan emission standard by operating under a maximum temperature limit at the inlet to the dry particulate matter control device based on a one-hour rolling average was challenged and briefed by Industry in the *Cement Kiln Recycling Coalition* litigation.[19] Given that the challenged provisions will be vacated when the Court issues its mandate, we are repromulgating this compliance provision, consistent with our approach of repromulgating the challenged emissions standards that were not revised. See § 63.1209(k)(1) and preamble discussion in Part Two, Section I.

As we explained in detail in the record to the September 1999 rule, this

[18] Note that this amendment does not alter the requirement to demonstrate compliance with all emission standards every five years (i.e., comprehensive performance testing), and the requirement to confirm compliance with the dioxin/furan emission standard midway between comprehensive performance tests (i.e., confirmatory performance testing). The amendment simply deletes the potentially additional dioxin/furan (and mercury) emission test prior to the end of the manufacturer's recommended life of the carbon bed to verify compliance with those emission standards.

[19] Joint Brief of Industry Petitioners, US Court of Appeals for the District of Columbia Circuit, No. 99–1457 et al. Cement Kiln Recycling Coalition, et al., v. USEPA, Aug. 16, 2000.

monitoring requirement is needed to assure that the emission standard is not exceeded. It is well-established that the relationship between dioxin/furan formation and temperature at the inlet to a dry particulate matter control device (e.g., fabric filter, electrostatic precipitator) is non-linear and exponential; that is, dioxin formation increases at a faster rate than temperature. Thus, an increase in temperature above the site-specific limit will increase formation of dioxin more than an equal reduction below the limit will reduce dioxin formation (and consequently emissions at lowered temperature will not balance out those emitted at the higher temperature). See generally Technical Support Document Vol. 4 chapters 2 and 3.[20] We consequently view the monitoring requirement as a form of enhanced monitoring required by section 114 (a)(3) of the Act to "provide a reasonable assurance of compliance with emission standards." *NRDC* v. *EPA*, 194 F. 3d 130, 136 (D.C. Cir. 1999).

We noted in the July 3, 2001 proposed rule that we do not view the temperature monitoring requirement as being an amendment to the standard. See 66 FR at 35138 n. 20. One commenter, however, reiterated claims briefed in the *Cement Kiln Recycling Coalition* litigation maintaining that requiring sources to establish a limit on maximum temperature at the inlet to a dry particulate matter control device to control dioxin/furan emissions on an hourly rolling average effectively amends the standard. We disagree.

Compliance with dioxin/furan emission standard is demonstrated by stack emissions testing. Neither the standard nor the stack test method prescribes any particular averaging time, or other monitoring regime, for achieving a temperature level. Therefore, using a one-hour averaging time does not amend the standard.

However, even if (against our view) the requirement to monitor temperature on an hourly rolling average is considered a change to the emission standard, it can be justified as a beyond the floor standard under CAA section 112 (d) (2). First, the standard is readily achievable technically. Spray quenching, the means of control, merely requires turning of a control valve to allow quenching. 4 TSD at 2–16. Operators can readily determine when quenching is needed, since thermocouples report instantaneous temperature changes, allowing immediate reaction to temperature changes. 4 TSD at 2–10. Second, we have already considered this cost (i.e., the cost of spray quenching) in determining the standards for HWCs. We do not believe that there would be any incremental cost associated with the one-hour averaging requirement, because it is based on the same spray quenching technology which is the basis for the standards already adopted. We also included the cost of controlling spray quenching to meet the one-hour monitoring requirement in assessing costs of the September 1999 rule, and regard these costs as reasonable. See generally Technical Support Document Volumes III, IV, and V. See also 64 FR at 52892 (finding that the cost of spray quenching technology for lightweight aggregate kilns is reasonable, in adopting the beyond-the-floor standard for dioxin). In addition, as explained above, the one-hour averaging requirement is needed to prevent exceedances of the emission standard itself, see 4 TSD at 2–8 to 2–9 and 3–8 to 3–9. Given dioxin/furan's extreme toxicity, costs are justified to assure that the emission limit is not exceeded. Finally, we do not believe there are any adverse non-air or energy impacts associated with the averaging requirement (and again, we have already assessed energy impacts and waste generation impacts of the standard when promulgating the standard in the first place). See generally Technical Support Document Vol. 5, "Emissions Estimates and Engineering Costs" (RC2F–S0011) chapter 10.

[20] In light of this documented non-linear increase in CDD emissions, RCRA permit writers are cautioned to take this phenomenon into account in making risk determinations pursuant to the RCRA omnibus permitting provision. Cf. 64 FR at 52839–843 (description of the site specific risk assessment policy which implements the RCRA omnibus permitting provision, and its relationship to sources subject to the Hazardous Waste Combustor NESHAP).

Part Three—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—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;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues. 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.

The aggregate annualized social costs for this final rule are less than $100 million. Furthermore, this rule is not expected to adversely effect, 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. The benefits to human health and the environment resulting from today's final action have not been fully monetized but are believed to be less than $100 million per year. Overall, the costs and benefits associated with this final Interim Standards Rule are essentially the same as those estimated for the September 30, 1999 rule. These impacts are discussed below in more detail.

II. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. This assumes full monetization of all relevant components. All other factors being equal, a rule that generates positive net welfare would be advantageous to society and should be promulgated, while a rule that results in negative net welfare to society should be avoided. In this Part we discuss the estimated costs and benefits of the interim standards.

Today's rule revises some emission standards and various other requirements promulgated in the September 30, 1999 rule. As discussed in Part Two, Section I of this action, while some of the emission standards are revised; most are retained as promulgated in that rule. In addition to modification of some standards, this rule provides cement and lightweight aggregate kiln sources the alternative to comply with the mercury standard by limiting the mercury content in the

hazardous waste to a certain level. Today's rule also includes revisions intended to reduce the potential for forfeited capital investments. This could occur if the future standards (i.e., the standards that will replace the interim standards) are substantially different (more stringent) than those established by this Interim Standards Rule. These changes include eliminating the requirement for confirmatory testing for dioxin and furans during the period that the interim standards are in effect; allowing the use of previously collected data to serve as documentation of compliance with the interim standards; and waiving all subsequent comprehensive performance tests (i.e., those after the initial comprehensive performance test) for the period that the interim standards are in effect. Finally, we are revising the startup, shutdown, and malfunction (SSM) provisions and emergency safety vent opening provisions.

In support of today's final rule we have developed preliminary cost and benefit estimates for the interim standards. These estimates, as presented below, are generalized quantified projections based on our findings as presented in the July 1999 *Assessment*[21], and the July 23 1999 *Addendum*[22]. We have not quantified impacts potentially associated with the other aspects of today's rule. Impacts associated with today's final rule will be fully characterized, modeled in detail, and incorporated as the baseline scenario in our analysis for the upcoming rule that will establish final standards.

Cost impacts (savings and increases) of the emission standards vary by source category. The interim standards for existing incinerators are identical to the standards promulgated in the September 30, 1999 rule. As a result, estimated impacts to existing incinerators are equivalent to the impacts presented in the *Addendum* to the September 30, 1999 rule. The interim emission standards for existing cement kilns are equivalent to the September 30, 1999 rule standards, except for semivolatile metals. The semivolatile metals emission standard in this Interim Standards Rule is increased from 240 µg/dscm to 330 µg/dscm. This change is estimated to result in a 5 percent decrease in total annual compliance costs for this source, as compared to costs presented in the *Addendum*. The interim emission standards for existing hazardous waste burning lightweight aggregate kilns are modified from the final rule standards for dioxin and furan, mercury, and hydrochloric acid/chlorine gas. Projected from the 1999 final rule baseline, these changes are estimated to reduce per system and aggregate annual compliance costs by about one-third for this source category.

The aggregate annualized social cost impacts associated with the interim standards reflect only a marginal reduction from the impacts associated with the September 30, 1999 rule. The total annualized social costs resulting from today's interim standards are estimated to range from $47 million to $60 million, with a high-end estimate of $74 million. The annualized social cost impacts of the September 30, 1999 rule were estimated to range from $50 to $61 million, with a high-end estimate of $75 million (See *Addendum* tables ADD–6, ADD–7, and ADD–8). All benefits associated with today's final rule have not been monetized. The *Addendum* estimated average monetized human health benefits of approximately $20 million per year[24] for selected primary pollutants. Approximately 90 percent of this total was derived from reductions in particulate matter emission levels. Since the particulate matter emission standard for each source category for the interim standards is unchanged, these estimated average monetized human health benefits are retained. Although not monetized, reduced lead exposure to children was another projected benefit. Ecological and waste minimization benefits were also anticipated as a result of the September 30, 1999 final rule[24]. While full monetization of all benefits (human health, ecological, waste minimization) is not feasible, we believe that these benefits justify the aggregate social costs. Overall, when projected from the September 30, 1999 baseline, aggregate annualized social costs for all sources are projected to decline by no more than 6 percent, while annual monetized plus non-monetized benefits may be only marginally reduced[25].

These findings are presented in more detail in the economic support document: *Preliminary Impacts Assessment—Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors*. This document is available in the docket established for today's action.

III. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.?

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each NAICS code by the Small Business Administration (SBA).

The Agency has examined the potential effects today's final rule may have on small entities, as required by the RFA/SBREFA. We have determined that this action will not have a significant economic impact on a substantial number of small entities. This is evidenced by the fact that the small entity analysis conducted in support of the September 30, 1999 final rule[26] concluded that significant impacts would not occur on a substantial number of potentially impacted small entities. Today's action results in marginally reduced cost

[21] U.S. EPA, Office of Solid Waste, "Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule", July 1999.

[22] U.S. EPA, Office of Solid Waste, "Addendum to the Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule," July 23, 1999.

[23] Undiscounted estimate for future cases avoided.

[24] See the July 1999 "*Assessment*" for a full discussion of these benefits.

[25] The majority of the cancer risk reductions were linked to the consumption of dioxin-contaminated agricultural products. The dioxin and furan standards in the Interim Standards Rule remain the same for incinerators and cement kilns and are modified slightly for lightweight aggregate kilns. Because baseline emissions of dioxin and furans from incinerators and cement kilns represent approximately 95 percent of the emissions from the three source categories combined, we estimate that most benefits discussed in the 1999 Assessment are retained.

Semivolatile metals are comprised of lead and cadmium. Lead exposure above certain levels has been linked to childhood IQ reductions and high blood pressure in adults. Potential benefits from reduced lead exposure were discussed but not monetized in the Addendum. Because approximately 70 percent of total semivolatile metals reductions (from all three source categories) were from incinerators, we estimate the semivolatile standard in today's Interim Standards Rule may correlate to marginally reduced lead benefits for children and/or adults.

[26] U.S. EPA, Office of Solid Waste, *Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule*, July 1999, Appendix G.

impacts, as measured from the September 30, 1999 findings. As such, it is logical to presume that impacts to small entities subject to rule requirements may be equivalent to the final rule impacts, or marginally reduced. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

IV. Was the Unfunded Mandates Reform Act Considered in This Final Rule?

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), calls on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments. Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action is not subject to the relevant requirements of UMRA. This rule will not result in $100 million or more in expenditures. Applying the pre final rule baseline, total social costs for today's final action are estimated to range from $47 million to $60 million per year. Furthermore, today's rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. We have determined that this rule will not significantly or uniquely affect small governments.

V. Were Equity Issues and Children's Health Considered in This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

(1) Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (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, the Agency 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. Today's final rule is not subject to the Executive Order (EO) because it is not economically significant, as defined by EO 12866.

(2) Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). We have no data indicating that today's final action would result in disproportionately negative impacts on minority or low income communities.

VI. What Consideration Was Given to Tribal Governments in This Final Rule?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal

governments, nor impose substantial direct compliance costs on them.

VII. Were Federalism Implications Considered in Today's Final Rule?

Executive Order 13132, entitled "Federalism" (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."

Today's 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 the Order. Thus, Executive Order 13132 does not apply to this rule.

VIII. Were Energy Impacts Considered?

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting the national energy supply. We believe that Executive Order 13211 is not relevant to this action.

IX. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.06) listing the information collection requirements of this final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260–2740.

The public burden associated with this final rule (which is under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 4.3 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $252 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

X. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not require the implementation of new technical standards; thus, the requirements of section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

XI. Is Today's Rule Subject to Congressional Review?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of February 13, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Part Four—What Are the State Authorization and Delegation Implications?

I. What Is the Authority for the Interim Standards Rule?

This rule revises the promulgated standards located at 40 CFR part 63, subpart EEE. As in the September 30, 1999 Final HWC NESHAP, we encourage State, Local, and Tribal (S/L/T) agencies to apply for delegation under CAA section 112. Additionally, this rule adds a new section (40 CFR 270.235) to the RCRA regulations to provide options for minimizing hazardous waste combustion emissions during startup, shutdown, and malfunction events.

II. How Is This Rule Delegated Under the CAA?

Section 112(l) of the CAA allows us to delegate authority to S/L/T programs to implement and enforce emission standards for pollutants subject to section 112 regulations. Thus, a S/L/T agency that receives 112(l) delegation can implement and enforce the revised emission standards and other revisions being made today. A S/L/T agency also can implement the revisions for Title V major sources (40 CFR 70.2) via their Title V authority because it is independent of their delegation status. By having an approved Title V program, the S/L/T agency has demonstrated that it has the legal authority, resources, and expertise to implement and enforce standards for section 112 pollutants.

As before, we encourage S/L/T agencies to apply for and receive 112(l) delegation for this rule. The key advantages afforded to S/L/T agencies who receive delegation are that they become the primary enforcement authority and can exercise delegable provision authorities. Additionally, it ensures clear and consistent requirements for affected sources and regulators. For example, a source need only report compliance assurance monitoring to its primary enforcement authority.

State, Local, and Tribal agencies still have the ability to choose which delegation options to use when applying for delegation of Federal authorities for this rule. The 112(l) delegation process begins when the S/L/T agency applies for delegation of a section 112 rule without changes (straight delegation), by rule adjustment, substitution of requirements, state program approval (SPA), or equivalency by permit (EBP).[27] Also, the partial approval option is available for any S/L/T who cannot or chooses not to take full delegation of an entire standard. The drawback to this option is that it can create inconsistent requirements since the S/L/T agency will enforce portions of the standard, while we will enforce the remaining portions.

This rule will be effective upon promulgation. As with the Phase I NESHAP, a S/L/T agency will need to incorporate the Federal standards and provisions of this rule into a major source's new, renewed, or revised Title V permit regardless of whether it has received delegation. However, by receiving delegation of 112(l), a S/L/T agency can approve minor changes to a Federal NESHAP. For instance, it can substitute an emission limitation that is more stringent than a Federal standard.

In light of the benefits afforded to a S/L/T agency if it receives 112(l) delegation, we recognize that the process of applying for and receiving delegation can be a lengthy one. This may be especially true for those agencies that do not have established agreements in place to receive automatic delegation of unchanged standards. There are agencies who choose to utilize the delegation options provided under 112(l), which are not as straightforward as the unchanged standards. In these cases, the review period required when applying for one of the delegation options combined with a state's legislative proceedings, are factors that can prolong the delegation process. Therefore, we encourage the S/L/T agency to do what makes sense given circumstances relevant to timing issues and resource needs.

[27] Refer to Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities; Final Rule at 65 FR 55810 or the CAA Delegation for the HWC NESHAP fact sheet at *www.epa.gov/epaoswer/hazwaste/combust/toolkit/coverpage.htm* for further information on delegation procedures.

III. How Would States Become Authorized Under RCRA?

Under section 3006 of RCRA, we may authorize qualified States to administer the RCRA hazardous waste program within the State. A State may receive authorization by following the approval process described under part 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by us apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. We maintain independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law.

Authorized States are required to modify their programs when we promulgate Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows States to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA [28] and non-HSWA, that are considered less stringent than the existing requirements. The requirements in today's amendment are considered to be neither more nor less stringent than the current emission regulations because they provide equivalent protection. Thus, States are not required to adopt today's amendments to maintain an equivalent program, although we strongly encourage them to do so.

Today's amendment in 40 CFR 270.235 is promulgated under both HSWA and non-HSWA statutory authority, depending on the waste management unit to which the standards apply. The authority to apply the provisions of 40 CFR 270.235 to cement and lightweight aggregate kilns is under RCRA 3004(q), which is a provision added by HSWA. Therefore, the Agency is adding this rule to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. If a State is not authorized to implement the RCRA program for these units, EPA will implement today's amendments. If a State has such authorization, today's amendments will not become effective under RCRA until States adopt and become authorized for the revisions. The authority to apply the provisions of 40 CFR 270.235 to incinerators is under section 3004(a) of RCRA, a non-HSWA provision. Therefore, today's amendments as they apply to incinerators will not become effective under RCRA until States adopt and become authorized for the revisions.

[28] HSWA refers to the Hazardous and Solid Waste Amendments of 1984.

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidenetial business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 7, 2002.

Christine Todd Whitman,

Administrator.

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

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

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

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

2. Section 63.1203 is revised to read as follows:

§ 63.1203 What are the standards for hazardous waste incinerators?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Emissions in excess of 0.40 ng TEQ/dscm corrected to 7 percent oxygen provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400°F or lower based on the average of the test run average temperatures. (For purposes of compliance, operation of a wet particulate control device is presumed to meet the 400 °F or lower requirement);

(2) Mercury in excess of 130 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrochloric acid and chlorine gas in excess of 77 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 34 mg/dscm corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) Dioxins and furans in excess of 0.20 ng TEQ/dscm, corrected to 7 percent oxygen;

(2) Mercury in excess of 45 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 120 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrochloric acid and chlorine gas in excess of 21 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 34 mg/dscm corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) *99.99% DRE.* Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$DRE = [1 - (W_{out} / W_{in})] \times 100\%$$

Where:

W_{in} = mass feedrate of one principal organic hazardous constituent (POHC) in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principle organic hazardous constituent (POHC) that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the Principal Organic Hazardous Constituents (POHCs) in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1), excluding caprolactam (CAS number 105602) as provided by § 63.60, for each waste to be burned. You must base this specification on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

3. Section 63.1204 is revised to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns?

(a) *Emission limits for existing sources.* You must not discharge or

cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Emissions in excess of 0.40 ng TEQ/dscm corrected to 7 percent oxygen provided that the combustion gas temperature at the inlet to the initial dry particulate matter control device is 400°F or lower based on the average of the test run average temperatures;

(2) Mercury in excess of 120 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 330 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 56 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) For kilns equipped with a by-pass duct or midkiln gas sampling system, either:

(A) Carbon monoxide in the by-pass duct or mid-kiln gas sampling system in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(i)(B) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the by-pass duct or mid-kiln gas sampling system do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(B) Hydrocarbons in the by-pass duct or midkiln gas sampling system in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(ii) For kilns not equipped with a by-pass duct or midkiln gas sampling system, either:

(A) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(B) Carbon monoxide in the main stack in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii)(A) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the main stack do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

(6) Hydrochloric acid and chlorine gas in excess of 130 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis, corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 0.15 kg/Mg dry feed and opacity greater than 20 percent.

(i) You must use suitable methods to determine the kiln raw material feedrate.

(ii) Except as provided in paragraph (a)(7)(iii) of this section, you must compute the particulate matter emission rate, E, from the following equation:

$$E = (C_s \times Q_{sd}) / P$$

Where:

E = emission rate of particulate matter, kg/Mg of kiln raw material feed;

C_s = concentration of particulate matter, kg/dscm;

Q_{sd} = volumetric flowrate of effluent gas, dscm/hr; and

P = total kiln raw material feed (dry basis), Mg/hr.

(iii) If you operate a preheater or preheater/precalciner kiln with dual stacks, you must test simultaneously and compute the combined particulate matter emission rate, E_c, from the following equation:

$$E_c = (C_{sk} \times Q_{sdk} + C_{sb} \times Q_{sdb}) / P$$

Where:

E_c = the combined emission rate of particulate matter from the kiln and bypass stack, kg/Mg of kiln raw material feed;

C_{sk} = concentration of particulate matter in the kiln effluent, kg/dscm;

Q_{sdk} = volumetric flowrate of kiln effluent gas, dscm/hr;

C_{sb} = concentration of particulate matter in the bypass stack effluent, kg/dscm;

Q_{sdb} = volumetric flowrate of bypass stack effluent gas, dscm/hr; and

P = total kiln raw material feed (dry basis), Mg/hr.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Emissions in excess of 0.40 ng TEQ/dscm corrected to 7 percent oxygen provided that the combustion gas temperature at the inlet to the initial dry particulate matter control device is 400 °F or lower based on the average of the test run average temperatures;

(2) Mercury in excess of 120 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 54 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) For kilns equipped with a by-pass duct or midkiln gas sampling system, carbon monoxide and hydrocarbons emissions are limited in both the bypass duct or midkiln gas sampling system and the main stack as follows:

(A) Emissions in the by-pass or midkiln gas sampling system are limited to either:

(1) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(i)(A)*(2)* of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) Hydrocarbons in the by-pass duct or midkiln gas sampling system in excess of 10 parts per million by volume, over an hourly rolling average

(monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; and

(B) Hydrocarbons in the main stack are limited, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

(ii) For kilns not equipped with a by-pass duct or midkiln gas sampling system, hydrocarbons and carbon monoxide are limited in the main stack to either:

(A) Hydrocarbons not exceeding 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(B)(*1*) Carbon monoxide not exceeding 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen; and

(*2*) Hydrocarbons not exceeding 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7); and

(*3*) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

(6) Hydrochloric acid and chlorine gas in excess of 86 parts per million, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 0.15 kg/Mg dry feed and opacity greater than 20 percent.

(i) You must use suitable methods to determine the kiln raw material feedrate.

(ii) Except as provided in paragraph (a)(7)(iii) of this section, you must compute the particulate matter emission rate, E, from the equation specified in paragraph (a)(7)(ii) of this section.

(iii) If you operate a preheater or preheater/precalciner kiln with dual stacks, you must test simultaneously and compute the combined particulate matter emission rate, E_c, from the equation specified in paragraph (a)(7)(iii) of this section.

(c) *Destruction and removal efficiency (DRE) standard.* (1) *99.99% DRE.* Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$DRE = [1 - (W_{out} / W_{in})] \times 100\%$$

Where:

W_{in} = mass feedrate of one principal organic hazardous constituent (POHC) in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principle organic hazardous constituent (POHC) that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the Principal Organic Hazardous Constituents (POHCs) in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1), excluding caprolactam (CAS number 105602) as provided by § 63.60, for each waste to be burned. You must base this specification on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses or other data and information.

(d) *Cement kilns with in-line kiln raw mills.* (1) *General.* (i) You must conduct performance testing when the raw mill is on-line and when the mill is off-line to demonstrate compliance with the emission standards, and you must establish separate operating parameter limits under § 63.1209 for each mode of operation, except as provided by paragraph (d)(1)(iv) of this section.

(ii) You must document in the operating record each time you change from one mode of operation to the alternate mode and begin complying with the operating parameter limits for that alternate mode of operation.

(iii) You must establish rolling averages for the operating parameter limits anew (*i.e.*, without considering previous recordings) when you begin complying with the operating limits for the alternate mode of operation.

(iv) If your in-line kiln raw mill has dual stacks, you may assume that the dioxin/furan emission levels in the by-pass stack and the operating parameter limits determined during performance testing of the by-pass stack when the raw mill is off-line are the same as when the mill is on-line.

(2) *Emissions averaging.* You may comply with the mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas emission standards on a time-weighted average basis under the following procedures:

(i) *Averaging methodology.* You must calculate the time-weighted average emission concentration with the following equation:

$$C_{total} = \{C_{mill\text{-}off} \times (T_{mill\text{-}off} / (T_{mill\text{-}off} + T_{mill\text{-}on}))\} + \{C_{mill\text{-}on} \times (T_{mill\text{-}on} / (T_{mill\text{-}off} + T_{mill\text{-}on}))\}$$

Where:

C_{total} = time-weighted average concentration of a regulated constituent considering both raw mill on time and off time;

$C_{mill\text{-}off}$ = average performance test concentration of regulated constituent with the raw mill off-line;

$C_{mill\text{-}on}$ = average performance test concentration of regulated constituent with the raw mill on-line;

$T_{mill\text{-}off}$ = time when kiln gases are not routed through the raw mill; and

$T_{mill\text{-}on}$ = time when kiln gases are routed through the raw mill.

(ii) *Compliance.* (A) If you use this emission averaging provision, you must document in the operating record compliance with the emission standards on an annual basis by using the equation provided by paragraph (d)(2) of this section.

(B) Compliance is based on one-year block averages beginning on the day you

submit the initial notification of compliance.

(iii) *Notification.* (A) If you elect to document compliance with one or more emission standards using this emission averaging provision, you must notify the Administrator in the initial comprehensive performance test plan submitted under § 63.1207(e).

(B) You must include historical raw mill operation data in the performance test plan to estimate future raw mill down-time and document in the performance test plan that estimated emissions and estimated raw mill down-time will not result in an exceedance of an emission standard on an annual basis.

(C) You must document in the notification of compliance submitted under § 63.1207(j) that an emission standard will not be exceeded based on the documented emissions from the performance test and predicted raw mill down-time.

(e) *Preheater or preheater/precalciner kilns with dual stacks.* (1) *General.* You must conduct performance testing on each stack to demonstrate compliance with the emission standards, and you must establish operating parameter limits under § 63.1209 for each stack, except as provided by paragraph (d)(1)(iv) of this section for dioxin/furan emissions testing and operating parameter limits for the by-pass stack of in-line raw mills.

(2) *Emissions averaging.* You may comply with the mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas emission standards specified in this section on a gas flowrate-weighted average basis under the following procedures:

(i) *Averaging methodology.* You must calculate the gas flowrate-weighted average emission concentration using the following equation:

$$C_{tot} = \{C_{main} \times (Q_{main} / (Q_{main} + Q_{bypass}))\} + \{C_{bypass} \times (Q_{bypass} / (Q_{main} + Q_{bypass}))\}$$

Where:

C_{tot} = gas flowrate-weighted average concentration of the regulated constituent;

C_{main} = average performance test concentration demonstrated in the main stack;

C_{bypass} = average performance test concentration demonstrated in the bypass stack;

Q_{main} = volumetric flowrate of main stack effluent gas; and

Q_{bypass} = volumetric flowrate of bypass effluent gas.

(ii) *Compliance.* (A) You must demonstrate compliance with the emission standard(s) using the emission concentrations determined from the performance tests and the equation provided by paragraph (e)(1) of this section; and

(B) You must develop operating parameter limits for bypass stack and main stack flowrates that ensure the emission concentrations calculated with the equation in paragraph (e)(1) of this section do not exceed the emission standards on a 12-hour rolling average basis. You must include these flowrate limits in the Notification of Compliance.

(iii) *Notification.* If you elect to document compliance under this emissions averaging provision, you must:

(A) Notify the Administrator in the initial comprehensive performance test plan submitted under § 63.1207(e). The performance test plan must include, at a minimum, information describing the flowrate limits established under paragraph (e)(2)(ii)(B) of this section; and

(B) Document in the Notification of Compliance submitted under § 63.1207(j) the demonstrated gas flowrate-weighted average emissions that you calculate with the equation provided by paragraph (e)(2) of this section.

(f) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(g) [Reserved].

(h) When you comply with the particulate matter requirements of paragraphs (a)(7) or (b)(7) of this section, you are exempt from the New Source Performance Standard for particulate matter and opacity under § 60.60 of this chapter.

4. Section 63.1205 is revised to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) to 400°F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) Mercury in excess of 120 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 250 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrochloric acid and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 57 mg/dscm corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) to 400°F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) Mercury in excess of 120 µg/dscm corrected to 7 percent oxygen;

(3) Lead and cadmium in excess of 43 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrochloric acid and chlorine gas in excess of 41 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter in excess of 57 mg/dscm corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) *99.99% DRE.* Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$DRE = [1 - (W_{out} / W_{in})] \times 100\%$$

Where:

W_{in} = mass feedrate of one principal organic hazardous constituent (POHC) in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to burn hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the Principal Organic Hazardous Constituents (POHCs) in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1), excluding caprolactam (CAS number 105602) as provided by § 63.60, for each waste to be burned. You must base this specification on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

5. Section 63.1206 is amended by:

a. Revising paragraph (b)(1)(i).

b. Adding paragraph (b)(15).

c. Revising paragraphs (c)(2)(i), (c)(2)(ii), (c)(4)(i), and (c)(4)(iv).

d. Adding paragraph (c)(2)(v).

The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(b) * * *

(1) * * *

(i) During periods of startup, shutdown, and malfunction; and

* * * * *

(15) *Alternative to the interim standards for mercury for cement and lightweight aggregate kilns.* (i) *General.* In lieu of complying with the applicable mercury standards of §§ 63.1204(a)(2) and (b)(2) for existing and new cement kilns and §§ 63.1205(a)(2) and (b)(2) for existing and new lightweight aggregate kilns, you may instead elect to comply with the alternative mercury standard described in paragraphs (b)(15)(ii) through (b)(15)(v) of this section.

(ii) *Operating requirement.* You must not exceed a hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) of 120 µg/dscm on a twelve-hour rolling average.

(iii) To document compliance with the operating requirement of paragraph (b)(15)(ii) of this section, you must:

(A) Monitor and record the feedrate of mercury for each hazardous waste feedstream according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record a MTEC assuming mercury from all hazardous waste feedstreams is emitted;

(D) Interlock the MTEC calculated in paragraph (b)(15)(iii)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the operating requirement of paragraph (b)(15)(ii) of this section.

(iv) In lieu of the requirement in paragraph (b)(15)(iii) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (b)(15)(iii)(C) of this section is below the operating requirement of paragraph (b)(15)(ii) of this section; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limits in paragraph (b)(15)(iv)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury feedrate exceeds the limits in paragraph (b)(15)(iv)(A) of this section.

(v) *Notification requirement.* You must notify in writing the RCRA authority that you intend to comply with the alternative standard.

(c) * * *

(2) *Startup, shutdown, and malfunction plan.* (i) You are subject to the startup, shutdown, and malfunction plan requirements of § 63.6(e)(3).

(ii) If you elect to comply with §§ 270.235(a)(1)(iii), 270.235(a)(2)(iii), or 270.235(b)(1)(ii) of this chapter to address RCRA concerns that you minimize emissions of toxic compounds from startup, shutdown, and malfunction events (including releases from emergency safety vents):

(A) The startup, shutdown, and malfunction plan must include a

description of potential causes of malfunctions, including releases from emergency safety vents, that may result in significant releases of hazardous air pollutants, and actions the source is taking to minimize the frequency and severity of those malfunctions.

(B) You must submit the startup, shutdown, and malfunction plan to the Administrator for review and approval.

(*1*) *Approval procedure.* The Administrator will notify you of approval or intention to deny approval of the startup, shutdown, and malfunction plan within 90 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplemental information that you submit. Before disapproving the plan, the Administrator will notify you of the Administrator's intention to disapprove the plan together with:

(*i*) Notice of the information and findings on which intended disapproval is based; and

(*ii*) Notice of opportunity for you to present additional information to the Administrator before final action on disapproval of the plan. At the time the Administrator notifies you of intention to disapprove the plan, the Administrator will specify how much time you will have after being notified on the intended disapproval to submit additional information.

(*2*) *Responsibility of owners and operators.* You are responsible for ensuring that you submit any supplementary and additional information supporting your plan in a timely manner to enable the Administrator to consider whether to approve the plan. Neither your submittal of the plan, nor the Administrator's failure to approve or disapprove the plan, relieves you of the responsibility to comply with the provisions of this subpart.

(C) *Changes to the plan that may significantly increase emissions.* (*1*) You must request approval in writing from the Administrator within 5 days after making a change to the startup, shutdown, and malfunction plan that may significantly increase emissions of hazardous air pollutants.

(*2*) To request approval of such changes to the startup, shutdown, and malfunction plan, you must follow the procedures provided by paragraph (c)(2)(ii)(B) of this section for initial approval of the plan.

* * * * *

(v) *Operating under the startup, shutdown, and malfunction plan.* (A) *Compliance with AWFCO requirements during malfunctions.* (*1*) During malfunctions, the automatic waste feed cutoff requirements of § 63.1206(c)(3) continue to apply, except for paragraphs (c)(3)(v) and (c)(3)(vi) of this section. If you exceed a part 63, Subpart EEE, of this chapter emission standard monitored by a CEMS or COMs or operating limit specified under § 63.1209, the automatic waste feed cutoff system must immediately and automatically cutoff the hazardous waste feed, except as provided by paragraph (c)(3)(viii) of this section. If the malfunction itself prevents immediate and automatic cutoff of the hazardous waste feed, however, you must cease feeding hazardous waste as quickly as possible.

(*2*) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 is not a violation of this subpart if you take the corrective measures prescribed in the startup, shutdown, and malfunction plan.

(*3*) *Excessive exceedances during malfunctions.* For each set of 10 exceedances of an emission standard or operating requirement while hazardous waste remains in the combustion chamber (*i.e.*, when the hazardous waste residence time has not transpired since the hazardous waste feed was cutoff) during a 60-day block period, you must:

(*i*) Within 45 days of the 10th exceedance, complete an investigation of the cause of each exceedance and evaluation of approaches to minimize the frequency, duration, and severity of each exceedance, and revise the startup, shutdown, and malfunction plan as warranted by the evaluation to minimize the frequency, duration, and severity of each exceedance; and

(*ii*) Record the results of the investigation and evaluation in the operating record, and include a summary of the investigation and evaluation, and any changes to the startup, shutdown, and malfunction plan, in the excess emissions report required under § 63.10(e)(3).

(B) *Compliance with AWFCO requirements when burning hazardous waste during startup and shutdown.* (*1*) If you feed hazardous waste during startup or shutdown, you must include waste feed restrictions (*e.g.*, type and quantity), and other appropriate operating conditions and limits in the startup, shutdown, and malfunction plan.

(*2*) You must interlock the operating limits you establish under paragraph (c)(2)(v)(B)(*1*) of this section with the automatic waste feed cutoff system required under § 63.1206(c)(3), except for paragraphs (c)(3)(v) and (c)(3)(vi) of this section.

(*3*) When feeding hazardous waste during startup or shutdown, the automatic waste feed cutoff system must immediately and automatically cutoff the hazardous waste feed if you exceed the operating limits you establish under paragraph (c)(2)(v)(B)(*1*) of this section, except as provided by paragraph (c)(3)(viii) of this section.

(*4*) Although the automatic waste feed cutoff requirements of this paragraph apply during startup and shutdown, an exceedance of an emission standard or operating limit is not a violation of this subpart if you comply with the operating procedures prescribed in the startup, shutdown, and malfunction plan.

* * * * *

(4) * * * (i) *Failure to meet standards.* If an emergency safety vent (ESV) opens when hazardous waste remains in the combustion chamber (*i.e.*, when the hazardous waste residence time has not expired) during an event other than a malfunction as defined in the startup, shutdown, and malfunction plan such that combustion gases are not treated as during the most recent comprehensive performance test (*e.g.*, if the combustion gas by-passes any emission control device that was operating during the performance test), you must document in the operating record whether you remain in compliance with the emission standards of this subpart considering emissions during the ESV opening event.

* * * * *

(iv) *Reporting requirements.* You must submit to the Administrator a written report within 5 days of an ESV opening that results in failure to meet the emission standards of this subpart (as determined in paragraph (c)(4)(i) of this section) documenting the result of the investigation and corrective measures taken.

* * * * *

6. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i)(A).

b. Adding paragraph (c)(2)(iii).

c. Revising paragraphs (d) introductory text, (d)(1), and (d)(2).

d. Adding paragraph (d)(4).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Initiated after 54 months prior to the compliance date, except as provided by paragraph (c)(2)(iii) of this section;

* * * * *

(iii) The data in lieu of test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply for the duration of the interim standards (*i.e.*, the standards published in the **Federal Register** on February 13, 2002. Paragraph (c)(2)(i)(A) of this section does not apply until EPA promulgates permanent replacement standards pursuant to the Settlement Agreement noticed in the **Federal Register** on November 16, 2001.

* * * * *

(d) *Frequency of testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must conduct testing periodically as prescribed in paragraphs (d)(1) through (d)(3) of this section. The date of commencement of the initial comprehensive performance test is the basis for establishing the deadline to commence the initial confirmatory performance test and the next comprehensive performance test. You may conduct performance testing at any time prior to the required date. The deadline for commencing subsequent confirmatory and comprehensive performance testing is based on the date of commencement of the previous comprehensive performance test. Unless the Administrator grants a time extension under paragraph (i) of this section, you must conduct testing as follows:

(1) *Comprehensive performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

(2) *Confirmatory performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test. If you submit data in lieu of the initial performance test, you must commence the initial confirmatory performance test within 31 months of the date six months after the compliance date. To ensure that the confirmatory test is conducted approximately midway between comprehensive performance tests, the Administrator will not approve a test plan that schedules testing within 18 months of commencing the previous comprehensive performance test.

* * * * *

(4) *Applicable testing requirements under the interim standards.* (i) Waiver of periodic comprehensive performance tests. Except as provided by paragraph (c)(2) of this section, you must conduct only an initial comprehensive performance test under the interim standards (*i.e.*, the standards published in the **Federal Register** on February 13, 2002; all subsequent comprehensive performance testing requirements are waived under the interim standards. The provisions in the introductory text to paragraph (d) and in paragraph (d)(1) of this section do not apply until EPA promulgates permanent replacement standards pursuant to the Settlement Agreement noticed in the **Federal Register** on November 16, 2001.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (*i.e.*, the standards published in the **Federal Register** on February 13, 2002. The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section are waived until EPA promulgates permanent replacement standards pursuant to the Settlement Agreement noticed in the **Federal Register** on November 16, 2001.

* * * * *

7. Section 63.1209 is amended by:

a. Revising paragraphs (k) introductory text, (k)(1), and (k)(7)(i).

b. Removing paragraph (m)(1)(i)(D).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(k) *Dioxins and furans.* You must comply with the dioxin and furans emission standard by establishing and complying with the following operating parameter limits. You must base the limits on operations during the comprehensive performance test, unless the limits are based on manufacturer specifications.

(1) *Gas temperature at the inlet to a dry particulate matter control device.* (i) For hazardous waste burning incinerators and cement kilns, if the combustor is equipped with an electrostatic precipitator, baghouse (fabric filter), or other dry emissions control device where particulate matter is suspended in contact with combustion gas, you must establish a limit on the maximum temperature of the gas at the inlet to the device on an hourly rolling average. You must establish the hourly rolling average limit as the average of the test run averages.

(ii) For hazardous waste burning lightweight aggregate kilns, you must establish a limit on the maximum temperature of the gas at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) on an hourly rolling average. The limit must be established as the average of the test run averages;

* * * * *

(7) * * *

(i) *Monitoring bed life.* You must:

(A) Monitor performance of the carbon bed consistent with manufacturer's specifications and recommendations to ensure the carbon bed (or bed segment for sources with multiple segments) has not reached the end of its useful life to minimize dioxin/furan and mercury emissions at least to the levels required by the emission standards;

(B) Document the monitoring procedures in the operation and maintenance plan;

(C) Record results of the performance monitoring in the operating record; and

(D) Replace the bed or bed segment before it has reached the end of its useful life to minimize dioxin/furan and mercury emissions at least to the levels required by the emission standards.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.340 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter. Nevertheless, even after this

demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

* * * * *

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with § 270.235(a)(1)(i) of this chapter to minimize emissions of toxic compounds from these events:

(i) Section 264.345(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) Section 264.345(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

2. Section 265.340 is amended by revising paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 265.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

* * * * *

(3) Section 265.345 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with § 270.235(b)(1)(i) of this chapter to minimize emissions of toxic compounds from startup and shutdown.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3004, and 3014, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Section 266.100 is amended by redesignating paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) as paragraphs (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), and (b)(2)(v), respectively, and adding new paragraph (b)(2)(i) to read as follows:

§ 266.100 Applicability.

* * * * *

(b) * * *

(2) * * *

(i) If you elect to comply with § 270.235(a)(1)(i) of this chapter to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, § 266.102(e)(1) requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and § 266.102(e)(2)(iii) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.19 is amended by revising paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

3. Section 270.22 is amended by revising introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

4. Section 270.62 is amended by revising introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

5. Section 270.66 is amended by revising introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

6. Part 270 is amended by adding Subpart I to read as follows:

Subpart I—Integration with Maximum Achievable Control Technology (MACT) Standards

§ 270.235 Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events.

(a) *Facilities with existing permits.* (1) *Revisions to permit conditions after documenting compliance with MACT.* The owner or operator of a RCRA-permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this chapter:

(i) *Retain relevant permit conditions.* Under this option, the Director will:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under § 63.1206(c)(2) of this chapter; and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) *Revise relevant permit conditions.* (A) Under this option, the Director will:

(*1*) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(*2*) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) *Changes that may significantly increase emissions.* (*1*) You must notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Director of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(*2*) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(*i*) Upon permit renewal, or, if warranted;

(*ii*) By modifying the permit under §§ 270.41(a) or 270.42.

(iii) *Remove permit conditions.* Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under § 63.1206(c)(2) of this chapter has been approved by the Administrator under § 63.1206(c)(2)(ii)(B) of this chapter; and

(B) The Director will remove permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this chapter.

(2) *Addressing permit conditions upon permit reissuance.* The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the Administrator a Notification of Compliance documenting compliance with the standards of part 63, subpart EEE, of this chapter may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) *RCRA option A.* (A) Under this option, the Director will:

(*1*) Include, in the permit, conditions that ensure compliance with §§ 264.345(a) and 264.345(c) or §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(*2*) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.; or

(ii) *RCRA option B.* (A) Under this option, the Director will:

(*1*) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(*2*) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) *Changes that may significantly increase emissions.* (*1*) You must notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Director of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(*2*) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(*i*) Upon permit renewal, or, if warranted;

(*ii*) By modifying the permit under §§ 270.41(a) or 270.42; or

(iii) *CAA option.* Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under § 63.1206(c)(2) of this chapter has been

approved by the Administrator under § 63.1206(c)(2)(ii)(B) of this chapter; and

(B) The Director will omit from the permit conditions that are not applicable under §§ 264.340(b) and 266.100(b) of this chapter.

(b) *Interim status facilities.* (1) *Interim status operations.* In compliance with §§ 265.340 and 266.100(b), the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of part 265 or 266 of this chapter may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance documenting compliance with the standards of part 63, subpart EEE, of this chapter:

(i) *RCRA option.* Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of part 265 or 266 of this chapter relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) *CAA option.* Under this option, the owner or operator is exempt from the interim status standards of part 265 or 266 of this chapter relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Director that the startup, shutdown, and malfunction plan required under § 63.1206(c)(2) of this chapter has been approved by the Administrator under § 63.1206(c)(2)(ii)(B) of this chapter.

(2) *Operations under a subsequent RCRA permit.* When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of parts 265 or 266 of this chapter submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9605, 6912(2), and 6926.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication ("Promulgation date") in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
• • • • • • •			
February 13, 2002	Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.	[Insert page No.]	February 13, 2002.
• • • • • • •			

[FR Doc. 02-3346 Filed 2-12-02; 8:45 am]
BILLING CODE 6560-50-P

Federal Register

Thursday,
February 14, 2002

Part II

Environmental Protection Agency

40 CFR Parts 63, 266, and 270
NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63, 266, and 270

[FRL–7143–4]

RIN 2050–AE79

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Amendments Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA established standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors) pursuant to section 112(d) of the Clean Air Act (CAA). This rule included not only the standards themselves, but a battery of provisions setting out the means by which the standards would be implemented. Following promulgation of this final rule, the regulated community, through informal comments, raised numerous issues on specific requirements of the rule relating to provisions implementing the emission standards. In response to these concerns, we proposed and requested comment on changes to discrete provisions in the final rule on July 3, 2001. Today's action finalizes some of the amendments proposed in that notice. These amendments do not change the numerical emission standards, but rather focus on improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. A related final rule establishing interim emission standards was published in the **Federal Register** on February 13, 2002.

EFFECTIVE DATE: This rule is effective on February 14, 2002. The incorporation by reference of a publication listed in this rule is approved by the Director of the Federal Register as of February 14, 2002.

ADDRESSES: You may view the docket to this rulemaking in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket number is F–2002–RC6F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Frank Behan at 703–308–8476, *behan.frank@epa.gov*, or Michael Galbraith at 703–605–0567, *galbraith.michael@epa.gov*, or write to them at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Acronyms Used in the Rule

APCD—Air pollution control device
ASME—American Society of Mechanical Engineers
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
COMS—Continuous opacity monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet
dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
NESHAP—National Emission Standards for HAPs
ng—Nanograms
NIC—Notice of Intent to Comply
NOC—Notification of compliance
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
psig—Pounds per square inch gage
RCRA—Resource Conservation and Recovery Act
TEQ—Toxicity equivalence

Official Record. The official record is the paper record maintained at the address in **ADDRESSES** above.

Supporting Materials Availability on the Internet. Supporting materials are available on the Internet. To access the information electronically from the World Wide Web (WWW), type website *http://www.epa.gov/epaoswer/hazwaste/combust.*

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Part One—What Events Led up to This Rule?

I. What Is the Background of This Rule?

A. What Is the Phase I Rule?

Today's notice finalizes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). In the Phase I final rule, we adopted National Emission Standards for Hazardous Air Pollutants to control emissions of hazardous air pollutants (HAPs) from burning hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns pursuant to section 112(d) of the Clean Air Act (CAA), which provisions require that the emission standards reflect the performance of best available control technology. *Cement Kiln Recycling Coalition* v. *EPA*, 255 F. 3d 855, 857 (D.C. Cir. 2001). This level of control is usually referred to as MACT, maximum available control technology. *Id.* at 859. These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's rule, we refer to these three categories collectively as hazardous waste combustors (HWC).

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact*.

B. How Did the Court's Opinion To Vacate the Rule and Petitioners Joint Motion To Stay the Mandate Affect Phase I and Today's Rule?

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the emission standards and certain related provisions. Petitions for review have also been filed challenging certain of the implementation provisions of the rule, but these petitions have been severed from the litigation dealing with the emission standards, and all litigation on these challenges has been stayed by consent of the parties.

As described in the "interim standards" final rule in yesterday's **Federal Register**, the D.C. Circuit, in the case challenging emission standards, found that EPA had failed to explain adequately how its methodology for calculating so-called MACT floors satisfied the requirements of section 112(d)(3). *Cement Kiln Recycling Coalition*, 255 F. 3d 855 (D.C. Cir. 2001).

On October 19, 2001, we, together with all other petitioners that challenged the hazardous waste combustor emission standards, filed a joint motion asking the Court to stay the issuance of its mandate for four months to allow us time to develop interim standards. Although neither the opinion, nor the litigation, deals with the implementation provisions at issue in this rulemaking,[1] these issues became a part of post-July 24 discussions between EPA and the petitioners. As part of the joint agreement and joint motion to the court which resulted from those discussions, we agreed to promulgate by February 14, 2002 several of the compliance and implementation amendments to the rule which we proposed on July 3, 2001 (66 FR 35126). Further information on this process is found in the "interim standards" final rule in yesterday's **Federal Register**, and the joint motion can be viewed and/or downloaded from EPA's Hazardous Waste Combustion website *http://www.epa.gov/epaoswer/hazwaste/combust/preamble.htm*.

[1] As noted above, virtually all issues involving implementation provisions were severed and assigned separate case numbers, and so were not before the panel which decided *Cement Kiln Recycling Coalition*.

II. Which Proposed Amendments Are Included in This Rule?

After promulgation of the Phase I rule, commenters (primarily the regulated community) raised numerous potential issues through informal comments, during EPA-conducted implementation workshops (which are open to the general public), and during litigation settlement discussions. After considering the issues raised, we proposed 33 amendments to the Phase I rule on July 3, 2001 (66 FR 35126, 35087, and 35124). Nine of these proposed amendments were promulgated in a Direct Final rule,[2] and 14 are being finalized today. Ten amendments will be considered as we proceed with a rulemaking on the final replacement standards scheduled to be promulgated by June 14, 2005.

In a separate notice published in the **Federal Register** on July 3, 2001, we took direct final action on certain amendments to the Sept. 1999 Phase I rule (66 FR 35087). We published the direct final rule without prior proposal because we viewed those amendments as being noncontroversial. We stated that we would withdraw any amendments from the direct final rulemaking that received adverse comments and instead, would seek comment on those amendments through the "parallel" proposal that was published on July 3, 2001 (66 FR 35124).

The following tables include information on all the amendments from the July 3, 2001 proposals.

[2] Thirteen amendments were promulgated on July 3, 2001 in a direct final rule contingent upon the Agency not receiving adverse comment on the amendments. See 66 FR 35087. The Agency received adverse comment on four amendments, and issued a partial withdrawal of the direct final rule on October 15, 2001 (66 FR 52361) that withdrew promulgation of those four amendments.

COMBUSTION MACT AMENDMENTS: DIRECT FINAL RULE

No.	Title of amendment	Approach to address amendment
I	Hazardous Waste Residence Time	No adverse comments received. The amendment became effective on Oct. 16, 2001.
II	Deletion of One-time Notification of Compliance with Alternative Clean Air Act Standards.	No adverse comments received. The amendment became effective on Oct. 16, 2001.
III	Use of DRE Data in Lieu of Testing	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
IV	Time Extension for Waiving PM and Opacity Standards to Correlate PM CEMs.	No adverse comments received.The amendment became effective on Oct. 16, 2001.
V	Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln.	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
VI	Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals.	No adverse comments received. The amendment became effective on Oct. 16, 2001.
VII	Deletion of Baghouse Inspection Requirements	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
VIII	Feedstream Analysis for Organic HAPs	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
IX	Revisions to the Metals Feedrate Extrapolation Procedures	No adverse comments received. The amendment became effective on Oct. 16, 2001.
X	Feedrate Limits for Undetectable Constituents	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XI	Revisions to Assist Early Compliance	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XII	Accuracy Requirements for Weight Measurement Devices	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XIII	Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operator Parameter Limit for Mercury Control for Wet Scrubbers.	No adverse comments received. The amendment became effective on Oct. 16, 2001.

COMBUSTION MACT AMENDMENTS

Proposed Rule

No.	Title of amendment	Approach to address amendment
I	Definition of Research, Development, and Demonstration Sources.	The amendment will be addressed in a future MACT rule.
II	Identification of an Organics Residence Time That Independent From and Shorter Than the Hazardous Waste Residence Time.	The amendment is will be addressed in a future MACT rule.
III	Controls on APCDs After the Hazardous Waste Residence Time Has Expired.	The amendment will be addressed in a future MACT rule.
IV	Instantaneous Monitoring of Combustion Zone Pressure	The amendment is promulgated in today's rule.
V	Operator Training and Certification	The amendment is promulgated in today's rule.
VI	Bag Leak Detection System	The amendment is promulgated in today's rule.
VII	Time Extensions for Performance Testing If the Test Plan Has Not Been Approved.	The amendment is promulgated in today's rule.
VIII	Flexibility in Operations During Confirmatory Performance Testing for Dioxin/Furans.	The amendment is promulgated in today's rule.
IX	Waiving Operating Parameter Limits During Performance Testing.	The amendment is promulgated in today's rule.
X	Method 23 as an Alternative to Method 0023A for Dioxin/Furans.	The amendment will be addressed in a future MACT rule.
XI	Calibration Requirements for Thermocouples	The amendment is promulgated in today's rule.
XII	Alternative Approach to Establish Operating Parameter Limits	The amendment will be addressed in a future MACT rule.
XIII	Extrapolation of Operating Parameter Limits	The amendment will be addressed in a future MACT rule.
XIV	Limit on Minimum Combustion Chamber Temperature for Cement Kilns.	The amendment will be addressed in a future MACT rule.
XV	Revisions to Operating Requirements for Activated Carbon Injection and Carbon Bed Systems.	The amendment is promulgated in today's rule.
XVI	Clarification of Requirements to Confirm Carbon Bed Age	Amendment is promulgated in today's rule.
XVII	Revisions to Operating Parameter Limits for Wet Scrubbers	The amendment will be addressed in a future MACT rule.
XVIII	Reproposal of kVA Limits for Electrostatic Precipitators and Request for Comment on Approaches to Ensure Baghouse Performance.	The amendment will be addressed in a future MACT rule.
XIX	How to Comply Temporarily with Alternative, Otherwise Applicable MACT Standards.	Amendment is promulgated in today's rule.

COMBUSTION MACT AMENDMENTS—Continued

Proposed Rule

No.	Title of amendment	Approach to address amendment
XX	RCRA Permitting Requirements for Sources Entering the RCRA Process Post-Rule Promulgation.	The amendment will be addressed in a future MACT rule.

Part Two—What Revisions, Proposed in the Parallel Proposal, Are We Making Today?

I. What Previous DRE Test Results May You Use To Demonstrate Compliance With the MACT DRE Standard

A. Why Are We Deleting the Age Restriction for Using Data in Lieu of Performing a DRE Test?

Today we are revising the September 1999 final rule to allow sources that inject hazardous waste only in the flame zone to use any previous destruction and removal efficiency (DRE) test results to document compliance with the DRE standard, provided the data meet our quality assurance/quality control requirements. These revisions do not affect sources that inject hazardous waste in places other than the normal flame zone.

Prior to today's change, we allowed data that were no older than five years to be used to document compliance with the DRE standard. However, stakeholders observed that sources that inject hazardous waste only in the flame zone need only document compliance with the DRE requirement once for the life of the source under September 1999 final rule, provided the test continues to be representative of current design and operating conditions. Stakeholders reasoned that, given that a single test is acceptable to document compliance with the DRE standard for the life of the source, the rule should allow use of DRE data older than five years to document compliance with the standard. We agree with stakeholders' concerns. Accordingly, in the parallel proposal to the direct final rule, we proposed to allow any DRE results (that meet QA/QC requirements and that continue to represent the design and operation of the source), irrespective of how old the tests are, to be used in lieu of having the source perform a new DRE test. All comments we received on this issue were favorable.

This change does not apply to sources that inject hazardous waste outside of the flame zone because the September 1999 final rule requires that these sources document compliance with the DRE standard every five years. These sources may use DRE test results that are no older than five years old to document compliance with the initial DRE test, and are required to perform a new test every five years. Although we explained in the preamble to the July 3, 2001 proposal that the revision discussed above applies only to sources that feed hazardous waste in the flame zone, one commenter notes that the proposed rule did not make a distinction between sources that feed waste in the flame zone versus other sources. We agree with this commenter and have corrected this oversight in today's amendment.

B. Why Are We Expanding the Type of Allowable DRE Test Results To Include Any Results That Pass QA/QC?

The September 1999 final rule restricts the DRE test data that can be used in lieu of performing a new test to data obtained in support of a previous RCRA permit issuance or reissuance. We did this because we wanted to ensure that the DRE data used met the quality assurance/quality control requirements applicable to data used to demonstrate compliance with the standards under the RCRA permit process. Stakeholders, however, expressed concerns that data meeting EPA's quality requirements can be generated outside the RCRA permit process. For example, a source might perform some type of CAA performance testing. This testing potentially could have the same level of oversight, and the same quality, as data obtained during the RCRA permit process.

We agree with stakeholders' concerns. In the parallel proposal to the direct final rule, we proposed to allow other DRE data provided that the data were obtained with the same level of oversight and quality as those data obtained during the RCRA permitting process. All commenters agree with this proposal and we are promulgating this amendment as proposed.

II. What Are the Hydrocarbon Monitoring Requirements for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln?

We are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack. These revisions are identical to those proposed (in the parallel proposal to the direct final rule (66 FR 35124 and 35092)). Accordingly, we are revising the requirements of § 63.1206(b)(13)(i) and adding the definition for a "preheater tower combustion gas monitoring location" to § 63.1201(a) as proposed.

Prior to today's action, § 63.1206(b)(13)(i) required new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. As explained in the final rule promulgated on September 30, 1999, we concluded that it would not be appropriate for cement kilns to comply with a hydrocarbon standard in the by-pass duct if hazardous waste is fed at a location downstream (relative to the direction of flue gas flow) of the by-pass sampling location. We stated that such operation would result in combustion of hazardous waste that would not be monitored by a hydrocarbon monitor (64 FR 52971).

Today's rule establishes an alternative to the main stack hydrocarbon standard of 20 ppmv for short, dry process cement kilns. Specifically, we are finalizing an alternative hydrocarbon standard of 10 ppmv measured continuously both in the alkali by-pass duct and at a preheater tower combustion gas monitoring location. This alternative monitoring approach satisfies our concern that the combustion of hazardous waste is monitored continuously by a hydrocarbon monitor.

One commenter opposed the proposed revisions to the hydrocarbon monitoring requirements and stated that the provision inappropriately establishes a separate category for short, dry process cement kilns and weakens the hydrocarbon standard by allowing for an increase in emissions. Three other

commenters supported the proposed changes to allow short, dry process cement kilns to continuously monitor hydrocarbons in the alkali by-pass duct and at the preheater tower combustion gas monitoring location.

We disagree with the commenter that this hydrocarbon monitoring alternative establishes a separate subcategory for short, dry process cement kilns. The final rule promulgated on September 30, 1999 (64 FR at 52885–52888) established different hydrocarbon and carbon monoxide standards for cement kilns with and without by-pass sampling systems. See §§ 63.1204(a)(5)(i) and (ii). All the existing short, dry process cement kilns burning hazardous waste are equipped with a by-pass duct and are subject to the hydrocarbon and carbon monoxide standards of § 63.1204(a)(5)(i). Today's final rule thus does not create a new subcategory for short, dry process cement kilns.

We also disagree with the commenter that the alternative hydrocarbon monitoring requirements weaken the hydrocarbon standard resulting in increased hydrocarbon emissions. We note that the hydrocarbon emission standard for the hydrocarbon monitoring alternative (10 ppmv) is more stringent than the hydrocarbon standard in the main stack (20 ppmv). All hydrocarbon emissions from the combustion of hazardous wastes would be reflected in the hydrocarbon measurements in the by-pass duct and at the preheater tower monitoring location and would decrease with improved combustion efficiency. As a result, this reflects MACT control or better because the hydrocarbon standard under the alternative is more stringent. As a result, one likely outcome of the alternative is that sources may burn hazardous waste under more efficient conditions.

We recognize, however, that a source electing the hydrocarbon monitoring alternative could substitute for its normal raw materials with other raw materials containing higher trace levels of organics. This monitoring alternative wouldn't detect higher concentrations of hydrocarbons emitted from the main stack (associated with the new raw materials) even though hydrocarbon concentrations originating from the combustion of hazardous waste remains the same. This substitution scenario is unlikely to occur for cement kilns because these facilities are sited near the primary raw material source to avoid transportation costs. Transporting large quantities of an alternative sources of raw material(s) is likely to be prohibitively costly. Moreover, we anticipate that any potential concerns associated with such raw material substitutions can be addressed in a site-specific risk assessment conducted as part of the RCRA permitting process. See *Horsehead Resource Development Co.* v. *Browner*, 16 F.3d 1246, 1262–63 (D.C. Cir. 1994) (EPA may permissibly regulate combined emissions from burning both hazardous wastes and non-wastes from boilers and industrial furnaces pursuant to its RCRA authority).

Accordingly, we are revising the requirements of § 63.1206(b)(13)(i) and adding the definition for a "preheater tower combustion gas monitoring location" to § 63.1201(a).

III. Why Are We Deleting the Baghouse Inspection Requirements?

As proposed (66 FR 35124 and 35096), we are deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10) applicable to incinerators and lightweight aggregate kilns. We find that the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector are adequate to ensure proper operation and maintenance of the baghouse. We believe that generic, prescriptive requirements (e.g., monthly inspection of bags, bag connections and the interior of the baghouse for physical integrity) may impose burdensome cost without commensurate benefits because such requirements may be inappropriate for the particular source. In lieu of complying with generic requirements, each source is required to develop monitoring and inspection procedures and to include those procedures in the general operation and maintenance plan.

We are also deleting the requirements of § 63.1206(c)(7)(ii)(A) and § 63.1207(f)(1)(xv) requiring submittal of the baghouse operations and maintenance plans to the Administrator. We had already determined that the general operation and maintenance plan required under § 63.1206(c)(7)(i) need not be submitted to the Administrator for review and approval. Therefore, we find no need to now single out the baghouse operation and maintenance plan for review and approval, since sources must continuously operate a bag leak detector system that identifies baghouse malfunctions.

Most comments favored the revision. One commenter, however, favors retaining the inspection provisions, and states that inspections trigger preventive maintenance, prevent malfunctions, and identify sources of fugitive emissions. We believe that site-specific baghouse inspection and monitoring provisions included in the operation and maintenance plan, coupled with a bag leak detector system, will ensure proper operation and maintenance of the baghouse because a bag leak detection system is a state-of-the-art monitoring system that ensures that the baghouse continues to operate in a manner consistent with good air pollution control practices. See also 64 FR 52908, September 30, 1999. The operation and maintenance plan must be included in the operating record and is subject to review by the inspectors to determine whether it is adequate to ensure the baghouse is operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards. §§ 63.1206(c)(7) and 63.6(e). We do not regard further requirements as necessary to assure proper baghouse operation and maintenance.

IV. What Are the Requirements for Feedstream Analysis of Organic HAPs?

In the parallel proposal to the direct final rule (66 FR 35124 and 35096), we intended to clarify the requirements for feedstream analysis of organic HAPs for compliance with the DRE standard. Section 63.1207(f) requires you to obtain "an analysis of each feedstream, including hazardous waste, other fuels, and industrial feedstocks, as fired, that includes: * * * an identification of such organic hazardous air pollutants that are present in the feedstream, except that you need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream." Following promulgation of the rule, stakeholders expressed concern about whether we had sought to require an analysis of all waste feedstreams or only the hazardous waste feedstreams. Stakeholders also brought to our attention that there were certain implications of requiring an analysis of CAA HAPs rather than RCRA Appendix VIII organic compounds, and stated that the requirement for continued analysis of organic HAPs every five years for the comprehensive performance test is overly burdensome if a source qualifies to comply with the DRE standard with a one-time emissions test.

We addressed stakeholders' concerns in the proposed rule as follows. First, we addressed the implications of selecting POHCs from the list of organic CAA HAPs rather than from the list of RCRA organic compounds for demonstrating compliance with the DRE standard. One stakeholder questioned whether RCRA DRE test data can be used in lieu of MACT DRE testing if the

POHCs selected during the RCRA test are not organic HAPs under the CAA. Another question was how to ensure DRE of those organic HAPs for which thermal stability data are not available. In response, we stated that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their hazardous waste feedstream. For instance, the most difficult to destroy POHCs used for RCRA DRE testing would also be representative of the most difficult to destroy CAA organic HAPs. *See* 66 FR 35097.

Second, we responded to questions on the frequency for analyzing organic HAP compounds in hazardous waste feedstreams. Stakeholders had questioned why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years once a source has demonstrated compliance with the DRE standard with a one-time test under the conditions of § 63.1206(b)(7)(i). In the proposal, we agreed with stakeholders that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A) is not necessary in all cases. As a result, we proposed to add § 63.1207(f)(1)(ii)(D) to allow regulatory officials to waive the comprehensive analysis of organic compounds, provided that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs being fed to the combustor. See 66 FR 35097.

Third, we clarified that we intended to require analysis of organic HAPs in the hazardous waste feedstreams only. Section 63.1207(f)(1)(ii)(A) could be read to imply that sources must analyze all feedstreams for organic HAPs. We proposed to amend this section to reflect our true intent not to require analysis for all feedstreams. *See* 66 FR 35097.

The majority of commenters on the proposal agree with the clarifications. However, one commenter asserts that POHCs should be selected considering organic HAPs in all feedstreams, not just hazardous waste feedstreams. The commenter reasons that approval of a comprehensive performance test plan without knowledge of the organic HAPs in all feedstreams could result in selecting POHCs that do not represent the most difficult to destroy organic compounds in all feedstreams. Thus, the DRE test may not ensure destruction of the most difficult to destroy compounds fed to the combustor. The commenter also suggests that the analysis for HAPs in all waste streams should be required because one or more of the POHCs selected based on hazardous waste feedstream analysis may also be present in nonhazardous waste streams. If the feedrate of POHCs in nonhazardous waste feedstreams are not accounted for during DRE testing, the DRE calculation will be conservatively low because more POHCs will be fed than accounted for in the calculation. In summary, the commenter's first concern addresses the analysis of feedstreams for HAPs for POHC selection prior to conducting the performance test, while the second concern addresses the analysis of feedstreams for HAPs that are chosen as POHCs for purposes of calculating DRE during the performance test.

With respect to commenter's first concern, we disagree with the need to consider organic HAPs in all feedstreams for POHC selection. We adopted the DRE requirement from existing RCRA requirements where it applies only to hazardous waste feeds,[3] and did so to satisfy section 3004 (o)(1)(B) of RCRA, which requires EPA to retain a DRE requirement for *hazardous waste*. Also, repromulgation of the RCRA requirement as a CAA standard saves the administrative burden of separate RCRA DRE permitting. See 64 FR at 52847. In addition, even if all feedstreams were considered for POHC selection, we conclude that organic HAPs in fossil fuels and raw materials would not be selected as the POHCs of greatest concern considering the types and concentration of those organic HAPs relative to the types and concentration of organic HAPs in hazardous waste feedstreams. Finally, we note that owners and operators typically select the same POHCs to demonstrate DRE regardless of the hazardous waste present. These POHCs are among the most difficult compounds to destroy of any organic compounds. Thus, presence of organic HAPs in nonhazardous waste feedstreams is generally moot because they would not suggest any different POHCs.

With respect to the commenter's second concern, we agree that the DRE calculation will be conservatively low if POHCs are present in nonhazardous waste feedstreams and not accounted for in the calculation. However, we are not aware that this has been a problem for sources trying to show compliance with DRE. Therefore, based upon the commenter's two concerns, we think the proposed clarifications are appropriate.

[3] For example, the DRE requirements of § 266.104 for cement kilns and lightweight aggregate kilns apply to hazardous waste feedstreams only, not fossil fuel or raw material feedstreams.

Part Three—What Revisions, Proposed in the Technical Amendments Proposal, Are We Making in Today's Rule?

I. What Revisions Are We Making to the Combustion System Leak Provisions?

We are making several revisions to the combustion system leak provisions. First, we are amending the definition of an instantaneous pressure monitor to better clarify that the intent of the combustion system leak requirements is to prevent fugitive emissions from the combustion of hazardous waste rather than from nonhazardous feedstreams. The revised definition also clarifies that instantaneous pressure monitors must detect and record pressure at a frequency adequate to detect combustion system leak events, as determined on a site-specific basis. *See* § 63.1201(a) and § 63.1209(p). Second, you must specify the method that you plan to use to control combustion system leaks in the performance test workplan and Notification of Compliance. See § 1206(c)(5)(ii). Finally, in response to numerous comments, today's rule also adopts a provision that will allow you, upon prior written approval of the Administrator, to use other techniques to monitor pressure that can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits. See § 63.1206(c)(5)(i)(D).

A. What Did We Propose To Change?

The September 1999 final rule requires you to control combustion system leaks by either: (1) Keeping the combustion zone sealed; (2) maintaining the maximum combustion zone pressure lower than the ambient pressure using an instantaneous monitor; or (3) using an alternative means to provide control of system leaks. After publication of the final rule, stakeholders expressed concern that the requirement to maintain the combustion zone pressure lower than ambient pressure (option 2 above) could result in an overly prescriptive requirement. Stakeholders believe this regulatory language can be interpreted to require you to monitor and record combustion zone pressure at a frequency of every 50 milliseconds. Stakeholders also requested that we clarify that combustion system leaks refer to fugitive emissions resulting from the combustion of hazardous waste, and not fugitive emissions that originate from nonhazardous process streams

(*e.g.*, the clinker product at a cement kiln).

In response to the above concerns, we proposed several amendments to the combustion system leak provisions. 66 FR at 35132. First, we proposed to modify the definition of an instantaneous pressure monitor to read as follows: "Instantaneous monitoring for combustion system leak control means detecting and recording pressure without use of an averaging period, at a frequency adequate to detect combustion system leak events from hazardous waste combustion."

Second, we proposed to revise the automatic waste feed cutoff regulatory language to read as follows: "If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion system leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained."

Third, we proposed that you must specify the method used to control combustion system leaks in the performance test workplan and notification of compliance. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, we also proposed that you must specify the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

Stakeholders also suggested that we allow averaging of the pressure readings over short periods of time, e.g., a 5-second rolling average updated every second, in demonstrating the combustion system is maintained below ambient pressure. As result, we requested comment on whether such a monitoring approach is appropriate.

B. What Were Commenters' Reactions to the Proposed Amendments?

We received no adverse comments on the proposed amendments that: (1) Require you to specify the method that will be used to control combustion system leaks in the performance test workplan and notification of compliance; and (2) revise the automatic waste feed cutoff provision that addresses combustion system leak events. We are finalizing these proposed amendments in today's rulemaking.

The majority of commenters supported the proposed amendment to the definition of instantaneous monitoring. Many of those supporting this amendment, however, were opposed to the concept of requiring instantaneous pressure limits altogether (see discussion below). One commenter expressed concern that the definition of instantaneous monitoring can still be interpreted to require you to monitor pressure as often as once every 50 milliseconds. Although the proposed definition of instantaneous monitoring clarifies that monitoring frequency should be adequate to detect combustion system leaks, the language does not specify what is considered to be an appropriate frequency. We conclude that such specificity in regulations would not be appropriate because sources differ substantially in design and operation such that different monitoring frequencies may be needed to prevent fugitive emissions. As a result, we are adopting, unchanged, the proposed revision to the definition of instantaneous monitoring.

Rather than specify a minimum monitoring frequency in the regulations, we clarify here that we do not intend for the instantaneous monitoring requirements to require a pressure monitoring frequency as often as once as every 50 milliseconds. We believe a reasonable pressure monitoring frequency that could meet the intent of the instantaneous monitoring definition is once every second, and a reasonable pressure recording frequency could be once every minute, provided that: (1) the automatic waste feed cutoff is engaged when a one-second reading exceeds ambient pressure; (2) you record in the operating record when any such event occurs; and (3) the pressure reading that is recorded every minute represents the highest one-second observation during the previous minute.

C. What Were Commenters' Objections to Instantaneous Pressure Limits?

Commenters disagree with the premise that a positive pressure event equates to a release of fugitive emissions, citing examples of positive pressure events that, based on system design and operation, do not result in fugitive emissions. They claim the rule as currently written will discourage innovative engineering solutions that would minimize fugitive emissions (e.g., installation of new kiln seals) because of the presumption that any positive pressure excursion results in an automatic waste feed cutoff.

We acknowledge that positive pressure events do not necessarily result in fugitive emissions. For example, there are state-of-the-art rotary kiln seal designs (such as shrouded and pressurized seals) which are capable of handling positive pressures without fugitive releases. Specifically, we are aware of rotary kilns operated at the U.S. Department of Energy (USDOE) Savannah River Site and USDOE Oak Ridge Site that have been used for radioactive and hazardous waste treatment which are designed to prevent the release of radioactive materials. The Savannah River kiln uses multiple graphite seals with pressurized chambers between the seals to prevent out-leakage at kiln pressures up to the pressure in the seal chamber (10 psig). The Oak Ridge kiln uses overlapping spring plate seals to form an air seal, and is designed to withstand positive pressures up to 2 psig. *See* Support Document for Fugitive Emission Control, February, 2002 for more information.

However, we believe these kilns are highly unusual, and that other conventional rotary kilns used in the hazardous waste combustion industry may not have seals which are designed for such positive pressure operation. In fact, we believe that, for most rotary kilns in current service, positive pressure events can result in fugitive releases. The level of such fugitive releases will be dependent on factors including the magnitude of the pressure excursion and the design and operation of the kiln.

Nonetheless, we agree that explicit restrictions on positive pressure events could discourage you from implementing innovative methods to prevent fugitive emissions, and we agree that instantaneous negative pressure limits may be not warranted for all hazardous waste combustion sources. A solution that was recommended by several commenters would amend the pressure monitoring requirements by including a provision that will, upon prior written approval of the Administrator, allow you to use other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits. Such a provision would clarify that you can use a compliance approach that does not require pressure to be maintained below ambient on an instantaneous basis provided you demonstrate that the method prevents fugitive emissions. We agree that this recommended amendment is reasonable and appropriate. Today's rule adopts this revision to the combustion system leak provisions.

Many commenters believe instantaneous pressure monitoring

requirements will increase the number of automatic waste feed cutoffs, resulting in rapid switching between use of supplementary fuel and hazardous waste fuel. The instantaneous pressure monitoring requirements could thus have a negative impact, resulting in increased use of fossil fuel and, because of the non-steady-state nature of combustion conditions associated with the rapid switching of fuels, increased pollutant emissions. Commenters claim the use of short averaging periods, time delays, or damping of the transmitter response times would allow properly designed facilities to handle these types of pressure changes while still minimizing fugitive emissions.

We believe automatic waste feed cutoffs are appropriate non-compliance deterrents, and are necessary whenever you exceed an emission standard or operating requirement (e.g., when fugitive emissions occur). If you repeatedly exceed the emission standards you should modify your operating practices and/or design of the unit to minimize the number of exceedances. However, we agree that needless triggering of automatic waste feed cutoffs when you are not exceeding an emission standard may provide less environmental protection, not more. As previously discussed, there may be instances when positive pressure events do not result in combustion system leaks. We believe the provision we are adopting that will allow you to use other techniques to monitor pressure that can be demonstrated to prevent fugitive emissions adequately addresses these commenters' concerns.

Several commenters suggest we abandon the instantaneous pressure monitoring requirement altogether and use the existing RCRA fugitive emission regulatory language in § 264.345.[4] One commenter agrees that there are some units where instantaneous negative pressure limits are desirable to minimize fugitive emissions. Other commenters claim we should abandon the instantaneous monitoring requirements because we require different levels of protection across different regulations. Specifically, the instantaneous pressure monitoring requirements in the Hazardous Waste Combustor MACT rule appear to reflect a zero tolerance for combustion system leaks while the requirements of the RCRA Subpart BB regulations covering air emissions for equipment leaks are less restrictive for the same types of wastes. One commenter states that the instantaneous pressure monitoring requirements should be abandoned because we have not demonstrated combustion system leaks present health risks.

We believe that combustion system leaks must be prevented whenever it is reasonably possible. This is the approach currently required by existing RCRA hazardous waste incinerator and boiler and industrial furnace rules. *See* §§ 264.345(d)(2) and 266.103(h)(2). Instantaneous pressure monitoring without the use of averaging periods is an appropriate, demonstrated compliance strategy option that achieves this goal. As a result, we cannot agree to drop the instantaneous monitoring requirements for all facilities. However, as previously stated, instantaneous pressure monitoring requirements may not be warranted for all hazardous waste combustion sources to prevent combustion system leaks and we are including a provision that allows you to use other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions.

We acknowledge the differences between the RCRA Subpart BB and MACT combustion system leak requirements. The MACT provisions are designed to assure compliance with the hazardous waste combustor emission standards and to assure that you operate in a manner consistent with good air pollution control practices. CAA Section 112(d) MACT emission standards and good air pollution control practices are generally technology specific and dependent on the type of regulated unit—they are not risk-based standards. Fugitive emissions from open tanks, pumps and valves will not be regulated the same as fugitive emissions from hazardous waste combustors because they are different devices that practically must use different pollution abatement systems.[5] Therefore, we do not agree with the commenters' assertions that there is an inappropriate disparity between the Subpart BB and MACT requirements.

One commenter believes that a five second pressure averaging or delay period is adequate for most sources, but for systems with high performance or double seals, a longer time could be warranted and for systems with less effective seals, a shorter period could be appropriate. Another commenter believes that we should allow you to average the positive pressure events over a time period not to exceed 15 seconds. A third comment recommends that the averaging period be no longer than a half of a second.

We disagree that a pressure averaging time not to exceed either five or fifteen seconds would be appropriate for all sources. The pressure monitoring technique that adequately prevents combustion system leaks is site-specific and will be dependent on many factors, including combustion chamber type and design, kiln seal design, hazardous waste feed practices, etc. If you choose to implement a pressure averaging compliance approach, today's adopted amendment requires you, on a site-specific basis, to demonstrate that the averaging period adequately prevents fugitive emissions.

Finally, one commenter states that EPA should not require chemical demilitarization facilities to maintain negative pressures in the combustion chamber at all times due to the energetic nature of the feedstream. The commenter states that although it is not possible to eliminate all transient pressure spikes in chemical demilitarization furnaces, the commenter believes the engineering features of the units and the air containment systems address environmental concerns. Furthermore, the commenter asserts that fugitive emissions that are released from these units into the containment rooms are controlled to better than a 99.9999% destruction removal efficiency, and suggests this meets or exceeds the control level that would be achieved if those same emissions had passed through the air pollution control system.

The chemical demilitarization facilities are unique because: (1) They thermally treat chemical agents; and (2) the combustion units are located in enclosed rooms where the air is exhausted through a bank of carbon filters specifically designed to control fugitive emissions. We are convinced that combustion system leaks should be prevented whenever it is reasonably possible, even considering the fact that the fugitive emissions are controlled by a secondary device. We consider this necessary because of the toxicity of these wastes, and because we believe such an approach is consistent with current good air pollution control practices.[6]

[4] We note the § 264.345 language does not explicitly require instantaneous pressure monitoring.

[5] For example, fugitive emissions from combustors are generally controlled by maintaining a negative combustion chamber pressure to ensure the organic wastes remain in the unit at the elevated temperatures to achieve organic destruction. Fugitive emissions from tanks and valves are generally controlled with containment systems (tank covers or vapor recovery systems), periodic leak inspections, etc.

[6] We believe minimizing fugitive emissions whenever reasonably possible to be consistent with good air pollution practices because this best

Continued

Because it appears that these facilities may be designed to adequately control the fugitive emissions that are released from the combustion units, a pressure monitoring scheme that does not include the use of instantaneous limits may be warranted.[7] We note that there are two existing regulatory mechanisms that allow you to implement a fugitive emission control compliance approach other than one that uses instantaneous pressure limits. First, § 63.1206(c)(5)((i)(C) allows you to use an alternative means to provide control of combustion system leaks equivalent to maintenance of combustion zone pressure lower than ambient pressure, upon prior written approval of the Administrator. Also, the alternative monitoring provisions of § 63.1209(g)(1) allow you to petition the regulatory official for approval to use alternative monitoring methods. As previously discussed, we are amending the pressure monitoring requirements to include a provision that will, upon prior written approval of the Administrator, allow the use of other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits.

II. What Revisions Are We Making to the Operator Training and Certification Requirements ?

On July 3, 2001 (*see* 66 FR 35132–34), we proposed changes to the operator training and certification requirements of § 63.1206(c)(6). Today we are finalizing those changes as proposed. These changes revise the rule to: (1) Allow incinerator control room operators to be trained and certified under either a site-specific, source-developed and implemented program; or the American Society of Mechanical Engineers (ASME) program; or a state program; (2) for sources that choose to use the ASME program, require only provisional ASME certification by the compliance date for existing facilities, and by the date of assuming duties for new employees; (3) delete the requirement to provide control room operator training and certification for shift supervisors; (4) require control room operators to complete an annual review or refresher course covering prescribed topics to maintain certification; and (5) clarify that a certified control room operator must be on duty at the source at all times the source is in operation.

As explained at proposal, the ASME program comprises of testing in two parts. The ASME administers a comprehensive, generic, written test addressing operations of various types of incinerators and their pollution control systems, and awards provisional certification to operators passing this test. Full certification is awarded later after an operator with provisional certification passes an on-site, site-specific oral examination. The ASME does not implement any training programs for these tests, and also does not require any annual review or refresher course to maintain certification. Under today's rule, each source is required to impart requisite training to its operators to pass the tests administered either by the ASME, or by the source itself; and also to implement an annual review or refresher course, described in detail at proposal.

Most commenters strongly favor all the revisions. One commenter, however, states that deleting certification requirements for shift supervisors is unwise and can lead to increased emissions, and that the certified supervisors can fill in during absences of the operator. We were not persuaded by this comment. Today's revision mandates the presence of a certified operator at all times the source is in operation. Because there will always be some periods of absence of any particular operator (due to vacation time, sickness etc.), the source will prepare plans for such periods and record them in the training and certification program, that is a part of the operating record. Since many sources are operated 24 hours a day, 7 days a week, and there is more than one operator in the control room (with one being the chief or head operator), we believe each source will train and certify several operators, and plan their rotational assignments according to their needs. It is the responsibility of each source to plan whether to utilize the shift supervisor, or a deputy of the chief control room operator during any absences. Of course, if a shift supervisor is used for such occasions, the shift supervisor must be trained and certified as a control room operator.

One commenter states that no state programs for control room operators are available. We agree that state programs may not be available, but believe that some states are either considering developing their own operator programs, or actively review, approve and oversee the facility-developed site-specific training programs. We do not want to foreclose any opportunity either to the sources, or to the states in this matter.

Another commenter states that the preamble to the proposal stipulates a written test, and does not mention use of equivalent techniques such as a computerized test. We agree that a computerized test or other testing approach equivalent to a written test may be appropriate and note that the regulation does not require use of a written test. If you plan to use an alternative to a written test, however, you should describe the testing approach in your training and certification program.

III. What Time Extensions for Testing Are Available If the Comprehensive Performance Test Plan Has Not Been Approved?

As proposed on July 3, 2001 (66 FR at 35135), we are revising the September 1999 rule to allow you to perform your comprehensive performance test later than you otherwise must if the permitting authority has not approved your test plan. To get a time extension, you must petition the permitting authority for a time period not to exceed six months. This petition may be renewed for a total time extension of one year. Permitting authorities should grant these extensions if the source has acted in good faith. You must, however, perform your test no later than one year after the test date (or sooner if your time extension expires before one year) that would have applied if the test plan had been approved in a timely manner.

In the final rule, we made no provision for having the test date delayed. We stated that sources would have to perform their comprehensive performance test within 6 months of the compliance date regardless of whether the test plan had been approved. At the time we stated that "if permit officials nevertheless fail to act within the nine month review and approval period, a source could argue that this failure is tacit approval of the plan and that later 'second guessing' is not allowed." See 64 FR at 52912. However, stakeholders noted that there is nothing to prohibit a permitting official from disapproving a plan after the actual test had been performed. If this occurs, the source

ensures the organic waste remains in the combustion unit for a duration of time, and at an elevated temperature, necessary to achieve adequate organic destruction.

[7] The information provided by the commenter that describes the control efficiency for released fugitive emissions does not contain the level of detail that would allow us to conclusively evaluate the commenter's assertions. For example, no information was provided explaining whether comparable carbon removal efficiencies would be achieved for such low organic concentration levels that result after the fugitive emissions are diluted by the containment room air (as compared to the destruction and removal efficiency in the combustor). The level of review is more appropriately conducted by the local regulatory official.

would be required to rerun a test based on the revised test plan.

Combustion source owners are very concerned about this potential scenario. They point out that comprehensive performance tests are very expensive, often several hundreds of thousands of dollars for a commercial source, and possibly more than a million dollars at a government installation due to the unique circumstances encountered while burning munitions or mixed waste. Therefore, we agree with stakeholders that a comprehensive performance test should not have to be rerun when circumstances prevent the permitting official from approving the test plan in a timely manner.

We proposed an amendment to the final rule that we believe addresses stakeholders' concerns. The proposed amendment specifically allowed sources to petition the Administrator under § 63.7(h) to waive the test requirement for up to six months if the test plan is not approved. This will give the permitting official an additional six months to act on the test plan. The source also could request a second waiver of up to six months if the plan is not approved following the initial six month period. You would qualify for this waiver if you submitted your test and evaluation plans on time, and made a good faith effort to accommodate any comments you received on those plans. The proposed amendment also describes the procedures for obtaining the waiver, what documentation you must include in the waiver, and how to involve the public.

We are promulgating this amendment as proposed. All but two commenters support the amendment. The commenters opposing the amendment are concerned that, despite as much as a 12-month respite from testing, the source might still have to perform a test after those 12 months without an approved test plan. Many commenters that support the proposed amendment also mention this concern. However, while we are sympathetic to the legitimate need for a time extension due to circumstances preventing the permitting authority to approve or deny the test plan, we continue to "believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to a test plan, thereby unnecessarily delaying testing." See 66 FR at 35135 for our previous discussion on this issue. None of the commenters provide information on this issue beyond what was available at the time the final rule was promulgated. Therefore, our belief at the time of the final rule that the test date should not be open-ended, has not changed, nor do we have any basis to believe that any extension beyond one year is needed.

IV. What Flexibility Is Provided in Operations During Confirmatory Testing for Dioxin/Furans?

On July 3, 2001 (see 66 FR at 35136), we proposed changes to the requirements for confirmatory performance testing for dioxin/furan to provide flexibility in operations during confirmatory testing. Today we are finalizing those changes as proposed, and are making an additional revision to clarify which historical data are used to calculate normal operating values. These changes to § 63.1207(g)(2) revise the rule to: (1) Allow approval in the test plan of operations under a wider range for a particular parameter based on information justifying that operating within the required range may be problematic; and (2) allow the Administrator to accept test results based on operations outside of the range specified in the confirmatory test plan. Under the existing rule, sources are required to operate so that carbon monoxide or hydrocarbon levels, and operating parameter limits associated with the dioxin/furan emission standard, are within the range of the average values over the previous 12 months up to the maximum or minimum value, as appropriate, that is allowed. Stakeholders expressed concern that it was difficult to control operation of the combustor to the required range for each operating parameter simultaneously. In particular, they stated it will be difficult to operate within a potentially narrow range of carbon monoxide levels for sources that normally operate close to the 100 ppmv limit, because carbon monoxide levels are dependent on many combustion-related factors and cannot be directly "dialed in" as can be done for other parameters (e.g., activated carbon injection feedrate).

Today's amendment to § 63.1207(g)(2) also allows the Administrator to accept test results based on operations outside of the range specified in the test plan when a source did not anticipate a problem in maintaining the operating levels within the required range (and therefore did not request advance approval to do so), but because of unforeseen factors, was unable to maintain the required range. This provision would give permit writers discretion to accept emissions data obtained when operating outside of the prescribed range so that sources would not have to incur the costs of an additional confirmatory test. In determining whether to accept test results from operations outside of the range specified in the test plan, permit writers would consider factors including: (1) the magnitude and duration of the deviation from the required range; (2) the historical range of the parameter (e.g., the range between the 10th and 90th percentile time-weighted average values for the parameter); (3) the proximity of the emission test results to the standard; and (4) the reason for not maintaining the required range. These factors determine whether the operations are reasonably representative of normal operations and how important it may be that test operations are truly representative of normal operations.

Most commenters support the proposed amendment, and we are revising § 63.1207(g)(2) as proposed with one minor change. The September 1999 final rule required you to exclude data pertaining to malfunctions, monitor calibrations, and nonhazardous waste operations when calculating normal operating levels. Today we are also requiring you to exclude data pertaining to startup and shutdown operations as well when calculating these averages. We did not propose to explicitly exclude you from using startup and shutdown data because you were previously not allowed to burn hazardous waste during these events. We conclude this change is now necessary given that some sources may, in limited circumstances, burn hazardous waste during startup and shutdown as a result of the changes to the startup, shutdown, and malfunction compliance requirements.

One commenter suggests that we should not require sources to exclude data pertaining to nonhazardous waste operations when calculating these averages. The commenter states that the amount of time sources operate while not burning hazardous waste is negligible and would not affect the calculated average values. We acknowledge that the time you operate while not burning hazardous waste (while also not in startup, shutdown, or malfunction mode) may be negligible, and thus may not significantly affect the calculated average values. However, we believe the data acquisition systems in use today are readily capable of omitting these data when calculating the averages, and excluding nonhazardous waste operating data is preferable. As a result, we conclude no change is necessary.

V. How Can You Waive Operating Parameter Limits During Performance Testing and Pretesting?

Section 63.1207(h) automatically waives operating parameter limits (OPLs) during subsequent comprehensive performance tests under an approved performance test plan. Stakeholders raised two concerns that we addressed in the proposed rule: (1) OPLs defined in the Documentation of Compliance should be waived during the initial comprehensive performance test and associated pretesting; and (2) OPLs should be waived during testing and pretesting irrespective of whether the test plan has been approved. 66 FR at 35136–37.

A. How Can You Waive OPLs During the Initial Comprehensive Performance Test?

We explained in the proposed rule why the rule need not be revised to waive OPLs during the initial comprehensive performance, or associated pretesting. This is because the OPLs are defined in the Documentation of Compliance (DOC) prior to the initial comprehensive performance test, and you may revise the DOC at any time prior to submitting the Notification of Compliance. To widen the operating envelope by making the OPLs less stringent, you need only provide information in the operating record justifying why operating under the less stringent OPLs is likely to ensure compliance with the emission standards. You would revise the DOC accordingly, and record the DOC in the operating record. Review and approval by regulatory officials is not required.

An industry commenter states the rule should be revised to explicitly waive the OPLs defined in the DOC during the initial performance test because revising the DOC and providing support that the revised OPLs ensure compliance with the emission standards may not be a simple process. We do not agree, and the commenter did not elaborate on why revising the DOC would be burdensome. Moreover, we note that the supporting information required for DOC modification must be developed and included in the performance test plan as justification to deviate from the current OPLs when the plan is submitted for review and approval.

We conclude that it is not necessary to revise the rule to waive OPLs during the initial comprehensive performance test and associated pretesting because you may revise the OPLs in the Documentation of Compliance at any time.

B. How Can You Waive OPLs During Subsequent Comprehensive Performance Tests?

Section 63.1207(h) waives operating parameter limits (OPLs) during subsequent comprehensive performance tests under an approved performance test plan. In our proposal, we addressed the potential situation where you are facing the deadline for conducting the comprehensive performance test but the test plan has not been approved and regulatory officials have not extended the compliance date. We proposed to revise the rule to waive OPLs during subsequent comprehensive performance testing and associated pretesting, provided that you record the emission test results of the pretesting. We reasoned that the emission test results would confirm whether you were in compliance with the emission standards when operating under the less stringent OPLs.

Most commenters agree with the proposal but noted that: (1) We revised § 63.1207(h)(2) to waive OPLs during pretesting provided that emission test results are recorded but neglected to revise § 63.1207(h)(1) that waives OPLs under the performance test only when there is an approved test plan; and (2) in revising § 63.1207(h)(2), we excluded a phrase added in a technical correction (see 65 FR at 42293 (July 10, 2000)) allowing the Administrator to renew the 720 hour limit on pretesting. Both omissions were inadvertent, and we include them in today's final rule.

One commenter states that OPLs should not be waived if the test plan is not approved by EPA. We disagree. The OPLs are waived only during pretesting or performance testing where the source is conducting emissions testing and recording the results of the tests. This documentation of compliance or noncompliance with the emission standards serves as an incentive to operate the source under alternative OPLs that ensure compliance with the standards.

We conclude it is appropriate to revise the rule as proposed to waive OPLs during subsequent comprehensive performance testing and pretesting (provided that emissions test results during pretesting are recorded) and to allow the Administrator to renew the 720 hour limit on pretesting as promulgated in the July 10, 2000 technical correction. *See* revised §§ 63.1207(h).

VI. What Are the Calibration Requirements for Temperature Measurement Devices?

The September 1999 final rule requires that thermocouples and other temperature measurement devices, such as pyrometers, must be recalibrated every three months. However, stakeholders are concerned that recalibrating these devices every three months can be particularly burdensome and offers little environmental benefit (i.e., among other things, no better assurance of compliance with the actual emission standards) over a less frequent calibration interval. In the July 2001 proposal, we discussed stakeholders' concerns and requested more information on the need for, and burden associated with, calibrating temperature measurement devices. See 66 FR at 35138. We also indicated that analysis of comments may lead us to conclude that § 63.1209(b)(2)(i) should be deleted in lieu of a requirement that each source develop an appropriate calibration procedure and frequency and include that information in the evaluation plan required by § 63.8(e)(3)(i).

Nearly all commenters agree with the need to provide flexibility in calibration frequency. Rather than delete § 63.1209(b)(2)(i), however, commenters suggest that we revise that provision to require calibration of temperature measurement devices using the manufacturer's procedures and calibration frequency. Also, commenters suggest that the calibration be performed at least once a year, unless a less frequent optical pyrometer calibration interval is approved by the Administrator.

We agree with commenters' suggestions and are revising § 63.1209(b)(2)(i) accordingly.

VII. What Changes Are We Making to the Particulate Matter Operating Requirements for Sources Using Activated Carbon Injection and Carbon Beds?

We are amending two provisions that apply to activated carbon injection and carbon bed operating systems. First, we are deleting the regulatory language that requires sources using activated carbon injection systems to limit the particulate matter emissions to levels achieved during the comprehensive performance test. We instead are requiring these sources to establish operating limits on the particulate matter control device to assure compliance with both the mercury and dioxin/furan emission standards. Second, we are deleting the requirement for sources equipped with carbon beds to establish particulate

matter operating parameter limits for purposes of ensuring compliance with dioxin/furan and mercury emission standards.

We explained at proposal that it is inappropriate to explicitly require a site-specific particulate matter limit if a carbon injection system is used because the rule does not require continuous monitoring of particulate matter emissions. 66 FR at 35141. The use of a site-specific particulate matter limit was originally thought to go in tandem with a requirement to use particulate matter continuous emission monitors. Because we do not require sources to use particulate matter CEMS for compliance purposes, however, we concluded these site-specific particulate matter limits were inappropriate, and proposed to delete this requirement. We instead proposed to require these sources to establish operating limits on the particulate matter control device consistent with the approach used to control particulate emissions for compliance assurance with the semivolatile and low volatile metals emission standards.

The proposal also explained that particulate matter control downstream of a carbon bed is not needed to ensure compliance with the dioxin/furan and mercury emission standards. We noted that most, if not all, carbon bed systems in use today are positioned downstream from particulate matter control devices to minimize particulate buildup in the carbon bed. Carbon beds are also designed so that carbon leakage into the flue gas is minimized. As a result, we proposed to delete the language that requires sources equipped with carbon beds to control particulate matter emissions to ensure compliance with the dioxin/furan and mercury standards.

We received no adverse comments on these proposed amendments. We are, therefore, adopting the proposed revisions in today's rulemaking.

VIII. How May You Comply Temporarily With Alternative, Otherwise Applicable MACT Standards?

Section 63.1206(b)(1)(ii), as revised (66 FR 35087 (July 3, 2001)), allows you to stop complying with the emission standards and operating requirements of Subpart EEE temporarily after the hazardous waste residence time has expired and to comply with otherwise applicable Clean Air Act requirements promulgated under Sections 112 and 129, provided you document in the operating record that you are complying with those alternative standards. If the Agency has not promulgated Clean Air Act Section 112 or 129 MACT standards for the nonhazardous waste burning class of sources in a particular source category, there are no otherwise applicable MACT standards for the source.

Stakeholders asked for clarification on the procedures during a transition between Subpart EEE standards and the otherwise applicable Section 112 or 129 MACT standards. In the July 3, 2001 proposed rule (66 FR at 35145–46) we explained that: (1) sources are affected sources only under Subpart EEE with respect to stack emissions, even when complying with the otherwise applicable MACT standards under an alternative mode of operation under § 63.1209(q); and (2) sources that elect to comply with otherwise applicable MACT standards after the hazardous waste residence time has expired must include all requirements of those MACT standards, not just operating limits, in the operating record, the Documentation of Compliance, the Notification of Compliance, and the title V permit application. We also proposed a revised approach to calculate rolling averages for compliance with operating parameter limits when changing modes of operation. We discuss these issues below, including comments received and our final determinations.

A. What Are the Implications of Being an Affected Source Only Under Subpart EEE?

At proposal, we explained that sources that invoke § 63.1206(b)(1)(ii) to become temporarily exempt from the emission standards and operating requirements of Subpart EEE remain an affected source under Subpart EEE (and only Subpart EEE) with respect to stack emissions requirements until the source meets the requirements specified in Table 1 to § 63.1200 for no longer being an affected source. To implement this clarification, we proposed to require you to define the period of compliance with the otherwise applicable Clean Air Act requirements promulgated under Sections 112 and 129 as an alternative mode of operation under § 63.1209(q). Thus, during this mode of operation, you would be exempt from the emission standards and operating requirements of Subpart EEE, except the requirements for the otherwise applicable Section 112 and 129 MACT standards you specify under § 63.1209(q).

We also proposed to revise the rule to clarify that otherwise applicable Section 112 and 129 MACT standards are "applicable requirements" under Subpart EEE if you elect to operate under that mode of operation after the hazardous waste residence time has expired. Because the source is an affected source only under Subpart EEE, those alternative, otherwise applicable MACT standards must be specified in a manner that is enforceable under Subpart EEE. Consequently, you must specify those alternative, otherwise applicable MACT standards, including not only the operating parameter limits under the Section 112 and 129 standards, but also the associated monitoring and compliance requirements and notification, reporting, and recordkeeping requirements, in the operating record under § 63.1209(q), the Documentation of Compliance (DOC) under § 63.1211(d), the Notification of Compliance (NOC) under § 63.1207(j), and the title V permit application.[8]

Commenters generally agree with our proposed approach to implement the alternative, otherwise applicable Section 112 and 129 MACT requirements after the hazardous waste residence time has expired. One commenter suggests, however, that we clarify that, if the Agency has not promulgated Section 112 or 129 MACT requirements applicable to the source, the source is exempt from operating requirements during that mode of operation. We agree with the commenter and addressed this situation in the proposal in footnote 37 (66 FR at 35145). If the Agency has not promulgated Section 112 or 129 MACT requirements applicable to the source, the source is exempt from operating requirements under the alternative, otherwise applicable MACT standards mode of operation provided that: (1) The hazardous waste residence time has expired; and (2) the source establishes this mode of operation under § 63.1209(q) and notes in the operating record when it enters and leaves this mode of operation. The source must nonetheless identify this mode of operation (i.e., where it is exempt from operating requirements) in the DOC, NOC, and title V permit application to assist compliance assurance.[9]

One commenter also suggests that the rule should be revised to waive the automatic waste feed cutoff requirements under § 63.1206(c)(3) when a source elects to continue operating under the Subpart EEE emission standards and operating requirements even though the hazardous waste residence time has

[8] We also noted in the proposal that, under § 70.6(a)(9), the title V permit must contain terms and conditions for all reasonably anticipated modes of operation, and thus, must contain the alternative, otherwise applicable MACT requirements.

[9] Please note such source could conceivably be subject to case-by-case permitting under section 112(j)(2) or 112(g)(2).

expired (i.e., the source elects not to comply with the alternative, otherwise applicable MACT standards). The commenter reasons that, because the hazardous waste residence time has expired, there is no need to require compliance with the hazardous waste feed cutoff requirements. We conclude that no regulatory revisions are needed because it is self-evident which provisions are applicable after the hazardous waste residence time has expired. For example, it is self-evident that the general requirements of § 63.1209(c)(3)(i) for the automatic waste feed cutoff system to cutoff the hazardous waste feed are not applicable, because hazardous waste is not being fed. Other requirements continue to be applicable, however. For example, § 63.1206(c)(3)(iii) continues to apply because it requires you to continue monitoring operating parameter limits after a cutoff and prohibits you from restarting the hazardous waste feed until the operating parameters and emission levels are within the specified limits.

After considering comments on the proposed rule, we conclude that, as proposed, § 63.1209(q) should be revised to add paragraph (q)(1) to provide requirements for operating under otherwise applicable Section 112 and 129 MACT standards.

B. How Are Rolling Averages Calculated When Changing Modes of Operation?

Section 63.1209(q) as originally promulgated requires you to begin calculating rolling averages anew (i.e., without considering previous recordings) when you begin complying with the operating parameter limits for an alternative mode of operation. We now believe this approach is problematic as it was to be implemented. As you change modes of operation, you would not be able to calculate a 60-minute rolling average, for example, until you had collected 60 one-minute average recordings for the parameter. Thus, for the initial hour after changing a mode of operation, you would not be able to document compliance with the operating parameter limits. To address this concern, we proposed that you would use the most recent continuous monitoring system recordings when operating under a mode of operation to calculate rolling averages when renewing operations under that same mode. Under this approach, to calculate an hourly rolling average when you changed to an alternative mode of operation, you would add the first one-minute average recording to the 59 one-minute average recordings when you last operated under that mode of operation. Thus, rolling averages could be calculated after the first minute of renewing operations under a mode of operation.

Several commenters express concern that the proposed approach of retrieving one-minute average recordings from when you last operated under that mode of operation to calculate a rolling average can place a significant burden on a source's data acquisition system. The data acquisition system would be required to store and retrieve 59 minutes from a mode of operation under which the source may operate only infrequently. This approach would increase the memory requirements of a source's data acquisition system and increase programming efforts and costs because of the increased number of data registers used for storage.

Commenters suggest two alternative approaches to calculate rolling averages when changing modes of operation. One alternative, the "Start Anew" approach, is the currently promulgated approach, but it would be implemented differently. The other alternative approach, the "Seamless Transition" approach, is an approach that we discussed in a footnote in the July 3, 2001 proposed rule. We agree with commenters' concerns about allowing only one approach to calculate rolling averages after a transition to a new mode of operation (i.e., the "Retrieval Approach"), and have promulgated all three approaches, as discussed below, because they are equally effective. You may use any of these approaches.

1. How Does the Retrieval Approach Work?

The retrieval approach works as described above and in the July 3, 2001 proposed rule. You use the most recent continuous monitoring system recordings when operating under a mode of operation to calculate rolling averages when renewing operations under that mode. Although this approach may be burdensome in some situations as commenters state, it may be preferable in some situations to the other two approaches discussed below. See new § 63.1209(q)(2)(i).

2. How Does the Start Anew Approach Work?

Under the start anew approach, you calculate rolling averages anew without considering previous recordings. This is the currently promulgated approach. See old § 63.1209(q) and new § 63.1209(q)(2)(ii).

Under today's rule, however, you are required to implement the approach differently. As discussed above, this approach is problematic if implemented as currently required because you are not able to calculate an hourly rolling average, for example, until you record 60 one-minute average values for a parameter under the new mode of operation. During that hiatus, you cannot document compliance with the OPLs. Under today's rule, to calculate an hourly rolling average after changing a mode of operation, you must calculate the hourly rolling average as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate an hourly rolling average. Similarly, to calculate a 12-hour rolling average immediately after changing a mode of operation, you must calculate the 12-hour rolling average as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate a 12-hour rolling average. See new § 63.1209(q)(2)(ii). This is a conservative approach to calculating rolling averages because you are not able to use the full averaging period to lessen the impact of abnormally high one-minute recordings until you accumulate, for example, 60 one-minute averages for the hourly rolling average.

You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring. This condition ensures that sources cannot avoid compliance with § 63.1206(c)(3)(iii) after an automatic waste feed cutoff by ignoring the parameter recordings that occurred when hazardous waste was in the combustion chamber and the OPLs were exceeded, and then quickly restarting the hazardous waste feed once the operating parameters and emission levels are within the specified limits.[10] The purpose of this provision is to provide an additional incentive to avoid exceedances when hazardous waste is in the combustion chamber by delaying restart of the hazardous waste feed until the operating parameters (and emissions measured with a CEMS) are within the limits.

3. How Does the Seamless Transition Approach Work?

Several commenters recommend the seamless transition approach that we discussed in footnote 41 in the July 3, 2001 proposal, 66 FR at 35146. Under this approach, you continue calculating

[10] See letter form Jim Berlow, USEPA, to Michelle Luck, Cement Kiln Recycling Coalition, dated June 21, 2001 (in the docket for this rulemaking).

rolling averages using data from the previous operating mode provided that both the operating limits and the averaging period for the parameter are the same for both modes of operation. We agree that this approach is an appropriate alternative and finalize it as new § 63.1209(q)(2)(iii). Note, however, that if parameter recordings from a previous mode of operation where you may not be burning hazardous waste contribute to an exceedance in the new mode of operation when you are burning hazardous waste and hazardous waste remains in the combustion chamber, you have nonetheless exceeded an emission standard or operating limit when hazardous waste is in the combustion chamber.

IX. What Are the Procedures for Allowing Use of Less Sensitive Bag Leak Detection Systems?

In the July 2001 proposed rule, we requested comment on whether the bag leak detection system requirements should be revised to explicitly allow sources to petition the Administrator to use bag leak detection monitors that have detection limits higher than 1.0 milligrams per actual cubic meter as required by the September 1999 final rule. See 66 FR at 35134. We reasoned that less sensitive bag leak detectors would be acceptable in situations where the detector could nonetheless detect subtle changes in baseline, normal mass emissions of particulate matter. In determining whether the detector is sensitive enough to detect subtle changes in baseline, normal mass emissions, the permitting authority could consider information such as results of site-specific tests that document the detector provides a measurable and repeatable change in opacity output with an increase in particulate matter mass emissions at normal emission levels.

All commenters support this revision, saying that we should explicitly allow a source to petition the Agency using the alternative monitoring provisions under § 63.1209(g)(1) to use a less sensitive bag leak detector. Therefore, we are revising new § 63.1206(c)(7)(ii)(A)(1) by appending it with the following phrase: "* * * unless a source demonstrates, pursuant to the procedures in § 63.1209(g)(1), that a higher sensitivity would adequately detect bag leaks."

Part Four-What Technical Corrections Are Being Made in Today's Rule?

I. What Corrections Are We Making to Part 63, Subpart EEE?

We are making several corrections to 40 CFR part 63, Subpart EEE, published on September 30, 1999.

A. Several Typographical Errors Are Corrected

In today's rule, we correct a typographical error shown in entry (2) in Table 1 to § 63.1200 by replacing the word "extent" with "extend."

We also revise by italicizing several paragraph numbers and headings that will make the regulatory text easier to read. The paragraphs revised include §§ 63.1206(b)(5)(i)(C)(1), 63.1209(g)(1)(B)(1) through (3), 63.1209(g)(1)(C)(1) and (2), 63.1209(l)(1), 63.1209(m)(3), 63.1209(n)(4), and 63.1209(o)(1).

We also correct several typographical errors. We correct § 63.1207(f)(1)(x) by removing an extra "]" from the paragraph. Section 63.1207(m)(4)(i) is corrected by capitalizing "Notification of Compliance." We correct a typographical error in the first sentence of § 63.1209(b)(5)(iii)(A) by removing the word "to" before the word "monitoring." The typographical error in the heading of paragraph § 63.1209(k)(8)(ii) is also corrected. We revise the paragraph heading from "mum time in-use" to "Maximum time in-use." Finally, we correct a typographical error in the first sentence of § 63.1213(a) by replacing the word "data" with "date."

B. Several Citations Are Corrected

In the May 14, 2001 rule, we removed the Notice of Intent to Comply (NIC) provisions that were vacated in *Chemical Manufacturers Association* v. *EPA*, 217 F.3d 861 (D.C. Cir. 2000). When we removed the NIC requirements from §§ 63.1210 and 63.1211 and redesignated follow-on paragraphs in those sections, we did not also revise several references to the redesignated paragraphs of §§ 63.1210 and 63.1211. The paragraphs revised include §§ 63.1206(b)(11), 63.1206(c)(1)(i), 63.1207(j)(1)(ii), 63.1207(j)(3), 63.1209(a)(1)(ii)(A), 63.1209(f)(1), and 266.100(b)(1).

In the May 14, 2001 rule, we also made changes to the compliance dates provisions of § 63.1206(a). However, when we redesignated paragraph (a)(3) to (a)(2) in that rule, we inadvertently failed also to revise a cite within old paragraph (a)(3). Today's rule corrects the reference in § 63.1206(a)(2) from paragraph (a)(3)(ii) to (a)(2)(ii).

We also correct an incorrect citation in § 63.1207(f)(1)(xvii). This paragraph inadvertently refers to § 63.1209(m)(5)(i) instead of § 63.1209(n)(5)(i). We make that correction today.

Finally, we correct an incorrect citation in § 63.1207(m)(4)(ii). This paragraph inadvertently refers to § 63.1207(m)(3)(iv) instead of § 63.1207(m)(4)(i). We make that correction today.

II. What Correction Are We Making to § 266.100?

We are making two corrections to § 266.100(d) to correct errors made when we promulgated the September 30, 1999 final rule. When we added § 266.100(b) to address integration of the MACT standards and redesignated paragraphs (b), (c), (d), (e), and (f), as (c), (d), (e), (f), and (g), respectively, we did not revise several references within these paragraphs. Today's rule revises the reference to old paragraph (c)(2) in paragraph (d)(1)(i)(B) to (d)(2); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(i) to (d)(1)(iii); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(ii) to (d)(1)(iii); the reference to old paragraphs (c)(1) and (c)(3) in paragraph (d)(3) to (d)(1) and (d)(3), respectively; the reference to old paragraph (c)(1) in paragraph (d)(3)(i) to (d)(1); and the reference to old paragraphs (c)(3) and (c)(1)(ii) in paragraph (d)(3)(i)(D) to (d)(3) and (d)(1)(ii), respectively.

In addition, when we added § 266.100(h) in the September 30, 1999 final rule to provide reduced sampling and analysis and notification and recordkeeping requirements for secondary lead smelters complying with the Secondary Lead Smelting NESHAP, we inadvertently deleted regulatory language in old paragraph (c)(3) that was redesignated paragraph (d)(3). We restore that regulatory language in (d)(3) today.

Finally, we correct a reference in § 266.100(a) from paragraphs (b), (c), (d), and (f) to paragraphs (b), (c), (d), (g), and (h).

III. What Correction Are We Making to § 270.42(j)(1): Combustion Facility Changes To Meet Part 63 MACT Standards?

We are correcting an error in the RCRA permitting regulations relating to the vacature of the Notification of Intent to Comply (NIC) and its associated requirements. On October 11, 2000, the D.C. Circuit issued a mandate to vacate the Notification of Intent to Comply provisions of 40 CFR part 63, Subpart EEE (Chemical Manufacturers Association v. EPA, 217 F. 3d 861, D.C.

Cir. 2000). We subsequently directed the Office of the Federal Register to remove those provisions from the Code of Federal Regulations on May 14, 2001 (66 FR 24270). Since sources were required to comply with the NIC requirements in order to be eligible for the RCRA Streamlined Permit Modification procedure, we also modified § 270.42(j)(1) to address the court's mandate.

Previously, § 270.42(j)(1) required owners or operators to first comply with the NIC requirements of § 63.1210 before requesting a streamlined RCRA permit modification. Sources were required to submit their final NICs by October 2, 2000. Since the court's mandate was not issued until after existing sources were required to submit their NICs, we determined that the court's action did not impact the sources' eligibility for a streamlined RCRA permit modification, provided, of course, that they submitted their NICs by October 2, 2000, as required by the rule. To clarify this in the regulatory language, we revised § 270.42(j)(1) to state that owners or operators must have complied with the Notification of Intent to Comply requirements of § 63.1210 that were in effect prior to May 14, 2001 in order to request a streamlined permit modification. In doing so, we incorrectly referred to the date that we removed the NIC provisions from the federal regulations (May 14, 2001) as the date on which those provisions were no longer in effect. Instead, we should have referenced the date of the court's mandate (October 11, 2000). The removal of the requirements from the federal regulations was only a ministerial action in acknowledgment of the court's October 11, 2000 order to vacate. Thus, in today's rulemaking, we are correcting the referenced date in § 270.42(j)(1) from May 14, 2001 to October 11, 2000.

IV. What Correction Are We Making to Table 1 to Subpart EEE—General Provisions Applicable to Subpart EEE?

Table 1 to Subpart EEE identifies which General Provisions provided under Subpart A, Part 63, are not applicable to hazardous waste combustors. We are amending that table to: (1) conform to revisions to Subpart EEE promulgated in a related final rule establishing interim emission standards and which was published in the **Federal Register** on February 13, 2002; (2) to make several other technical corrections; and (3) to clarify the explanation of the applicability of the General Provisions.

We are making the following specific corrections to Table 1 to Subpart EEE:

a. The applicability explanations for §§ 63.6(e), (f), and (h), and 63.7(e) are corrected to acknowledge that the emission standards and operating requirements of Subpart EEE do not apply during startup, shutdown, and malfunctions;

b. The applicability explanation for § 63.7(a) is clarified to note that § 63.1207(e)(3) allows you to petition the Administrator under § 63.7(h) to provide an extension of time to conduct a performance test;

c. The applicability explanation for § 63.8(c) is revised to correct the reference to § 63.1211(c) rather than § 63.1211(d);

d. The applicability explanations for §§ 63.8(c) and (g) are revised to delete the reference to applicability only to cement kilns because it is self-evident that only cement kilns are subject to an opacity emission standard under Subpart EEE. Further, if other sources were to use a COMS under alternative monitoring or other provisions, those sources would be required to comply with § 63.8(c); and

e. The applicability explanation for § 63.9(f) is corrected to require compliance with that paragraph for sources that are allowed under § 63.1209(a)(1)(v) to use visible determinations of opacity for compliance in lieu of a COMS.

Part Five—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

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;

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

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

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Today's final action was submitted to OMB for review and confirmation. Pursuant to the terms of the Executive Order, the Agency, in conjunction with OMB has determined that today's final amendments rule does not represent a "significant regulatory action." Today's final action does not meet any of the criteria identified above. Changes to this section of the Preamble made in response to OMB suggestions or recommendations are documented in the public record.

The aggregate annualized social cost for this final rule are less than $100 million. Furthermore, this rule is not expected to adversely effect, 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. The benefits to human health and the environment resulting from today's final rule have not been monetized but are believed to be less than $100 million per year.

II. What Economic and Equity Analyses Were Completed in Support of the Proposed Rule?

We prepared two economic support documents for the July 3, 2001 proposed rule: Assessment of Potential Costs, Benefits and Other Impacts, NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments to the Final Rule: NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001, and Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors Technical Amendments to the Final Rule: NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001. Both documents are available in the docket established for the July 3, 2001 action.

The Assessment document addressed both the thirteen direct final amendments and the twenty proposed amendments. Three of the proposed amendments in the direct final rule are finalized in today's rule and are projected to result in cost savings. Our analysis found that the amendment revising the alternative to the particulate matter standard for incinerators resulted in the single most significant projected cost savings. This amendment accounted for an estimated 77 percent, or $707,500, of the total quantifiable annual cost savings of $918,500. The direct final amendment addressing

feedstream analysis was projected to result in annual cost savings of $180,000, while the amendment on deletion of one-time notification of compliance accounted for the remaining cost savings. The total projected cost burden associated with the July 3, 2001 direct final amendments was estimated at $8,700 per year. The analysis found that most of the cost burdens are easily quantifiable, whereas many of the cost savings were not readily quantifiable and, are therefore not included in the aggregate estimate.

We were able to develop a quantified cost savings estimate for only one of the twenty proposed amendments in the Assessment. The amendment addressing method 23 as an alternative to method 0023A for dioxin/furans was projected to result in cost savings of $102,600 per year. Five of the twenty proposed amendments were projected to result in an aggregate quantifiable cost burden of $361,100 per year. Approximately 45 percent of this increased cost burden would be on the government. The proposed amendment revising the operator training and certification provisions was estimated to account for 84 percent of the total estimated cost burden.

No measurable impacts were projected in any of the following categories related to equity and regulatory concerns: environmental justice; children's health protection; unfunded mandates; tribal governments; and regulatory takings.

The RFSA document prepared in support of the July 3, 2001 actions analyzed potential impacts to small entities associated with both the direct final and proposed amendments. Based on our worst-case scenario, we found that there would not be a significant economic impact on any of the small business combustor companies subject to rule (amendment) requirements.

III. What Substantive Comments Were Received on the Cost/Economic Aspects of Proposed Rule?

We received no substantive comments on the cost/economic issues associated with either the direct final or proposed amendments. Selected commenters, however, incorporated minor references to cost issues as part of their comments on other issues. One commenter indicated that unnecessary testing cost increases and complications would result without the flexibility to use DRE data in lieu of testing. The incorporation of this amendment into today's final rule relieves this cost concern. Two commenters indicated support for the Agency's proposed amendment that would allow use of site-specific operator training and certification programs. This flexibility was supported as a means of avoiding the burden and complications associated with training requirements established under the final rule. The incorporation of this amendment into today's final rule addresses this cost concern.

Four commenters referenced cost issues associated with the amendment addressing the time extension for performance testing. These commenters generally supported the amendment but felt, in some cases, that it did not go far enough to address unforeseen circumstances and to mitigate the concerns associated with the potential for unnecessary performance testing and related costs. We are sensitive to these concerns; however, we continue to believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to the test plan. We believe that this stimulus will help mitigate unnecessary cost impacts.

IV. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. A rule that generates positive net welfare would be advantageous to society and should be promulgated. A rule that results in negative net welfare to society should be avoided, assuming all other factors are equal.

We have assessed the impacts of this final rule in our economic support document: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Amendments to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action. A brief summary of findings is presented below.

Today's rule revises several requirements promulgated in the September 30, 1999 rule. Cost impacts associated with the final amendments are not fully quantifiable. All amendments, however, are projected to result in zero cost impacts or national annual net cost savings to industry, as projected from the baseline of the September 30, 1999 rule. The total cost burden to government associated with the final amendments is estimated at $160,000 per year. No quantifiable benefits and/or environmental implications have been identified.

V. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.?

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each NAICS code by the Small Business Administration (SBA).

The Agency has examined the potential effects today's final rule may have on small entities, as required by the RFA/SBREFA. We have found that four of the final amendments are projected to result in measurable cost impacts. The amendment addressing feedstream analysis for organic HAPs would result in cost savings but we expect that only larger operations would be impacted. The other three final amendments are projected to result in a measurable cost burden. Of these three, only the amendment addressing operator training and certification may potentially result in a cost burden to small hazardous waste combustors. Under an assumed worst-case, or high end cost scenario, we estimate maximum total costs on each "small" hazardous waste combustor company to average $25,700 ($154,000/6 = $25,700 per "small" source). Based on this high cost scenario, impacts on an individual small company basis would be no more than 0.71 percent of the annual gross sales. This figure is less than our threshold of 1 percent for determination of potentially significant economic impact. This amendment, however, was designed to ultimately provide regulatory relief. The lack of available data prevented us from quantifying cost savings potentially associated with this amendment. Overall impacts are likely to be considerably less than the 0.71 percent "high-end" estimate presented here. Based on this analysis we believe that it is reasonable to conclude that

there would not be a significant economic impact to any of the small business combustor companies potentially subject to rule requirements. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Full details of the small entity analysis are presented in our report: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule—Amendments to the NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action.

VI. Was the Unfunded Mandates Reform Act Considered In This Final Rule?

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), calls on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments. Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of UMRA. Today's final rule will not result in $100 million or more in expenditures. The aggregate annualized social costs for today's final rule are projected to be less than one million dollars. Furthermore, today's rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. We have determined that this rule will not significantly or uniquely affect small governments.

VII. Were Equity Issues and Children's Health Considered In This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

(1) Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 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, the Agency 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. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

(2) Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

VIII. What Consideration Was Given to Tribal Governments In This Final Rule?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on

the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

IX. Were Federalism Implications Considered in Today's Final Rule?

Executive Order 13132, entitled "Federalism" (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."

Today's 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 the Order. Thus, Executive Order 13132 does not apply to this rule.

X. Were Energy Impacts Considered?

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

XI. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.07) listing the information collection requirements of this final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260–2740.

The public burden associated with this final rule (which is under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 7.6 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $440 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

XII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not require the implementation of technical standards, as defined above; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

XIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

Is Today's Final Action Subject to Congressional Review?

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major Rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This final rule will become effective on February 14, 2002.

Part Six—Delegation Implications

I. What Is the Authority for the Final Amendment Rule?

Unlike the September 30, 1999 Final HWC NESHAP rule, this rule does not include any significant changes or additions affecting the RCRA program. This Final Amendment Rule amends the promulgated standards located in 40 CFR part 63, subpart EEE. Therefore, this discussion pertains only to delegation of amendments to State, Local, and Tribal (S/L/T) agencies pursuant to the CAA program.

Section 112(l) of the CAA allows us to delegate the authority to S/L/T programs to implement and enforce emission standards for pollutants subject to section 112 regulations. Thus, a S/L/T agency that receives 112(l) delegation can implement and enforce the amendments being made today. A S/L/T agency also can implement the amendments for Title V major sources (see 40 CFR 70.2) via their Title V authority because it is independent of their delegation status. By having an approved Title V program, the S/L/T agency has demonstrated that it has the legal authority, resources, and expertise to implement and enforce standards for section 112 pollutants.

As before, we encourage S/L/T agencies to apply for and receive 112(l) delegation for this rule. The key advantages afforded to S/L/T agencies

who receive delegation are that they become the primary enforcement authority and can exercise delegable provision authorities. Additionally, it ensures clear and consistent requirements for affected sources and regulators. For example, a source need only report compliance assurance monitoring to its primary enforcement authority.

State, Local, and Tribal agencies still have the ability to choose which delegation options to use when applying for delegation of Federal authorities for this rule. The 112(l) delegation process begins when the S/L/T agency applies for delegation of a section 112 rule without changes (straight delegation), by rule adjustment, substitution of requirements, state program approval (SPA), or equivalency by permit (EBP).[11] Also, the partial approval option is available for any S/L/T who cannot or chooses not to take full delegation of an entire standard. The drawback to this option is that it can create inconsistent requirements since the S/L/T agency will enforce portions of the standard, while we will enforce the remaining portions.

II. Why Should I Apply for Delegation of This Rule?

This rule will be effective upon promulgation. As with the Phase I NESHAP, a S/L/T agency will need to incorporate the amendments of this rule into a major source's new, renewed, or revised Title V permit regardless of whether it has received delegation. However, by receiving delegation of 112(l), a S/L/T agency can approve minor changes to a Federal NESHAP. For instance, it can substitute an emission limitation that is more stringent than a Federal standard.

In light of the benefits afforded to a S/L/T agency if it receives 112(l) delegation, we recognize that the process of applying for and receiving delegation can be a lengthy one. This may be especially true for those agencies that do not have established agreements in place to receive automatic delegation of unchanged standards. There are agencies who choose to utilize the delegation options provided under 112(l), which are not as straightforward as the unchanged standards. In these cases, the review period required when applying for one of the delegation options combined with a state's legislative proceedings, are factors that can prolong the delegation process. Therefore, we encourage the S/L/T agency to do what makes sense given circumstances relevant to timing issues and resource needs.

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference Reporting and recordkeeping requirements.

40 CFR Part 266

Energy, Environmental Protection Agency, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Environmental Protection Agency, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 7, 2002.

Christine Todd Whitman,

Administrator.

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

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

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

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

2. Section 63.14 is amended by adding paragraph (i) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) *ASME standard number QHO–1–1994 and QHO–1a–1996 Addenda.* This standard is titled as "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this document from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017. You may inspect a copy at the RCRA Information Center, Crystal Gateway One, 1235 Jefferson Davis Highway, Arlington, VA 22202, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3. Section 63.1200 is amended by revising entry (2) in Table 1 in paragraph (b) to read as follows:

§ 63.1200 Who is subject to these regulations?

* * * * *

(b) * * *

TABLE 1 TO § 63.1200.—HAZARDOUS WASTE COMBUSTORS EXEMPT FROM SUBPART EEE

If * * *	And If * * *	Then * * *
. . . . .		
(2) You are a research, development, and demonstration source.	You operate for no longer than one year after first burning hazardous waste (Note that the Administrator can extend this one-year restriction on a case-by-case basis upon your written request documenting when you first burned hazardous waste and the justification for needing additional time to perform research, development, or demonstration operations).	You are not subject to this subpart (Subpart EEE). This exemption applies even if there is a hazardous waste combustor at the plant site that is regulated under this subpart. You still, however, remain subject to § 270.65 of this chapter.
. . . . .		

[11] Refer to Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities; Final Rule at 65 FR 55810 or the CAA Delegation for the HWC NESHAP fact sheet at *www.epa.gov/epaoswer/hazwaste/combust/toolkit/coverpage.htm* for further information on delegation procedures.

* * * * *

4. Section 63.1201 is amended by adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

5. Section 63.1204 is amended by revising paragraph (d)(1)(iii) to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns?

* * * * *

(d) * * *

(1) * * *

(iii) You must calculate rolling averages for operating parameter limits as provided by § 63.1209(q)(2).

* * * * *

6. Section 63.1206 is amended by:

a. Revising the first sentence of paragraph (a)(2)(i).

b. Redesignating paragraph (a)(4) as (a)(3).

c. Revising paragraphs (b)(5)(i)(C)(*1*), (b)(6)(i) and (b)(6)(ii), (b)(7), (b)(11), and (b)(13)(i).

d. Revising paragraphs (c)(1)(i) introductory text, (c)(5)(i)(C), (c)(6), and (c)(7)(ii).

e. Adding paragraph (c)(5)(i)(D).

The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(2) * * *

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(2)(ii) of this section. * * *

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) * * *

(*1*) Except as provided by paragraph (b)(5)(i)(C)(*2*) of this section, after the change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

* * * * *

(6) * * *

(i) If a DRE test performed pursuant to § 63.1207(c)(2) is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

(ii) If during this acceptable DRE test you did not obtain hydrocarbon emissions data sufficient to document compliance with the hydrocarbon standard, you must either:

(A) Perform, as part of the performance test, an "equivalent DRE test" to document compliance with the hydrocarbon standard. An equivalent DRE test is comprised of a minimum of three runs each with a minimum duration of one hour during which you operate the combustor as close as reasonably possible to the operating parameter limits that you established based on the initial DRE test. You must use the highest hourly rolling average hydrocarbon emission level achieved during the equivalent DRE test to document compliance with the hydrocarbon standard; or

(B) Perform a DRE test as part of the performance test.

(7) *Compliance with the DRE standard.* (i) Except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section:

(A) You must document compliance with the Destruction and Removal Efficiency (DRE) standard under §§ 63.1203 through 63.1205 only once provided that you do not modify the source after the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) Sources that feed hazardous waste at a location in the combustion system other than the normal flame zone must demonstrate compliance with the DRE standard during each comprehensive performance test;

(iii) For sources that do not use DRE previous testing to document conformance with the DRE standard pursuant to § 63.1207(c)(2), you must perform DRE testing during the initial comprehensive performance test.

* * * * *

(11) *Calculation of hazardous waste residence time.* You must calculate the hazardous waste residence time and include the calculation in the performance test plan under § 63.1207(f) and the operating record. You must also provide the hazardous waste residence time in the Documentation of Compliance under § 63.1211(c) and the Notification of Compliance under §§ 63.1207(j) and 63.1210(b).

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average

(monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*)(*i*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(*ii*) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*)(*i*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(*ii*) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(c)* * * (1) * * * (i) You must operate only under the operating requirements specified in the Documentation of Compliance under § 63.1211(c) or the Notification of Compliance under §§ 63.1207(j) and 63.1210(b), except:

* * * * *

(5) * * *

(i) * * *

(C) Upon prior written approval of the Administrator, an alternative means of control to provide control of combustion system leaks equivalent to maintenance of combustion zone pressure lower than ambient pressure; or

(D) Upon prior written approval of the Administrator, other technique(s) which can be demonstrated to prevent fugitive emissions without use of instantaneous pressure limits; and

* * * * *

(6) *Operator training and certification.* (i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that, for control room operators, the training and certification program shall be as specified in paragraphs (c)(6)(iii) through (c)(6)(vi) of this section.

(ii) You must ensure that the source is operated and maintained at all times by persons who are trained and certified to perform these and any other duties that may affect emissions of hazardous air pollutants. A certified control room operator must be on duty at the site at all times the source is in operation.

(iii) Hazardous waste incinerator control room operators must:

(A) Be trained and certified under a site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) Be trained under the requirements of, and certified under, the American Society of Mechanical Engineers Standard Number QHO–1–1994 and QHO–1a–1996 Addenda (incorporated by reference—see § 63.14(e)). If you choose to use the ASME program:

(*1*) Control room operators must, prior to the compliance date, achieve provisional certification, and must submit an application to ASME and be scheduled for the full certification exam. Within one year of the compliance date, control room operators must achieve full certification;

(*2*) New operators and operators of new sources must, before assuming their

duties, achieve provisional certification, and must submit an application to ASME, and be scheduled for the full certification exam. Within one year of assuming their duties, these operators must achieve full certification; or

(C) Be trained and certified under a State program.

(iv) Cement kiln and lightweight aggregate kiln control room operators must be trained and certified under:

(A) A site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) A State program.

(v) Site-specific, source developed and implemented training programs for control room operators must include the following elements:

(A) Training on the following subjects:

(*1*) Environmental concerns, including types of emissions;

(*2*) Basic combustion principles, including products of combustion;

(*3*) Operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures;

(*4*) Combustion controls and continuous monitoring systems;

(*5*) Operation of air pollution control equipment and factors affecting performance;

(*6*) Inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices;

(*7*) Actions to correct malfunctions or conditions that may lead to malfunction;

(*8*) Residue characteristics and handling procedures; and

(*9*) Applicable Federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards; and

(B) An examination designed and administered by the instructor; and

(C) Written material covering the training course topics that may serve as reference material following completion of the course.

(vi) To maintain control room operator qualification under a site-specific, source developed and implemented training program as provided by paragraph (c)(6)(v) of this section, control room operators must complete an annual review or refresher course covering, at a minimum, the following topics:

(A) Update of regulations;

(B) Combustor operation, including startup and shutdown procedures, waste firing, and residue handling;

(C) Inspection and maintenance;

(D) Responses to malfunctions or conditions that may lead to malfunction; and

(E) Operating problems encountered by the operator.

(vii) You must record the operator training and certification program in the operating record.

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements. (1)* The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, pursuant to procedures in § 63.1209(a)(1), that a higher sensitivity would adequately detect bag leaks;

(*2*) The bag leak detection system shall provide output of relative particulate matter loadings;

(*3*) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(*4*) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(*5*) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(*6*) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(*7*) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(*8*) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(*1*) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(*2*) You must alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following measures:

(*i*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*ii*) Sealing off defective bags or filter media;

(*iii*) Replacing defective bags or filter media, or otherwise repairing the control device;

(*iv*) Sealing off a defective baghouse compartment;

(*v*) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(*vi*) Shutting down the combustor.

7. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i).

b. Adding paragraph (c)(2)(iv).

c. Adding paragraph (e)(3).

d. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), (f)(1)(x) introductory text, and (f)(1)(xvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Removing and reserving paragraph (f)(1)(xv).

g. Revising paragraphs (g)(2)(i) and (g)(2)(ii).

h. Adding paragraph (g)(2)(v).

i. Revising paragraphs (h)(1) and (h)(2) introductory text.

j. Revising paragraphs (j)(1)(ii) and (j)(3).

k. Revising paragraphs (m)(4)(i) and (m)(4)(ii).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * * (i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Was initiated after 54 months prior to the compliance date, except as provided by paragraphs (c)(2)(iii) or (c)(2)(iv) of this section;

(B) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results demonstrate compliance with the applicable standards;

(C) Was in conformance with the requirements of paragraph (g)(1) of this section; and

(D) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(iv) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply to DRE data provided you do not feed hazardous waste at a location in the combustion system other than the normal flame zone.

* * * * *

(e) * * *

(3) *Petitions for time extension if Administrator fails to approve or deny test plans.* You may petition the Administrator under § 63.7(h) to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would be implemented as an extension of time to conduct the performance test at a later date.

(i) *Qualifications for the waiver.* (A) You may not petition the Administrator for a waiver under this section if the Administrator has issued a notification of intent to deny your test plan(s) under § 63.7(c)(3)(i)(B);

(B) You must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation test plan at least one year before a comprehensive performance test is scheduled to begin as required by paragraph (c)(1) of this section, or at least 60 days before a confirmatory performance test is scheduled to begin as required by paragraph (d) of this section. The test plans must include all required documentation, including the substantive content requirements of paragraph (f) of this section and § 63.8(e); and

(C) You must make a good faith effort to accommodate the Administrator's comments on the test plans.

(ii) *Procedures for obtaining a waiver and duration of the waiver:* (A) You must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h) separately for each source at least 60 days prior to the scheduled date of the performance test;

(B) The Administrator will approve or deny the petition within 30 days of receipt and notify you promptly of the decision;

(C) The Administrator will not approve an individual waiver petition for a duration exceeding 6 months;

(D) The Administrator will include a sunset provision in the waiver ending the waiver within 6 months;

(E) You may submit a revised petition to renew the waiver under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition;

(F) The Administrator may approve a revised petition for a total waiver period up to 12 months.

(iii) *Content of the waiver.* (A) You must provide documentation to enable the Administrator to determine that the source is meeting the relevant standard(s) on a continuous basis as required by § 63.7(h)(2). For extension requests for the initial comprehensive performance test, you must submit your Documentation of Compliance to assist the Administrator in making this determination.

(B) You must include in the petition information justifying your request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test, as required by § 63.7(h)(3)(iii).

(iv) *Public notice.* You must notify the public (e.g., distribute public mailing list) of your petition to waive a performance test.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(i) or 63.1209(n)(2)(ii)(A);

* * * * *

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(7) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (n)(5)(i), and (o)(2)(i).

* * * * *

(g) * * *

(2) * * *

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the hourly rolling average values recorded (each minute) over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

(ii) Each operating limit (specified in § 63.1209) established to maintain

compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the rolling average values recorded over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

* * * * *

(v) The Administrator may approve an alternative range to that required by paragraphs (g)(2)(i) and (ii) of this section if you document in the confirmatory performance test plan that it may be problematic to maintain the required range during the test. In addition, when making the finding of compliance, the Administrator may consider test conditions outside of the range specified in the test plan based on a finding that you could not reasonably maintain the range specified in the test plan and considering factors including whether the time duration and level of the parameter when operations were out of the specified range were such that operations during the confirmatory test are determined to be reasonably representative of normal operations. In addition, the Administrator will consider the proximity of the emission test results to the standard.

* * * * *

(h) * * * (1) Current operating parameter limits established under § 63.1209 are waived during subsequent comprehensive performance testing.

(2) Current operating parameter limits are also waived during pretesting prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) under an approved test plan or if the source records the results of the pretesting. Pretesting means:

* * * * *

(j) * * *

(1) * * *

(ii) Upon postmark of the Notification of Compliance, you must comply with all operating requirements specified in the Notification of Compliance in lieu of the limits specified in the Documentation of Compliance required under § 63.1211(c).

* * * * *

(3) See §§ 63.7(g), 63.9(h), and 63.1210(b) for additional requirements pertaining to the Notification of Compliance (*e.g.*, you must include results of performance tests in the Notification of Compliance).

* * * * *

(m) * * *

(4) * * *

(i) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(2)(iii) of this section is below the applicable emission standard; and

(ii) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(4)(i) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(4)(i) of this section.

* * * * *

8. Section 63.1209 is amended by:

a. Revising paragraph (a)(1)(ii)(A).

b. Revising paragraphs (b)(2)(i) and (b)(5)(iii)(A).

c. Revising paragraph (f)(1).

d. Revising paragraphs (g)(1)(iii)(B)(*1*), (g)(1)(iii)(B)(*2*), (g)(1)(iii)(B)(*3*), (g)(1)(iii)(C)(*1*), and (g)(1)(iii)(C)(*2*).

e. Revising paragraphs (k)(5) and (k)(8)(ii).

f. Revising paragraphs (l)(1) introductory text, (l)(3), and (l)(4).

g. Revising paragraph (m)(3).

h. Revising paragraph (n)(4).

i. Revising paragraph (o)(1).

j. Revising paragraph (q).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(1) * * *

(ii) * * *

(A) You must maintain and operate each COMS in accordance with the requirements of § 63.8(c) except for the requirements under § 63.8(c)(3). The requirements of § 63.1211(c) shall be complied with instead of § 63.8(c)(3); and

* * * * *

(b) * * *

(2) * * *

(i) *Calibration of thermocouples and pyrometers.* The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequent than once per year. You must operate and maintain optical pyrometers in accordance with manufacturer specifications unless otherwise approved by the Administrator. You must calibrate optical pyrometers in accordance with the frequency and procedures recommended by the manufacturer, but no less frequent than once per year, unless otherwise approved by the Administrator. And,

* * * * *

(5) * * *

(iii) * * * (A) Except as provided by paragraph (b)(5)(iii)(B) of this section, you must continue monitoring operating parameter limits with a CMS when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if an operating parameter exceeds its limit.

* * * * *

(f) * * *

(1) *Section 63.8(c)(3).* The requirements of § 63.1211(c), that requires CMSs to be installed, calibrated, and operational on the compliance date, shall be complied with instead of section 63.8(c)(3);

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) * * *

(*1*) Data or information justifying your request for an alternative monitoring requirement (or for a waiver of an operating parameter limit), such as the technical or economic infeasibility or the impracticality of using the required approach;

(*2*) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach/technique (*e.g.*, type of detector, monitoring location), the averaging period for the limit, and how the limit is to be calculated; and

(*3*) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard, or that it is the monitoring requirement that best assures compliance with the standard and that is technically and economically practicable.

(C) * * *

(*1*) Notice of the information and findings on which the intended disapproval is based; and

(*2*) Notice of opportunity for you to present additional information to the Administrator before final action on the request. At the time the Administrator notifies you of intention to disapprove the request, the Administrator will specify how much time you will have after being notified of the intended

disapproval to submit the additional information.

* * * * *

(k) * * *

(5) *Particulate matter operating limit.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section:

* * * * *

(8) * * *

(ii) *Maximum time in-use.* You must replace a catalytic oxidizer with a new catalytic oxidizer when it has reached the maximum service time specified by the manufacturer.

* * * * *

(l) * * *

(1) *Feedrate of total mercury.* You must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages, unless mercury feedrate limits are extrapolated from performance test feedrate levels under the following provisions.

* * * * *

(3) *Activated carbon injection.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraphs (k)(5) and (k)(6) of this section.

(4) *Activated carbon bed.* If your combustor is equipped with an activated carbon bed system, you must comply with the requirements of (k)(7) of this section to assure compliance with the mercury emission standard.

(m) * * *

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as the average of the test run averages.

(n) * * *

(4) *Maximum total chlorine and chloride feedrate.* You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

* * * * *

(o) * * *

(1) *Feedrate of total chlorine and chloride.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

* * * * *

(q) *Operating under different modes of operation.* If you operate under different modes of operation, you must establish operating parameter limits for each mode. You must document in the operating record when you change a mode of operation and begin complying with the operating limits for an alternative mode of operation.

(1) *Operating under otherwise applicable standards after the hazardous waste residence time has transpired.* As provided by § 63.1206(b)(1)(ii), you may operate under otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act in lieu of the substantive requirements of this subpart.

(i) The otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act are applicable requirements under this subpart.

(ii) You must specify (e.g., by reference) the otherwise applicable requirements as a mode of operation in your Documentation of Compliance under § 63.1211(c), your Notification of Compliance under § 63.1207(j), and your title V permit application. These requirements include the otherwise applicable requirements governing emission standards, monitoring and compliance, and notification, reporting, and recordkeeping.

(2) *Calculating rolling averages under different modes of operation.* When you transition to a different mode of operation, you must calculate rolling averages as follows:

(i) *Retrieval approach.* Calculate rolling averages anew using the continuous monitoring system values previously recorded for that mode of operation (i.e., you ignore continuous monitoring system values subsequently recorded under other modes of operation when you transition back to a mode of operation); or

(ii) *Start anew.* Calculate rolling averages anew without considering previous recordings.

(A) Rolling averages must be calculated as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate hourly or 12-hour rolling averages, whichever is applicable to the parameter.

(B) You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring; or

(iii) *Seamless transition.* Continue calculating rolling averages using data from the previous operating mode provided that both the operating limit and the averaging period for the parameter are the same for both modes of operation.

9. Section 63.1210 is amended by revising paragraph (a) to read as follows:

§ 63.1210 What are the notification requirements?

(a) *Summary of requirements.* (1) You must submit the following notifications to the Administrator:

Reference	Notification
63.9(b)	Initial notifications that you are subject to Subpart EEE of this Part.
63.9(d)	Notification that you are subject to special compliance requirements.
63.9(j)	Notification and documentation of any change in information already provided under § 63.9.
63.1206(b)(5)(i)	Notification of changes in design, operation, or maintenance.
63.1207(e), 63.9(e), 63.9(g)(1) and (3)	Notification of performance test and continuous monitoring system evaluation, including the performance test plan and CMS performance evaluation plan.[1]
63.1210(b), 63.1207(j), 63.1207(k), 63.1207(l), 63.9(h), 63.10(d)(2), 63.10(e)(2).	Notification of compliance, including results of performance tests and continuous monitoring system performance evaluations.

[1] You may also be required on a case-by-case basis to submit a feedstream analysis plan under § 63.1209(c)(3).

(2) You must submit the following notifications to the Administrator if you request or elect to comply with alternative requirements:

Reference	Notification, request, petition, or application
63.9(i)	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.

Reference	Notification, request, petition, or application
63.10(e)(3)(ii)	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f)	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c)	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C)	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(8)(iii)(B)	If you elect to conduct particulate matter CEMS correlation testing and wish to have federal particulate matter and opacity standards and associated operating limits waived during the testing, you must notify the Administrator by submitting the correlation test plan for review and approval.
63.1206(b)(8)(v)	You may request approval to have the particulate matter and opacity standards and associated operating limits and conditions waived for more than 96 hours for a correlation test.
63.1206(b)(9)	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(10)	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(14)	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15)	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C)	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C)	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D)	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2)	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3)	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.
63.1207(e)(3), 63.7(h)	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2)	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D)	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v)	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i)	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4)	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3)	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f)	You may request: (A.) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (B.) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1)	You may request approval of: (A.) Alternative monitoring methods, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (B.) a waiver of an operating parameter limit.
63.1209(l)(1)	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)(ii)	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d)	You may request to use data compression techniques to record data on a less frequent basis than required by §63.1209.

* * * * * * *

10. Section 63.1211 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

(a) *Summary of reporting requirements.* You must submit the following reports to the Administrator:

Reference	Report
63.10(d)(4)	Compliance progress reports, if required as a condition of an extension of the compliance date granted under § 63.6(i).
63.10(d)(5)(i)	Periodic startup, shutdown, and malfunction reports.
63.10(d)(5)(ii)	Immediate startup, shutdown, and malfunction reports.
63.10(e)(3)	Excessive emissions and continuous monitoring system performance report and summary report.
63.1206(c)(2)(ii)(B)	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(vi)	Excessive exceedances reports.
63.1206(c)(4)(iv)	Emergency safety vent opening reports.

(b) *Summary of recordkeeping requirements.* You must retain the following in the operating record:

Reference	Document, data, or information
63.1200, 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii)	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii)	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11)	Calculation of hazardous waste residence time.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A)	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(c)(2)	Feedstream analysis plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.
63.1209(k)(7)(i)(C)	Results of carbon bed performance monitoring.
63.1209(q)	Documentation of changes in modes of operation.
63.1211(c)	Documentation of compliance.

* * * * *

11. Section 63.1213 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 63.1213 How can the compliance date be extended to install pollution prevention or waste minimization controls?

(a) *Applicability.* You may request from the Administrator or State with an approved title V program an extension of the compliance date of up to one year. * * *

* * * * *

12. Table 1 to Subpart EEE is amended to read as follows:

TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE

Reference	Applies to subpart EEE	Explanation
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes..	
63.5	Yes.	

TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE—Continued

Reference	Applies to subpart EEE	Explanation
63.6(a), (b), (c), (d), and (e).	Yes.	
63.6(f)	Yes	Except that the performance test requirements of Sec. 63.1207 apply instead of §63.6(f)(2)(iii)(B).
63.6(g) and (h)	Yes.	
63.6(i)	Yes	Section 63.1213 specifies that the compliance date may also be extended for inability to install necessary emission control equipment by the compliance date because of implementation of pollution prevention or waste minimization controls.
63.6(j)	Yes.	
63.7(a)	Yes	Except §63.1207(e)(3) allows you to petition the Administrator under §63.7(h) to provide an extension of time to conduct a performance test.
63.7(b)	Yes	Except §63.1207(e) requires you to submit the site-specific test plan for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(c)	Yes	Except §63.1207(e) requires you to submit the site-specific test plan (including the quality assurance provisions under §63.7(c)) for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(d)	Yes.	
63.7(e)	Yes	Except §63.1207 prescribes operations during performance testing and §63.1209 specifies operating limits that will be established during performance testing (such that testing is likely to be representative of the extreme range of normal performance).
63.7(f)	Yes.	
63.7(g)	Yes	Except §63.1207(j) requiring that you submit the results of the performance test (and the notification of compliance) within 90 days of completing the test, unless the Administrator grants a time extension, applies instead of §63.7(g)(1).
63.7(h)	Yes	Except §63.1207(c)(2) allows data in lieu of the initial comprehensive performance test, and §63.1207(m) provides a waiver of certain performance tests. You must submit requests for these waivers with the site-specific test plan.
63.8(a) and (b)	Yes.	
63.8(c)	Yes	Except: (1) §63.1211(c) that requires you to install, calibrate, and operate CMS by the compliance date applies instead of §63.8(c)(3); and (2) the performance specifications for CO, HC, and O2 CEMS in subpart B, of this chapter requiring that the detectors measure the sample concentration at least once every 15 seconds for calculating an average emission level once every 60 seconds apply instead of §63.8(c)(4)(ii).
63.8(d)	Yes.	
63.8(e)	Yes	Except §63.1207(e) requiring you to submit the site-specific comprehensive performance test plan and the CMS performance evaluation test plan for approval at least one year prior to the planned test date applies instead of §§63.8(e)(2) and (3)(iii).
63.8(f) and (g)	Yes.	
63.9(a)	Yes.	
63.9(b)	Yes	*Note:* Section 63.9(b)(1)(ii) pertains to notification requirements for area sources that become a major source, and §63.9(b)(2)(v) requires a major source determination. Although area sources are subject to all provisions of this subpart (Subpart EEE), these sections nonetheless apply because the major source determination may affect the applicability of part 63 standards or title V permit requirements to other sources (i.e., other than a hazardous waste combustor) of hazardous air pollutants at the facility.
63.9(c) and (d)	Yes.	
63.9(e)	Yes	Except §63.1207(e) which requires you to submit the comprehensive performance test plan for approval one year prior to the planned performance test date applies instead of §63.9(e).
63.9(f)	Yes	Section 63.9(f) applies if you are allowed under §63.1209(a)(1)(v) to use visible determination of opacity for compliance in lieu of a COMS.
63.9(g)	Yes	Except §63.9(g)(2) pertaining to COMS does not apply.
63.9(h)	Yes	Except §63.1207(j) requiring you to submit the notification of compliance within 90 days of completing a performance test unless the Administrator grants a time extension applies instead of §63.9(h)(2)(iii). Note: Even though area sources are subject to this subpart, the major source determination required by §63.9(h)(2)(i)(E) is applicable to hazardous waste combustors for the reasons discussed above.
63.9(i) and (j)	Yes.	
63.10	Yes	Except reports of performance test results required under §63.10(d)(2) may be submitted up to 90 days after completion of the test.
63.11	No.	
63.12–63.15	Yes.	

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Section 266.100 is amended by:

a. Revising the first sentence of paragraph (a).

b. Revising the first sentence of paragraph (b)(1).

c. Revising paragraphs (d)(1)(i)(B), (d)(2)(i), (d)(2)(ii), (d)(3) introductory text, (d)(3)(i) introductory text, and (d)(3)(i)(D).

The revisions read as follows:

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), (g), and (h) of this section.* * *

* * * * *

(b) * * * (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.* * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) The hazardous waste is burned solely for metal recovery consistent with the provisions of paragraph (d)(2) of this section;

* * * * *

(2) * * *

(i) The hazardous waste has a total concentration of organic compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (d)(1) of this section. The owners or operator must comply with the requirements of paragraph (d)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (d)(3).

(i) The hazardous wastes listed in appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (d)(1) of this section, provided that:

* * * * *

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph (d)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (d)(1)(ii) of this section and records to document compliance with paragraph (d)(3) of this section shall be kept for at least three years.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000. (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 02–3373 Filed 2–13–02; 8:45 am]

BILLING CODE 6560–50–P