WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #3

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STATE OF WEST VIRGINIA

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY: W.Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

TITLE OF RULE BEING AMENDED: Emission Standards for Hazardous Air Pollutants

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: 45CSR34 - Emission Standards for Hazardous Air Pollutants

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 10, 2009

b. What other notice, including advertising, did you give of the hearing?

Public Notice placed on Department of Environmental Protection's web site, distributed via the agency's mailing list, and in a Class I legal ad published in the Charleston Newspapers.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

Public Hearing/Comment Period Ended - July 13, 2009 (close of hearing)

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2009

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304
Phone: (304) 926-0499 ext. 1966

Fax: (304) 926-0488

John.A.Benedict@wv.gov

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

BRIEFING DOCUMENT

Rule Title: 45CSR34 - "Emission Standards for Hazardous Air Pollutants"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to Section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in Section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2009. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As provided in 40 CFR §§61.04(b) and 63.12(b)(1), and because West Virginia has an approved Title V permit program, the Secretary therefore has the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources required to obtain a Title V permit under 40 CFR Parts 61 and 63, pursuant to Section 112 of the CAA. Promulgation of this rule is necessary for the State to fulfill its responsibilities under the CAA, and will enable the Department of Environmental Protection to continue to be the primary enforcement authority for NESHAP promulgated by U.S. EPA under 40 CFR Parts 61 and 63 as of June 1, 2009. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA. Revisions to the rule include general annual incorporation by reference updates and updated exclusions to adoption of standards.

The revised rule incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2009 for non-major area sources: Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium; Clay Ceramics Manufacturing, Glass Manufacturing, and Electric Arc Furnace Steelmaking Facilities.

The revised rule also incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2009 for major sources: Organic Liquids Distribution (Non-Gasoline); Semiconductor Manufacturing; Standards for Hazardous Waste Combustors; Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (Acetal Resins Production and Hydrogen Fluoride Production) (Risk and Technology Review); Alternative Work Practice To Detect Leaks From Equipment; and Refineries and Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions.

The following source categories of newly promulgated NESHAPS affecting non-major area sources of hazardous air pollutants are being excluded from incorporation by reference: Iron and Steel Foundries, Plating and Polishing Operations, Ferroalloys Production Facilities and Metal Fabrication and Finishing Source Categories.

No additional funding has been provided by U.S. EPA to implement these new federal area source air toxics rules. Further, DAQ considers these standards to be resource-intensive and costly to implement, as a practical matter, without achieving commensurate air quality benefits. Many States in Region III are not adopting all of these the standards, for similar reasons. U.S. EPA Regional offices will be implementing those standards not adopted by the States, thereby providing a measure of regulatory certainty and consistency.

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 stated exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 3, 2009 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday, June 3, 2009
601 57th Street, SE, Charleston, West Virginia
West Virginia Room – 3rd Floor

IN ATTENDANCE:

Members of the Council:

Lisa Dooley
Jackie Hallinan
Larry Harris
Karen Price
Bill Raney
Rick Roberts

DEP:

Raymond Franks II	General Counsel
Kristin Boggs	Associate General Counsel
Kathy Cosco	Chief Communications Officer
Tom Clarke	Director, Division of Mining & Reclamation
James Martin	Chief, Office of Oil & Gas
Robert Bates	Division of Water & Waste Management
Bill Brannon	Division of Water & Waste Management
Carroll Cather	Division of Water & Waste Management
Ellen Herndon	Division of Water & Waste Management
Jeff Knepper	Division of Water & Waste Management
Teresa Koon	Division of Water & Waste Management
Sudhir Patel	Division of Water & Waste Management
Yogesh Patel	Division of Water & Waste Management
Bill Timmermeyer	Division of Water & Waste Management
Ken Politan	Division of Mining & Reclamation
Jim Mason	Division of Air Quality

Others:

Don Garvin	Interested Citizen
Steve Hannah	Interested Citizen
Dave Yaussy	Interested Citizen

OLD BUSINESS:

Raymond Franks called the meeting to order at 1:45 p.m. Mr. Franks noted that two members of the Council had pointed out a minor discrepancy in the April minutes as circulated, and that for expediency's sake the error would be corrected following the meeting and the April and June minutes each moved for approval at the September meeting.

Mr. Franks provided to the Council information it had requested at the April meeting regarding ongoing projects in the Office of Abandoned Mine Lands and recruiting potential for environmental inspectors. The Council agreed to review the information and discuss it in more detail at the September meeting.

NEW BUSINESS:

Mr. Franks turned the meeting over to Kristin Boggs for presentation and discussion of the 2010 proposed Legislative Rules:

DIVISION OF WATER & WASTE MANAGEMENT – WATER RULES

47CSR10 – ***NPDES Rule***: Promulgated last in 2008. The proposed revisions reflect changes made to the Federal rule regarding Concentrated Animal Feeding Operations (CAFOs), which became effective in November 2008. EPA gave DEP two years to revise the State rules and start issuing permits. The revisions include a clarified definition of CAFO, a detailed explanation of the permitting process and the process for permit exemption, and an explanation of the required nutrient management plan. Technical revisions and corrections are made throughout.

47CSR26 – ***Water Pollution Control Permit Fee Schedules***: Promulgated last in 2000. The proposed revisions reflect the CAFO changes made in the NPDES Rule. The fees for CAFOs will be as follows: $300 for the initial application; $300 for permit renewal; $50 for permit modification; and $50 for the annual permit fee. Technical revisions and corrections are made throughout.

47CSR12 – ***Requirements re Groundwater Standards***: Promulgated last in 2002. The proposed revisions reflect updates and additions made to EPA's 2006 edition of the Drinking Water Standards & Health Advisories. Technical revisions and corrections are made throughout.

47CSR59 – ***Monitoring Well Rule***. Promulgated last in 1994. The proposed revisions add new language to incorporate "high" and "low" risk boreholes, experience requirements for those persons applying for monitoring well driller certificates, recertification and training requirements for monitoring well drillers, and definitions. Technical revisions and corrections are made throughout.

47CSR60 – ***Monitoring Well Design Standards***. Promulgated last in 1996. The proposed revisions bring this rule in conformance with the 47CSR59 *Monitoring Well Rule* definition changes, and "high" and "low" borehole requirements. Technical revisions and corrections are made throughout.

DIVISION OF WATER & WASTE MANAGEMENT – WASTE MANAGEMENT RULES

33CSR1 – ***Solid Waste Management Rule***: Promulgated last in 2006. The proposed revisions include removing the requirement that free day tonnage count toward monthly/daily totals and clarifying the definition of pick-up truck. Technical revisions and corrections are made throughout.

33CSR20 – ***Hazardous Waste Management System***: Promulgated last in 2009. The proposed rule reflects the annual incorporation-by-reference (IBR) revisions made by DEP to its hazardous waste rule. The proposed revisions include changes to the academic laboratory waste provisions to allow alternative requirements for hazardous waste determination and accumulation of unwanted materials at labs owned by and affiliated with colleges and universities. Other proposed revisions are directed at the hazardous waste code 019 provisions, which expand the exclusion for sludges generated from the chemical conversion coating of aluminum using a zinc phosphating process. The F019 waste code exclusion only applies to the automobile or light truck manufacturing industry. This IBR specifically excludes two federal amendments that are currently undergoing reconsideration by the EPA, *i.e.*, revisions to the definition of solid waste and expansion of RCRA comparable fuel exclusion. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the seven DWWM rules. Mr. Raney inquired about the impetus for the change in the monitoring well rules, since they have not been revised in several years. Ms. Boggs responded that the changes in the rules reflect changes in technology and practice over time. There were no further questions from the Council.

OFFICE OF OIL AND GAS RULE

35CSR4 – ***Oil & Gas Wells and Other Wells***: Promulgated last in 2001. The proposed revisions include updating the permit fees to reflect the 2005 statutory change, clarifying general requirements for pit and impoundment construction, and adding a new section setting forth requirements for constructing pits and impoundments that exceed a certain size. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the OOG rule. Dr. Harris expressed concern that the current statutory bond amount may not suffice given the larger pits associated with Marcellus wells. Mr. Martin explained that the bond is a performance bond, not designed to cover any specific area of the well operation. Dr. Harris than asked about protections for surface owners whose water supply is impaired from drilling operations, in response to which Mr. Martin pointed out the statutory and regulatory remedies. There were no further questions from the Council.

DIVISION OF MINING & RECLAMATION RULE

47CSR30 – ***Mining NPDES Rule***: Promulgated last in 2009. The proposed revisions include deleting the certification language for NPDES maps and decreasing from two years to one the raw mine drainage water quality data required for abandonment of a deep mine. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the DMR rule. Ms. Dooley inquired whether the changes were substantive or merely technical. Ms. Boggs explained that although the changes appeared merely technical, they had real-world effects upon licensed professional engineers and surveyors, whom the rule required to swear to the contents of a NPDES map under penalty of perjury. Engineers and surveyors could not obtain insurance for such an oath, because they did not create the maps and were therefore subjecting themselves to criminal penalties for work that was not entirely within their control. There were no further questions from the Council.

DIVISION OF AIR QUALITY RULES

45CSR8 – *Ambient Air Quality Standards*: Promulgated last in 2009. The proposed revisions include deletion of redundant measurement method language for lead and addition of new national primary and secondary ambient air quality standards for lead.

45CSR14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration*: Promulgated last in 2009. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers. Other miscellaneous revisions and corrections are also included, so that the rule comports with federal counterpart language.

45CSR16 – *Standards of Performance for New Stationary Sources*: Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to New Source Performance Standards, including Stationary Spark-Ignition Internal Combustion Engines, Fossil Fuel-Fired Steam Generators and Industrial-Commercial-Institutional Steam Generating Units, Stationary Combustion Turbines, Nonroad Spark Ignition Engines, Alternative Work Practice To Detect Leaks From Equipment, Petroleum Refineries and Performance Specification 16 for Predictive Emissions Monitoring Systems, Amendments to Testing and Monitoring Provisions, and Nonmetallic Mineral Processing Plants. The IBR exclusion for the vacated Clean Air Mercury Rule has been removed.

45CSR19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*: Promulgated last in 2005. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers, Reasonable Possibility in Recordkeeping, Ethanol Production Facilities, and 8-Hour Ozone National Ambient Air Quality Standard provisions. Other proposed revisions to the rule remove references to pollution control projects and clean units per the 2005 decision by the United State Court of Appeals for the District of Columbia Circuit that vacated the parallel federal provisions. Other miscellaneous revisions and/or corrections are also included, so that the rule comports with federal counterpart language.

45CSR25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*: Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Waste rule.

45CSR33 – *Acid Rain Provisions and Permits*: Promulgated last in 2006. The proposed rule

reflects the annual IBR revisions, including Air Pollution Control, Transport of Emissions of Nitrogen Oxide and Sulfur Dioxide; Amendments to Monitoring Provisions; Revisions to Acid Rain Program Rules, and Revisions to the Continuous Monitoring Rule for the Acid Rain Program.

45CSR34 – *Emission Standards for Hazardous Air Pollutants*: Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Air Pollutant rule. Excluded from incorporation by reference are the national emission standards for hazardous air pollutants affecting non-major (area) sources of hazardous air pollutants for Iron and Steel Foundries, Plating and Polishing Operations, Ferroalloys Production Facilities, and Metal Fabrication and Finishing Source Categories.

Mr. Franks asked whether the Council had any questions about the seven DAQ Rules, and there were none.

On general comment, Dr. Harris inquired about water quality standards for mercury, citing a newspaper report that DEP supported less stringent standards based on data that State residents consume relatively fewer fish per capita. Mr. Clarke explained the factual context of the reported quote and the method by which EPA developed the point three (0.3) standard. With respect to the rules presentation, Dr. Harris suggested a return to the practice of providing Council with written summaries of the proposed rules, along with justifications for the proposed changes. The suggestion was well-received.

Mr. Franks then opened the floor to questions from the general public. Don Garvin, Legislative Coordinator for the West Virginia Environmental Council, inquired about acid rain standards, to which Mr. Mason responded that the State's standards with respect to acid rain derive from Title VI of the federal Clean Air Act.

Dr. Harris then asked whether the downtown in the energy market has caused any decrease in the number of permit applications to drill gas wells in the Marcellus Shale. Mr. Martin responded that the economy has had some effect on the number of permit applications overall, and that he could later provide Dr. Harris with more precise statistics.

Mr. Garvin complimented the Agency and the Office of Oil & Gas on finally requiring pits to be lined. Mr. Raney then thanked DEP staff for their hard work on the rules.

With no further comments forthcoming from the Council or public, Mr. Franks reminded everyone that the next meeting is scheduled for Wednesday, September 23, 2009. On motion from Mr. Raney, seconded by Mr. Roberts, Mr. Franks declared the meeting adjourned at 2:45 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR34 - "Emission Standards for Hazardous Air Pollutants"

Type of Rule: ___X__ Legislative _____Interpretive _____Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: 926-0475 Email: tammy.l.mowrer@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

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

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 0	$ 0	$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR34 - "Emission Standards for Hazardous Air Pollutants"

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Parts 61 and 63 as of June 1, 2009 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/8/09

Signature of Agency Head

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

§45-34-1. General.

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Parts 61, 63 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a), or one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~May 8, 2009~~.

1.4. Effective Date. -- ~~June 1, 2009~~.

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, effective ~~July 1, 2008~~ June 1, 2009.

1.6. Former Rules. -- This legislative rule amends 45CSR34 - "Emission Standards for Hazardous Air Pollutants" which was filed ~~April 23, 2008~~ May 8, 2009, and which became effective ~~June 1, 2008~~ June 1, 2009.

§45-34-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §7401 et seq.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR §61.01(a) or section 112(b) of the CAA.

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person

to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Parts 61 and 63. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

§45-34-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Parts 61 and 63 which results or will result in a violation of this rule.

3.2. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Secretary determines that the maximum achievable control technology emission limitation under 40 CFR Part 63 and this rule for new sources will be met.

3.3. The Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with sections 112(d) and 112(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR19, 45CSR30 and this rule.

§45-34-4. Adoption of Standards.

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61, 63 and 65, effective ~~July 1, 2008~~ June 1, 2009, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §§61.16 and 63.15 are amended to provide that information shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31;

4.1.b. Subpart E of 40 CFR Part 63 and any provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Provisions under Subpart HH of 40 CFR Part 63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2) shall be excluded;

4.1.d. Provisions under Subpart ZZZZ of 40 CFR Part 63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.6585(c) and (d) shall be excluded;

4.1.e. Subparts DDDDDD, ~~EEEEEE,~~ ~~FFFFFF,~~ ~~GGGGGG,~~ LLLLLL, ~~MMMMMM,~~ ~~NNNNNN,~~ OOOOOO, PPPPPP, QQQQQQ, ~~RRRRRR, SSSSSS,~~ TTTTTT, ~~YYYYY,~~ WWWWW, ZZZZZ, HHHHHH,

BBBBBB, CCCCCC, ~~and~~ WWWWWW, XXXXXX and YYYYYY of 40 CFR Part 63 shall be excluded; and

4.1.f. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

§45-34-5. Secretary.

5.1. Any and all references in 40 CFR Parts 63 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to recordkeeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

5.1.c. where the context of the regulation clearly requires otherwise.

§45-34-6. Permits.

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency Between Rules.

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

45CSR34

Federal Register

Tuesday,
January 23, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0510; FRL–8257–4]

RIN 2060–AN45

National Emission Standards for Hazardous Air Pollutants for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: EPA is issuing national emission standards for hazardous air pollutants (NESHAP) for four area source categories. These final NESHAP include emissions limits and/or work practice standards that reflect the generally available control technologies (GACT) and/or management practices in each of these area source categories.

DATES: These final rules are effective on January 23, 2007. The incorporation by reference of certain publications listed in these rules is approved by the Director of the Federal Register as of January 23, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0510. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825, fax number (919) 541–3207, e-mail address: *nizich.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background Information for Final Area Source Standards
III. Summary of Final Rule and Changes Since Proposal
A. NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources
B. NESHAP for Primary Copper Smelting Area Sources
C. NESHAP for Secondary Copper Smelting Area Sources
D. NESHAP for Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium Area Sources
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I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Polyvinyl chloride and copolymers production.	325211	Area source facilities that polymerize vinyl chloride monomer to produce vinyl chloride and/or copolymer products.
Primary copper smelting	331411	Area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
Secondary copper smelting	[2] 331423	Area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.
Primary nonferrous metals—zinc, cadmium, and beryllium.	331419	Area source facilities that produce zinc, zinc oxide, cadmium, or cadmium oxide from zinc sulfide ore concentrates using pyrometallurgical techniques and area source facilities that produce beryllium metal, alloy, or oxide from beryllium ore.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.
[2] This final rule applies only to secondary copper smelters and does not apply to copper, brass, and bronze ingot makers or remelters that may also be included under this NAICS code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11140 of subpart DDDDDD (NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources), 40 CFR 63.11146 of subpart EEEEEE (NESHAP for Primary Copper Smelting Area Sources), 40 CFR 63.11153 of subpart FFFFFF (NESHAP for Secondary Copper Smelting Area Sources), or 40 CFR 63.11160 of subpart GGGGGG (NESHAP for Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium

Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 26, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Sections 112(c)(3) and 112(k)(3)(B) of the CAA instruct EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories [1] to ensure that sources representing 90 percent or more of the emissions of each of the 30 listed HAP ("area source HAP") are subject to regulation. Sierra Club sued EPA, alleging a failure to complete standards for the source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the timeframe specified by the statute. *See Sierra Club* v. *Johnston*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B).

Among other things, the order requires that, by December 15, 2006, EPA complete standards for four of the listed area source categories. On October 6, 2006 (71 FR 59302) we proposed NESHAP for the following four listed area source categories that we have selected to meet the December 15, 2006 deadline: (1) Primary Copper Smelting; (2) Secondary Copper Smelting; (3) Polyvinyl Chloride and Copolymers Production; and (4) Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium. These final NESHAP complete the required regulatory action for four area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." Under section 112(d)(5), the Administrator has the discretion to use generally available control technology (GACT) or management practices in lieu of MACT. As mentioned in the proposed NESHAP for these four area source categories, we have decided not to issue MACT standards and concluded that requirements that provide for the use of GACT or generally available management practices are appropriate for these four source categories (71 FR 59302, 59304, October 6, 2006).

III. Summary of Final Rules and Changes Since Proposal

A. NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources

As proposed, we are adopting the requirements in 40 CFR part 61, subpart F that apply to polyvinyl chloride (PVC) plants as the NESHAP for the Polyvinyl Chloride and Copolymer Production area source category. The only change since the proposed rule is that this final rule does not adopt either the startup, shutdown, and malfunction (SSM) requirements in 40 CFR 63.6(e)(3) or the preconstruction notification requirements in 40 CFR 63.5. As discussed in more detail in section IV.B of this preamble, under the construct of part 61 standards, sources must comply with the standards at all times, including periods of SSM. Because in this final rule we are adopting the part 61 standards for PVC plants as the area source standard, separate requirements governing SSM are not necessary. We have also determined that the preconstruction notification requirements at 40 CFR 63.5 are not necessary because a comparable preconstruction notification is already required under the part 61 General Provisions (40 CFR part 61, subpart A), which apply to this NESHAP.

1. Applicability and Compliance Dates

This final rule applies to both new and existing PVC and copolymer plants that are area sources of HAP. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by January 23, 2007. The owner or operator of a new source must comply with this area source NESHAP by January 23, 2007 or at startup, whichever is later.

2. Emissions Limits and Work Practice Standards

The Polyvinyl Chloride and Copolymers Production area source category was listed for its contribution to the emissions of the area source HAP vinyl chloride. As proposed, we are adopting the requirements in 40 CFR part 61, subpart F that are applicable to PVC plants as the NESHAP for the Polyvinyl Chloride and Copolymer Production area source category. These requirements in subpart F include numerical emissions limits for reactors; strippers; mixing, weighing, and holding containers; monomer recovery systems; emissions sources following the stripper(s); and reactors used as strippers. In addition, they include emissions limits and work practice requirements that apply to discharges from manual vent valves on a PVC reactor and relief valves in vinyl chloride service, fugitive emissions sources, and equipment leaks. Subpart F also requires a new or existing source to comply with the requirements at 40 CFR part 61, subpart V for the control of equipment leaks. As discussed in the proposal preamble, we have determined that these requirements represent GACT for sources in this area source category.

3. Compliance Requirements

We are including in this NESHAP the monitoring, testing, recordkeeping, and reporting requirements in 40 CFR part 61, subpart F. This final NESHAP requires a vinyl chloride continuous emissions monitoring system (CEMS) for the regulated emissions sources (except for sources following the stripper) and for any control system to which reactor emissions or fugitive

[1] Under section 112(a) of the Clean Air Act, an area source is defined as a stationary source that is not a major source. A major source is defined as a stationary source or a group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

emissions must be ducted. Plants using a stripper to comply with this NESHAP must also determine the daily average vinyl chloride concentration for each type of resin. The owner or operator must submit quarterly reports containing information on emissions or resin concentrations that exceed the applicable limits. Records are required to demonstrate compliance, including a daily operating log for each reactor. Plants are required to comply with the testing, monitoring, recordkeeping, and reporting requirements in the part 61 General Provisions (40 CFR part 61, subpart A). For the reasons discussed in sections III.A and IV.B of this preamble, this final NESHAP does not require that the owner or operator comply with the SSM requirements at 40 CFR 63.6(e)(3) and the preconstruction notification requirements at 40 CFR 63.5.

4. Exemption From Title V Permit Requirements

Section 502(a) of the CAA provides that EPA may exempt one or more area sources from the requirements of title V if EPA finds that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome" on such area sources. EPA must determine whether to exempt an area source from title V at the time we issue the relevant section 112 standard (40 CFR 70.3(b)(2)). For the reasons discussed in the preamble to the proposed rule, we are exempting PVC and copolymers production area sources from the requirements of title V. PVC and copolymers production area sources are not required to obtain title V permits solely as a function of being the subject of the NESHAP; however, if they were otherwise required to obtain title V permits, such requirement(s) would not be affected by this exemption. We received no comments on our proposal to exempt PVC and copolymer production area sources from the requirements of title V.

B. NESHAP for Primary Copper Smelting Area Sources

The Primary Copper Smelting area source category was listed for its contribution to the emissions of the area source HAP arsenic, cadmium, chromium, lead, and nickel. As discussed in more detail in section IV.C of this preamble, the major change since the proposed rule is that we established a subcategory of primary copper smelters that use the batch converting technology and developed separate standards for this subcategory. At the time of the proposed rule, we were not aware of any area sources using the batch converting technology. Since then, we received comments indicating that there may or will be primary copper smelting area sources that use the batch converting technology. Because batch technology is quite different from the continuous converting technology we used to develop the proposed standards for the Primary Copper Smelting area source category in terms of process operation, emissions points, and achievable levels of control, we believe that the proposed standards do not represent GACT for existing primary copper smelting area sources that use the batch converting technology. Accordingly, we developed a separate standard for existing sources that use the batch converting technology, and we developed that standard based on the title V permit of one batch converting facility that we have determined to be effectively controlling its HAP emissions by complying with its permit terms and conditions.

In response to comments, we also made several changes to the proposed rule for primary copper smelters that do not use the batch converting technology. As explained in the preamble to the proposed rule, we have determined that certain terms and conditions in the title V permit of the only area source primary smelter of which we are aware provide effective control of HAP emissions and represent GACT for these sources. We made changes in the proposed rule to more accurately capture the relevant terms and conditions in this existing area source's title V permit. Specifically, we clarified that capture and control systems are not required for anode casting and holding operations; that the sampler required for existing sources is a continuous PM sampler; that the emissions limit is expressed as PM less than 10 microns in aerodynamic diameter (PM10) rather than PM; and that a single gas collection system could serve multiple process vessels.

As discussed in section IV.B of this preamble, we allow new and existing sources to comply with either the SSM requirements in 40 CFR 63.6(e)(3) or the detailed SSM requirements in the final rule that were developed from the existing sources' title V permits, which are substantially equivalent to the SSM requirements in 40 CFR part 63.

1. Applicability and Compliance Dates

This final rule applies to each new or existing primary copper smelter that is an area source of HAP. The owner or operator of an existing affected source must comply by January 23, 2007. The owner or operator of a new affected source must comply by January 23, 2007 or upon initial startup, whichever is later. An affected source is new if construction or reconstruction of the affected source was commenced on or after October 6, 2006.

2. Emissions Limits and Work Practice Standards

As previously mentioned, we have developed separate standards for existing sources that use the batch converting technology and for those that do not. However, the standards for new sources apply to all new area source primary copper smelters irrespective of the converting technology utilized.

Under this final rule, the owner or operator of an existing area source using any converting technology is required to control HAP emissions from copper concentrate drying, copper concentrate smelting, copper matte drying and grinding, copper matte converting, and copper anode refining. As discussed in the proposal preamble, we are using PM as a surrogate for HAP metals. Gases and fumes generated by these processes must be captured and vented through one or more PM control devices. For existing primary copper smelters that do not use the batch converting process, the total emissions of PM10 from the captured gas streams from all of these processes is limited to 89.5 pounds per hour (lb/hr) as determined on a 24-hour average basis.

For existing primary copper smelters using the batch converting technology, the exhaust gases from each smelter vessel and each converter must be collected and sent to a PM control device and to a sulfuric acid plant. A secondary gas collection system must be installed on each smelting vessel and converter, and PM emissions from the secondary capture and control system must not exceed 0.02 grains per dry standard cubic foot (gr/dscf). The PM emissions from each copper concentrate dryer must not exceed 0.022 gr/dscf.

Similarly, the owner or operator of a new area source using any converting technology must control HAP emissions from all primary copper smelting processes, including but not limited to those processes mentioned above that are applicable to the new source's smelter design. Gases and fumes generated by these processes at a new source must be captured and vented through one or more PM control devices. We are requiring a new source to achieve a facility input-based emissions rate for total PM no greater than a daily (24-hour) average of 0.6 pounds per ton (lb/ton) of copper concentrate feed charged to the smelting vessel.

This final rule for new area source primary copper smelters also requires a secondary gas system for each smelting

vessel and converting vessel that collects the gases and fumes released during the molten material transfer operations and conveys the collected gas stream to a control device. Capture systems that collect gas and fumes and convey them to a control device also are required for operations in the anode refining. These capture and control requirements apply to all new and existing area sources using any copper smelting technology.

3. Compliance Requirements

In this final rule, we have adopted the testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements for PM emissions that are in the title V permits of the existing area source smelters. Compliance with the emissions limit for existing area sources not using the batch converting technology is based on the daily average PM_{10} emissions measured by a continuous PM sampler. For smelters using the batch conversion technology, compliance is based on performance tests at least every 2.5 years and continuous monitoring using continuous opacity monitoring systems (COMS) for electrostatic precipitators and bag leak detection systems for baghouses.

The operation and maintenance requirements in this final rule for existing sources using any converting technology are based on the existing sources' title V permits. At all times, the owner or operator must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. In addition, all pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. Maintenance records must be made available to the permitting authority upon request.

This final rule allows any new or existing source to meet the SSM requirements specified in this final rule or the SSM requirements in 40 CFR 63.6(e)(3). The SSM requirements that are specified in this final rule were developed from the existing sources' title V permit requirements, and we believe these requirements are equally applicable to new and existing area sources irrespective of the converting technology used. Sources may nevertheless choose to comply with the SSM provisions in 40 CFR 63.6(e)(3), in lieu of the SSM requirements specified in this final rule. The SSM provisions in this final rule require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the owner or operator must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the probable cause can be identified, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards. A malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

The owner or operator of an existing area source using any copper smelting technology must comply with notification requirements in 40 CFR 63.9 of the General Provisions (40 CFR part 63, subpart A). In the notification of compliance status required in 40 CFR 63.9(h), the owner or operator may certify initial compliance with the emissions limit based on monitoring data collected during a previous compliance test. The owner or operator also must certify initial compliance with the work practice standards.

The owner or operator of a new primary copper smelter must install, operate, and maintain a CEMS to measure and record PM concentrations and gas stream flow rates for each emissions source subject to the emissions limit. The standard requires that the PM CEMS meet EPA Performance Specification 11 (40 CFR part 60, appendix B). A device to measure and record the weight of the copper concentrate feed charged to the smelting furnace each day also is required. The owner or operator must continuously monitor PM emissions, determine and record the daily (24-hour) value for each day, and calculate and record the daily average pounds of total PM per ton of copper concentrate feed charged to the smelting furnace. A monthly summary report of the daily averages of PM per ton of copper concentrate feed charged to the smelting vessel also is required. All notification, monitoring, testing, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to the owner or operator of a new source. This final rule allows a new source to meet the specific SSM requirements that were developed from the title V permit requirements for existing sources or the SSM requirements in 40 CFR 63.6(e)(3).

C. NESHAP for Secondary Copper Smelting Area Sources

We did not receive any comments on our determination of GACT for secondary copper smelters, and we are promulgating the standard as proposed without any changes.

1. Applicability and Compliance Dates

This final rule applies to each new secondary copper smelter that is an area source of HAP. The owner or operator of a new affected source is required to comply by January 23, 2007 or upon initial startup, whichever is later.

2. Emissions Limit and Work Practice Standards

This final rule does not include requirements for existing area sources of secondary copper smelters. As we explained in the preamble to the proposed rule, currently there are no existing major or area sources of secondary copper smelters. Therefore, there is not any, nor would there ever be, an existing secondary copper smelter that would be subject to this rule. In this circumstance, we are not issuing standards for existing area sources of secondary copper smelters. However, this final rule contains requirements for new area sources of secondary copper smelters. The Secondary Copper Smelting area source category was listed for its contribution to the emissions of the area source HAP cadmium, lead and dioxin. We have established requirements for new sources in this category to ensure that any potential emission of these area source HAP from future secondary copper smelting area sources will be appropriately controlled.

We are requiring that the owner or operator of any new secondary copper smelter operate a capture and control system for PM emissions from any process operation that melts copper scrap, alloys, or other metals or that processes molten material. Emissions of PM from the control device must not exceed 0.002 gr/dscf. The owner or operator must also prepare and follow a written plan for the selection, inspection, and pretreatment of copper scrap to minimize, to the extent practicable, the amount of oil and plastics in the scrap that is charged to smelting or melting furnaces. As we explained in the proposal preamble, we are using PM as a surrogate for establishing standards for metal HAP, which are cadmium and lead in this case. The United Nations Environmental Programme (UNEP) has also recommended using control devices with high efficiency PM removal to reduce dioxin emissions. The pollution

prevention measure described above (i.e., presorting and pretreating materials) is another UNEP recommendation for reducing dioxin emissions. We have determined that these requirements represent GACT for new sources of secondary copper smelters and requested comments on this determination in the proposed rule. We did not receive any comments on this determination.

3. Compliance Requirements

Fabric filters (baghouses) are expected to be needed to meet the NESHAP emissions limit. Consequently, the monitoring requirements include bag leak detection systems when baghouses are used. For additional information on bag leak detection systems that operate on the triboelectric effect, see "Fabric Filter Bag Leak Detection Guidance", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161. The owner or operator must prepare a written plan for the selection, inspection, and pretreatment of copper scrap and keep records to document conformance with the requirements in the written plan. If a control device other than a baghouse is used, the owner or operator must submit a monitoring plan to the permitting authority for approval. The monitoring plan must include performance test results showing compliance with the PM emissions limit, a plan for operation and maintenance of the control device, a list of operating parameters that will be monitored, and operating parameter limits that were established during the performance test.

The owner or operator must conduct a performance test to demonstrate initial compliance with the PM emissions limit and report the results in the notification of compliance status required by 40 CFR 63.9(h) of the General Provisions. If a baghouse is used, the PM concentration is to be determined using EPA Method 5 (for negative pressure baghouses) or Method 5D (for positive pressure baghouses) in 40 CFR part 60, appendix A. Repeat performance tests are required every 5 years to demonstrate compliance with the PM emissions limit. All requirements of the part 63 General Provisions apply to the owner or operator of a new source, including the notification, monitoring, testing, operation and maintenance, SSM, recordkeeping, and reporting requirements.

D. NESHAP for Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium Area Sources

1. NESHAP for Primary Zinc Production

In this final rule, we have adopted a limit in grains per dry standard cubic foot (gr/dscf) for certain melting furnaces at existing zinc production area sources in addition to the proposed pound per hour (lb/hr) limits for these furnaces at existing sources. This gr/dscf limit is the limit that we proposed for the same furnaces at new sources. Both the gr/dscf limit and the lb/hr limits reflect the level of emission control that can be achieved based on the technology we identified as GACT for these furnaces (i.e., a well-operated and well-maintained baghouse). However, whereas the lb/hr limits were based on the specific operations at the two existing sources of which we are aware, the gr/dscf emission limit is not operation specific and can apply to these furnaces at any primary zinc production area source irrespective of its operation. For this reason, we proposed this gr/dscf emissions limit for these furnaces at new sources. In this final rule, we similarly allow an existing source to meet this gr/dscf limit for these furnaces. This final rule provides existing sources the option of meeting either the lb/hr limits or the gr/dscf limit for these furnaces. We believe that including both the lb/hr and gr/dscf limits in this final rule will ensure effective control of these furnaces at all existing primary zinc production area sources in the event that there are facilities other than the two we know and with very different operations from the two known sources.

In addition, as discussed in section IV.B of this preamble, we allow new and existing sources to comply with either the SSM requirements in 40 CFR 63.6(e)(3) or with the detailed SSM requirements in the final rule that were developed from the existing sources' title V permits, which are substantially equivalent to the SSM requirements in part 63.

Applicability and compliance dates. This final rule applies to each new or existing primary zinc production facility that is an area source of HAP. The owner or operator of an existing affected source must comply by January 23, 2007. The owner or operator of a new affected source must comply by January 23, 2007 or upon initial startup, whichever is later.

Emissions limits and work practice standards. Primary zinc production facilities were included as part of the Primary Nonferrous Metals area source category due to their contributions to the emissions of the area source HAP arsenic, cadmium, lead, manganese, and nickel, all of which are metal HAP. As we mentioned in the proposal preamble, cadmium is produced as a by-product of zinc smelting processes. There are no primary cadmium smelters in the United States. Accordingly, the requirements for area sources of zinc production in this final rule also address emissions associated with any cadmium production at these zinc production facilities.

As previously mentioned, we are using PM as a surrogate for establishing standards for metal HAP. Under this final rule, the owner or operator of an area source of zinc production is required to exhaust roaster off-gases to PM removal equipment and a sulfuric acid plant. Bypassing the sulfuric acid plant during charging of the roaster is prohibited.

Emissions limits apply to the different types of melting furnaces at primary zinc production facilities. For existing sources, this NESHAP limit PM emissions to 0.93 lb/hr for zinc cathode melting furnaces; 0.1 lb/hr for furnaces that melt zinc dust, chips, and off-specification zinc materials; and 0.228 lb/hr for the combined exhaust from furnaces that melt zinc scrap and alloys. As an alternative to the lb/hr limits for these furnaces at existing sources, the owner or operator may elect to meet a limit of 0.005 gr/dscf. For new sources, the PM limit is 0.005 gr/dscf for the furnaces mentioned above. Other PM limits are 0.014 gr/dscf for anode casting furnaces and 0.015 gr/dscf for cadmium melting furnaces at new and existing sources.

Emissions limits also apply to any sintering machine at a new or existing area source facility. If there is a sintering machine, the owner or operator must comply with the PM limit at 40 CFR 60.172 and the opacity limit at 40 CFR 60.174(a) of the new source performance standard (NSPS) for primary zinc smelters (40 CFR part 60, subpart Q).

Compliance requirements. We are adopting for existing area sources certain monitoring, recordkeeping, and reporting requirements in the title V permits of the two existing facilities that relate to PM emissions control. The owner or operator of an existing area source must monitor baghouse pressure drop, perform routine baghouse maintenance, and keep records to document compliance. In addition, we are requiring repeat performance tests (at least once every 5 years) for existing sources. This final rule also requires a continuous opacity monitoring system (COMS) for any sintering machine in accordance with 40 CFR 60.175.

The owner or operator of an existing area source must comply with initial notification requirements in 40 CFR 63.9 of the General Provisions. In the notification of compliance status required by 40 CFR 63.9(h), the owner or operator may certify initial compliance with the HAP emissions limits based on the results of a PM performance test for each of the regulated emissions sources conducted within the past 5 years. The owner or operator must also certify initial compliance with the work practice standards.

If an existing source has not conducted a performance test to demonstrate compliance with the emissions limits for a furnace, the facility must conduct a test according to the requirements at 40 CFR 63.7 using EPA Method 5 (40 CFR part 60, appendix A) to determine the PM concentration or an alternative method previously approved by the permitting authority. For a sintering machine, the owner or operator must conduct a performance test according to the procedures in 40 CFR 60.176(b) using EPA Method 5 to determine the PM concentration and EPA Method 9 (40 CFR part 60, appendix B) to determine the opacity of emissions.

The operation and maintenance requirements in the final rule for existing sources are based on the sources' title V permits. The owner or operator must maintain all equipment covered under the subpart in such a manner that the performance or operation of the equipment does not cause a deviation from the applicable requirements. A maintenance record must be kept for each item of air pollution control equipment. At a minimum, this record must show the dates of performing maintenance and the nature of preventative maintenance activities.

This final rule allows any existing source to meet the specific SSM requirements that were developed from the title V permit requirements for existing sources or the SSM requirements in 40 CFR 63.6(e)(3). The specific SSM provisions in this final rule require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the owner or operator must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the probable cause can be identified, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards. A malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

As required in the existing permits, the owner or operator must submit a notification to the permitting authority of any deviation from the requirements of this final NESHAP. The notification must describe the probable cause of the deviation and any corrective actions or preventative measures taken. Existing facilities are also required to submit semiannual monitoring reports which clearly describe any deviations. Records of baghouse maintenance, all required monitoring data, and support information also are required. The owner or operator of an existing area source must also comply with the notification requirements in 40 CFR 63.9 of the General Provisions.

The owner or operator of a new area source is required to install and operate a bag leak detection system for each baghouse used to comply with a PM emissions limit. For additional information on bag leak detection systems that operate on the triboelectric effect, see "Fabric Filter Bag Leak Detection Guidance", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161. In addition, we are requiring repeat PM performance tests (once every 5 years) for each furnace at a new source. The owner or operator must also install, operate, and maintain a COMS for each sintering machine according to EPA Performance Specification 1 (40 CFR part 60, appendix B).

The owner or operator of a new affected source must demonstrate initial compliance with the applicable emissions limits by conducting a performance test according to the requirements at 40 CFR 63.7 and using EPA 5 or 5D (40 CFR part 60, appendix A), as applicable, to determine the PM concentration. An initial performance test is also required for a sintering machine according to the methods and procedures in 40 CFR 60.176(b). All of the notification, testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to a new area source. This final rule allows a new source to meet the specific SSM requirements in this final rule or the SSM requirements in 40 CFR 63.6(e)(3).

2. NESHAP for Primary Beryllium Production Area Sources

The only change since proposal is that this final rule does not adopt the SSM requirements in 40 CFR 63.6(e)(3) and the preconstruction notification requirements in 40 CFR 63.5. As discussed in more detail in section IV.B of this preamble, we have determined that the SSM requirements are not necessary for standards under part 61 that must be met at all times, and the preconstruction notification is already required under the part 61 General Provisions.

Applicability and compliance dates. For this final rule, we are adopting all of the requirements in the National Emission Standard for Beryllium at 40 CFR part 61, subpart C. The owner or operator of an existing area source must comply with this NESHAP by January 23, 2007. The owner or operator of a new area source must comply by January 23, 2007 or at startup, whichever is later.

Emissions limits. Primary beryllium production facilities were included as part of the Primary Nonferrous Metals area source category due to their contributions to the emissions of the area source HAP arsenic, cadmium, lead, manganese, and nickel, all of which are metal HAP. As discussed in the proposal preamble, we are using beryllium as a surrogate for HAP metals. We are adopting the 40 CFR part 61, subpart C standard as the requirements for both new and existing primary beryllium production facilities in this final rule. The part 61, subpart C standard limits emissions from extraction plants (i.e., primary beryllium production facilities) to 10 grams (0.022 lb) of beryllium over a 24-hour period. Alternatively, the owner or operator of a beryllium production facility may request to meet an ambient concentration limit instead of the emissions limit. As discussed in the preamble to the proposed rule, the part 61 standard is highly effective in controlling PM and metal HAP emissions from the only existing beryllium production facility known to us at the time of the proposal. We have determined that these requirements reflect GACT for area sources of beryllium production. We did not receive any comments on this determination.

Compliance requirements. This final rule requires the owner or operator to comply with the testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 61, subpart

C. An owner or operator subject to the ambient concentration limit must operate air sampling sites to continuously monitor the concentrations of beryllium in the ambient air according to an EPA-approved plan.

The owner or operator must comply with recordkeeping requirements in 40 CFR part 61, subpart C, as well as the testing, monitoring, recordkeeping, and reporting requirements in the part 61 General Provisions in 40 CFR part 61, subpart A. For the reasons discussed in section IV.B of this preamble, this final rule does not require that the owner or operator comply with the requirements for SSM plans and reports in 40 CFR 63.6(e)(3) or the preconstruction notification requirements in 40 CFR 63.5.

IV. Summary of Comments and Responses

A. Existing Area Source Facilities

At proposal, we stated that we did not know of any existing sources in the Polyvinyl Chloride and Copolymer area source category, and we requested comments on whether there are or ever will be any area sources in this area source category. We also stated that currently there is only one area source of primary copper production in operation in the United States and that there are no primary beryllium production area sources.

Comment: One commenter informed us of an area source PVC plant in Alabama. In addition, two commenters stated that there are a few (at least three) PVC plants that they believe may qualify as area sources. According to the commenters, these were once major sources that have reduced HAP emissions significantly or that are currently shut down but are expected to start up again with significantly less emissions than from previous operations as major sources. The commenters requested that EPA clarify the meaning of "potential to emit" in its definition of an "area source" in the proposed rule, as well as the proposed rule's applicability to plants that have obtained or, for the ones that are not currently operating, will obtain permits that limit emissions to levels below the major source thresholds. In addition, the commenters requested clarification of the proposed rule's applicability to PVC plants co-located at chemical complexes that are major sources.

One commenter notified us of an area source primary beryllium plant in Utah. The commenter sought clarification of the proposed rule's applicability to a primary beryllium plant that is a major source because of perchloroethylene emissions and that may become an area source in the future by eliminating the use of perchloroethylene.

We also received comments that there are two operating primary copper smelters that are area sources rather than just one, as EPA stated in the proposed rule. The company operating this second source reported that it was an area source (synthetic minor) based on a determination by the permitting authority. The company also stated that it is planning to restart a primary copper smelter in Texas that has been shutdown and under "care and maintenance" for several years. This facility will incorporate feedstock limitations to remain below major source thresholds, and the company expects that this facility will qualify as an area source when the renewed permits are issued. The commenter sought clarification of the applicability of the proposed rule to the two primary copper smelters described above.

Response: Section 112(a) of the CAA defines the terms "major source" and "area source." An "area source" is defined as any stationary source that is not a major source. In the proposed rule, we included a definition for "area source" and that definition attempted to summarize the statutory definitions of "major source" and "area source." Commenters sought clarification of the meaning of the term "potential to emit" contained in the proposed definition of "area source." Based on the comment, it appears that the proposed definition of "area source" has caused confusion. Because the proposed definition of "area source" was merely intended to summarize the statutory definitions of "major source" and "area source" and is redundant of the definition of "area source" contained in the General Provisions (40 CFR part 63, subpart A), we have decided not to finalize the proposed "area source" definition. Instead, as noted in the NESHAP for each of these four area source categories, the definitions of "major source," "area source," and "potential to emit" in 40 CFR 63.2 apply to this final rule.[2] To the extent the commenters have questions as to whether their facility is a major source or an area source, EPA cannot answer these site-specific applicability questions in the context of this national rulemaking. We refer the commenters to the definitions of "major source," "area source," and "potential to emit" found in 40 CFR 63.2, and recommend that the commenters consult with the relevant permitting authority or submit a request for an applicability determination to the EPA regional office in the region where the source is located.

In addition, we want to clarify that a plant that is co-located with other facilities that together qualify as a major source is part of that major source and not an area source.

B. Part 63 General Provisions

Comment: One commenter representing the two beryllium plants objected to the part 63 SSM requirements in the proposed NESHAP for the Primary Beryllium Production area source category. The commenter stated that these two beryllium plants are already subject to 40 CFR part 61, subpart C, which EPA has adopted in this final rule, as well as the SSM requirements in State implementation plans (SIP), State laws, and title V permits. According to the comment, because these plants are subject to a strict ambient air standard for beryllium under the part 61 NESHAP, which requires that the plants monitor continuously and meet the required limits under all conditions, the part 63 SSM requirements are not necessary. Commenters representing facilities in the PVC industry provided similar comments. In addition, they stated that by requiring compliance with part 61 and the SSM provisions in 40 CFR 63.6, the proposed rule would impose two different SSM schemes in one standard. It would also impose more burdensome reporting and recordkeeping obligations on the lower emitting (area) sources.

Representatives of two primary copper companies also stated that the SSM requirements are unnecessary and duplicative of existing requirements and should be deleted. Their title V permits contain existing functionally equivalent

[2] In 1995, the Court of Appeals for the District of Columbia Circuit reviewed the definition of "potential to emit" (PTE) contained in 40 CFR in 40 CFR 63.2 (*National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995)). In July 2005, the D.C. Circuit remanded the definition to EPA to the extent the definition required that physical or operational limitations be "federally enforceable" (*National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995)). The court did not vacate the 40 CFR part 63 regulations and therefore the definition of "potential to emit" in 40 CFR part 63 remains in place. EPA is currently in the process of developing a proposed rule that responds to the court's remand. EPA has a transitional policy that relates to PTE. See "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" (Jan. 25, 1995), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf*. EPA has extended the transition policy several times. See "Third Extension of January 25, 1995 Potential to Emit Transition Policy" (December 20, 1999), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf*. Under the Third Extension, sources can rely on State-only enforceable PTE limits until we finalize our response to the remand.

SSM provisions, including requirements for timely notification and reporting.

Response: We agree that the SSM requirements in the 40 CFR part 63 General Provisions need not be included in the NESHAP for the PVC and Copolymer Production and the Primary Beryllium Production area source categories, both of which adopted the relevant part 61 standards for these categories. Under the construct of the part 61 standards, sources must comply with the standards at all times, including periods of SSM. Therefore, separate requirements governing SSM are not necessary. Accordingly, we have revised the proposed rule to eliminate the part 63 SSM requirements for new and existing primary beryllium and PVC plants.

We also examined the SSM requirements that are in title V permits for other source categories. The primary copper smelters and primary zinc production plants have similar requirements in their permits. Our review indicates that these requirements are substantially equivalent to the part 63 SSM requirements. For example, the title V permits for these plants require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the permittee must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the permittee can identify the probable cause, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards or other requirements of the permit. The permit also makes it clear that a malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Based on the comments and our review of title V permits, we are including in this final rule alternative SSM requirements that we have formulated based on our review of the title V permits mentioned above. Under this final rule, a new or existing primary copper smelter or primary zinc production facility may choose to meet the SSM requirements in 40 CFR 63.6(e)(3) or the alternative SSM requirements provided in this final rule.

This final rule also includes operation and maintenance requirements for existing sources that are based on the permits. For primary copper smelters, the owner or operator must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. In addition, all pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, ampere meters, volt meters, flow rate indicators, temperature gauges, continuous emissions monitoring systems, etc., must be installed, operated properly and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at the facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

Comment: One commenter stated that we should not adopt the preconstruction notification requirements in the part 63 General Provisions (40 CFR part 63, subpart A) because they were unnecessary and duplicate the very similar requirements already in the part 61 General Provisions (40 CFR part 61, subpart A). EPA should not impose the additional burden of submitting and processing two duplicative applications and should just rely on the provisions already in the part 61 General Provisions.

Response: We agree that if a preconstruction notification is submitted under the part 61 General Provisions (40 CFR 61.07), it is not necessary to submit another preconstruction notification under the part 63 General Provisions. We have revised the proposed rule to reflect this change.

Comment: One commenter stated that EPA should not incorporate any of the part 63 General Provisions into area source standards that adopt the part 61 NESHAP. These provisions, including those in 40 CFR 63.1 (Applicability), are already addressed in the part 61 General Provisions and enhanced by SIP requirements and title V permits.

Response: We have previously addressed the SSM requirements and preconstruction notifications for facilities subject to part 61 standards. The only other section of the part 63 General Provisions that we have included for these sources deals with applicability in 40 CFR 63.1 (§§ 63.1(a)(1) through (10), 63.1(b)(1), 63.1(c), and 63.1(d)). The provisions on applicability impose no burden on the facility and provide clarity and useful information related to the applicability of standards under part 63. Consequently, the final rule includes portions of § 63.1 from the part 63 General Provisions.

C. Primary Copper Smelters

Comment: Two commenters identified two primary copper smelters as area sources in addition to the one smelter identified as an area source in the proposal preamble. One of these smelters is operating, and the company stated that the facility is an area source (i.e., a synthetic minor source). The other smelter has been shut down for several years, but it is in the process of obtaining permits to re-start and expects to be an area source. Both of these smelters use the batch converting process, whereas the smelter that was identified as an area source at proposal and was the basis for GACT uses flash continuous converting technology. The company pointed to the process descriptions in the proposal preamble that noted the numerous differences in the two technologies. The company suggested that their two smelters fit into a separate subcategory (batch converting technology) and should have rule requirements based on that technology. The requirements in the proposed rule are not appropriate for their smelters because the proposed rule is based on the flash continuous converting technology.

Response: The commenters asserted that there are two area source primary copper smelters that use the batch converting technology. As we described in the proposal preamble (71 FR 59308, October 6, 2006), there are numerous differences in process operation, emissions points, and achievable levels of control. We believe that our proposed standard for existing sources, which is based on flash continuous converting technology, would not be appropriate for existing sources of primary copper smelting that use the batch converting technology and that separate standards are needed to address the different technology used by these existing smelters. Solely for purposes of this analysis, we accept, as true, the commenter's assertion that there are existing area source facilities that use batch processing. As explained above, to the extent the commenter has any question as to whether the smelters identified above are major or area sources, they should consult with the relevant permitting authority or submit

a request for an applicability determination to the EPA regional office in the region where the source is located.

In developing the requirements for sources using the batch converting technology, we reviewed the title V permit of the currently operating source identified in the comment. The emissions from this facility are controlled as a result of its title V permit requirements to capture and control emissions of PM. The vast majority of the gases from the smelting furnace and converter are collected by a primary capture system, sent to control equipment to remove PM, and then processed in a sulfuric acid plant. Fugitive emissions are collected by a secondary capture system and sent to a baghouse for control of PM emissions. We determined that these current permit requirements represent GACT for existing primary copper smelters using the batch converting process and have included these requirements in this final rule as the requirements for existing primary copper smelting area sources that use batch converting technology.

According to these requirements, plants that use batch converting technology must operate primary capture systems on each smelting vessel and each copper converter. Secondary capture systems must be installed to capture emissions from tapping copper matte and slag from the smelting vessel and emissions from charging, skimming, pouring, and holding when the converter mouth is partially rotated out from the primary collection hood. All of the collected gases must be routed to an emissions control system. In addition, emissions from the primary collection system for the smelting vessel and converter must be routed to a sulfuric acid plant after PM removal.

Emissions from each copper concentrate dryer must be controlled and must not exceed 0.022 gr/dscf. Emissions from secondary capture systems that are not vented to a sulfuric acid plant must not exceed 0.02 gr/dscf.

We also examined the monitoring requirements in the title V permit of this primary smelter using the batch technology and found that they would ensure that control devices are working properly on a continuous basis. We therefore included these monitoring requirements in this final rule as requirements for primary copper smelting area sources that use the batch converting technology. Under these requirements, a COMS meeting Performance Specification 1 (40 CFR part 60, appendix B) must be installed on each electrostatic precipitator. If the 24-hour rolling average opacity exceeds 15 percent, the plant must investigate the cause of the problem and take corrective action. Each baghouse must be equipped with and monitored by a bag leak detection system to ensure proper operation. We have also required performance tests every 2.5 years to determine compliance with PM limits.

Comment: A commenter representing the primary copper plant that was the basis for GACT stated that EPA did not properly capture the facility's title V permit requirements in some cases. The commenter supplied additional details and clarifications. Clarification is needed for the requirements for anode casting and holding operations, the emissions limit should not be referred to as "smelter wide" but as the limit for the main stack, the limit should be expressed as PM_{10} rather than PM, and the continuous PM sampler should not be referred to as a CEMS. The commenter also asked that EPA modify the proposed rule to clearly state that a single secondary gas collection system can capture and control emissions from multiple processing vessels (i.e., each vessel does not have to have its own separate collection system). The commenter also requested more flexibility in the monitoring requirements so that the permitting authority could approve improved monitoring technology should it become available in the future.

Response: We agree with the commenter and will make most of the suggested changes. The facility's title V permit was the basis for our GACT determination, and we intended that the proposed area source rule incorporate the permit requirements of this well-controlled facility. We understand that in some cases, a gas collection system may be applied to multiple process vessels, and we have included this clarification in this final rule. We understand that flexibility in monitoring is important, especially as improved monitoring techniques become commercially available and demonstrated in metallurgical operations. That said, it is not necessary to revise the proposed rule to allow a facility to request approval of an alternative monitoring method because the procedure for making such requests is contained in 40 CFR 63.8, which applies to the NESHAP for the Primary Copper Smelting area source category in this final rule.

Comment: One commenter noted that the new source standard for primary copper was based on the newer flash continuous converter technology and would not be appropriate for new plants using the batch converting technology. The commenter stated that continuous converting has more limited applicability to ore concentrates that have high impurities levels than does batch converting. The commenter stated that because a new smelter could use either of the technologies, the emission standards for new sources should be reflective of the performance of either of these technologies. This can be achieved by providing flexibility in the emission limits that are adopted. The commenter recommended that the standard for new smelters using the batch converting technology be based on the best performing existing facility with the technology. In addition, a provision should be made to allow an alternate emissions limit to be authorized by either EPA or the permitting authority that is equally protective.

Response: The emissions limit that we proposed for new primary copper smelters is in lb/ton of copper concentrate feed and is applied on a facility wide basis. The format and requirements of the standard can be applied to and achieved by a facility using any primary copper smelting technology if it is well controlled. The format of the standard also provides flexibility because multiple process vessels can have different levels of emissions as long as they collectively meet the overall lb/ton limit. The limit has been demonstrated as achievable by an existing area source that uses a continuous converting process. Unlike existing sources, new sources using any smelting technology have the opportunity to incorporate state-of-the-art capture and control systems into their design, construction, and operation. Based on our engineering experience with capture and control systems that have been applied to primary copper processes and also those that have been applied to similar processes in other metallurgical industries, we believe that the emissions limit for new sources can be achieved by primary copper smelters using any processing technology, including both the continuous and batch converting processes. The standard for new primary copper smelters represents a level of control that is generally available for new sources. Consequently, we chose to promulgate the limit as proposed as GACT for new primary copper smelters.

Comment: Three commenters objected to the requirement of using a PM CEMS for monitoring at new primary copper smelter area sources. Although improvements in PM CEMS have been made as they continue to be developed, there is not sufficient operating history

to prove its feasibility for continuous monitoring at primary copper smelters.

Response: The PM CEMS have been demonstrated in many different applications, including processes with exhaust gases similar to those from primary copper smelters (e.g., at electric utilities where the temperatures and exhaust gas compositions are similar). The commenters did not provide any information that the exhaust gases from primary copper smelting are uniquely different. We have included PM CEMS as the monitoring technology for new sources in this final rule.

D. Primary Zinc Smelters

Comment: One commenter asked if the proposed rule was meant to apply to any zinc refinery that processes any amount of zinc sulfide concentrate. If so, what is the timeframe for using zinc sulfide concentrate and its percentage of the feed that qualifies a facility as a primary zinc smelter? Is EPA really trying to regulate zinc refineries, which produce cathodes in a cathode melting furnace and use zinc sulfide concentrate as a feed material, and not regulate thermal zinc smelters, who do not produce cathodes and do not currently use zinc sulfide concentrate?

Response: The commenter is correct in that this final rule applies to any area source facility that produces zinc products from any amount of zinc sulfide ore concentrates using pyrometallurgical processes (i.e., a "primary zinc smelter"). This final rule does not apply to thermal zinc smelters if they do not process zinc sulfide concentrate. (Facilities processing only zinc scrap and residues containing zinc would be classified as secondary zinc smelters.) If a facility meets the definition of primary zinc smelter and is an area source on the compliance date, it is subject to this final rule. If the facility is not processing zinc sulfide concentrate but subsequently begins processing it, meets the definition of primary zinc smelter, and is an area source, it is subject to this final rule when it begins processing the zinc sulfide concentrate. Under these facts, such a facility would be subject to the standards for new sources if construction or reconstruction of the primary zinc smelter (the affected source) commenced on or after October 6, 2006.

We are not making a distinction between zinc refineries and thermal zinc smelters as described by the commenter. Either type of facility is subject to this final rule if it is an area source and meets the definition of primary zinc smelter.

Comment: One commenter noted that the proposed rule requires demonstrating compliance by stack testing within 180 days after the compliance date. Their plant has a process that is not operating, it is subject to the rule, but it may not restart until more than 180 days after the compliance date. As the proposed rule reads, they would have to demonstrate compliance by a stack test even though the process is not operating.

Response: We have clarified the proposed rule to indicate that if a process subject to this final rule is not operating on the compliance date and subsequently starts up, compliance testing must be performed within 180 days after startup of the process.

Comment: One commenter noted that the proposed rule requires that initial compliance must be demonstrated "for each furnace at your facility." A zinc smelter may have other types of furnaces that are not subject to emission limits. The commenter assumes that this requirement will have no impact on these furnaces.

Response: The commenter is correct. We have clarified the proposed rule to state that initial compliance must be demonstrated "for each furnace at your facility that is subject to an emissions limit under this subpart."

Comment: One commenter stated that the emissions limit of 0.005 gr/dscf for certain furnaces at new sources is greater than the emissions limit for the same furnaces at existing sources. The commenter suggested that the greater of the two values be applied in this case to provide a level playing field for new and existing sources.

Response: We disagree with the comment that the emissions limit of 0.005 gr/dscf for certain furnaces at new sources is greater than the emissions limits for the same furnaces at existing sources. The emissions limit of 0.005 gr/dscf for new sources is applied to the exhaust vent of a zinc cathode melting furnace; scrap zinc melting furnace; furnace melting zinc dust, zinc chips, and other materials containing zinc; and alloy melting furnace. For existing sources, the limits are 0.1 lb/hr from the exhaust vent of a furnace that melts zinc dust, zinc chips, and/or other materials containing zinc; and 0.228 lb/hr from the vent for the combined exhaust from a furnace melting zinc scrap and an alloy furnace. Although the limits for the furnaces mentioned above are expressed in different formats for new and existing sources, both formats reflect the level of emission control that can be achieved based on the technology we identified as GACT for these furnaces (i.e., a well-operated and well-maintained baghouse). However, whereas the lb/hr limits for the above-noted furnaces in the proposed rule were based on the specific operations at the two existing sources of which we are aware, the gr/dscf emission limit is not operation specific and can apply to these furnaces at any primary zinc production area source. We have therefore adopted the gr/dscf limit in addition to the proposed lb/hr limit, and sources can meet either the limit expressed in lb/hr or the limit expressed in gr/dscf.

E. Basis for Area Source Standards

Comment: We received a comment from the National Association of Clean Air Agencies (NACAA) expressing concern with EPA's establishment of area source standards under section 112 of the CAA by adopting existing Federal and/or State area source standards. In the comment, the NACAA stated that the existence of State and local regulations does not relieve EPA of its obligation to establish area source standards under the CAA. The NACAA expressed concern that some States cannot have requirements more stringent than those of the Federal government and may, therefore, be required to change their regulations of area sources to be consistent with EPA's area source standards. The NACAA stated that, if the permit requirements that make these sources "well controlled" are not contained within the Federal rule, the nonfederal rules could be relaxed. The NACAA further stated that, in the absence of Federal requirements, there would be nothing to prevent "backsliding" by these sources.

The NACAA was particularly concerned with EPA's proposed PVC rule, which adopted the part 61 standards for PVC plants. According to the NACAA, the part 61 standards for PVC plants are outdated and inappropriate as a model for GACT. The NACAA submitted with its comment a recommendation for the standards for area sources of PVC plants. The NACAA previously recommended these limits to EPA as the MACT standards for major sources of PVC plants. The NACAA believes the submittal contains valuable information for EPA in developing PVC regulations for area sources as well.

Response: We have traditionally reviewed operating permits and current standards in the standards development process, and we used this approach in developing the NESHAP for the four area source categories in this final rule. The NACAA did not explain why it would be inappropriate for EPA to adopt existing Federal, State or local standards that EPA has determined to be

effective in controlling HAP emissions. Contrary to the commenter's assertions, EPA is setting final area source standards for the four source categories at issue in this rule. The emissions limits and/or work practice standards in each of the four NESHAP in this final rule have been reviewed, determined by EPA to be the appropriate standards for the relevant area source category, and established by EPA in this final rule as the Federal requirements for that category pursuant to section 112 of the CAA.

It is conceivable that for those States with laws that preclude the State from issuing regulations that are more stringent than EPA's regulations, a State may need to change its existing area source regulation in response to this final rule. However, the NACAA has not identified any existing State regulation that would require modification in this regard. Further, as previously mentioned, we established the area source standards in this final rule based on GACT, which may or may not be reflected by more stringent State or local requirements. The NACAA also asserted that the part 61 standards for PVC plants are outdated and inappropriate as GACT for area source PVC plants. NACAA's statement was apparently based on the fact that the part 61 standards were issued prior to the 1990 Amendments to the Clean Air Act and were based on risk. However, the fact that these are risk-based standards are not per se evidence that they do not reflect GACT for area sources of PVC plants. We believe that the record supports our determination as to what constitutes GACT for the four categories at issue here.

Moreover, we reviewed the information submitted by the commenter that contained their "presumptive" determination of MACT that they issued as guidance to State and local agencies. These recommended limits were based on the best-controlled plants, most if not all of which are major sources.[3] We believe that these recommended limits may represent MACT or something beyond MACT, but we do not believe that they are appropriate for these particular area source categories. As previously mentioned, we have decided to establish the standards for the PVC and Copolymer Production area source category based on GACT. We do not believe that NACAA's recommended limits represent GACT for area sources of PVC plants. Because we expect PVC plants to be operating in accordance with the part 61 standards for PVC plants, we believe that these standards represent a level of control that is generally available and is therefore a reasonable representation of GACT for area sources in this source category.

Comment: One commenter stated that area source standards are not needed for primary beryllium plants. All of these plants, including major and area sources, are already subject to NESHAP under 40 CFR part 61. In addition, the proposed area source standard will not achieve any reduction in HAP emissions. A second commenter stated that absent EPA's statutory obligation to establish standards for area sources, there would be no need to regulate PVC and copolymer plants because they are already governed by the existing NESHAP. However, the commenter recognizes EPA's obligation to regulate PVC and copolymer area sources and supports the adoption of the part 61 NESHAP as the area source standard.

Response: The second commenter has captured the issue and provides the response to the first commenter: EPA has a statutory obligation to establish area source NESHAP for primary beryllium plants.

F. Compliance Date

Comment: Two commenters stated that requiring compliance on the date of publication of the final rule in the **Federal Register** does not allow sufficient time for existing sources to develop a SSM plan.

Response: We believe that we have addressed the commenter's concern regarding existing sources' abilities to develop SSM plans by the compliance date. With respect to primary copper smelting and primary zinc production area sources, this final rule allows existing sources in these two area source categories to address SSM according to the relevant requirements in their title V permits, which do not require a SSM plan. As previously discussed in our response to the comments on the necessity of the part 63 SSM requirements (section IV.B of this preamble), we have reviewed the SSM requirements in the title V permits for the existing sources of primary copper smelting and primary zinc production area sources and have determined that these provisions are adequate to replace the SSM requirements in the General Provisions, which require a SSM plan. See 40 CFR 63.6(e)(3). We have therefore included in the final NESHAP for primary copper smelting and primary zinc production area sources requirements that are based on these title V permit terms and conditions. To provide flexibility, sources can comply with the SSM requirements specified in this final rule or comply with the provisions contained in the General Provisions at 40 CFR 63.6(e). Accordingly, the existing sources in these two area source categories are not required to develop SSM plans and may instead continue to follow their title V permit requirements regarding SSM.

In addition, as previously mentioned, we are not requiring SSM plans and reports in 40 CFR 63.6(e)(3) for area source PVC plants and beryllium production facilities. Because the NESHAP for these source categories in this final rule adopt part 61 standards, which require compliance at all times, specific provisions governing SSM are unnecessary. For all of the reasons stated above, we believe that the concern expressed in this comment has been addressed.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The NESHAP for Polyvinyl and Copolymers Production Area Sources do not impose any new information collection burden. New and existing plants that are area sources are required to comply with the same testing, monitoring, reporting, and recordkeeping requirements as those in the National Emission Standards for Vinyl Chloride (40 CFR part 61, subpart F), to which these area sources are currently subject, and the information collection requirements in the part 61 NESHAP General Provisions (40 CFR part 61, subpart A), which are incorporated into the NESHAP. The OMB has previously approved the information collection requirements in 40 CFR part 61, subpart F, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0071, EPA Information Collection Request (ICR) number 0186.10.

A copy of the OMB-approved ICR for the National Emission Standards for

[3] It is not clear whether the one polyvinyl chloride area source plant known to the National Association of Clean Air Agencies (NACAA) was among the plants that the NACAA analyzed in developing the recommended limits.

Vinyl Chloride may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

The requirements for primary beryllium production facilities in the NESHAP for Primary Nonferrous Metals Area Sources do not impose any new information collection burden. New and existing plants that are area sources are required to comply with the same testing, monitoring, recordkeeping, and reporting requirements as those in the National Emission Standards for Beryllium (40 CFR part 61, subpart C), to which these area sources are currently subject, and the information collection requirements in the part 61 General Provisions (40 CFR part 61, subpart A), which are incorporated into the NESHAP for these sources. The OMB has previously approved the information collection requirements in 40 CFR part 61, subpart C, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0092, EPA ICR number 0193.08.

A copy of the OMB-approved ICR for the National Emission Standards for Beryllium may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

The information requirements in the NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources, Primary Copper Smelting Area Sources, Secondary Copper Smelting Area Sources, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium Area Sources have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collection requirements for primary copper smelting and primary zinc production are based on the current title V permitting requirements for existing sources and the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A), most of which are incorporated into the NESHAP for new sources. The ICR document includes the burden estimates for all applicable General Provisions. These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The PM testing, monitoring, recordkeeping, and reporting requirements with which existing primary copper smelting and primary zinc smelting area sources must comply are the same as the requirements that are in these facilities' current title V operating permits. The only new information collection requirements that apply to these area sources consist of initial notifications. There are no existing secondary copper smelting facilities, and there are no requirements for existing secondary copper smelting area sources.

Any new primary zinc production facility, primary copper smelter, or secondary copper smelter area source is subject to all information collection requirements in the part 63 General Provisions. No costs or burden hours are estimated for new primary copper smelters, secondary copper smelters, or primary zinc production area sources because no new sources are estimated during the 3-year period of the ICR. No new sources have been constructed in more than 10 years, no new construction has been announced, and we have no indication there will be any new sources in the next 3 years.

The annual burden for this information collection (including all four source categories) averaged over the first 3 years of this ICR is estimated to total 23 labor hours per year at a cost of $1,948 for the three existing primary copper smelting area sources and 15.4 labor hours per year at a cost of $1,305 for the two existing primary zinc smelting area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendments for the approved information collection requirements contained in the final rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for PVC and copolymers production, secondary copper smelting, and primary nonferrous metals manufacturing); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by these final rules are small businesses. We have determined that existing small businesses in these area source categories will not incur any adverse impacts on existing area sources of PVC and copolymer production facilities, primary copper smelters, and non-ferrous metal production facilities because the rules do not create any new requirements or burdens other than minimal notification requirements. There will be no adverse impacts on existing secondary copper area sources because there are no existing sources in the category. Although these final NESHAP contain emission control

requirements for new area sources in all four source categories, we are not aware of any new sources being constructed now or planned in the near future, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. These final rules are designed to harmonize with existing State or local requirements. In addition, we have deleted the proposed requirements for SSM plans and reports.

D. Unfunded Mandates Reform Act

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 by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 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.

EPA has determined that the final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated expenditures for the private sector in any one year are less than $2,500. Thus, the final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rules do not significantly or uniquely affect small governments. The final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, the final rules are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

These final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

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

Executive Order 13175 (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." These final rules do not have tribal implications, as specified in Executive Order 13175. They 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 Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

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

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

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

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

These final rules are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these final rules are not likely to have any adverse energy effects because energy requirements would remain at existing levels. No additional pollution controls or other equipment that consume energy are required by these final rules.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A; and Performance Specifications 1 and 11 in 40 CFR part 60, appendix B. The search identified one VCS as an acceptable alternative to EPA Method 3B. The method ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," is cited in two of these final rules for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The standard ASTM D6216 (1998), "Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications," was designated an acceptable alternative for the design specifications given in EPA's Performance Specification 1. As a result, EPA incorporated ASTM D6216–98 by reference into Performance Specification 1 as the design specifications for opacity monitors in August 2000.

The search for emissions measurement procedures identified 13 other VCS. The EPA determined that these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in these final rules were impractical alternatives to EPA test methods for the purposes of the rules. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 13 methods are in the docket for these rules.

For the methods required or referenced by these rules, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions.

J. Congressional Review Act

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 Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules 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 final rules 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). These final rules will be effective on January 23, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), and Table 5 of subpart DDDDD of this part.

* * * * *

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

Subpart DDDDDD—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources

Sec.

Applicability and Compliance Dates

63.11140 Am I subject to this subpart?
63.11141 What are my compliance dates?

Standards and Compliance Requirements

63.11142 What are the standards and compliance requirements for new and existing sources?

Other Requirements and Information

63.11143 What General Provisions apply to this subpart?
63.11144 What definitions apply to this subpart?
63.11145 Who implements and enforces this subpart?

Applicability and Compliance Dates

§ 63.11140 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a plant specified in 40 CFR 61.61(c) that produces polyvinyl chloride (PVC) or copolymers and is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is the collection of all equipment and activities in vinyl chloride service necessary to produce PVC and copolymers. An affected source does not include portions of your PVC and copolymers production operations that meet the criteria in 40 CFR 61.60(b) or (c).

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11141 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by January 23, 2007.

(b) If you own or operate a new affected source, you must achieve compliance with the applicable provisions in this subpart by the dates in paragraphs (b)(1) and (2) of this section.

(1) If you start up a new affected source on or before January 23, 2007, you must achieve compliance with the

applicable provisions in this subpart not later than January 23, 2007.

(2) If you start up a new affected source after January 23, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11142 What are the standards and compliance requirements for new and existing sources?

You must meet all the requirements in 40 CFR part 61, subpart F, except for 40 CFR 61.62 and 40 CFR 61.63.

Other Requirements and Information

§ 63.11143 What General Provisions apply to this subpart?

(a) All the provisions in 40 CFR part 61, subpart A, apply to this subpart.

(b) The provisions in 40 CFR part 63, subpart A, applicable to this subpart are specified in paragraphs (b)(1) and (2) of this section.

(1) § 63.1(a)(1) through (10).

(2) § 63.1(b) except paragraph (b)(3), § 63.1(c), and § 63.1(e).

§ 63.11144 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; 40 CFR 61.02; 40 CFR 61.61; and § 63.2 for terms used in the applicable provisions of part 63, subpart A, as specified in § 63.11143(b).

§ 63.11145 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative means of emissions imitation under 40 CFR 61.12(d).

(2) Approval of a major change to test methods under 40 CFR 61.13(h). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 61.14(g). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 61.10. A "major change to recordkeeping/reporting" is defined in § 63.90.

■ 4. Part 63 is amended by adding subpart EEEEEE to read as follows:

Subpart EEEEEE—National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources

Sec.

Applicability and Compliance Dates

63.11146 What are the applicability provisions and compliance dates?

Standards and Compliance Requirements

63.11147 What are the standards and compliance requirements for existing sources not using batch copper converters?

63.11148 What are the standards and compliance requirements for existing sources using batch copper converters?

63.11149 What are the standards and compliance requirements for new sources?

Other Requirements and Information

63.11150 What General Provisions apply to this subpart?

63.11151 What definitions apply to this subpart?

63.11152 Who implements and enforces this subpart?

Table 1 to Subpart EEEEEE of Part 63—Applicability of General Provisions to Subpart EEEEEE

Applicability and Compliance Dates

§ 63.11146 What are the applicability provisions and compliance dates?

(a) You are subject to this subpart if you own or operate a primary copper smelter that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each primary copper smelter.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

(e) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by January 23, 2007.

(f) If you own or operate a new affected source, you must achieve compliance with the applicable provisions of this subpart by the dates in paragraphs (f)(1) and (2) of this section.

(1) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with the applicable provisions of this subpart not later than January 23, 2007.

(2) If you startup a new affected source after January 23, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11147 What are the standards and compliance requirements for existing sources not using batch copper converters?

(a) *Emissions limits and work practice standards.* (1) You must not discharge to the atmosphere through any combination of stacks or other vents captured process exhaust gases from the copper concentrate dryers, smelting vessels, converting vessels, matte drying and grinding plants, secondary gas systems, and anode refining department that contain particulate matter less than 10 microns in aerodynamic diameter (PM_{10}) in excess of 89.5 pounds per hour (lb/hr) on a 24-hour average basis.

(2) You must operate a capture system that collects the gases and fumes released during the transfer of molten materials from smelting vessels and converting vessels and conveys the collected gas stream to a control device.

(3) You must operate one or more capture systems that collect the gases and fumes released from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap and convey each collected gas stream to a control device. One control device may be used for multiple collected gas streams.

(b) *Compliance requirements.* For purposes of determining compliance with the emissions limit in paragraph (a)(1) of this section, you must comply with the requirements in paragraphs (b)(1) through (7) of this section.

(1) You must calibrate, maintain and operate a system to continuously measure emissions of particulate matter (PM) from the smelter's main stack.

(2) All PM collected by the smelter main stack continuous PM sampling system is reported as PM_{10} unless you

demonstrate to the satisfaction of the permitting authority that, due to an infrequent event, the measured PM contains a large fraction of particles greater than 10 microns in diameter.

(3) To determine the mass emissions rate, the PM_{10} concentration as determined by the smelter main stack continuous PM sampling system is multiplied by the volumetric flow rate for the smelter main stack and any necessary conversion factors.

(4) Compliance with the PM_{10} emissions limit is demonstrated based on the average mass PM_{10} emissions rate for each 24-hour period.

(5) The results of the PM monitoring and calculated average mass PM_{10} emissions rate for each 24-hour period must be recorded and the records maintained for at least 5 years. Collected data must be available for inspection when the required laboratory analysis is completed.

(6) You must submit to the permitting authority by the 20th day of each month a report summarizing the 24-hour average mass PM_{10} emissions rates for the previous month.

(7) You may certify initial compliance with the emissions limit in paragraph (a)(1) of this section based on the results of PM sampling conducted during the previous month.

(c) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, you must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(2) All pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, amp meters, volt meters, flow rate indicators, temperature gauges, continuous emission monitors, etc., must be installed, operated properly, and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at your facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

(3) You must document the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices.

(4) Except as provided in paragraph (c)(5) of this section, in the event of an emergency situation the owner or operator must comply with the requirements in paragraphs (c)(4)(i) through (iii) of this section. For the purposes of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation, and that causes the affected source to exceed an applicable emissions limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency, you must implement all reasonable steps to minimize levels of emissions that exceed the emissions standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (c)(4)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emissions limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(5) As an alternative to the requirements in paragraph (c)(4) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

(d) *Deviations.* You must submit written notification to the permitting authority of any deviation from the requirements of this subpart, including the probable cause of such deviations and any corrective actions or preventative measures taken. You must submit this notification within 14 days of the date the deviation occurred.

(e) *Reports.* You must submit semiannual monitoring reports to your permitting authority. All instances of deviations from the requirements of this subpart must be clearly identified in the reports.

(f) *Records.* (1) You must retain records of all required monitoring data and support information. Support information includes all calibration and maintenance records, all original strip charts or appropriate recordings for continuous monitoring instrumentation, and copies of all reports required by this subpart. For all monitoring requirements, the owner or operator must record, where applicable, the date, place, and time of sampling or measurement; the date analyses were performed; the company or entity that performed the analyses; the analytical techniques or methods used; the results of such analyses; and the operating conditions existing at the time of sampling or measurement.

(2) You must maintain records of the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices. Records of these activities must be maintained for at least 5 years.

§ 63.11148 What are the standards and compliance requirements for existing sources using batch copper converters?

(a) *Emissions limits and work practice standards.* (1) For each copper concentrate dryer, you must not discharge to the atmosphere from the dryer vent any gases that contain total particulate matter (PM) in excess of 0.022 grains per dry standard cubic foot (gr/dscf).

(2) You must exhaust the process off gas from each smelting vessel to a control device according to the requirements in paragraphs (a)(2)(i) and (ii) of this section.

(i) During periods when copper ore concentrate feed is charged to and smelted to form molten copper matte and slag layers in the smelting vessel, you must exhaust the process off gas from the smelting vessel to a gas cleaning system controlling PM and to a sulfuric acid plant prior to discharge to the atmosphere.

(ii) During periods when no copper ore concentrate feed is charged to or molten material tapped from the smelting vessel but the smelting vessel

remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator or baghouse prior to discharge to the atmosphere.

(3) You must control the process emissions released when tapping copper matte or slag from a smelting vessel according to paragraphs (a)(3)(i) and (ii) of this section.

(i) You must operate a capture system that collects the gases and fumes released when copper matte or slag is tapped from the smelting vessel. The design and placement of this capture system must be such that the tapping port opening, launder, and receiving vessel (e.g., ladle, slag pot) are positioned within the confines or influence of the capture system's ventilation draft during those times when the copper matte or slag is flowing from the tapping port opening.

(ii) You must not cause to be discharged to the atmosphere from the capture system used to comply with paragraph (a)(3)(i) of this section any gases that contain total PM in excess of 0.022 gr/dscf.

(4) For each batch copper converter, you must meet the requirements in paragraphs (a)(4)(i) through (iv) of this section.

(i) You must operate a primary capture system that collects the process off gas vented when one or more batch copper converters are blowing. If you operate a batch copper converter that does not use a "U"-shaped side flue located at one end of the converter, then the capture system design must include use of a primary hood that covers the entire mouth of each batch copper converter vessel when the copper converter is positioned for blowing. The capture system may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other.

(ii) If you operate a batch copper converter that does not use a "U"-shaped side flue located at one end of the converter, then you must operate a secondary capture system that collects gases and fumes released from the batch copper converter when the converter mouth is rotated out partially or totally from within the confines or influence of the primary capture system's ventilation draft during charging, skimming, pouring, or holding. The capture system design must use additional hoods (e.g., sliding secondary hoods, air curtain hoods) or other capture devices (e.g., building evacuation systems). The capture system may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other, and individual duct segments may be connected to separate PM control devices.

(iii) You must exhaust the process off gas captured by the primary capture system that is used to comply with paragraph (a)(4)(i) of this section to a gas cleaning system controlling PM and to a sulfuric acid plant prior to discharge to the atmosphere.

(iv) For each secondary capture system that is used to comply with paragraph (a)(4)(ii) of this section and is not vented to a gas cleaning system controlling PM and a sulfuric acid plant, you must not cause to be discharged to the atmosphere any gases that contain total particulate matter in excess of 0.02 grains/dscf.

(b) *Monitoring requirements for electrostatic precipitators.* To monitor the performance of each electrostatic precipitator used to comply with the PM emissions limits in paragraph (a) of this section, you must use a continuous opacity monitoring system (COMS) that is installed at the outlet of each electrostatic precipitator or a common duct at the outlet of multiple electrostatic precipitators.

(1) Each COMS must meet Performance Specification 1 in 40 CFR part 60, appendix B.

(2) You must comply with the quality assurance requirements in paragraphs (b)(2)(i) through (v) of this section.

(i) You must automatically (intrinsic to the opacity monitor) check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is as defined in the applicable version of Performance Specification 1 in 40 CFR part 60, appendix B.

(ii) You must adjust the zero and span whenever the 24-hour zero drift or 24-hour span drift exceeds 4 percent opacity. The COMS must allow for the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified. The optical surfaces exposed to the effluent gases must be cleaned prior to performing the zero and span drift adjustments, except for systems using automatic zero adjustments. For systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

(iii) You must apply a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. All procedures applied must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(iv) Except during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments, the COMS must be in continuous operation and must complete a minimum of one cycle of sampling and analyzing for each successive 10 second period and one cycle of data recording for each successive 6-minute period.

(v) You must reduce all data from the COMS to 6-minute averages. Six-minute opacity averages must be calculated from 36 or more data points equally spaced over each 6-minute period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments must not be included in the data averages. An arithmetic or integrated average of all data may be used.

(3) You must evaluate opacity measurements from the COMS on a 24-hour rolling average excluding periods of startup, shutdown, and malfunction. If the 24-hour rolling average opacity exceeds 15 percent, you must initiate investigation of the relevant controls or equipment within 24 hours of the first discovery of the high opacity incident and, if necessary, take corrective action as soon as practicable to adjust or repair the controls or equipment to reduce the opacity average to below the 15 percent level.

(4) You must log in ink or electronic format and maintain a record of 24-hour opacity measurements performed in accordance with paragraph (b)(3) of this section and any corrective actions taken, if any. A record of corrective actions taken must include the date and time during which the 24-hour rolling average opacity exceeded 15 percent and the date, time and type of the corrective action.

(c) *Monitoring requirements for baghouses.* To monitor the performance of each baghouse used to comply with PM emissions limits in paragraph (a) of this section, you must use a bag leak detection system according to the requirements in paragraphs (c)(1) through (4) of this section.

(1) You must install, calibrate, maintain, and continuously operate a bag leak detection system for the baghouse to monitor the baghouse performance.

(2) The baghouse leak detection system must meet the specifications and requirements in paragraphs (c)(2)(i) through (v) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations that can effectively discern any dysfunctional leaks of the baghouse.

(ii) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(iii) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(iv) The bag leak detection system must be installed downstream of the baghouse.

(v) The bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations. The calibration of the system must, at a minimum, consist of establishing the relative baseline output level by adjusting the sensitivity and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(3) If the bag leak detection system alarm sounds, you must initiate investigation of the baghouse within 24 hours of the first discovery of the alarm and, if necessary, take corrective action as soon as practicable to adjust or repair the baghouse to minimize possible exceedances of the applicable PM emissions limits in paragraph (a) of this section.

(4) You must log in ink or electronic format and maintain a record of installation, calibration, maintenance, and operation of the bag leak detection system. If the bag leak detection system alarm sounds, the records must include an identification of the date and time of all bag leak detection alarms, their cause, and an explanation of the corrective actions taken, if any.

(d) *Alternative monitoring requirements for baghouses.* As an alternative to the requirements in paragraph (c) of this section for bag leak detection systems, you must monitor the performance of each baghouse used to comply with a PM emissions limit in paragraph (a) of this section using a COMS that is installed at the outlet on the baghouse or a common duct at the outlet of multiple baghouses. Each COMS must meet the requirements in paragraphs (b)(1) through (4) of this section.

(e) *Performance testing.* (1) You must demonstrate initial compliance with the applicable PM emissions limits in paragraph (a) of this section based on the results of a performance test for each affected source.

(i) You may certify initial compliance for an affected source based on the results of a previous performance test conducted within the past 12 months before your compliance date.

(ii) If you have not conducted a performance test to demonstrate compliance with the applicable emissions limits within the past 12 months before your compliance date, you must conduct a performance test within 180 days of your compliance date and report the results in your notification of compliance status.

(2) You must demonstrate subsequent compliance with the applicable PM emissions limits in paragraph (a) of this section based on the results of repeat performance tests conducted at least every 2.5 years for each affected source.

(3) You must conduct each performance test according to § 63.7(e)(1) using the test methods and procedures in paragraphs (e)(3)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses or Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. A minimum of three valid test runs are needed to comprise a PM performance test.

(f) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, you must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(2) All pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, amp meters, volt meters, flow rate indicators, temperature gauges, continuous emissions monitor, etc., must be installed, operated properly and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at your facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

(3) You must document the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices. Records of these activities must be maintained as required by the permitting authority.

(4) Except as specified in paragraph (f)(5) of this section, in the event of an emergency situation, you must comply with the requirements specified in paragraphs (f)(4)(i) through (iii) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation and that causes the affected source to exceed applicable emission limitation under this subpart due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (f)(4)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(5) As an alternative to the requirements in paragraph (f)(4) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

(g) *Recordkeeping requirements.* (1) You must maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected source subject to this subpart; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(2) You must maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this section recorded in a permanent form suitable for inspection. The file must be retained for at least 5 years following the date of such measurements, maintenance, reports.

(h) *Reporting requirements.* (1) You must prepare and submit to the permitting authority an excess emissions and monitoring systems performance report and summary report every calendar quarter. A less frequent reporting interval may used for either report as approved by the permitting authority.

(2) The summary report must include the information in paragraphs (h)(2)(i) through (iv) of this section.

(i) The magnitude of excess emissions computed, any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.

(ii) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

(iii) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(iv) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information must be stated in the report.

§ 63.11149 What are the standards and compliance requirements for new sources?

(a) *Emissions limits and work practice standards.* (1) You must not discharge to the atmosphere exhaust gases that contain total PM in excess of 0.6 pound per ton of copper concentrate feed charged on a 24-hour average basis from any combination of stacks, vents, or other openings on furnaces, reactors, or other types of process vessels used for the production of anode copper from copper sulfide ore concentrates by pyrometallurgical techniques. Examples of such process equipment include, but are not limited to, copper concentrate dryers, smelting flash furnaces, smelting bath furnaces, converting vessels, combined smelting and converting reactors, anode refining furnaces, and anode shaft furnaces.

(2) You must operate a capture system that collects the gases and fumes released during the transfer of molten materials from smelting vessels and converting vessels and conveys the collected gas stream to a baghouse or other PM control device.

(3) You must operate one or more capture systems that collect the gases and fumes released from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap and convey each collected gas stream to a baghouse or other PM control device. One control device may be used for multiple collected gas streams.

(b) *Monitoring requirements.* (1) You must install, operate, and maintain a PM continuous emissions monitoring system (CEMS) to measure and record PM concentrations and gas stream flow rates for the exhaust gases discharged to the atmosphere from each affected source subject to the emissions limit in paragraph (a)(1) of this section. A single PM CEMS may be used for the combined exhaust gas streams from multiple affected sources at a point before the gases are discharged to the atmosphere. For each PM CEMS used to comply with this paragraph, you must meet the requirements in paragraphs (b)(1)(i) through (iii) of this section.

(i) You must install, certify, operate, and maintain the PM CEMS according to EPA Performance Specification 11 in 40 CFR part 60, appendix B, and the quality assurance requirements of Procedure 2 in 40 CFR part 60, appendix F.

(ii) You must conduct an initial performance evaluation of the PM CEMS according to the requirements of Performance Specification 11 in 40 CFR part 60, appendix B. Thereafter, you must perform the performance evaluations as required by Procedure 2 in 40 CFR part 60, appendix F.

(iii) You must perform quarterly accuracy determinations and daily calibration drift tests for the PM CEMS according to Procedure 2 in 40 CFR part 60, appendix F.

(2) You must install, operate, and maintain a weight measurement system to measure and record the weight of the copper concentrate feed charged to the smelting vessel on a daily basis.

(c) *Compliance requirements.* (1) You must demonstrate initial compliance with the emissions limit in paragraph (a)(1) of this section using the procedures in paragraph (c)(2) this section within 180 days after startup and report the results in your notification of compliance status no later than 30 days after the end of the compliance demonstration.

(2) You must demonstrate continuous compliance with the emissions limit in paragraph (a)(1) of this section using the procedures in paragraph (c)(2)(i) through (iii) of this section whenever your facility is producing copper from copper concentrate.

(i) You must continuously monitor and record PM emissions, determine and record the daily (24-hour) value for each day, and calculate and record the daily average pounds of total PM per ton of copper concentrate feed charged to the smelting vessel according to the requirements in paragraph (b) of this section.

(ii) You must calculate the daily average at the end of each calendar day for the preceding 24-hour period.

(iii) You must maintain records of the calculations of daily averages with supporting information and data, including measurements of the weight of copper concentrate feed charged to the smelting vessel. Collected PM CEMS data must be made available for inspection.

(d) *Alternative startup, shutdown, and malfunction requirements.* You must comply with the requirements specified in this paragraph as an alternative to the requirements in 40 CFR 63.6(e)(3). In the event of an emergency situation, you must comply with the requirements specified in paragraphs (d)(1) through (3) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation, and that causes the affected source to exceed an applicable emissions limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(1) During the period of the emergency, you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(2) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (d)(1) of this section.

(3) You must submit a notice of the emergency to the permitting authority within two working days of the time when emissions limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(e) *Reports.* You must submit to the permitting authority by the 20th day of each month a summary of the daily average PM per ton of copper concentrate feed charged to the smelting vessel for the previous month.

Other Requirements and Information

§ 63.11150 What General Provisions apply to this subpart?

(a) If you own or operate a new or existing affected source, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as specified in Table 1 to this subpart.

(b) If you own or operate an existing affected source subject to § 63.11147, your notification of compliance status required by § 63.9(h) must include the information specified in paragraphs (b)(1) through (4) of this section.

(1) If you certify initial compliance with the PM emissions limit in § 63.11147(a)(1) based on monitoring data from the previous month, your notification of compliance status must include this certification of compliance, signed by a responsible official: "This facility complies with the PM emissions limit in § 63.11147(a)(1) based on monitoring data that were collected during the previous month."

(2) If you conduct a new performance test to demonstrate initial compliance with the PM emissions limit in § 63.11147(a)(1), your notification of compliance status must include the results of the performance test, including required monitoring data.

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11147(a)(2): "This facility complies with the requirement to capture gases from transfer of molten materials from smelting vessels and converting vessels and convey them to a control device in accordance with § 63.11147(a)(2)."

(4) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11147(a)(3): "This facility complies with the requirement to capture gases from operations in the anode refining department and convey them to a PM control device in accordance with § 63.11147(a)(3)."

(c) If you own or operate an existing affected source subject to § 63.11148, your notification of compliance status required by § 63.9(h) must include the information specified in paragraphs (c)(1) through (4) of this section.

(1) If you certify initial compliance with the PM emissions limit in § 63.11148(a)(1), (a)(3)(ii), and (a)(4)(iv) based on the results of a previous performance test conducted within the past 12 months before your compliance date, your notification of compliance status must include this certification of compliance, signed by a responsible official: "This facility complies with the PM emissions limit in § 63.11148(a)(1) based on the results of a previous performance test."

(2) If you conduct a new performance test to demonstrate initial compliance with the PM emissions limits in § 63.11148(a)(1), (a)(3)(ii), and (a)(4)(iv), your notification of compliance status must include the results of the performance test, including required monitoring data.

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standards in § 63.11148(a)(2), and (a)(4)(iii): "This facility complies with the requirement to vent captured process gases to a gas cleaning system controlling PM and to a sulfuric acid plant in accordance with § 63.11148(a)(2) and (a)(4)(iii)."

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11148(a)(3)(i): "This facility complies with the requirement to operate capture systems to collect gases and fumes released when copper matte or slag is tapped from the smelting vessel in accordance with § 63.11148(a)(3)(i)."

(4) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11148(a)(4): "This facility complies with the requirement to operate capture systems to collect gases and fumes released during batch copper converter operations in accordance with § 63.11148(a)(4)."

(d) If you own or operate a new affected source, your notification of compliance status required by § 63.9(h) must include the information in paragraphs (d)(1) through (3) of this section.

(1) Your notification of compliance status must include the results of the initial performance test and monitoring data collected during the test that demonstrate compliance with the emissions limit in § 63.11149(a)(1).

(2) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11149(a)(2): "This facility complies with the requirement to capture gases from transfer of molten materials from smelting vessels and converting vessels and convey them to a PM control device in accordance with § 63.11149(a)(2)."

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11149(a)(3): "This facility complies with the requirement to capture gases from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap, and convey them to a PM control device in accordance with § 63.11149(a)(3)."

§ 63.11151 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Anode refining department means the area at a primary copper smelter in which anode copper refining operations are performed. Emissions sources in the anode refining department include anode refining furnaces and anode shaft furnaces.

Baghouse means a control device that collects particulate matter by filtering the gas stream through bags. A *baghouse* is also referred to as a "fabric filter."

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to continuously monitor relative particulate matter loadings.

Batch copper converter means a converter in which molten copper matte is charged and then oxidized to form blister copper by a process that is performed in discrete batches using a sequence of charging, blowing, skimming, and pouring.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Charging means the operating mode for a batch copper converter during which molten or solid material is added into the vessel.

Control device means air pollution control equipment used to remove PM from a gas stream.

Converting vessel means a furnace, reactor, or other type of vessel in which copper matte is oxidized to form blister copper.

Copper concentrate means copper ore that has been beneficiated to increase its copper content.

Copper concentrate dryer means a vessel in which copper concentrates are heated in the presence of air to reduce the moisture content of the material. Supplemental copper-bearing feed materials and fluxes may be added or mixed with the copper concentrates fed to a copper concentrate dryer.

Copper concentrate feed means the mixture of copper concentrate, secondary copper-bearing materials, recycled slags and dusts, fluxes, and other materials blended together for feeding to the smelting vessel.

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Holding means the operating mode for a batch copper converter or a holding furnace associated with a smelting furnace during which the molten bath is maintained in the vessel but no blowing or smelting is performed nor is material added into or removed from the vessel.

Matte drying and grinding plant means the area at a primary copper smelter in which wet granulated matte copper is ground in a mill, dried by blowing heated air through the mill, and then separated from the drying air stream using a control device such as a baghouse.

Pouring means the operating mode for a batch copper converter during which molten copper is removed from the vessel.

Primary copper smelter means any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques.

Responsible official means responsible official as defined at 40 CFR 70.2.

Secondary gas system means a capture system that collects the gases and fumes released when removing and transferring molten materials from one or more vessels using tapping ports, launders, and other openings in the vessels. Examples of molten material include, but are not limited to: Copper matte, slag, and blister copper.

Skimming means the batch copper converter operating mode during which molten slag is removed from the vessel.

Smelting vessel means a furnace, reactor, or other type of vessel in which copper ore concentrate and fluxes are smelted to form a molten mass of material containing copper matte and slag. Other copper-bearing materials may also be charged to the smelting vessel.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

§ 63.11152 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11150(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART EEEEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEEE

Citation	Subject	Applies to subpart EEEEEE?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12) (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5).	Compliance with Standards and Maintenance Requirements—Applicability and Compliance Dates.	Yes.	
63.6(e)	Operation and Maintenance Requirements.	Yes/No	Operation and maintenance requirements do not apply to existing sources except that the startup, shutdown, and malfunction requirements in § 63.6(e)(3) are allowed as an alternative to the rule requirements for emergency situations. Operation and maintenance requirements apply to new sources except that the rule requirements for emergency situations are allowed as an alternative to the startup, shutdown, and malfunction requirements in § 63.6(e)(3).
63.6(f), (g), (i), (j)	Compliance with Nonopacity Emission Standards.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		Yes/No	Requirements apply to new sources but not existing sources.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements	Yes.	
63.7(b), (c)		Yes/No	Notification of performance tests and quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c), (f), (g)	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart EEEEEE does not require flares.
63.8(d), (e)		Yes/No	Requirements for quality control program and performance evaluations apply to new sources but not existing sources.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (f)		No.	
63.9(e), (g)		Yes/No	Notification requirements for performance test and use of continuous monitoring systems apply to new sources but not existing sources.
63.10(a), (b)(1), (d)(1), (d)(2), (d)(4), (d)(5), (f).	Recordkeeping and Reporting Requirements.	Yes/No	Recordkeeping requirements apply to new sources but not existing sources.
63.10(b)(2), (b)(3), (c)(1) (c)(5)–(c)(8), (c)(10)–(c)(15), (e)(1), (e)(2).		Yes/No	Recordkeeping requirements apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(3), (e)(4)		No	Reporting requirements apply to new sources but not existing sources.
63.10(e)(3)		Yes/No	Reporting requirements apply to new sources but not existing sources.
63.11	Control Device Requirements	No	Subpart EEEEEE does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 5. Part 63 is amended by adding subpart FFFFFF to read as follows:

Subpart FFFFFF—National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources

Sec.

Applicability and Compliance Dates

63.11153 Am I subject to this subpart?
63.11154 What are my compliance dates?

Standards and Compliance Requirements

63.11155 What are the standards and compliance requirements for new sources?
63.11156 [Reserved]

Other Requirements and Information

63.11157 What General Provisions apply to this subpart?
63.11158 What definitions apply to this subpart?
63.11159 Who implements and enforces this subpart?
Table 1 to Subpart FFFFFF of Part 63—Applicability of General Provisions to Subpart FFFFFF

Applicability and Compliance Dates

§ 63.11153 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a new secondary copper smelter that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new affected source. The affected source is each secondary copper smelter. Your secondary copper smelter is a new affected source if you commenced construction or reconstruction of the affected source before October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11154 What are my compliance dates?

(a) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with the applicable provisions of this subpart not later than January 23, 2007.

(b) If you startup a new affected source after January 23, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11155 What are the standards and compliance requirements for new sources?

(a) You must not discharge to the atmosphere any gases which contain particulate matter (PM) in excess of 0.002 grains per dry standard cubic foot (gr/dscf) from the exhaust vent of any capture system for a smelting furnace, melting furnace, or other vessel that contains molten material and any capture system for the transfer of molten material.

(b) For each smelting furnace, melting furnace, or other vessel that contains molten material, you must install and operate a capture system that collects the gases and fumes from the vessel and from the transfer of molten material and convey the collected gas stream to a control device.

(c) You must prepare and operate at all times according to a written plan for the selection, inspection, and pretreatment of copper scrap to minimize, to the extent practicable, the amount of oil and plastics in the scrap that is charged to the smelting furnace. Your plan must include a training program for scrap inspectors. You must keep records to demonstrate continuous compliance with the requirements of your plan. You must keep a current copy of your pollution prevention plan onsite and available for inspection.

(d) You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in paragraph (a) of this section according to paragraph (d)(1) of this section, prepare and operate by a site-specific monitoring plan according to paragraph (d)(2) of this section, take corrective action according to paragraph (d)(3) of this section, and record information according to paragraph (d)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger.)

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this specific

condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate 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 process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (d)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of an alarm were initiated, whether procedures were initiated within 1 hour of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(e) You must conduct a performance test to demonstrate initial compliance with the PM emissions limit within 180 days after startup and report the results in your notification of compliance status. You must conduct each PM test according to § 63.7(e)(1) using the test methods and procedures in paragraphs (e)(1) through (5) of this section.

(1) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(3) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

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

(5) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses and Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. The sampling time and volume for each run must be at least 60 minutes and 0.85 dry standard cubic meters (30 dry standard cubic feet). A minimum of three valid test runs are needed to comprise a PM performance test.

(f) You must conduct subsequent performance tests to demonstrate compliance with the PM emissions limit at least once every 5 years.

(g) If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (g)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (e) of this section verifying the performance of the device for reducing PM to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

§ 63.11156 [Reserved]

Other Requirements and Information

§ 63.11157 What General Provisions apply to this subpart?

(a) If you own or operate a new affected source, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A as specified in Table 1 to this subpart.

(b) Your notification of compliance status required by § 63.9(h) must include the following:

(1) The results of the initial performance tests and monitoring data collected during the test.

(2) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.1155(b): "This facility complies with the requirement for a capture system for each smelting furnace, melting furnace, or other vessel that contains molten material in accordance with § 63.11155(b)."

(3) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11155(c): "This facility complies with the requirement for a written plan for the selection, inspection, and pretreatment of copper scrap in accordance with § 63.11155(c)."

(4) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11155(d)(2): "This facility has an approved monitoring plan in accordance with § 63.11155(d)(2)."

(5) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11157(g): "This facility has an approved monitoring plan in accordance with § 63.11157(g)."

§ 63.11158 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Anode copper means copper that is cast into anodes and refined in an electrolytic process to produce high purity copper.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Melting furnace means any furnace, reactor, or other type of vessel that heats solid materials and produces a molten mass of material.

Secondary copper smelter means a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade

copper scrap. A facility where recycled copper scrap or copper alloy scrap is melted to produce ingots or for direct use in a manufacturing process is not a secondary copper smelter.

Smelting furnace means any furnace, reactor, or other type of vessel in which copper scrap and fluxes are melted to form a molten mass of material containing copper and slag.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

§ 63.11159 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/ reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11157(a), you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART FFFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFFF

Citation	Subject	Applies to subpart FFFFFF?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.7	Performance Testing Requirements	Yes.	
63.8(a)(1), (a)(2), (b), (f)(1)–(5)	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(c), (d), (e), (f)(6), (g)		No	Subpart FFFFFF does not require a continuous monitoring system.
63.8(a)(4)		No	Subpart FFFFFF docs not require flares.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (e), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4)		No.	
63.9(f)		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.9(g)		No	Subpart FFFFFF does not require a continuous monitoring system.
63.10(a), (b)(2)(i)–(b)(2)(v), (b)(2)(xiv), (d)(1), (d)(2), (d)(4), (d)(5), (e)(1), (e)(2), (f).	Recordkeeping and Reporting Requirements.	Yes.	
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(b)(2)(vi)–(b)(2)(xiii), (c)(1), (c)(5)–(c)(14), (e)(1)–(e)(2), (e)(4).			Subpart FFFFFF does not require a continuous monitoring system.
63.10(d)(3)		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.10(e)(3)		Yes.	
63.11	Control Device Requirements	No	Subpart FFFFFF does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	

TABLE 1 TO SUBPART FFFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFFF—Continued

Citation	Subject	Applies to subpart FFFFFF?	Explanation
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 6. Part 63 is amended by adding subpart GGGGGG to read as follows:

Subpart GGGGGG—National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium

Sec.

Applicability and Compliance Dates

63.11160 Am I subject to this subpart?
63.11161 What are my compliance dates?

Primary Zinc Production Facilities

63.11162 What are the standards and compliance requirements for existing sources?
63.11163 What are the standards and compliance requirements for new sources?
63.11164 What General Provisions apply to primary zinc production facilities?

Primary Beryllium Production Facilities

63.11165 What are the standards and compliance requirements for new and existing sources?
63.11166 What General Provisions apply to primary beryllium production facilities?

Other Requirements and Information

63.11167 What definitions apply to this subpart?
63.11168 Who implements and enforces this subpart?
Table 1 to Subpart GGGGGG of Part 63—Applicability of General Provisions to Primary Zinc Production Area Sources

Applicability and Compliance Dates

§ 63.11160 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a primary zinc production facility or primary beryllium production facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) The affected source is each existing or new primary zinc production facility or primary beryllium production facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) If you own or operate a new or existing affected source, you must obtain a permit under 40 CFR part 70 or 71.

§ 63.11161 What are my compliance dates?

(a) If you have an existing affected source, you must achieve compliance with applicable provisions in this subpart by January 23, 2007. If you startup a new sintering machine at an existing affected source after January 23, 2007, you must achieve compliance with the applicable provisions in this subpart not later than 180 days after startup.

(b) If you have a new affected source, you must achieve compliance with applicable provisions in this subpart according to the dates in paragraphs (b)(1) and (2) of this section.

(1) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with applicable provisions in this subpart not later than January 23, 2007.

(2) If you startup a new affected source after January 23, 2007, you must achieve compliance with applicable provisions in this subpart upon initial startup.

Primary Zinc Production Facilities

§ 63.11162 What are the standards and compliance requirements for existing sources?

(a) You must exhaust the off-gases from each roaster to a particulate matter (PM) control device and to a sulfuric acid plant, including during the charging of the roaster.

(b) Except as provided in paragraph (b)(6) of this section, you must not discharge to the atmosphere any gases which contain PM in excess of the emissions limits in paragraphs (b)(1) through (5) of this section.

(1) 0.93 pound per hour (lb/hr) from the exhaust vent of a zinc cathode melting furnace.

(2) 0.1 lb/hr from the exhaust vent of a furnace that melts zinc dust, zinc chips, and/or other materials containing zinc.

(3) 0.228 lb/hr from the vent for the combined exhaust from a furnace melting zinc scrap and an alloy furnace.

(4) 0.014 grains per dry standard cubic foot (gr/dscf) from the exhaust vent of an anode casting furnace.

(5) 0.015 gr/dscf from the exhaust vent of a cadmium melting furnace.

(6) You may elect to meet an emissions limit of 0.005 gr/dscf as an alternative to the emissions limits in lb/hr in paragraphs (b)(1) through (3) of this section.

(c) You must establish an operating range for pressure drop for each baghouse applied to a furnace subject to an emissions limit in paragraph (b) of this section based on the minimum and maximum values recorded during a performance test that demonstrates compliance with the applicable PM emissions limit. Alternatively, you may use an operating range that has been previously established and approved by your permitting authority within the past 5 years. You must monitor the pressure drop daily, maintain the pressure drop for each baghouse within the established operating range, and record the pressure drop measurement in a daily log. You must perform routine maintenance on each baghouse and record maintenance activities in a baghouse maintenance log. Baghouse maintenance logs must include, but are not limited to, inspections, criteria for changing bag filters, and dates on which the bag filters are replaced. Both logs must be maintained in a suitable permanent form and kept available for inspection.

(d) If you own or operate a sintering machine at your facility, you must comply with the PM emissions limit in 40 CFR 60.172(a) and the opacity emissions limit in 40 CFR 60.174(a) for that sintering machine.

(e) If you own or operate a sintering machine at your facility, you must install and operate a continuous opacity monitoring system (COMS) for each sintering machine according to the requirements in 40 CFR 60.175(a). Each COMS must meet Performance Specification 1 (40 CFR part 60, appendix B).

(f) For each furnace at your facility subject to an emissions limit in paragraph (b) of this section, you must demonstrate initial compliance with the applicable PM emissions limit in

paragraph (b) of this section based on the results of a performance test for that furnace. If you own or operate a sintering machine, you must also demonstrate initial compliance with the PM and opacity emissions limits in paragraph (d) of this section based on the results of a performance test for that sintering machine.

(1) You may certify initial compliance for a furnace (and sintering machine, if applicable) based on the results of a previous performance test conducted during the past 5 years.

(2) If you have not conducted a performance test to demonstrate compliance with the applicable emissions limits during the past 5 years, you must conduct a performance test within 180 days of your compliance date and report the results in your notification of compliance status. If a furnace subject to an emissions limit in paragraph (b) of this section is not operating on the compliance date and subsequently resumes operation, you must conduct a performance test within 180 days of startup and report the results in your notification of compliance status.

(3) You must conduct each PM test for a furnace according to § 63.7(e)(1) using the test methods and procedures in paragraphs (f)(3)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for a negative pressure baghouse, Method 5D (40 CFR part 60, appendix A) for a positive pressure baghouse, or an alternative method previously approved by your permitting authority. A minimum of three valid test runs are needed to comprise a PM performance test.

(4) You must conduct each PM test for a sintering machine according to § 63.7(e)(1) and 40 CFR 60.176(b)(1) using the test methods in paragraph (f)(3) of this section. You must determine the PM concentration using EPA Method 5 (40 CFR part 60, appendix A). You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(5) You must conduct each opacity test for a sintering machine according to the requirements in § 63.6(h)(7). You must determine the opacity of emissions using EPA Method 9 (40 CFR part 60, appendix A).

(g) For each furnace subject to an emissions limit in paragraph (b) of this section, you must conduct subsequent performance tests according to the requirements in paragraph (f)(3) of this section to demonstrate compliance with the applicable PM emissions limit for the furnace every 5 years.

(h) You must submit a notification to your permitting authority of any deviation from the requirements of this subpart within 30 days after the deviation. The notification must describe the probable cause of the deviation and any corrective actions or preventative measures taken.

(i) You must submit semiannual monitoring reports to your permitting authority containing the results for all monitoring required by this subpart. All deviations that occur during the reporting period must be clearly identified.

(j) You must keep records of all required monitoring data and support information. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by this subpart.

(k) You must comply with the operation and maintenance requirements specified in paragraphs (k)(1) and (2) of this section and the requirements for emergency situations specified in paragraph (k)(3) or (4) of this section.

(1) You must maintain all equipment covered under this subpart in such a manner that the performance or operation of such equipment does not cause a deviation from the applicable requirements.

(2) You must keep a maintenance record for each item of air pollution control equipment. At a minimum, this record must show the dates of performing maintenance and the nature of preventative maintenance activities.

(3) Except as specified in paragraph (k)(4) of this section, in the event of an emergency situation you must comply with the requirements in paragraphs (k)(3)(i) through (iii) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that require immediate corrective action to restore normal operation, and that cause the affected source to exceed applicable emission limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (k)(3)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternative timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) As an alternative to the requirements in paragraph (k)(3) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

§ 63.11163 What are the standards and compliance requirements for new sources?

(a) You must exhaust the off-gases from each roaster to a PM control device and to a sulfuric acid plant, including the charging of the roaster.

(b) You must not discharge to the atmosphere any gases which contain PM in excess of the emissions limits in paragraphs (b)(1) through (3) of this section.

(1) 0.005 gr/dscf from the exhaust vent of a zinc cathode melting furnace; scrap zinc melting furnace; furnace melting zinc dust, zinc chips, and other

materials containing zinc; and alloy melting furnace.

(2) 0.014 gr/dscf from the exhaust vent of an anode casting furnace.

(3) 0.015 gr/dscf from the exhaust vent of a cadmium melting furnace.

(c) For each melting furnace, you must install and operate a capture system that collects gases and fumes from the melting furnace and from the transfer of molten materials and conveys the collected gases to a control device.

(d) You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in paragraph (b) of this section according to paragraph (d)(1) of this section, prepare and operate by a site-specific monitoring plan according to paragraph (d)(2) of this section, take corrective action according to paragraph (d)(3) of this section, and record information according to paragraph (d)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger.)

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate 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 process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (d)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, if procedures were initiated within 1 hour of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and if the alarm was alleviated within 3 hours of the alarm.

(e) If there is a sintering machine at your primary zinc production facility, you must comply with the PM emissions limit in 40 CFR 60.172(a) and the opacity emissions limit in 40 CFR 60.174(a) for that sintering machine.

(f) If there is a sintering machine at your primary zinc production facility, you must install and operate a COMS for each sintering machine according to the requirements in 40 CFR 60.175(a). Each COMS must meet EPA Performance Specification 1 (40 CFR part 60, appendix B).

(g) For each furnace (and sintering machine, if applicable) at your facility, you must conduct a performance test to demonstrate initial compliance with each applicable PM emissions limit for that furnace (and the PM and opacity limits for a sintering machine, if applicable) within 180 days after startup and report the results in your notification of compliance status.

(1) You must conduct each PM test for a furnace according to § 63.7(e)(1) using the test methods and procedures in paragraphs (g)(1)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling

sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses or Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. A minimum of three valid test runs are needed to comprise a PM performance test.

(2) You must conduct each PM test for a sintering machine according to § 63.7(e)(1) and 40 CFR 60.176(b)(1) using the test methods in paragraph (g)(1) of this section. You must determine the PM concentration using EPA Method 5 (40 CFR part 60, appendix A). You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(3) You must conduct each opacity test for a sintering machine according to the requirements in § 63.6(h)(7). You must determine the opacity of emissions using EPA Method 9 (40 CFR part 60, appendix A).

(h) You must conduct subsequent performance tests according to the requirements in paragraph (g)(1) of this section for each furnace subject to an emissions limit in paragraph (b) of this section to demonstrate compliance at least once every 5 years.

(i) If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (i)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (g) of this section verifying the performance of the device for reducing PM and opacity to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system;

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(i) As an alternative to the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3), you must comply with the requirements specified in this paragraph. In the event of an emergency situation, you must comply with the requirements in paragraphs (i)(1) through (3) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that require immediate corrective action to restore normal operation, and that cause the affected source to exceed applicable emission limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(1) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(2) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (i)(1) of this section.

(3) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternative timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

§ 63.11164 What General Provisions apply to primary zinc production facilities?

(a) If you own or operate an existing affected source, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, according to Table 1 to this subpart and paragraphs (a)(1) through (3) of this section.

(1) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the work practice standards in § 63.11162(a): "This facility complies with the work practice standards in § 63.11162(a)."

(2) If you certify compliance with the PM emissions limits in § 63.11162(b) based on a previous performance test, your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official: "This facility complies with the PM emissions limits in § 63.11162(b) based on a previous performance test."

(3) If you conduct a new performance test to demonstrate compliance with the PM emissions limits for a furnace in § 63.11162(b), your notification of compliance status required by § 63.9(h) must include the results of the performance test, including required monitoring data.

(b) If you own or operate a new affected source, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as provided in Table 1 to this subpart and paragraphs (b)(1) through (4) of this section.

(1) Your notification of compliance status required in § 63.9(h) must include the results of the initial performance tests, including required monitoring data.

(2) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11163(a): "This facility complies with the work practice standards in § 63.11163(a)."

(3) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the capture system requirements in § 63.11163(c): "This facility has installed capture systems according to § 63.11163(c)."

(4) If you use a baghouse that is subject to the requirements in § 63.11163(d), your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the bag leak detection system requirements in § 63.11163(d): "This facility has an approved monitoring plan in accordance with § 63.11163(d)."

(5) If you use control devices other than baghouses, your notification of compliance status required by § 63.9(h)

must include this certification of compliance, signed by a responsible official for the monitoring plan requirements in § 63.11163(i): "This facility has an approved monitoring plan in accordance with § 63.11163(i)."

Primary Beryllium Production Facilities

§ 63.11165 What are the standards and compliance requirements for new and existing sources?

You must comply with the requirements in 40 CFR 61.32 through 40 CFR 61.34 of the National Emission Standards for Beryllium (40 CFR part 61, subpart C).

§ 63.11166 What General Provisions apply to primary beryllium production facilities?

(a) You must comply with all of the requirements of the General Provisions in 40 CFR part 61, subpart A.

(b) You must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, that are specified in paragraphs (b)(1) and (2) of this section.

(1) Section 63.1(a)(1) through (10).

(2) Section 63.1(b) except paragraph (b)(3), § 63.1(c), and § 63.1(e).

Other Requirements and Information

§ 63.11167 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA; 40 CFR 60.2; 60.171; 61.02; 61.31; 61.61; 63.2; and in this section as follows:

Alloy furnace means any furnace used to melt alloys or to produce zinc that contains alloys.

Anode casting furnace means any furnace that melts materials to produce the anodes used in the electrolytic process for the production of zinc.

Bag leak detection system means a system that is capable of continuously monitoring the relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other conditions that result in increases in particulate loadings. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Cadmium melting furnace means any furnace used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production process.

Capture system means the collection of equipment used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Primary beryllium production facility means any establishment engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes. A primary beryllium production facility may also be known as an extraction plant.

Primary zinc production facility means an installation engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques.

Responsible official means responsible official as defined in 40 CFR 70.2.

Roaster means any facility in which a zinc sulfide ore concentrate charge is heated in the presence of air to eliminate a significant portion (more than 10 percent) of the sulfur contained in the charge.

Sintering machine means any furnace in which calcines are heated in the presence of air to agglomerate the calcines into a hard porous mass called sinter.

Sulfuric acid plant means any facility producing sulfuric acid from the sulfur dioxide (SO_2) in the gases from the roaster.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

Zinc cathode melting furnace means any furnace used to melt the pure zinc from the electrolytic process.

§ 63.11168 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (c) and (d) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) For primary zinc production facilities subject to this subpart, the authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90

(4) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

(d) For primary beryllium manufacturing facilities subject to this subpart, the authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (d)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 61.12(d).

(2) Approval of a major change to test methods under 40 CFR 61.13(h). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 61.14(g). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 61.10. A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11164(a) and (b), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART GGGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO PRIMARY ZINC PRODUCTION AREA SOURCES

Citation	Subject	Applies to subpart GGGGGG	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5).	Compliance with Standards and Maintenance Requirements—Applicability Compliance Dates.	Yes.	
63.6(e)	Operation and Maintenance Requirements.	Yes/No	Operation and maintenance requirements do not apply to existing sources except that the startup, shutdown, and malfunction requirements in § 63.6(e)(3) are allowed as an alternative to the rule requirements for emergency situations. Operation and maintenance requirements apply to new sources except that the rule requirements for emergency situations are allowed as an alternative to the startup, shutdown, and malfunction requirements in § 63.6(e)(3).
63.6(f), (g), (i), (j)	Compliance with Nonopacity Emission Standards.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		Yes.	
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements	Yes.	
63.7(b), (c)		Yes/No	Notification of performance tests and quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c), (f), (g)	Monitoring Requirements	Yes	Requirements in § 63.6(c)(4)(i)–(ii), (c)(5), (c)(6), (d), (e), (f)(6), and (g) apply if a COMS is used.
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart GGGGGG does not require flares.
63.8(d), (e)		Yes/No	Requirements for quality control program and performance evaluations apply to new sources but not existing sources.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes/No	Notification of performance tests and opacity or visible emissions observations apply to new sources but not existing sources.
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4)		No.	
63.10(a), (b)(1), (b)(2)(i)–(v), (d)(4), (d)(5)(i), (f).	Recordkeeping and Reporting Requirements.	Yes.	
63.10(b)(2), (b)(3), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(15), (d)(1)–(d)(3), (d)(5)(ii), (e)(1), (e)(2), (e)(4).		Yes/No	Recordkeeping and reporting requirements apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(e)(3)		Yes/No	Reporting requirements apply to new sources but not existing sources.
63.11	Control Device Requirements	No	Subpart GGGGGG does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	

TABLE 1 TO SUBPART GGGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO PRIMARY ZINC PRODUCTION AREA SOURCES—Continued

Citation	Subject	Applies to subpart GGGGGG	Explanation
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

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July 16, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–AR–2006–0897; FRL–8330–1]

RIN 2060–AN44

National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing six national emissions standards for hazardous air pollutants for seven area source categories. The final emissions standards and associated requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. These final rules include emission standards that reflect the generally available control technologies or management practices in each of these area source categories.

DATES: These final rules are effective on July 16, 2007. The incorporation by reference of certain publications listed in these rules is approved by the Director of the Federal Register as of July 16, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0897. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825; fax number: (919) 541–3207; e-mail address: nizich.sharon@epa.gov.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. Where can I get a copy of this document?
  C. Judicial Review
II. Background Information for Final Area Source Standards
III. Summary of Final Rules and Changes Since Proposal
  A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources
  B. NESHAP for Carbon Black Production Area Sources
  C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds
  D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources
  E. NESHAP for Lead Acid Battery Manufacturing Area Sources
  F. NESHAP for Wood Preserving Area Sources
IV. Exemption of Certain Area Source Categories from Title V Permitting Requirements
  A. Acrylic and Modacrylic Fibers Production
  B. Flexible Polyurethane Foam Production and Fabrication
  C. Lead Acid Battery Manufacturing
  D. Wood Preserving
V. Summary of Comments and Responses
  A. Basis for Area Source Standards
  B. Proposed NESHAP for Acrylic and Modacrylic Fibers Production Area Sources
  C. Proposed NESHAP for Carbon Black Production Area Sources
  D. Proposed NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds
  E. Proposed NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources
  F. Proposed NESHAP for Lead Acid Battery Manufacturing Area Sources
  G. Proposed NESHAP for Wood Preserving Area Sources
  H. Proposed Exemption of Certain Area Source Categories from Title V Permitting Requirements
  I. Compliance with Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  J. Compliance with Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Acrylic and modacrylic fibers production.	325222	Area source facilities that manufacture polymeric organic fibers using acrylonitrile as a primary monomer.
Carbon black production.	325182	Area source facilities that manufacture carbon black using the furnace, thermal, or acetylene decomposition process.
Chemical manufacturing: chromium compounds.	325188	Area source facilities that produce chromium compounds, principally sodium dichromate, chromic acid, and chromic oxide, from chromite ore.
Flexible polyurethane foam production.	326150	Area source facilities that manufacture foam made from a polyurethane polymer.

Category	NAICS code [1]	Examples of regulated entities
Flexible polyurethane foam fabrication operations.	326150	Area source facilities that cut or bond flexible polyurethane foam pieces together or to other substrates.
Lead acid battery manufacturing.	335911	Area source facilities that manufacture lead acid storage batteries made from lead alloy ingots and lead oxide.
Wood preserving	321114	Area source facilities that treat wood such as lumber, ties, poles, posts, or pilings with a preservative.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11393 of subpart LLLLLL (NESHAP for Acrylic and Modacrylic Fibers Production Area Sources), 40 CFR 63.11400 of subpart MMMMMM (NESHAP for Carbon Black Production Area Sources), 40 CFR 63.11407 of subpart NNNNNN (NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds), 40 CFR 63.11414 of subpart OOOOOO (NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources), 40 CFR 63.11421 of subpart PPPPPP (NESHAP for Lead Acid Battery Manufacturing Area Sources), or 40 CFR 63.11428 of subpart QQQQQQ (NESHAP for Wood Preserving Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 14, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP), which, as the result of emissions of area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "Urban HAP." See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. See *Sierra Club* v. *Johnston*, No. 01–1537 (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3).

Among other things, the order requires that, by June 15, 2007, EPA complete standards for six area source categories. On April 4, 2007, we proposed NESHAP for the following seven listed area source categories that we have selected to meet the June 15, 2007 deadline: (1) Acrylic and Modacrylic Fibers Production; (2) Carbon Black Production; (3) Chemical Manufacturing: Chromium Compounds; (4) Flexible Polyurethane Foam Production; (5) Flexible Polyurethane Foam Fabrication Operations; (6) Lead Acid Battery Manufacturing; and (7) Wood Preserving. See 72 FR 16632. These final NESHAP complete the required regulatory action for seven area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." As explained in the proposed NESHAP, we are setting standards for these seven area source categories pursuant to section 112(d)(5). See 72 FR 16638, April 7, 2007.

III. Summary of Final Rules and Changes Since Proposal

This section summarizes the final rules and identifies and discusses changes since proposal. For changes that were made as a result of public comments, we have provided detailed explanations of the changes and the rationale in the responses to comments in section V of this preamble.

A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources

1. Applicability and Compliance Dates

This final rule applies to any existing or new acrylic or modacrylic fibers production plant that is an area source of HAP. The owner or operator of an existing area source must comply with all the requirements of this area source

[1] An area source is a stationary source of hazardous air pollutant (HAP) emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

NESHAP by January 16, 2008. The owner or operator of a new area source must comply with this area source NESHAP by July 16, 2007 or upon initial startup, whichever is later.

2. Emissions Standards

The Acrylic and Modacrylic Fibers Production area source category was listed pursuant to section 112(c)(3) for its contribution of the Urban HAP acrylonitrile (AN). In response to comments, we have revised the proposed AN requirements for existing area sources to include a new compliance alternative. We have also revised the compliance provisions for existing area sources to allow facilities to change the operating limits for a wet scrubber control device.

Existing area sources. The final standards for existing area sources apply to emissions from the control devices for polymerization and monomer recovery process equipment, spinning lines at plants that do not have a monomer recovery process, and AN storage tanks. As proposed, we are adopting the State permit requirements applicable to the one existing area source as the NESHAP for existing acrylic and modacrylic fibers production area sources.

No changes have been made since proposal to the AN emissions limits for control devices for polymerization and monomer recovery process equipment. The AN emissions limit for the control device for polymerization process equipment is 0.2 pound per hour (lb/hr). The AN emissions limit for the control device for monomer recovery process equipment is 0.05 lb/hr.

In response to comments, we have revised the proposed rule to include an alternative compliance option for existing area sources. The new compliance option in § 63.11395(b)(3) allows an existing area source to comply with the same requirements that apply to process vents for new area sources. Although the two requirements are expressed in different units, they provide an equivalent level of control.

No changes have been made since proposal to the control device parameter operating limits for wet scrubbers. The daily average water flow rate to the wet scrubber control device for polymerization process equipment must not drop below 50 liters per minute (l/min). For the wet scrubber control device for monomer recovery process equipment, the daily average water flow rate must not drop below 30 l/min. We have revised the proposed standard to include procedures for changing the operating limits based on the results of a performance test. These procedures are contained in § 63.11395(k).

As explained in the proposed rule, this rule does not include requirements for spinning lines for existing sources that remove residual AN using a monomer recovery process prior to spinning. As proposed, existing sources that do not have a monomer recovery process prior to spinning must meet the requirements for spinning lines in 40 CFR part 63, subpart YY.

Acrylonitrile storage tanks meeting certain capacity/vapor pressure conditions must comply with one of three control options: (1) A fixed roof in combination with an internal floating roof, (2) an external floating roof, or (3) a closed vent system and control device.

In response to comments, we are clarifying in the final rule that process and maintenance wastewater containing AN must be treated in a wastewater treatment system. We are deleting the definition of "wastewater" because we have specifically defined "process wastewater" and "maintenance wastewater."

New area sources. No changes have been made to the proposed emissions standards for new area sources. The final standards apply to process vents, fiber spinning lines, AN storage tanks, process wastewater, maintenance wastewater, and equipment leaks. The process vent requirements apply to each vent stream with an AN concentration of 50 parts per million by volume (ppmv) or greater and a flow rate of 0.005 cubic meters per minute or greater. The owner or operator must control AN emissions from process vents meeting this threshold by reducing uncontrolled emissions by 98 weight percent or meeting an emissions limit of 20 ppmv by venting vapors through a closed vent system to a recovery device, control device, or flare. The owner or operator must determine which process vents meet the threshold noted above by using the procedures and methods in § 63.1104 of subpart YY.

The emissions limits for fiber spinning lines require the owner or operator to: (1) Reduce AN emissions by 85 weight-percent (e.g., by venting emissions from a total enclosure through a closed vent system to a control device that meets the requirements in 40 CFR part 63, subpart SS), (2) reduce AN emissions from the spinning line to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced, or (3) reduce the AN concentration of the spin dope to less than 100 parts per million by weight (ppmw). The requirements in § 63.1103(b)(4) of subpart YY apply to an enclosure for a fiber spinning line.

For all AN storage vessels at a new area source, the owner or operator must: (1) Reduce AN emissions by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices as specified in § 63.982(a)(1) of subpart SS or reduce AN emissions by 95 weight-percent or greater by venting emissions through a closed system to a recovery device as specified in § 63.993 of subpart SS; or (2) comply with the equipment standards for internal or external floating roofs in 40 CFR part 63, subpart WW.

Process wastewater and maintenance wastewater at new sources are subject to the requirements in § 63.1106(a) and (b) of subpart YY. We are clarifying that wastewater that contains AN but which is below the thresholds for control in subpart YY must be treated in a wastewater treatment system. The owner or operator is also required to comply with the equipment leak requirements in subpart YY. Subpart YY applies the requirements in either subpart TT or UU to equipment that contains or contacts 10 percent by weight or greater of AN and that operates at least 300 hours per year.

3. Compliance Requirements

No significant changes have been made to the compliance provisions for existing sources. As proposed, we are including in this final NESHAP the monitoring, testing, recordkeeping, and reporting requirements in the State operating permit for the one existing area source. The only change since proposal is the addition of records of process and maintenance wastewater streams that are treated in a wastewater treatment system. Specifically, for existing sources, continuous parameter monitoring systems (CPMS) are required to measure and record the scrubber water flow rates at least every 15 minutes. The owner or operator of an existing source must determine compliance with the daily average operating limits for the scrubber water flow rates on a monthly basis and submit quarterly compliance reports to EPA or the delegated authority. Compliance with the operating limits is to be determined on a monthly basis; quarterly compliance reports also are required. The owner or operator must keep records of each monthly compliance determination and retain the records for at least 2 years following the date of each compliance determination. If the daily average water flow rate falls below the required operating limit, the owner or operator must submit a report to EPA or the delegated authority that identifies the

exceedance; the owner or operator would be required to submit the report within 10 days of the exceedance.

The owner or operator of an existing source must conduct a performance test for each control device for polymerization process equipment and monomer recovery process equipment. A performance test is not required for an existing source if a prior performance test has been conducted using the methods required by this rule, which are the requirements contained in § 63.1104 of subpart YY, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

For AN storage tanks at existing sources, the owner or operator must comply with the applicable testing, inspection, and notification procedures in 40 CFR 60.113b(a) and the recordkeeping and reporting requirements in 40 CFR 60.115b and 60.116b of subpart Kb. The testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 65, subpart C apply if the owner or operator elected to comply with the part 65 control option for AN storage tanks. See 40 CFR 60.110b(e).

The owner or operator of an existing area source must comply with certain notification requirements in § 63.9 of the General Provisions (40 CFR part 63, subpart A). These requirements include a notification of applicability and a notification of compliance status. In the notification of compliance status required in 40 CFR 63.9(h), the owner or operator of an existing source may certify initial compliance with the emissions limits based on a previous performance test if applicable. We have revised the proposed certification of compliance for the emissions limit to include a certification for the new alternative compliance option for process vents. The owner or operator must also certify initial compliance with the NSPS requirements in 40 CFR part 60, subpart Kb.

We are also requiring that the owner or operator of an existing source comply with the requirements for startup, shutdown, and malfunction (SSM) plans, reports, and records in 40 CFR 63.6(e)(3). As proposed, we are allowing additional time (6 months after promulgation) to allow for preparation of the plan.

No changes have been made since proposal to the compliance provisions for new area sources. The owner or operator of a new area source must perform assessments [3] to identify affected process vents, equipment, and wastewater streams; conduct initial performance tests and/or compliance demonstrations; and comply with the monitoring, inspection, recordkeeping, and reporting requirements in each applicable subpart. For process vents, the owner or operator must comply with all testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 63, subpart SS. For other emissions sources, the owner or operator must comply with all testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 63, subpart SS or WW for AN tanks, and subpart TT or UU for equipment leaks. Only specified provisions in subpart G apply for process wastewater and maintenance wastewater.

The owner or operator of a new area source is also required to comply with the NESHAP General Provisions (40 CFR part 63, subpart A), including requirements for notifications; performance tests and reports; SSM plans and reports; recordkeeping, and reporting. We have identified in the final NESHAP the General Provisions of 40 CFR part 63 applicable to existing and new sources.

B. NESHAP for Carbon Black Production Area Sources

1. Applicability and Compliance Dates

The final NESHAP applies to each new or existing carbon black production facility that is an area source of HAP. The owner or operator of an existing affected source must comply with all the requirements of this area source NESHAP by July 16, 2007. The owner or operator of a new affected source must comply by July 16, 2007 or upon initial startup, whichever is later.

2. Emissions Standards

The Carbon Black Production area source category was listed pursuant to section 112(c)(3) for regulation for its contribution of the Urban HAP POM (polycyclic organic matter). We have made no changes since proposal to the emissions standards for this source category.

This final NESHAP requires the owner or operator of an existing or new source to control HAP emissions from each carbon black production main unit filter process vent that has a HAP concentration equal to or greater than 260 ppmv. The specific control requirements are: (1) Reduce emissions of HAP by using a flare meeting all the requirements of 40 CFR part 63, subpart SS; or (2) reduce total HAP emissions by 98 weight-percent or to a concentration of 20 ppmv, whichever is less, by venting emissions through a closed vent system to any combination of control devices meeting the requirements 40 CFR 63.982(a)(2).

3. Compliance Requirements

We have made no changes to the proposed compliance provisions for carbon black production area sources. For existing and new area sources, we are adopting in this final NESHAP the testing, monitoring, recordkeeping, and reporting requirements in subpart YY. The owner or operator must demonstrate compliance with the emissions limit for existing and new area sources by monitoring the operating parameters of the control device or devices selected to comply with the requirements of the NESHAP.

The owner or operator of an existing or new area source must comply with the subpart YY notification requirements in 40 CFR 63.1110. In the notification of compliance status required in 40 CFR 63.1110(d), the owner or operator of an existing source may demonstrate initial compliance with the emissions standards based on the results of a performance test that has been previously conducted provided certain conditions are met (*e.g.*, using the same methods as the test methods in the final rule).

As proposed, we are requiring that the owner or operator of an existing area source comply with the SSM requirements in 40 CFR 63.1111. Section 63.1111(a)(1) of subpart YY requires that the source include provisions for an SSM plan.

C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds

1. Applicability and Compliance Dates

The final rule applies to the owner or operator of a new or existing area source that manufactures chromium compounds. The owner or operator of an existing area source must comply with all the requirements of this area source NESHAP by January 16, 2008. The owner or operator of a new affected source must comply by July 16, 2007 or upon initial startup, whichever is later. In response to comments, we have also added a definition of "chromium compounds manufacturing facility."

2. Emissions Standards

The Chemical Manufacturing: Chromium Compounds area source category was listed for regulation pursuant to section 112(c)(3) for its

[3] These assessments are used to determine which process vents and wastewater streams must be controlled.

contribution of the Urban HAP chromium. We have not revised the emissions standards for this area source category since proposal. However, we have revised Table 1 of subpart NNNNNN to clarify the regulated process equipment. These changes include revising the title of Table 1 to refer to emissions sources instead of emissions points, changing the "filter for sodium chromate slurry" to "residue dryer system", changing the "reactor used to produce chromic acid" to the "melter used to produce chromic acid", and removing the "sodium evaporation unit" from the table. These changes do not affect the estimated level of emissions control or reduction for the rule.

The final NESHAP requires new and existing facilities to operate a capture system that collects gases and fumes from each emissions source and conveys the gases to a PM control device that controls emissions to the levels required in the rule. Emissions limits for PM, in lb/hr format, are established based on the process rate of the emissions source. The PM emissions limits apply to more than 20 emissions sources in the production of chromium compounds, including sodium chromate, sodium dichromate, chromic acid, chromic oxide, and chromium dehydrate at new and existing sources.

3. Compliance Requirements for Existing Area Sources

As proposed, the compliance requirements for existing area sources are based on the operation and maintenance, recordkeeping, and reporting requirements in the title V permit of the area source located in North Carolina. The title V permit includes requirements for inspections and maintenance of each type of control device, semiannual reports of any deviation, and records of control device inspections and maintenance. The control devices used by the existing area sources in this source category include baghouses, dry electrostatic precipitators, wet electrostatic precipitators, and wet scrubbers. The monitoring requirements for existing area sources consist of inspection and maintenance requirements specific to the type of control device.

In response to comments, we have revised the proposed requirements for initial and periodic inspections of control devices in several respects. The final rule requires an initial inspection for each installed control device which has operated within 60 days of the compliance date. An initial inspection for an installed control device which has not operated within 60 days of the compliance date must be conducted prior to startup. In addition, we have revised the requirements for initial inspections of the internal components of control devices to state that an initial inspection is not required if an inspection has been performed within the past 24 months (for an electrostatic precipitator) or within the past 12 months (for a baghouse or wet scrubber). The proposed requirements for initial inspections that do not require shutting down the process and control device, such as inspecting baghouses and ductwork for leaks and verifying proper operation of electrostatic precipitators and wet scrubbers, have not been revised. We have also clarified the timing for periodic inspections by requiring subsequent inspections 12 or 24 months after the last inspections and then annual or biennial inspections thereafter. We have also revised the final rule to clarify that the requirements for internal inspections of control devices do not apply to cyclonic scrubbers installed upstream of electrostatic precipitators.

For a baghouse, this final NESHAP requires monthly visual inspections of the system ductwork and baghouse units for leaks. The plant owner or operator must conduct an annual inspection of the interior of each baghouse for structural integrity and condition of the filter fabric. For electrostatic precipitators, plants are required to conduct: (1) A daily check to verify that the electronic controls for corona power and rapper operation are functioning, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold; (2) a monthly visual inspection of the system ductwork, cyclones (if applicable), housing unit, and hopper for leaks; and (3) a biennial internal inspection to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates. For wet electrostatic precipitators, plants also must conduct a daily check to verify water flow and a biennial internal inspection to determine the condition and integrity of plate wash spray heads. For wet scrubbers, plants are required to conduct: (1) A daily check to verify water flow to the scrubber; (2) a monthly visual inspection of the system ductwork and scrubber unit for leaks; and (3) an annual internal inspection for structural integrity and condition of the demister and spray nozzle.

The owner or operator of an existing plant must record the results of each inspection, the results of any maintenance performed on the control device, and the date and time of each recorded action. The results of inspections and maintenance of control equipment must be recorded in a logbook (written or electronic). The logbook must be kept onsite and made available to the permitting authority upon request. The owner or operator of an existing plant is required to report any deviations from the emissions limits or monitoring requirements in a semiannual report submitted to the permitting authority.

The owner or operator of an existing area source must submit an initial notification of applicability and a notification of compliance status according to the requirements in 40 CFR 63.9 of the General Provisions (40 CFR part 63, subpart A). In the notification of compliance status required by 40 CFR 63.9(h), the owner or operator must certify that equipment has been installed and is operating for each regulated emissions point and that the plant will comply with the inspection and maintenance requirements. A performance test is not required if a performance test has been conducted within the past 5 years using the specified test methods, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The final rule also requires that the owner or operator comply with either the requirements for SSM plans and reports in 40 CFR 63.6(e)(3) or with the requirements in this final rule. The owner or operator is required to submit a report if an event occurs that results in emissions in excess of a PM limit and lasts for more than 4 hours.

4. Compliance Requirements for New Area Sources

No changes have been made to the compliance requirements for new area sources. The owner or operator of a new source must install and operate a bag leak detection system for each baghouse used to comply with a PM emissions limit. For additional information on bag leak detection systems that operate on the triboelectric effect, see "Fabric Filter Bag Leak Detection Guidance", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161.

The owner or operator of a new source that uses a control device other than a baghouse must submit a

monitoring plan to the permitting authority for approval. The plan must describe the control device, the parameters to be monitored, and the operating limits for the parameters established during a performance test.

The owner or operator of a new source is required to demonstrate initial compliance with each applicable PM emissions limit by conducting a performance test according to the requirements in 40 CFR 63.7. EPA Method 5 or 5D (40 CFR part 60, appendix A), as applicable, is to be used to determine the PM emissions. All of the testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to a new area source. We have identified in the final NESHAP the General Provisions of 40 CFR part 63 applicable to existing and new sources.

D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to both new and existing flexible foam production and flexible foam fabrication plants that are area sources. In response to comments, we have revised the compliance dates to allow more time for certain existing area sources to comply with the NESHAP. The owner or operator of an existing slabstock flexible polyurethane foam production-affected source must comply with all of the requirements of this area source NESHAP by July 16, 2008 instead of July 16, 2007. As proposed, the owner or operator of an existing molded flexible polyurethane foam production, an existing rebond foam production, or an existing flexible polyurethane foam fabrication affected source must comply by July 16, 2007. The owner or operator of a new area source must comply by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories were listed pursuant to section 112(c)(3) for their contribution of the Urban HAP methylene chloride. No changes have been made since proposal to the required emissions standards and management practices. Table 1 of this preamble summarizes the various types of foam production and fabrication area sources covered by this final rule and the corresponding regulatory strategies. As shown in the table below, slabstock foam producers may still use limited amounts of methylene chloride as an auxiliary blowing agent (ABA). The technologies determined to be GACT for slabstock foam production area sources significantly reduce, but do not always eliminate the use of methylene chloride as an ABA. Methylene chloride use is prohibited for other uses at foam production and foam fabrication facilities.

TABLE 1.—FOAM PRODUCTION AND FABRICATION PROCESSES AND CORRESPONDING REGULATIONS

Area source types	Final regulation
1. Slabstock polyurethane foam production	a. Emission limits for methylene chloride used as an auxiliary blowing agent (ABA); b. Controls on storage vessels; c. Management practices for equipment leaks; and d. Prohibition on use of methylene chloride as an equipment cleaner; or Eliminate use of methylene chloride in slabstock foam production processes.
2. Molded polyurethane foam production	Prohibit use of methylene chloride as mold release agent or equipment cleaner.
3. Rebond foam production	Prohibit use of methylene chloride as mold release agent.
4. Foam fabrication adhesive use	Prohibit use of methylene chloride adhesives.

For slabstock foam production area sources, we are requiring emissions limits and management practices to reduce methylene chloride emissions from the production line, storage tanks, leaking equipment, and equipment cleaning. Emissions limits for methylene chloride used as an ABA are based on a formula which varies depending on the grades of foam being produced. Vapor balance systems or carbon beds are required for methylene chloride storage vessels. The management practices require plants to identify and correct leaking pumps and other equipment in methylene chloride service. Specifically, owners or operators must check periodically for equipment leaks (from quarterly for pumps and valves to annual for connectors) using EPA Method 21 (40 CFR part 60, appendix A). Leaks, which are defined as a reading of 10,000 parts per million (ppm) or greater, must be corrected within 15 days of when they are detected. The use of methylene chloride to clean mix heads and other equipment is prohibited.

Slabstock foam facilities that do not use any methylene chloride at the facility are not subject to these emissions limitations and management practices. Such facilities are, however, required to submit a one-time report.

This final rule prohibits the use of methylene chloride-based mold release agents at molded and rebond foam facilities, methylene chloride-based equipment cleaners at molded foam facilities, and methylene chloride-based adhesives for foam fabrication.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements. Slabstock foam area sources continuing to use methylene chloride are required to monitor methylene chloride added at slabstock production mixheads and the methylene chloride contained in and added to methylene chloride storage tanks. Plants using carbon adsorber systems to control emissions from methylene chloride storage tanks must monitor the methylene chloride content of exhaust streams from outlet vents. Plants using a recovery device to reduce methylene chloride emissions are required to comply with a recovered methylene chloride monitoring and recordkeeping program.

The owner or operator of a slabstock foam production area source that continues to use methylene chloride as an ABA must submit semiannual reports containing information on allowable and actual methylene chloride emissions, carbon adsorbers on storage tanks, and equipment leaks. Owners and operators are also required to submit annual compliance

certifications. Records are required to demonstrate compliance, including a daily operating log of foam runs containing the grades of foam produced and related data, and records related to storage tanks and equipment leaks. Slabstock foam plants that do not use any methylene chloride must submit a one-time certification as part of their notification of compliance status.

Molded foam, rebond foam, and foam fabrication area source facilities which operate loop slitters must prepare, and keep on file, compliance certifications which certify that the facility is not using the prohibited methylene-chloride based products. The area source plants must also maintain records documenting that the products they are using do not contain any methylene chloride. These can be records that would be kept in the absence of this final rule such as adhesive usage information and Material Safety Data Sheets. Foam fabrication area source plants which do not operate loop slitters have no compliance certification or recordkeeping requirements.

The owner or operator of each slabstock foam affected source that continues to use methylene chloride and, therefore, is subject to the methylene chloride emissions limits, is required to comply with several requirements of the General Provisions in 40 CFR part 63, subpart A. We have identified in the final NESHAP the General Provisions that apply to existing and new sources.

For slabstock foam production facilities that have eliminated the use of methylene chloride and are not subject to the emissions limitations in this final rule, we are requiring that owners or operators submit a notification certifying that they do not use any methylene chloride. Slabstock foam facilities that choose to use methylene chloride in the future will be subject to the emission limits and other requirements discussed above.

E. NESHAP for Lead Acid Battery Manufacturing Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to new and existing lead acid battery manufacturing plants that are area sources. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by July 16, 2008. The owner or operator of a new source must comply with this area source NESHAP by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Lead Acid Battery Manufacturing area source category was listed for regulation pursuant to section 112(c)(3) for its contribution of the Urban HAP lead and cadmium. As proposed, we are adopting as the NESHAP for the Lead Acid Battery Manufacturing area source category the numerical emissions limits for grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead emitting processes in 40 CFR 60.372 of the new source performance standards (NSPS) for lead acid batteries. These lead discharge limits are:

- 0.40 milligram of lead per dry standard cubic meter of exhaust (mg/m^3) from grid casting facilities,
- 1.00 mg/m^3 from paste mixing facilities,
- 1.00 mg/m^3 from three-process operation facilities,
- 5.0 mg per kilogram of lead feed from lead oxide manufacturing facilities,
- 4.50 mg/m^3 from lead reclamation facilities, and
- 1.0 mg/m^3 from any other lead-emitting operations.

We are also adopting the opacity limits from the lead acid battery NSPS. The opacity of emissions must be no greater than 5 percent from lead reclamation facilities and no greater than 0 percent from any affected facility except lead reclamation facilities.

3. Compliance Requirements

At proposal, we stated that we would adopt in this NESHAP the compliance requirements in the NSPS for lead acid batteries. We incorrectly stated in the proposal that title V would not add monitoring to the proposed NESHAP. While that statement was accurate for emissions units controlled by scrubbing systems, it was not accurate for emissions units controlled by fabric filters. We recognized our error during our consideration of comments submitted on the proposal. We have incorporated the part 63 monitoring, recordkeeping, and reporting requirements for all emissions units instead of those in part 60. We concluded that the part 63 General Provisions are more appropriate for this NESHAP than are the part 60 General Provisions that were proposed. We have also added periodic monitoring, recordkeeping, and reporting requirements for emissions units controlled by fabric filters.

We are adopting in this NESHAP the testing and monitoring and requirements in the NSPS for lead acid batteries. These provisions include the requirement to conduct a performance test and opacity measurement for each source. They also require continuous monitoring of the pressure drop for sources controlled by scrubbing systems. In addition to these requirements, we added to the final rule daily recordkeeping and semiannual reporting requirements for emissions units that are controlled by scrubbing systems.

We added to the final rule monitoring, recordkeeping, and reporting requirements for emissions units that are controlled by fabric filters. These requirements direct facilities to conduct semiannual inspections of fabric filter structure and bags, and to either: (1) Measure and record the pressure drop across the fabric filter once per day, or (2) conduct daily visible emission observations. If visible emissions are detected, the final rule requires that an opacity measurement be made. A weekly rather than daily alternative monitoring frequency is also available for emissions units that utilize high efficiency particulate air (HEPA) filters in combination with fabric filters.

We are also adopting the testing, monitoring, recordkeeping, and reporting requirements and the initial notification and notification of compliance requirements in the part 63 General Provisions (40 CFR part 63, subpart A). We concluded that the part 63 General Provisions are more appropriate for this NESHAP than the part 60 General Provisions that were proposed.

We have clarified the deadline for submission of initial notifications required by § 63.9 of the General Provisions (40 CFR part 63, subpart A). The initial notification of applicability required for existing facilities is due by November 13, 2007. The notification of compliance status is due 60 days after the 1 year deadline for compliance September 15, 2008. We have identified in the final NESHAP the applicable General Provisions of 40 CFR part 63.

The final NESHAP allows existing plants to utilize previously conducted performance tests, when they are representative of current conditions, to demonstrate compliance. Plants without representative prior performance tests are required to conduct performance tests by 180 days after the compliance date.

F. NESHAP for Wood Preserving Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to new and existing wood preserving plants

that are area sources. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by July 16, 2007. The owner or operator of a new source must comply by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Wood Preserving area source category was listed for regulation under section 112(c)(3) for its contribution of the following Urban HAP: arsenic, chromium, methylene chloride, and dioxin. The only changes to the rule made since proposal are clarifications of applicability and the required management practices.

We are adopting as the NESHAP for the Wood Preserving area source category the control technologies and management practices that we have determined are generally available, considering cost, for the wood preserving industry. We have revised the rule since proposal to clarify that the management practices and other recordkeeping and notification requirements in the NESHAP apply to those facilities that are using a wood preservative containing arsenic, chromium, dioxins, or methylene chloride.

The NESHAP requires that facilities using a pressure treatment process use a retort or similarly enclosed vessel for the preservative treatment of wood involving any wood preservative containing chromium, arsenic, dioxins, or methylene chloride. Facilities using a thermal treatment process involving any wood preservative containing chromium, arsenic, dioxins, or methylene chloride are required to use process treatment tanks equipped with air scavenging systems to capture and control air emissions.

This final rule also requires facility owners or operators using any wood preservative containing chromium, arsenic, dioxins, or methylene chloride to minimize emissions from process tanks and equipment (*e.g.*, retorts, other enclosed vessels, and thermal treatment tanks), as well as storage, handling, and transfer operations. These standards are to be documented in a management practices plan that must include, but not be limited to, the following activities:

- Minimizing preservative usage;
- Maintaining records on the type of treatment process and types and amounts of wood preservatives used at the facility;
- For the pressure treatment process, maintaining charge records identifying pressure reading(s) inside the retort (or similarly enclosed vessel, if applicable);
- For the thermal treatment process, maintaining records that an air scavenging system is installed and operated properly during the treatment process;
- For the pressure treatment process, we proposed a requirement for facilities to fully drain the retort prior to opening the retort door. In the final rule, we have clarified this provision to require facilities to fully drain the retort to the extent practicable, prior to opening the retort door;
- Storing treated wood product on drip pads or in a primary containment area to convey preservative drippage to a collection system until drippage has ceased;
- Promptly collecting any spills; and
- Performing relevant corrective actions or preventative measures in the event of a malfunction before resuming operations.

Existing written standard operating procedures may be used as the management practices plan if those procedures include the minimum activities required for a management practices plan.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements for wood preserving facilities. Plants that use any wood preservative containing chromium, arsenic, dioxins, or methylene chloride are required to comply with the notification requirements in the part 63 General Provisions (40 CFR part 63, subpart A). This final rule establishes the content and deadlines for submission of the notifications. We have explicitly identified in this final NESHAP the applicable General Provisions of 40 CFR part 63.

The final standards require recordkeeping to serve as monitoring and deviation reporting to demonstrate compliance. The compliance requirements for new and existing area sources are based on certain notification requirements in the part 63 General Provisions. The initial notification of applicability required by 40 CFR 63.9(b)(2) requires the owner or operator to identify the plant as an area source subject to the standards. The notification of compliance status requires the owner or operator to certify compliance with the standards. No other recordkeeping or reporting requirements in the General Provisions are applicable.

IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 ("Exemption Rule").

The four factors that EPA identified in the Exemption Rule for determining whether title V is "unnecessarily burdensome" on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in

combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In response to the proposed rule, we received a comment concerning the proposed title V exemptions. In response to this comment, we re-examined the four factors for each of the area source categories for which we had proposed an exemption. As explained below, after evaluating the relevant factors, we again conclude that the requirements of title V would be unnecessarily burdensome on the area source categories for which we proposed an exemption from title V.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As discussed below in sections IV.A through IV.D of this preamble, we have determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. We therefore finalize the proposed exemptions in this rule.

A. Acrylic and Modacrylic Fibers Production

In sections IV.A through IV.D of this preamble, we apply the four-factor balancing test to determine whether title V is unnecessarily burdensome on the area source category. Starting with the first factor, which is to determine whether title V permits would result in significant improvements to the compliance requirements for the Acrylic and Modacrylic Fibers Production area source category, we compared the monitoring, recordkeeping, and reporting requirements of title V permitting to those requirements in the final NESHAP. As noted above (see section III.A of this preamble), the final NESHAP adopts the compliance requirements in the State-issued permit for the one area source plant currently in operation.

Specifically, this final rule requires CPMS to measure and record the water flow rate to the control device (wet scrubber) every 15 minutes and to determine the daily average flow rate. Periodic visual inspections of AN storage tanks equipped with a fixed roof in combination with an internal floating roof must be conducted according to the NSPS requirements in 40 CFR part 60, subpart Kb. This final rule, therefore, contains both continuous and noncontinuous monitoring requirements, which constitute periodic monitoring. Under EPA's Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs (71 FR 75422, December 15, 2006) ("Interpretive Rule"), if an applicable requirement, such as a NESHAP, contains periodic testing or instrumental or non-instrumental monitoring (*i.e.*, periodic monitoring), permitting authorities are not authorized to assess the sufficiency of or impose new monitoring requirements on a case-by-case basis; therefore, title V would not impose additional monitoring requirements on sources in this category.

We also considered the extent to which title V could enhance compliance through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. The final rule for acrylic and modacrylic fibers production requires the owner or operator to submit an initial certification of compliance that must be signed by a responsible official. In addition, the owner or operator must determine compliance with daily average operating limits for the water flow rates to each control device on a monthly basis and submit compliance reports to EPA or the delegated authority on a quarterly basis. Should the daily average water flow rate to a wet scrubber control device fall below the operating limits, the plant must notify the delegated authority in writing within 10 days of the identification of the exceedance. Reports of performance test results are required. New and existing sources are also required to comply with the requirements for SSM plans, reports, and records in 40 CFR 63.6(e)(3). When an SSM report must be submitted, it must consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

Records are required to demonstrate compliance with the NSPS inspection and repair requirements for storage tanks in 40 CFR part 60, subpart Kb. Records are also required for the monthly compliance determination for scrubber operating limits. The information required in the final rule is similar to the information that must be provided in the deviation reports and semiannual monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

This final rule does not require an annual compliance certification report, which is a requirement of a title V permit. See 40 CFR 70.5(c)(9)(iii) and 40 CFR 71.6(c)(5)(i). The EPA believes that the annual certification reporting requirement is not necessary because the initial compliance certification and subsequent quarterly reports are more than adequate to determine compliance for existing sources. New sources must submit notifications and reports required by the part 63 General Provisions. Moreover, the certifications that new and existing sources must submit under the part 63 General Provisions and the final rule include initial notification of compliance status; periodic and immediate reports under the SSM provisions; and reports of excess emissions and monitoring system performance.

The monitoring, recordkeeping, and reporting requirements in the final rule for the Acrylic and Modacrylic Fibers Production area source category are substantially equivalent to such requirements under title V. Therefore, we conclude that title V would not result in significant improvements to the compliance requirements we are promulgating for this area source category.

We evaluated factor two to determine whether title V permitting would impose a significant burden on the area source category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the average annual cost of obtaining and complying with a title V permit was $7,700 per year per source, including fees, or $38,000 per source for a 5-year permit period. See Information Collection Request (ICR) for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. There are certain activities associated with the part 70 and 71 rules that are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and

other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 may help to understand the overall burdens and costs, as well as the relative burdens, of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In considering the second factor for the one existing area source acrylic and modacrylic fibers plant, we examined the potential economic resources of the parent company and whether the source would have any difficulty in obtaining assistance from the permitting authority. Although this area source plant is small (*i.e.*, it is the smallest of the four known plants in the source category), the parent company is a multi-national corporation and is not a small business. In addition, the plant has worked closely with the State permitting authority to obtain State operating permits and a designation as a synthetic minor source, which means the plant must keep HAP emissions below the major source threshold. The State agency has assigned a staff person who is specifically responsible for the permitting of sources at the plant. This staff person is familiar with the production processes, emissions sources, and permitting requirements for the plant; therefore, the staff person can provide permitting assistance as needed. Consequently, we have no evidence that obtaining a title V permit would impose a significant burden on this particular area source or that the burden would be aggravated by any difficulty in obtaining assistance from permitting authorities. However, we do not know what circumstances would exist for new sources in this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. While we concluded that the one existing area source could sustain the cost of title V permit requirements without a significant economic impact on the company as a whole, we do not think the costs for the one existing area source are justified because we do not think title V permitting would lead to gains in compliance by the source. As discussed above for factor one, we determined that the compliance requirements of this NESHAP are substantially equivalent to the requirements of title V. Furthermore, as discussed below for factor four, there are adequate implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP. We conclude, therefore, that the costs of title V are not justified for the one existing area source in this category, even though we concluded the costs would not be burdensome on the existing area source in this category. Furthermore, for new sources, the requirements of title V may be a significant burden and, since we have determined consistent with the first factor that there would not be significant improvements in compliance under title V, we likewise conclude that the cost would not be justified.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is "unnecessary" to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. We do not have similar data for this rule because we are issuing this final NESHAP today. In the Exemption Rule, EPA exempted the categories from the requirements of title V after the NESHAP was issued. Although we do not have the type of enforcement data we had in the Exemption Rule, we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E. There are State programs in place to enforce this area source NESHAP and assure compliance with the NESHAP. In light of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the final rule without relying on title V permitting.

Considering the factors in combination supports the finding in the proposal that title V is unnecessarily burdensome on this area source category. We found in the proposal and again here that title V would not result in significant improvements to the compliance requirements applicable to this area source category and that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Although we concluded that the cost of title V permitting would not be burdensome on the one known existing area source, we cannot conclude that title V would not be a significant burden on new sources in the category. We also found that the cost is not justified because we could not identify any potential gains in compliance within the category if title V were required for this category. Thus, we conclude that title V permitting is "unnecessarily burdensome" for the Acrylic and Modacrylic Fibers Production area source category.

In addition to evaluating whether compliance with title V requirements is "unnecessarily burdensome", EPA also

considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting these area source categories from title V requirements would adversely affect public health, welfare, or the environment. We stated at proposal that exemption of this area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same even if a title V permit were required. We continue to believe that there would be no adverse effects for all of the reasons supporting the exemptions as discussed above.

Importantly, the title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. We conclude, therefore, that exempting this area source category from title V permitting requirements in the final rule would not adversely affect public health, welfare, or the environment.

Moreover, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, placing all requirements for the one existing area source in a title V permit would do little to clarify the requirements applicable to that source or assist it in compliance with those requirements because of the simplicity of the source and the NESHAP, and the fact that this source is not subject to other NESHAP or to other requirements under the CAA. Given that the emissions profile for new sources should be similar to the existing source, we believe that new sources would be subject to similar CAA requirements.

For the foregoing reasons, we are exempting the Acrylic and Modacrylic Fibers Production area source category from title V permitting requirements.

B. Flexible Polyurethane Foam and Fabrication

As discussed in the proposal, to determine whether title V permits would result in significant improvements to the compliance requirements in the final NESHAP for flexible polyurethane foam production and fabrication area source categories (factor one in determining whether title V permitting is "unnecessarily burdensome"), we compared the title V monitoring, recordkeeping, and reporting requirements to those requirements in the final NESHAP for these source categories.

This final NESHAP does not contain monitoring or periodic reporting requirements for molded foam production, rebond foam production, and foam fabrication facilities that must eliminate the use of methylene chloride, or for slabstock foam production facilities that elect to totally eliminate the use of methylene chloride. Since these facilities have discontinued the use of methylene chloride entirely, Urban HAP emissions would be reduced without the need for continuous or periodic monitoring of equipment or operations.

For slabstock foam production facilities still using methylene chloride as an ABA, the final NESHAP requires the same periodic monitoring in the form of quantifying methylene chloride usage that must be performed by major sources. Therefore, title V would not add any monitoring to the final NESHAP. See the Interpretive Rule (71 FR 75422, December 15, 2006).

We also considered the extent to which title V could enhance compliance for area sources through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. The final NESHAP requires area source foam plants that have discontinued the use of methylene chloride to certify compliance with the prohibition on methylene chloride in their Notification of Compliance Status reports. For slabstock foam plants still using methylene chloride, the final NESHAP requires the same recordkeeping or reporting that must be performed by major sources. The information required in the final reports and records is similar to the information that must be provided in the deviation reports and required for title V permitting under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

The final NESHAP requires a report if a deviation occurs, but does not require periodic compliance reports. The addition of periodic reports for sources that are subject to monitoring requirements would not result in significant improvements to the compliance requirements in the final NESHAP for these area source categories. The final NESHAP does not require an annual compliance certification report for slabstock facilities that continue to use methylene chloride, as would be required under a title V permit. See 40 CFR 70.5(c)(9)(iii) and 40 CFR 71.6(c)(5)(i). EPA believes that the annual certification reporting requirement is not necessary because the deviation reports are adequate to ensure compliance for new and existing sources. Furthermore, even absent the requirement to submit annual compliance certifications, sources must comply with all emission standards in the NESHAP. In conclusion, we do not believe that title V would lead to significant improvements in the compliance requirements for these categories.

The second factor considered in determining whether title V is "unnecessarily burdensome" is whether title V permitting would impose significant burdens on the flexible polyurethane foam production and fabrication area sources and whether these burdens would be aggravated by difficulty they may have in obtaining assistance from permitting agencies. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the true average annual cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA Number 1587.05.

The EPA does not have specific estimates for the burdens and costs of permitting flexible polyurethane foam production and fabrication area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In

addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs' requirements.

The ICR for part 70 further explains the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In the proposal, we stated that we believed the cost of a title V program would be a significant burden for the area sources in all the categories that we proposed to exempt. For flexible polyurethane foam production and fabrication, that conclusion was based on the types of smaller establishments that make up these categories. We estimate that over 90 percent of the firms in the NAICS code for these categories are small businesses, with over half the firms having less than 20 employees. We believe that these small sources will likely lack the technical resources needed to comprehend and comply with the permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Accordingly, we conclude that title V would be a significant burden for these categories because almost all the sources are small businesses with limited resources, and that it would be difficult for them to meet the numerous requirements applicable to sources under part 70 or 71, whether they have a standard or general permit. Also, we are not sure what level of title V related assistance permitting authorities would be able to provide such small sources. Thus, for the final rule, we believe factor two supports title V exemption for flexible polyurethane foam production and fabrication sources because title V compliance would impose a significant economic and non-economic burden on sources in these categories.

The third factor is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We concluded after consideration of the first factor that title V would not result in significant improvements to the compliance requirements in the final rule for flexible polyurethane foam production and fabrication source categories. We also concluded in our consideration of the second factor that title V permitting would be a significant burden on the facilities and that the burden was associated with both the financial cost of compliance as well as the time and effort that these small facilities would have to devote to compliance with title V. Furthermore, as discussed in our consideration of the fourth factor below, there are adequate implementation and enforcement programs in place sufficient to ensure compliance with the NESHAP. Because the costs, both economic and non-economic, are burdensome on these sources, and title V would not lead to significant improvements in compliance with the NESHAP, we conclude that requiring title V permitting is not justified for the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is "unnecessary" to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the flexible polyurethane foam production and fabrication NESHAP without relying on title V permitting.

Balancing the four factors for these area source categories strongly supports the proposed finding that title V is unnecessarily burdensome. We determined in the proposal and above that title V would not significantly improve the compliance requirements of the NESHAP and that the requirements of title V would be a significant burden on the facilities. We also determined that the costs of compliance with title V would not be justified because it would not likely lead to gains in compliance with the NESHAP and that there are sufficient implementation and enforcement programs in place to assure compliance without reliance on title V. All four factors weigh in favor of exemption, and we conclude that title V permitting is "unnecessarily burdensome" for the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories.

In addition to evaluating whether compliance with title V requirements is "unnecessarily burdensome", EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a title V permit were required.

The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. Therefore, we conclude that exempting the flexible polyurethane foam production and fabrication area sources from title V permitting requirements in these rules will not adversely affect public health, welfare, or the environment.

Moreover, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to these area sources, as the requirements are not complicated to understand or implement. Furthermore, the sources in this category are not subject to any other NESHAP or CAA requirements to combine into one title V permit. For these reasons, we do not find that title V permitting is necessary to improve understanding of and achieve compliance with these standards.

For the foregoing reasons, we are exempting the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V permitting requirements.

C. Lead Acid Battery Manufacturing

In the proposal, we discussed whether title V permitting was "unnecessarily burdensome" for the Lead Acid Battery Manufacturing area source category. Factor one in determining whether title V permitting is "unnecessarily burdensome" is to determine whether title V permits would result in significant improvements to the compliance requirements in the final NESHAP. In this NESHAP, we proposed adopting the compliance requirements in the NSPS for lead acid battery manufacturing as the compliance requirements for this area source category. The final rule includes the same provisions and requires monitoring, recordkeeping and deviation reporting to ensure compliance with the NESHAP. Specifically, the final rule requires that a facility using a scrubbing system install, calibrate, maintain, and operate a monitoring device that measures and records the pressure drop across the scrubbing system at least once every 15 minutes. Opacity requirements are zero percent for five of the six emission sources and five percent for the sixth. In addition to these requirements, we are adding in the final rule monitoring, recordkeeping and reporting requirements for emissions units controlled by fabric filters. These requirements direct facilities to perform and keep records of semiannual fabric filter inspections and to either: (1) Measure and record the pressure drop across the fabric filter once per day or (2) conduct daily visible emission observations. If visible emissions are detected, the final rule requires that an opacity measurement be made. The alternative of weekly monitoring is also available for emissions units that utilize HEPA filters in combination with fabric filters.

Each facility must demonstrate compliance by either conducting a performance test or submitting the results of a recent performance test conducted using the methods and procedures in the final NESHAP. Because both the continuous and noncontinuous monitoring methods required by the final NESHAP constitute periodic monitoring, title V would not result in significant improvements to monitoring in the final NESHAP. *See* the Interpretive Rule (71 FR 75422, December 15, 2006).

We also considered the extent to which title V could enhance compliance through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. Records are required to demonstrate compliance. Plants are required to comply with the testing, monitoring, recordkeeping, and reporting requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The information required in the NESHAP is similar to the information that must be provided in the deviation reports and semiannual monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

The NESHAP for lead acid battery manufacturing requires the owner or operator to submit an initial certification of compliance that must be signed by a responsible official. The NESHAP does not require an annual compliance certification report, as would be required under a title V permit. See 40 CFR 70.5(c 9)(iii) and 40 CFR 71.6(c)(5)(i). EPA believes that the title V annual certification reporting requirement is not necessary because the semiannual reports are adequate to ensure compliance for new and existing sources. Furthermore, even absent the requirement to submit annual compliance certifications, sources must comply with all emission standards in the NESHAP. Therefore, the monitoring, recordkeeping and reporting requirements in the final NESHAP for the Lead Acid Battery Manufacturing area source category are substantially equivalent to requirements under title V. We conclude that title V would not result in significant improvements to the compliance requirements for this area source category.

The second factor considered in determining whether title V permitting is "unnecessarily burdensome" is whether title V permitting would impose a significant burden for the Lead Acid Battery Manufacturing area source category and whether that burden would be aggravated by any difficulty these sources may have in obtaining assistance from permitting agencies. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA previously estimated that the true average annual cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05.

EPA does not have specific estimates for the burdens and costs of permitting lead acid battery manufacturing area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the

permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs' requirements.

The ICR for part 70 may help to understand the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In considering the second factor for lead acid battery manufacturing, we examined the potential economic resources of the plants and their parent companies and whether they would have any difficulty in obtaining assistance from the permitting authority. There are a few multi-national corporations that own several lead acid battery manufacturing plants that would be subject to this NESHAP, and those facilities would have resources adequate to absorb the economic and non-economic burdens associated with complying with the title V permitting requirements. However, there are many plants that are small businesses for which the title V permitting requirements would be a significant burden, both economic and non-economic. In addition to the small businesses currently subject to the NSPS, there are some small plants[4] that are not subject to the NSPS that will be subject to the NESHAP. These small businesses will be burdened complying with the NESHAP, even if title V compliance is not required.

Through discussions with the industry trade organization, we have learned that very few lead acid battery manufacturing facilities currently are subject to a title V permit for either lead or other criteria pollutants. Some plants have synthetic minor permits to remain below the threshold for title V permitting for criteria pollutants. As such, if title V permits were required the sources would have difficulty obtaining assistance from the permitting authorities as they developed and applied for title V permits. This difficulty stems from the fact that there are about 60 plants in this area source category, and permitting authorities" resources are limited. Thus, the difficulty sources would have obtaining appropriate guidance from permitting authorities would only increase the already significant economic and non-economic burdens of title V on the small facilities with limited resources.

The third factor is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We evaluated the monitoring, recordkeeping, reporting requirements of the proposed NESHAP when considering the first factor and concluded above that title V would not lead to significant improvements to the compliance requirements for this category. In considering the second factor, we concluded that some of the existing area sources could comply with the title V permit requirements without a significant economic impact on the company as a whole. But, we also concluded that the costs would be a significant burden for small facilities, particularly those not currently covered by the NSPS because they would have to comply with the NESHAP and title V simultaneously. In addition, under the fourth factor below, we find that there are adequate implementation and enforcement programs in place to enforce the provisions of the NESHAP. We believe that the costs of compliance with title V are, therefore, not justified for this area source category given the little potential for gain in compliance benefits.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. While we did not state this in the proposal, we know that States have been enforcing the NSPS on which the NESHAP is based for this source category for some time and that the State programs are sufficient to assure compliance with these NESHAP.

We noted at proposal that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is "unnecessary" to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption Rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

Balancing the four factors for this area source category supports the proposed finding that title V is unnecessarily burdensome. In considering the first factor, we concluded that title V would not lead to significant improvements in the compliance requirements. We concluded after consideration of the second factor that title V would impose a significant burden on the small facilities, particularly those not subject to the NSPS, but that the burden would not be significant for sources owned by larger companies. We concluded that the costs would not be justified given the little potential gain in the compliance likely to occur. We also determined that there are adequate implementation and enforcement programs in place to enforce the NESHAP and, furthermore, States have in fact been enforcing the provisions of the NSPS. All four factors individually support exemption, and collectively they support the finding in the proposal. Therefore, we conclude that title V permitting is "unnecessarily

[4] The new source performance standard (NSPD) applied only to plants that produced or had the design capacity to produce in one day batteries containing an amount of lead equal to or greater than 5.9 megagrams (6.5 tons).

burdensome" for the Lead Acid Battery Manufacturing area source category.

In addition to evaluating whether compliance with title V requirements is "unnecessarily burdensome", EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Lead Acid Battery Manufacturing area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Lead Acid Battery Manufacturing area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. There is no evidence in the record that leads us to question these conclusions. Therefore, we conclude that exempting the lead acid battery manufacturing area sources from title V permitting requirements in this rule will not adversely affect public health, welfare, or the environment.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to the lead acid battery manufacturing area sources. These plants are straightforward in design and are not covered by regulations with requirements that are very complicated to understand or implement. The permits we have examined for the Lead Acid Battery Manufacturing area source category currently consist of a single document that applies to all sources and to lead and the other criteria pollutants emitted. For these reasons, we do not find that title V permitting is necessary to improve understanding of and achieve compliance with these standards.

For the foregoing reasons, we are exempting the Lead Acid Battery Manufacturing area source category from title V permitting requirements.

D. Wood Preserving

As discussed in the proposal, we compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the NESHAP for the Wood Preserving area source category. EPA determined that the management practices currently used at most facilities is GACT and the rule requires recordkeeping that serves as monitoring and deviation reporting to ensure compliance with the NESHAP. The monitoring component of the first factor favors title V exemption because title V is unnecessary to provide adequate monitoring for wood preserving area sources. Because the NESHAP requires management practices for certain treatment processes and requires recordkeeping designed to serve as monitoring, additional monitoring requirements that might be added under title V would be unnecessary to assure compliance. Monitoring other than recordkeeping is not practical or appropriate in this case because the requirements are management practices. Records are required to ensure that the management practices are followed, including records of the type of preservative treatment process used, the types and quantities of preservatives used, and charge records of retort pressure.

As part of the first factor, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this final rule through recordkeeping or reporting requirements. For any affected wood preserving area source facility, the NESHAP requires an initial notification, a compliance status report, and deviations must be reported within 30 days. We considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6.

The wood preserving NESHAP also requires affected facilities to certify compliance with the management practices required by the rule. In addition, wood preserving facilities must maintain records showing compliance with the required management practices and report deviations. The information required in the deviation reports and records is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We acknowledge that title V might impose additional compliance requirements on this category, but, as stated in the proposal, we conclude that the monitoring, recordkeeping and reporting requirements of the NESHAP for wood preserving are sufficient to ensure compliance with the provisions of the NESHAP, and title V would not significantly improve those compliance requirements.

Under the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. The EPA does not have specific estimates for the burdens and costs of permitting wood preserving area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70

sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for wood preserving facilities, we found that over 90 percent of the 393 plants are small businesses, most with only a few employees. These small sources lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant economic and non-economic costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Most are small businesses with limited resources, and under title V they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Furthermore, given the large number of sources in the category and the relatively small size, it would likely be difficult for them to obtain assistance from the permitting authority. Thus, we find that factor two strongly supports title V exemption for wood preserving facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the economic and non-economic costs of compliance with title V would impose a significant burden on most of the 393 wood preserving facilities. We also concluded in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the NESHAP assure compliance with the management practices imposed in the NESHAP. In addition, below in our consideration of the fourth factor we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are so high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for wood preserving area sources.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113, and 114. We concluded that title V permitting is "unnecessary" to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Wood Preserving NESHAP without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we concluded that there would not be significant improvements to the compliance requirements in the NESHAP because the requirements in this final rule are specifically designed to assure compliance with the standards and management practices imposed on this area source category. We also concluded that the economic and non-economic costs of compliance with title V, in conjunction with the likely difficulty this large number of small sources would have obtaining assistance from the permitting authority, would impose a significant burden on the sources. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Thus, we conclude that title V permitting is "unnecessarily burdensome" for the Wood Preserving area source category.

In addition to evaluating whether compliance with title V requirements is "unnecessarily burdensome", EPA also considered at proposal, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Wood Preserving area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Wood Preserving area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve

compliance with the requirements. In this case, however, placing all requirements for the sources in a title V permit would do little to clarify the requirements applicable to the sources or assist them in compliance with those requirements because of the simplicity of the sources and the NESHAP, and the fact that these sources are not subject to other NESHAP or to other requirements under the CAA. We have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. For the final rule, we conclude that title V exemptions for the wood preserving area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the foregoing reasons, we are exempting the Wood Preserving area source category from title V permitting requirements.

V. Summary of Comments and Responses

We received a total of 18 comments on the proposed NESHAP from seven industry trade associations, representatives of eight affected facilities, one environmental group, and two State agencies during the public comment period. Sections V.A through V.J of this preamble provide responses to the significant public comments received on the proposed NESHAP.

A. Basis for Area Source Standards

Comment: One commenter stated that EPA's decision to issue GACT standards pursuant to section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (d)(3), for six of the seven area source categories at issue in the proposed rule is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter makes this argument for the following six source categories: Acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: Chromium compounds, flexible polyurethane foam production/flexible polyurethane foam fabrication, and lead acid battery manufacturing.

Response: As the commenter itself recognizes, in section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, section 112(d)(5), which is entitled "Alternative standard for area sources," provides:

> With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. (*Emphasis added*).

There are two critical aspects to section 112(d)(5). First, section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to section 112(c). The commenter does not dispute that EPA listed the six area source categories noted above pursuant to section 112(c)(3). Second, section 112(d)(5) provides that for area sources listed pursuant to section 112(c), EPA *"may, in lieu of"* the authorities provided in section 112(d)(2) and 112(f), elect to promulgate standards pursuant to section 112(d)(5). Section 112(d)(2) provides that emission standards established under that provision "require the maximum degree of reduction in emissions" of HAP (also known as MACT). Section 112(d)(3), in turn, defines what constitutes the "maximum degree of reduction in emissions" for new and existing sources. See section 112(d)(3).[5] Webster's dictionary defines the phrase "in lieu of" to mean "in the place of" or "instead of." See Webster's II New Riverside University (1994). Thus, section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of generally available control technologies or management practices (GACT), *instead of* issuing MACT standards pursuant to section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.[6]

The commenter argues that EPA must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. The commenter is incorrect, however. Had Congress intended that EPA first conduct a MACT analysis for each area source category and only if cost or some other reason made applying the MACT standard inappropriate for the category would EPA be able to issue a standard under section 112(d)(5), Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis, before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, EPA must set a GACT standard that is consistent with the requirements of section 112(d)(5) and have a reasoned basis for its GACT determination. As explained in the proposed rule and below, in determining what constitutes GACT for a particular area source category, EPA evaluates the control technologies and management practices that reduce HAP emissions that are generally available for the area source category. See 72 FR 116638. The legislative history supporting section 112(d)(5) provides that EPA may consider costs in determining what constitutes generally available control technologies or management practices for the area source category (GACT).[7] EPA cannot consider cost in setting MACT floors,

[5] Specifically, section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best-controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best-performing 12 percent of the existing sources for which the Administrator has emissions information. Section 112(d)(2) directs EPA to consider whether more stringent—so called beyond-the-floor limits—are technologically achievable considering, among other things, the cost of achieving the emission reduction.

[6] Section 112(d)(5) also references section 112(f). See CAA section 112(f)(5) (entitled "Area Sources" and providing that EPA is not required to conduct a review or promulgate standards under section 112(f) for any area source category or subcategory listed pursuant to section 112(c)(3) and for which an emission standard is issued pursuant to section 112(d)(5)).

[7] Additional information on the definition of "generally available control technology or management practices" (GACT) is found in the Senate report on the 1990 amendments to the Clean Air Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). That report states that GACT is to encompass: . . . methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

pursuant to section 112(d)(3). Congress plainly recognized that area sources differ from major sources, which is why Congress permitted EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not permit that consideration in setting MACT floors for major sources. This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states—provide EPA the authority to issue "[a]lternative standards for area sources." EPA properly issued standards for the area source categories at issue here under section 112(d)(5), and as demonstrated below, EPA has a reasoned basis for each of its GACT determinations.

Finally, even accepting, for arguments sake, the commenter's assertion that EPA must provide a rationale basis for setting a GACT standard as opposed to a MACT standard, we did so in the proposed rule. In the proposal, we explained that we can and do consider costs and economic impacts in determining GACT. We also explained that the facilities in the source categories at issue here are already well controlled for the Urban HAP for which the source category was listed pursuant to section 112(c)(3). See 72 FR 16638. We believe the consideration of costs and economic impacts is especially important for the well-controlled area sources at issue in this final action because, given current well-controlled levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for the area source category.

Comment: One commenter stated that EPA's alternative proposal (72 FR 16647) that GACT is no further emissions reduction for existing area sources in three source categories (chromium compounds manufacturing, carbon black production, and acrylic and modacrylic fibers production) is unlawful and arbitrary. The commenter stated that the Agency provided no basis whatsoever for concluding that GACT is no further emission reduction. In particular, the commenter claimed that EPA provided no basis for concluding that: (1) Chromium compounds manufacturers cannot reduce their emissions of such pollutants through the use of generally available control measures, (2) carbon black manufacturers cannot reduce all their emissions of HAP at least to the 98 weight percent reduction or 20 ppmv standards, and (3) acrylic and modacrylic fibers manufacturers cannot reduce their emissions of HAP at least to the levels EPA has identified as GACT.

Response: In the preamble to the proposed rule for the Acrylic and Modacrylic Fibers Production area source category, we solicited comments as follows:

> We are alternatively proposing that GACT for this existing area source is no further emission reduction. We request comment on the basis, consistent with section 112(d)(5), for asserting that GACT is no further control for the existing source. We request comment on this issue because the standard proposed above will not result in any emission reductions beyond what is already required by the State permit to which the existing facility is already subject.

We included the same request for comments in the preamble for the Chemical Manufacturing: Chromium Compounds area source category and the Carbon Black Production area source category. We are not finalizing this approach in the final rule. Rather, we are finalizing the proposed emissions standards with minor changes.

B. Proposed NESHAP for Acrylic and Modacrylic Fibers Production Area Sources

Comment: One commenter stated that EPA's decision to reject steam stripping of wastewater streams as GACT for the one existing area source plant on cost effectiveness grounds is unlawful and arbitrary. The commenter asserted that in the proposed rule, EPA did not dispute that steam stripping was commercially available and appropriate and did not claim that the economic impact was too great. The commenter further asserted that EPA presented only its own subjective views on cost effectiveness, which are not relevant under section 112(d)(5).[8] According to the commenter, EPA's decision to reject steam stripping is arbitrary because the Agency did not consider the relevant factors (availability, appropriateness, and cost) in determining what constitutes GACT. The commenter further stated that EPA failed to explain why it based its rejection of steam stripping on its claims about cost effectiveness or to explain why it did not consider the reductions cost effective.

Response: As stated in the preamble to the proposed rule (72 FR 16638, April 4, 2007):

> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Prior to proposal, we reviewed the generally available control technologies and management practices that have been applied to wastewater at the one existing acrylic and modacrylic fibers area source plant. This plant has a wastewater stream with a low concentration of AN, and the wastewater is processed in a wastewater treatment system to remove organic compounds and degrade the AN. We also considered the control technologies and management practices employed at major sources in this category for treating wastewater streams and determined that the major sources were treating similar low-HAP concentration wastewater streams in the same manner as the area sources in this category. We also evaluated the feasibility of steam stripping to remove the AN even though it was not employed in the category for low-HAP concentration wastewater streams. We stated at proposal that steam stripping the wastewater stream would require a capital expenditure of $700,000 with a recurring total annualized cost of $630,000 per year. We stated that, assuming a 90 percent removal rate, the emissions reduction from steam stripping for the existing area source facility would be 7 tpy. The cost effectiveness would be $90,000 per ton of AN.[9] We determined that steam stripping of the wastewater stream at the only known existing area source was not appropriate for application for the source because it was not cost effective. See *e.g., Husqvarna AB* v. *EPA*, 349 U.S. App. DC 118, 254 F.3d 195, 201 (DC Cir. 2001) (Finding EPA's decision to consider costs on a per ton of emissions removed basis reasonable because CAA section 213 did not mandate a specific method of cost analysis). Consequently,

[8] The commenter cites legislative history, noting that GACT must reflect the "methods, practices and techniques that are commercially available and appropriate for application by the sources in the category considering economic impacts" (72 FR 16638, quoting S. Rep. No. 101–228, at 171–172).

[9] We recognize that in other contexts the effectiveness of steam stripping is 96 percent, which results in a cost effectiveness of $85,000 per ton of AN.

we concluded that GACT was the plant's current management practice of processing the water in a wastewater treatment system.

In response to comments, we evaluated plants in similar industrial categories (*e.g.*, the synthetic organic chemical manufacturing industry subject to subpart G in 40 CFR part 63) and found that the general management practice for low-HAP concentration wastewater streams is to process the water in a wastewater treatment system similar to that employed by the existing acrylic and modacrylic area source. We conclude here that the current practice employed at the existing facility is GACT and, consistent with our finding at proposal, stream stripping is not GACT for this area source category.

Comment: One commenter stated that the proposed rule for existing sources was very specific to the one area source plant that EPA identified and stated that it should more appropriately be based on efficiencies or concentrations to allow some operating flexibility. While the commenter acknowledged that this facility is the only acrylic fiber manufacturer currently known to be an area source, the commenter believed that future facilities may struggle to comply with such site-specific requirements. Specifically, the commenter suggested that the proposed emissions limit for polymerization process equipment, which is expressed in terms of pounds per hour (lb/hr), should be written more generally for different types of processes and control equipment that might be used and should require a control efficiency or outlet concentration. According to the commenter, this would more closely match the approach provided for new sources which used efficiency and concentration limits.

The commenter also noted that the control device parameter operating limit for existing sources specifies the water flow rate of the scrubbers. The commenter stated that the standard should require the operating parameters to be established based on performance testing. The commenter asserted if past testing is used and parameters were previously set, this should still be acceptable. According to the commenter, this approach would allow the existing facility flexibility to change these parameters based on performance testing should it become necessary.

Response: We agree that the proposed emission limit for process vents is very site-specific to the one known area source plant. We are providing existing sources with the option of complying with the standards for new sources. Although the standards for new and existing sources are expressed in different formats, both standards require the same level of emission control, and both ensure that the technology identified as GACT is in place. Thus, the compliance alternative we are adopting in the final rule provides an equivalent level of control and additional flexibility for existing sources to demonstrate compliance with the NESHAP.

We also agree with the commenter's suggestion about establishing operating limits for the scrubbers during a performance test and have revised the rule accordingly. The scrubber water flow must be monitored during the performance test, and the test must demonstrate compliance with the emission limit. The operating limit for scrubber water flow is determined from the lowest average flow rate during any test run that shows compliance with the emissions limit.

C. Proposed NESHAP for Carbon Black Production Area Sources

Comment: Two commenters stated that there are no area sources in the source category producing carbon black by the furnace or thermal processes. The commenters believed that the 2002 National Emissions Inventory (NEI) incorrectly designated the Degussa Engineered Carbon facility in Belpre, Ohio, as an area source. Both commenters claimed that the emissions reported in the NEI and the 2005 Toxics Release Inventory (TRI) from this facility, which are below the major source thresholds, represent levels after control but that the uncontrolled "potential to emit" emissions are considerably above the major source thresholds.

The commenters asserted that this facility was identified as the only existing area source in the category and was used to form the basis for GACT. The commenters stated that EPA determined GACT based on this mistaken identification of the Belpre, Ohio facility as an area source. The commenters requested that EPA reconsider its GACT determination in light of the fact that the source considered in making such a determination is a major source and that GACT determinations require considerations of economics and a technical feasibility for the smaller sources outside of the major source category. The commenters stated that GACT for area sources should be less stringent than MACT for major sources due to the financial and technical considerations that would apply to a smaller area source.

Response: The identification of the Degussa plant in Belpre, OH as an area source was due in part to the information in the NEI and TRI as suggested by the commenters. We also reviewed the plant's title V permit, which expires in December 2007. The permit indicated that the plant was a major source of criteria pollutants and not a major source of HAP emissions. The permit also did not indicate that the plant was subject to the MACT standard in subpart YY (40 CFR part 63). While we were aware of the plant's recent permit renewal application that incorporated the provisions of subpart YY, it was still unclear whether the plant was a major source of HAP. However, since one of the commenters is the plant itself, we accept that we made an error in considering this facility to be an area source.

In light of this new information, we reevaluated our GACT determination for existing carbon black area sources. As stated in the proposal preamble (72 FR 16638, April 4, 2007):

> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Given that there are no current area sources, we examined all existing carbon black plants, which happen to be all major sources. Those sources have applied technologies to reduce organic HAP emissions from main unit process vent streams with concentrations of 260 ppmv or greater. The control technologies typically used for this source category are flares and incinerators. These control technologies have also been widely applied to many emission sources in other similar industrial source categories, such as process vents at petroleum refineries and chemical plants. These control technologies are therefore generally available.

Even if by some mechanism an existing major source becomes an existing area source, that facility would already have the necessary controls in

place and the facility would incur no additional costs in response to this final NESHAP. The facility would not be able to remove or discontinue use of any of the controls because they would likely exceed the major source thresholds (i.e., the commenters pointed out that their potential to emit based on emissions before control exceeds major source thresholds). Further, the controls were installed to meet permit limits for criteria pollutants, and these requirements would not change just because a source became an area source of HAP emissions.

Accordingly, after considering the availability of the above-identified control technologies, which provide the most effective control of HAP emissions from these processes, their demonstrated applicability to carbon black facilities and similar emission sources, and their reasonable costs for vent streams with concentrations above 260 ppmv, we are finalizing the standard for carbon black area sources set forth in the proposal.

Comment: One commenter stated that EPA's decision to provide a 260 ppmv applicability cutoff in the proposed rule for carbon black producers is based on factors that are irrelevant to the establishment of GACT standards under section 112(d)(5) and devoid of any rational explanation. According to the commenter, EPA determined that GACT for carbon black manufacturing is either a 98 weight-percent reduction in HAP emissions or a 20 ppmv concentration standard. The commenter claimed that EPA proposed to allow sources to meet an alternative 260 ppmv standard. According to the commenter, EPA's only explanation for allowing sources to emit 13 times as much HAP as its own GACT standard would allow is that "this cutoff represents the lowest control device inlet concentration reported at one of the best-controlled facilities" and "we do not have available information to indicate that the single existing area source controls process vent emissions with concentrations below this level." The commenter asserted that EPA did not explain the relevance of either of those claims to its determination of GACT. According to the commenter, the control device inlet concentration at any given source is in no way indicative of the emissions level that can be achieved by the technology that EPA itself has recognized as GACT and therefore, it is irrelevant to the GACT determination. The commenter also claimed that because control device inlet information is irrelevant under section 112(d)(5), EPA's decision to base an alternative GACT decision on such information is arbitrary and that EPA's complete failure to explain why it would base its GACT decision on such information or why it believed that such information is even relevant to the determination of GACT is also arbitrary.

The commenter stated that to the extent EPA based its decision on the fact that the single source currently in the area source carbon black category does not currently control vent emissions streams below the 260 ppmv level, its decision is unlawful. The commenter asserted that EPA's obligation under section 112(d)(5) is to base standards on control measures that are commercially available and appropriate for the category. According to the commenter, the fact that a source has not already voluntarily controlled its emission streams below a given level does not mean that control technology is not commercially available for use on such streams or that the use of such technology is not appropriate. The commenter stated that EPA did not even suggest that using a flare or incinerator to control emissions from vent streams with concentrations below 260 ppmv is either technically or economically infeasible.

Response: As noted above, other commenters reported that the facility originally identified as the only existing area source in this category (upon which the proposed GACT requirements were based) is in fact a major source. Therefore, as we stated in the previous response, we reevaluated GACT for this category and determined that for sources with process vent stream emissions of 260 ppmv or greater, the technology that applies at major sources (i.e., flares or incinerators) is transferable to area sources. We have no emissions data for process vent streams below 260 ppmv, as the major sources are not required to control below this level.

As an initial matter, we reject the commenter's statement that control device inlet concentration is not relevant. The inlet concentration and other stream characteristics (*i.e.*, the characteristics of the uncontrolled emission stream) are directly related to both the effectiveness and the cost of a control device. For example, the heating value of components of the inlet stream is a key component in the effectiveness and cost of a flare. Therefore, the concentration affects flame stability, emissions, and flame structure. A lower concentration (and thus lower heating value) produces a cooler flame that does not favor combustion kinetics and is also more easily extinguished. While these limitations can sometimes be overcome through the use of auxiliary fuels, this increases the costs. Therefore, we believe that the use of concentration is an appropriate consideration in determining GACT for this source category.

Flares and incinerators are established control technologies that are generally available for this source category for POM, which is the Urban HAP for which this source category was listed. Therefore, we analyzed the potential impacts associated with a requirement to control process vent streams with organic HAP concentrations of 260 ppmv or less. We estimate that the cost effectiveness of controlling a 260 ppmv stream with a flare would be around $19 million per ton of POM emission reduction (carbon black production was listed as an area source category based on emissions of POM). The cost effectiveness of an incinerator was estimated to be almost $25 million per ton of POM reduction. We believe that the costs of requiring the control of process vent streams with organic HAP concentrations less than 260 ppmv are cost prohibitive and therefore do not represent methods, practices, and techniques which are generally available for application by the sources in this category. Therefore, the final rule retains the 260 ppmv applicability threshold.

D. Proposed NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds

Comment: One commenter objected to the proposed standard requiring plants to operate a capture system that collects gases and fumes from each emissions source and conveys the gases to a PM control device because, according to the commenter, EPA did not say how efficient either the capture system or the PM control device must be. The commenter also stated that EPA appears to indicate that any capture system and control device will do, but the commenter acknowledged that EPA did provide equations that appear to establish numerical limits on PM emissions on a pounds per hour basis. The commenter stated that EPA's apparent assumption that all PM control is the same and equally sufficient for controlling emissions from this source is at odds with the record evidence and is arbitrary.

According to the commenter, not all PM controls are equally effective. The commenter stated that "it is plain from the discussion of PM controls provided by both EPA itself and ICAC that PM controls vary widely in effectiveness, and is plain that chromium compound manufacturers could reduce their emissions of hexavalent chromium and

other HAP by using more effective PM controls." Examples given by the commenter include more effective fabric filters such as filters with better fabric or better baghouse design and more effective scrubbers.

According to the commenter, EPA did not consider the possibility of requiring any controls other than those that are currently in use and did not discuss which technologies are currently available, their effectiveness, or how much they cost. The commenter asserted that EPA's rejection of more effective controls without even considering them is arbitrary and capricious.

Response: We disagree with the commenter's statement that EPA concluded that any capture system or any control device is, as the commenter implies, sufficient in the abstract to comply with the NESHAP. EPA established numerical emissions limits for chromium, using PM as a surrogate, and the emissions limits are established by equations set forth in the rule. The commenter stated that the equations "appear" to establish numerical emission limits, and, in fact, the equations do establish such limits on a pounds per hour basis, and the commenter's implication that they do not is unsupported.

Further, we disagree with the commenter that we assumed that all PM control devices are equally effective. We proposed an emissions standard for the metal HAP at issue using PM as a surrogate. The PM emissions standard identified as GACT was based on control technologies that are generally available, considering cost, and represent a level of control that has been achieved at the two existing chromium compound manufacturing facilities.

As we discussed earlier, in determining GACT for area sources, we examine the demonstrated and generally available controls at area sources in the source category. See 72 FR 16638, April 4, 2007. We also consider the standards applicable to major sources in the category and determine if those controls are generally available and transferable to area sources. See 72 FR 16638, April 4, 2007. In addition, in appropriate circumstances, we may consider technologies employed at similar industrial source categories. See 72 FR 16638, April 4, 2007. We also consider cost and economic impacts of generally available control technologies or management practices on a source category in determining GACT. See 72 FR 16638, April 4, 2007.

In this case, at proposal, we evaluated the control technologies that are used by the existing chromium compound manufacturing area source facilities. The two processes with the greatest emissions potential are the high temperature operations of the rotary kilns used for roasting the chromite ore and the processes used for quenching the hot kiln roast. Both plants use a combination of wet scrubbers and electrostatic precipitators in series for one or both of these processes. This combination of wet scrubbers and electrostatic precipitators has been demonstrated as effective for this source category and is generally available.[10] Thus, we established GACT based on the current controls employed at the two area sources in this category. We did not find that the costs and economic impacts of compliance would be significant because the controls that we determined were generally available in the category were being employed at the existing facilities, and nothing in the record indicated that the costs would be prohibitive for new sources.

There are no major sources in this category, and we did not consider similar source categories at proposal. In response to comments, however, we have evaluated similar primary metal industries. We have found that electrostatic precipitators, often in combination with scrubbers, the same controls employed by the emissions sources in this category, are the commonly used control devices for the smelting or roasting operations in other primary metal industries, including primary steel, primary copper, and primary zinc production. We affirm our conclusion that the proposed controls are GACT for this area source category. The proposed standard, with minor changes discussed elsewhere, is finalized in this rulemaking.

Comment: One commenter requested clarification of the performance test requirements. The commenter pointed out that for an existing facility, the proposed rule allows certification of compliance with the emission limits based on a previous performance test conducted within the past 5 years; otherwise, a facility must conduct tests to demonstrate initial compliance. The commenter noted that the proposed rule conflicted with the General Provisions table which indicates that performance test requirements apply to an existing source only if the permitting authority requests the tests. The commenter stated that he initially understood that EPA would require initial performance tests only if requested by the permitting authority. According to the commenter, the two affected plants that produce chromium compounds from chromite ore are currently performing adequate monitoring, recordkeeping, and reporting to demonstrate compliance with the proposed emissions limits, and any decision to require performance tests should be at the discretion of the permitting agency.

Response: We acknowledge that the current title V permits for the affected plants require performance testing only at the request of the permitting authority. However, the final rule requires performance testing if a valid performance test has not been conducted within the 5 years prior to the effective date of the final rule. We found that performance tests have not been conducted within the past 5 years at the two existing plants, and a few minor emissions sources have never been tested. An initial performance test or a recent performance test is very important to ensure that the control devices are operating as designed and can be shown to meet the applicable emissions limit. Although the plants have performed the monitoring, reporting, and recordkeeping required by their permits, we cannot correlate the monitoring results to the performance of the control devices to ensure the emissions limits are met unless a performance test has been conducted to demonstrate this. Once a performance test has demonstrated compliance, we will have assurance that subsequent monitoring will ensure that the emissions sources continue to operate as designed and as demonstrated by the performance test.

The commenter is correct in that there were conflicting entries in the General Provisions table of the proposed rule for performance test requirements. We have corrected the table in the final rule to clarify the performance test requirements as discussed above.

Comment: One commenter requested that EPA clarify the definition of a "new" affected source. The commenter asked if a new affected source includes new or reconstructed equipment at an existing site, or is a new affected source a new or reconstructed chromium chemical manufacturing facility. The commenter suggested that EPA add a definition of "chromium compounds manufacturing facility."

Response: The proposed rule stated that the "affected source" is "each chromium compounds manufacturing facility." We have added a definition of "chromium compounds manufacturing facility" to further clarify what the affected source is. A new affected source is one for which construction or

[10] The effectiveness of these controls is shown by the TRI reporting for the North Carolina plant with a 95 percent reduction in chromium emissions since the control technology identified as GACT was installed.

reconstruction commenced after April 4, 2007. The definitions of "construction" and "reconstruction" are given in the General Provisions (40 CFR 63.2).

Comment: One commenter objected to the proposed requirements for initial control device inspections for plants that are already implementing the inspection requirements according to an established schedule in an approved title V permit. The commenter claimed that the proposed requirement for initial inspections will result in increased costs and result in shutdown of key emissions sources and control devices that are not due for inspection until 2008 and 2009. The commenter provided an example of kilns that must be shutdown and cooled before the internal components of the electrostatic precipitators can be inspected. According to the commenter, the shutdown and cooling period for the kilns takes several days and results in significant cost in terms of lost production and other expenses. As an alternative, the commenter suggested that EPA require an initial inspection prior to startup for installed control devices which have not operated within 60 days of the compliance date.

Response: Our intent at proposal was to codify the control device inspection requirements currently in the permit of the North Carolina plant because we determined that these requirements represent what is generally available, and this plant had inspection requirements that were more comprehensive than those at the other area source plant. The proposed inspection requirements included daily, monthly, annual, and biennial inspections for various control devices and their components. To perform the internal inspection, it is necessary to shut down the process (the high temperature kilns) and allow the system to cool down. We agree that the 24-month period as stated in the permit is reasonable for this particular type of inspection. It provides flexibility to the facility to perform the inspection during periods of regularly scheduled kiln maintenance, which minimizes the disruption to production and the large expense that would result from a mandatory initial inspection and subsequent annual inspections. The operating processes also have to be shut down for the annual internal inspections of baghouses and wet scrubbers. Consequently, we have revised the rule to state that an initial inspection of the internal components of electrostatic precipitators does not have to be performed if an inspection has been performed within the past 24 months. The next inspection must be performed within 24 months of the last inspection, and subsequent inspections of the internal components must be performed for each following 24-month period. Similarly, an initial inspection of the internal components of baghouses and wet scrubbers does not have to be performed if an inspection has been performed within the past 12 months. The next inspection must be performed within 12 months of the last inspection, and subsequent inspections of the internal components must be performed for each following 12-month period. However, we continue to require initial inspections that do not require shutting down the process and control device, such as inspecting baghouses and ductwork for leaks, verifying the proper operation of electrostatic precipitator parameters, and water flow to wet scrubbers.

We agree with the commenter's suggestion that we require an initial inspection prior to startup for installed control devices which have not operated within 60 days of the compliance date. This inspection can be performed before process operations resume and thus would not require a disruptive shutdown.

Comment: One commenter asked if annual inspection requirements for wet scrubbers apply to cyclonic scrubbers prior to wet electrostatic precipitators. According to the commenter, this is not a requirement in the current title V permit and would not be consistent with EPA's approach of codifying the monitoring requirements currently applicable to the North Carolina plant.

Response: Our intent at proposal was to be consistent with the established inspection requirements in the title V permit of the North Carolina plant. The permit requires internal inspections of electrostatic precipitators, wet scrubbers, and baghouses that are used as primary control devices. Internal inspections of cyclonic scrubbers that are installed upstream of the electrostatic precipitators are not required by the permit, nor do we believe they are needed. Unlike electrostatic precipitators, cyclonic scrubbers do not have complex internal components subject to failure that would affect emissions control performance. Consequently, we are clarifying that annual internal inspections of cyclonic scrubbers installed upstream of electrostatic precipitators are not required. However, we continue to require monitoring for the cyclonic scrubbers, including the presence of water flow and visual inspections of the system ductwork and scrubber unit for leaks.

Comment: One commenter requested changes to the process description in the preamble to the proposed rule and corresponding revisions and clarifications to Table 1 of the proposed rule which identifies the regulated process equipment. The commenter stated that the table should be titled "Emissions Sources" instead of "Emissions Points"; the "filter for sodium chromate slurry" should be changed to "residue dryer system"; the "reactor used to produce chromic acid" should be changed to the "melter used to produce chromic acid"; and the "sodium dichromate evaporation unit" should be removed from the table because there are no chromium emissions from this unit at either plant.

Response: We agree that the table is a listing of emission "sources", and we will clarify that the production of chromic acid occurs in a "melter." We also agree that we inadvertently included the filter for sodium chromate slurry, which is not an emissions source, and should have included instead the residue dryer system, which is an emissions source. We identified the sodium dichromate evaporation unit as a process at the chromium compound manufacturing plants. However, this process operates under a vacuum to reduce the water content at temperatures far below the temperatures that would be needed to volatilize chromium compounds in the wet slurry into PM. This process is not an emissions source for PM and was therefore not identified in the title V permit as an emission source. Consequently, we are deleting the sodium dichromate evaporation unit from the table of emissions sources.

Comment: One commenter noted that the General Provisions table in the NESHAP should be revised to eliminate duplication of entries for § 63.10(e)(1) and (e)(2).

Response: We agree and have corrected the table to eliminate the duplication.

E. Proposed NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources

Comment: One commenter stated that one HAP emitted by flexible polyurethane foam production and fabrication facilities is methylene chloride. According to the commenter, EPA indicated in the preamble that methylene chloride is used by stabstock foam plants as an ABA and an equipment cleaner, and that molded and rebond foam plants use methylene chloride as a mold release agent and an equipment cleaner. The commenter noted that for slabstock foam plants EPA

proposed either to prohibit the use of methylene chloride or to establish certain requirements for its use.

The commenter asserted that EPA must prohibit the use of methylene chloride at slabstock facilities based on the following statement from the proposal preamble: "[b]ased on recent contacts with the industry, we have verified that every known slabstock facility has converted their process to use a non-HAP technology (72 FR 16649)." The commenter stated that EPA's failure to require the use of non-HAP technology it acknowledges to be GACT is unlawful and arbitrary. Also arbitrary, according to the commenter, is the Agency's failure to explain its decision to allow facilities to continue to use methylene chloride with various control requirements, given its own conclusion that a ban on the use of methylene chloride is GACT.

Response: The proposed regulation addressed eight different types of situations where methylene chloride could potentially be used at flexible polyurethane foam production and flexible polyurethane foam fabrication facilities. For seven of these potential use situations, the proposed rule prohibited the use of methylene chloride. The lone situation where the proposed rule did not prohibit the use of methylene chloride was as an ABA in the production of slabstock flexible polyurethane foam.

By only selecting a portion of the language from the preamble related to the determination of GACT for methylene chloride usage as an ABA at slabstock facilities and presenting it out of context, the commenter has misrepresented EPA's rationale in the proposal preamble. The entire discussion, from which the commenter quoted selectively, is as follows:

> The NESHAP requirements, along with the revisions to the Occupational Safety and Health Administration (OSHA) permissible exposure and short-term exposure limits for methylene chloride (63 FR 50711, September 22, 1998), caused slabstock foam facilities to investigate, evaluate, and install technologies to reduce or eliminate the use of methylene chloride as an ABA at their facilities. These technologies include alternative formulations to reduce the amount of methylene chloride ABA needed, alternative non-HAP ABAs (acetone, liquid carbon dioxide), controlled or variable pressure foaming, and forced cooling. Based on recent contacts with the industry, we have verified that every known slabstock facility has converted their process to utilize one of these technologies * * *. Consequently, we propose to conclude that emissions limitations based on the application of these technologies are generally available (GACT) for new and existing sources.

See 72 FR 16649, April 4, 2007.

As explained in the proposal, we determined that some of the technologies listed could result in the complete elimination of the use of methylene chloride as an ABA. However, we also discussed alternative formulations that reduce, but do not eliminate, the amount of methylene chloride ABA needed in the list of generally available control measures. Alternative formulations can include, among other things, chemical additives and alternative polyols. These measures "reduce" the use of methylene chloride as an ABA without eliminating it. In fact, a specific relevant example of these technologies was provided by a slabstock flexible polyurethane foam production facility that commented on the proposal. This commenter reports that their facility has reduced methylene chloride emissions by 77 percent through the reformulation of foam grades and marketing to encourage customers to switch to foam grades that the commenter's company can produce without methylene chloride. This is a clear example of the "alternative formulations" referred to in the proposal preamble as one of the technologies we determined to be GACT. Therefore, we reject the commenter's assertion that we concluded that GACT was a ban on the use of methylene chloride as an ABA and did not make any revisions in the final rule as a result of this comment.

Comment: One commenter opposed the proposal to prohibit all use of methylene chloride-based adhesives. The commenter stated that there may be certain applications where adhesives based on methylene chloride provide superior performance and can be used in compliance with Occupational Safety and Health Administration (OSHA) worker exposure limits. The commenter only mentions loop slitter operations.

Response: In our proposal, we specifically requested comments on "whether and under what circumstances methylene-chloride based adhesives (*e.g.*, in small specialty applications) *are being used or might be used* by the foam fabrication industry, and what quantities are or might be involved in such applications" (72 FR 16649) (*emphasis added*). The commenter's general assertion that there may be applications where methylene chloride-based adhesives provide superior performance is not responsive to our request for comments. As for loop slitters, we found at proposal that the industry has discontinued the use of methylene chloride-based adhesives, and we concluded at proposal that GACT was the prohibition of the use of such adhesives for loop slitter operations. At this time, we are not aware of any specific applications where methylene chloride adhesives provide performance that cannot be achieved by alternative adhesives and where they can be used in compliance with OSHA worker exposure limits. Consequently, the final rule retains the prohibition of the use of methylene chloride adhesives in flexible polyurethane foam fabrication operations.

Comment: One commenter indicated that a less burdensome program should be provided for flexible polyurethane foam producers that utilize methylene chloride as an ABA. This commenter's company is a small business that employs less than 100 people. They operate one facility that produces and fabricates flexible polyurethane foam. The commenter pointed out that their facility produces thousands of pounds of flexible polyurethane foam per month, while typical facilities throughout the country produce millions of pounds per month.

The commenter provided information on the numerous improvements that have been made at this facility to reduce methylene chloride usage and emissions. They have eliminated all uses of methylene chloride except as an ABA, and have made significant reductions (over 75 percent) in its usage as an ABA.

The commenter indicated that this facility has a federally enforceable synthetic minor permit which caps methylene chloride emissions on a monthly and 12-month rolling basis. The permit also incorporates many of the monitoring and recordkeeping requirements of the foam production MACT rule.

The commenter suggested that, for this facility, the proposed rule is unnecessarily complicated in view of the environmental benefits realized by the programs already in place. The commenter suggested several amendments to the rule to reduce the burden. In general, the commenter requested that the methylene chloride ABA emissions caps and the monitoring and reporting provisions in their permit be provided as an acceptable option for meeting the requirements of the area source rule for slabstock foam production.

The commenter cited numerous areas where capital expenditures would be necessary to comply with the proposed rule including the purchase of control equipment (storage tank vapor balance line), computer software, IFD and density testing equipment, and meter calibration equipment. The commenter

noted that the initial investment would also include costs for computer program development and operator training. The commenter estimated that the total initial capital costs would range from $25,000 to $35,000. The commenter also stated that the proposed rule would result in increased annual costs of between $28,000 and $45,000 for testing, training, calibrations, maintenance, tracking, recordkeeping and data entry, and reporting.

Response: The proposed rule included an emissions limitation format for the use of methylene chloride as an ABA, along with associated monitoring, recordkeeping, and reporting provisions, that allows flexibility in how sources choose to comply (for example, individual emissions point requirements versus a source-wide overall limit, monthly compliance versus 12-month rolling average). We believe that this flexibility outweighs any perceived complexity of the format of the emissions limitation and the monitoring and recordkeeping requirements, and we do not believe that the costs of these requirements are inappropriate for this category. Therefore, we did not make any changes to the proposed rule in response to these comments.

Comment: This same commenter stated that the compliance date of the proposed rule for slabstock flexible polyurethane foam production sources (the date of publication of the final rule) is not reasonable since the final rule will result in the need for equipment, operating, monitoring, and administrative changes.

Response: The commenter cited numerous areas where capital expenditures would be necessary to comply with the proposed rule including the purchase of control equipment (storage tank vapor balance line), computer software, IFD and density testing equipment, and meter calibration equipment. The commenter also indicated that computer program development will be necessary and operators will need to be trained. Given the changes that will be necessary to comply with the final rule, we agree that it is reasonable to extend the compliance date for existing sources. Therefore, the final rule has a compliance date for slabstock foam affected sources electing to continue to utilize methylene chloride as an ABA to 1 year from the date of publication of the final rule.

Comment: One commenter did not understand how facilities that do not release a HAP, specifically methylene chloride, could be subject to the NESHAP for flexible polyurethane foam production and fabrication. In support, the commenter recited the definition of an area source as "any stationary source of hazardous air pollutants that is not a major source * * *." The commenter believed the proposed rule conflicts with the definition of an area source because the proposed NESHAP has specific requirements for facilities that do not release any HAP. The commenter asked how this is possible.

Response: The first paragraph of the proposed rule, § 63.11414(a), states "You are subject to this subpart if you own or operate an area source of hazardous air pollutant (HAP) emissions that meets the criteria in paragraph (a)(1) or (2) of this section." Facilities that are not sources of any hazardous air pollutants, including methylene chloride, are not subject to the rule. Therefore, the comment that "the proposed NESHAP has specific requirements for facilities that do not release any HAP" is incorrect.

F. Proposed NESHAP for Lead Acid Battery Manufacturing Area Sources

Comment: One commenter stated that EPA's proposed GACT determination for battery manufacturers does not satisfy section 112(d)(5). The commenter claimed that rather than evaluating the potential reduction measures that are commercially available and appropriate for application by battery manufacturers, EPA considered only one option: requiring all sources to comply with the 1982 NSPS for PM, with which 53 out of 58 sources are already in compliance anyway. The commenter stated that section 112(d)(5) requires the use of "methods, practices and techniques" which are commercially available and appropriate for application by the sources in the category considering economic impacts." The commenter said that there are "methods, practices, and techniques" that are commercially available and appropriate for application by battery manufacturers. The commenter specifically cited a 1998 EPA report that specifies a 2:1 air to cloth ratio as the "[g]enerally safe design level" for lead oxide in ordinary baghouses. With respect to processes currently controlled with fabric filters, the commenter stated that there are more effective fabric filters, and with respect to processes currently controlled by impingement scrubbers, there are fabric filters or more effective scrubbers (*e.g.* venturi scrubbers). According to the commenter, EPA has not required GACT standards that reflect the use of these technologies, nor even considered doing so. The commenter concluded that EPA's rule contravenes section 112(d)(5).

The commenter also stated that EPA's rule is arbitrary and that EPA provided no rationale for failing to consider methods, practices and techniques that are commercially available and would reduce battery manufacturers' emissions significantly. The commenter stated that EPA does not claim that more efficient control measures are not commercially available for any of the relevant processes, nor does the Agency claim that they are too costly. In particular, according to the commenter, EPA does not even say what the cost for more efficient technologies would be or why it thinks they might be too costly. The commenter stated that EPA failed to consider any approach other than using the 1982 NSPS without providing any explanation for its choice. The commenter stated that it appears EPA's only consideration was whether the 1982 NSPS might be too stringent to be GACT, and EPA did not entertain the possibility that more protective standards might be achievable through the use of generally available measures. According to the commenter, EPA's rule is not only arbitrary but unlawful in that it reflects a complete abrogation of the EPA's statutory duty to evaluate currently available control measures and set standards that reflect them.

Response: Section 112(d)(5) authorizes the Administrator to "elect to promulgate standards or requirements applicable to sources in such [area source] categories or subcategories which provide for the use of generally available control technologies or management practices [GACT] by such sources to reduce emissions of hazardous air pollutants." As we discussed earlier, in determining GACT for area sources, we examine the demonstrated and generally available controls at area sources in the source category. See 72 FR 16638, April 4, 2007. We also consider the standards applicable to major sources in the category and determine if those controls are generally available and transferable to area sources. See 72 FR 16638, April 4, 2007. In addition, in appropriate circumstances, we may consider technologies employed by sources in similar industrial categories. See 72 FR 16638, April 4, 2007. We also consider cost and economic impacts of generally available control technologies or management practices on a source category in determining GACT. See 72 FR 16638, April 4, 2007.

For the lead acid battery area sources, at proposal, we considered the controls and technologies employed by the area sources in the category. We found that

the smallest sources in this category were not subject to the lead acid battery NSPS. We also found that there are approximately 60 known area sources in this category and no known major sources. We concluded that the requirements of the NSPS represented generally available control technologies or management practices for this source category. Moreover, although not stated in the proposal, because of the large number of area sources in this category, we concluded that we did not need to look at sources in similar industrial categories for determining what is generally available to the lead acid battery manufacturing category.

At proposal, we found that the NSPS addressed lead (not PM) emissions from six types of processes at lead acid battery manufacturing plants: (1) Grid casting, (2) paste mixing, (3) three-process operations, (4) lead oxide manufacturing, (5) lead reclamation, and (6) other lead emitting processes. The commenter stated that more effective "methods, practices, and techniques" including fabric filters with air to cloth ratios between 2:1 and 3.5:1 (and specifically 2:1 for lead oxide) are available, and cited this as evidence that significant advancements in technology have occurred since the NSPS was promulgated in 1982. The 1998 EPA report that the commenter cited indicates that the generally safe design level for lead oxide in ordinary baghouses is, in fact, the same 2:1 air to cloth ratio required in the NSPS standard for lead oxide manufacturing, which is incorporated into this rule. Thus, contrary to the commenter's assertion, the emission limitations in the NSPS were in this case based on the specific technology addressed by the commenter and that technology is considered state-of-the-art today.

The commenter assumed that the category's current lead emissions reflect a 98 percent reduction from uncontrolled emissions, and suggested that substantial emissions reductions would be obtained through setting new standards that reflect a 99.9 percent reduction. We are unsure on what the commenter based this assertion. For fabric filters with a 6:1 air to cloth ratio in the NSPS, which is the control basis for the standards for paste mixing, three-process operations, and other lead emitting processes in this rule, we attributed 99 percent lead emissions reduction. We attributed a 90 percent lead removal efficiency for impingement scrubbers, the control basis for the standards for the grid casting and lead reclamation processes. Therefore, while there would be an incremental reduction in emissions if technologies that achieve 99.9 percent lead emission reduction were required by this area source NESHAP, the reductions would not be as substantial as predicted by the commenter.

We did not discuss the costs of imposing additional control requirements on this category at proposal, but we do so here in response to this comment. We estimate that the total capital investment for a typical plant to upgrade to 99.9 percent controls could range from more than $600,000 to almost $1.7 million, depending on the technologies selected. We estimate annual costs of this additional control for a typical plant would be around $1.2 million per year due to increased operator labor costs, maintenance labor and material costs, electricity and other utility costs, taxes and insurance, and capital recovery costs. This cost represents almost 5 percent of the total shipments for an average lead acid battery establishment. We do not believe that these costs and potential economic impacts are appropriate for application by the area sources in this category. The costs incurred per ton of lead emissions reduced would be around $450,000 to $500,000 based on replacing existing control devices or installing additional devices to increase control efficiency up to 99.9 percent.

In conclusion, we believe that the technologies upon which the proposed standards were based are generally available to this industry. Moreover, we believe that the costs of requiring every area source lead acid battery facility to install technologies that achieve additional incremental emission reductions, beyond those established in these NESHAP, would be prohibitive. Thus, we have not revised the emission standards in the rule in response to this comment.

Comment: One commenter stated that in addition to emitting more than 26 tpy of lead, lead acid battery manufacturers emit more than 47 tpy of other HAP; among these are HAP that are not metals, do not behave like PM in the stack gas, and therefore cannot be captured or reduced through the use of PM control devices. According to the commenter, section 112(d) requires emission standards for each HAP listed in section 112(b). Assuming that the Agency does not have to set separate standards for each HAP when issuing standards under section 112(d)(5), the commenter stated that EPA still has an obligation to address all of the HAP that a category emits when setting GACT standards. The commenter claimed that EPA has an obligation to address the HAP emitted by battery manufacturing plants that are not captured by PM control devices, and the failure to do so was unlawful. The commenter also stated that the failure to consider the HAP that are not emitted as PM and to explain why they were not addressed is arbitrary and capricious.

Response: Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP emitted from area sources that pose the greatest threat to public health in the largest number of urban areas (the "Urban HAP") and identify the area source categories that will be listed pursuant to section 112(c)(3). Section 112(c)(3), in relevant part, provides:

> The Administrator shall, * * *, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section.

Thus, section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation.

Section 112(d)(1) requires the Administrator to promulgate regulations establishing emissions standards for each area source of HAP listed for regulation pursuant to section 112(c). EPA identified the 30 Urban HAP that pose the greatest threat to public health in the Integrated Urban Air Toxics Strategy. In that same document, EPA listed the source categories that account for 90 percent of the Urban HAP emissions.

We have interpreted the above provisions of section 112 to require EPA to regulate only those Urban HAP emissions for which an area source category is listed pursuant to section 112(c)(3). As stated elsewhere in this preamble, Congress chose to treat areas sources differently from major sources under section 112 and other sections of the CAA, such as title V. Under section 112, Congress determined that the Agency should identify 30 HAP emitted from area sources that posed the greatest threat to public health in the largest number of urban areas. The statute then directs the Agency to list sufficient area source categories to account for 90 percent of the emissions of each Urban HAP and to subject those listed source categories to regulation. Section 112(d)(1) requires emissions standards for area sources of HAP "listed pursuant to subsection (c)". Area sources listed pursuant to subsection (c)(3) are listed

only because they emit one of the 30 listed Urban HAP and the Agency has identified the category as one that will ensure that we satisfy the requirement to subject area sources representing 90 percent of the area source emissions of the 30 Urban HAP to regulation.

Moreover, section 112(c)(3) explicitly refers to section 112(k)(3)(B). Section 112(k)(3)(B) addresses the national strategy to control HAP from area sources in urban areas. The focus of the strategy is on the 30 HAP that pose the greatest threat to public health in the largest number of urban areas. As noted above, in 1999, EPA issued the Integrated Air Toxics Strategy in response to section 112(k)(3)(B). In that strategy, we identified the 30 Urban HAP, which are the HAP that pose the greatest threat to public health in the largest number of urban areas, and we identified, consistent with section 112(c)(3), the area source categories that account for 90 percent of those Urban HAP.

Pursuant to sections 112(c)(3) and 112(k)(3)(B), the Lead Acid Battery Manufacturing area source category was listed due to emissions of two specific pollutants: lead and cadmium. We recognize that other HAP, including Urban HAP which did not form the basis of the section 112(c)(3) listing decision, may be emitted from lead acid battery manufacturing facilities. To the extent that the other HAP are Urban HAP, we identified other area source categories that emit those Urban HAP in higher amounts and have determined that subjecting other area source categories to regulation for these HAP will achieve the 90 percent requirement in the CAA. In conclusion, consistent with section 112, we are not obligated to address HAP other than Urban HAP for which this area source category was listed pursuant to section 112(c)(3), which, as noted above, are lead and cadmium.

Comment: One commenter requested clarification of the dates for compliance compared to the key NESHAP General Provisions for existing sources. The commenter explained that in § 63.9(b) of the General Provisions and based on communications with EPA, initial notification by existing facilities is due 120 calendar days after final rule publication. According to the commenter, the proposed compliance date provision in § 63.11422 could be read to suggest notification is not due for a year. The commenter found similar confusion between § 63.9(h) and § 63.11422 pertaining to notices of compliance from existing sources. The commenter suggested the following clarification language:

Note: Initial notification by existing facilities, required by § 63.9(b), is due within 120 calendar days after the date of publication of the final rule in the **Federal Register.** Notices of compliance by existing facilities, required by § 63.9(h), is due on the 60th day following the 1 year deadline for compliance with the new standard.

Response: We agree that the timing for notifications should be clarified, and we have made the suggested clarifications in the final rule.

G. Proposed NESHAP for Wood Preserving Area Sources

Comment: Eight commenters questioned the need for the standards and stated there is no need to regulate wood preserving area sources. The commenters further stated that the wood preserving industry is an insignificant source of the four HAP to be regulated by this proposed standard. According to the commenters, the industry has not used methylene chloride in the wood treating process since 1992, and emissions of the three other HAP covered in this rule are negligible according to the commenters. Moreover, the commenters claimed that EPA was unable to identify "any other management practices or control technologies that would provide additional emissions reductions in a cost effective manner."

Response: The emission levels used for the Integrated Urban Air Toxics Strategy were based on the section 112(k) 1990 inventory. Following issuance of the Integrated Urban Air Toxics Strategy in 1999, EPA revised the area source category listing in the Strategy to also include the wood preserving area source category (67 FR 70428, November 22, 2002). We also recognize that the wood preserving industry has changed over the past 15 years and Urban HAP emissions have been reduced. The regulations being finalized today will ensure that future emissions from wood preserving operations will be limited to the same level that is being generally achieved today and was determined to be GACT. Without such regulations, there is nothing that would limit future Urban HAP emissions from a new process or wood preservative.

Comment: Eight commenters requested clarification regarding non-applicable preservative chemistries. The commenters asserted that as currently worded, the provision in § 63.11428(a) would seem to encompass any wood preserving operation, including those that treat household commodities with ammoniacal copper quat (ACQ) or copper azole (CA)—waterborne, copper-based preservatives that do not contain chromium, arsenic, dioxins, or methylene chloride. The commenters understood that EPA did not intend to regulate wood preservatives that do not contain the Urban HAPs for which the wood preserving category was listed. Accordingly, the commenters requested that EPA revise § 63.11428(a) to clarify, as it does in § 63.11430 and in the preamble to the proposed rule, that the wood preserving area source standard applies only to facilities "using a treatment process with any wood preservatives containing chromium, arsenic, dioxins, or methylene chloride."

Response: The applicability of the wood preserving area source rule (as described in § 63.11428(a)) includes any wood preserving operation located at an area source. However, only those facilities that are using a wood preservative containing chromium, arsenic, dioxins, or methylene chloride are subject to the management practice requirements in § 63.11430 and the other requirements in § 63.11432. Additional language was added to § 63.11430(c) and § 63.11432 to clarify that only those area source facilities using any wood preservative containing chromium, arsenic, dioxins, or methylene chloride have to prepare and operate according to a management practice plan to minimize air emissions, and comply with the initial notification and reporting requirements. If your area source wood preserving facility is only using preservatives such as ACQ or CA, then you are not subject to the requirements in §§ 63.11430 and 63.11432.

Comment: Several commenters requested that EPA provide flexibility in the interpretation of the term "fully drain" as that term is used in § 63.11430(c)(6): "For the pressure treatment process, fully drain the retort prior to opening the retort door." The commenters stated that as a practical matter, it is not possible to "fully drain" 100 percent of all residual preservative before a retort door is opened and that the quantity of material involved is small. The commenters requested confirmation that the trace amount of residual preservative which may remain in the cylinder when the retort door is opened does not violate the § 63.11430(c)(6) requirement to "fully drain" the retort before opening the door, and that the language in § 63.11430(c)(6) be amended to read "For the pressure treatment process, fully drain the retort to the extent practical, prior to opening the retort door."

Response: We agree with the commenters and have made the

following change to § 63.11430(c)(6) in the final standards: "For the pressure treatment process, fully drain the retort to the extent practicable, prior to opening the retort door." An example of what is practicable for fully draining the retort would be a retort operation where any residual preservative drips into the door pit sump.

H. Proposed Exemption of Certain Area Source Categories from Title V Permitting Requirements

Comment: One commenter believed that EPA's proposal to exempt four of the five area source categories addressed in its proposal (acrylic and modacrylic fibers production, flexible polyurethane foam production and fabrication, lead-acid battery manufacturing, and wood preserving) from title V permitting requirements is unlawful and arbitrary. In support of this assertion, the commenter cited CAA section 502(a), which provides that EPA may exempt area source categories from title V permitting requirements if compliance with such requirements is "impracticable, infeasible or unnecessarily burdensome." See 42 U.S.C. 7661a(a). The commenter stated that EPA does not claim that such requirements are impracticable or infeasible for any of the four area source categories it proposes to exempt, but rather relies entirely on its claim that they would be "unnecessarily burdensome."

Response: Section 502(a) of the CAA states, in relevant part, that:

> * * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. 42 U.S.C. 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.* area) sources of air pollution from the requirements of title V. The commenter correctly notes that EPA based the proposed exemptions solely on a determination that title V is "unnecessarily burdensome," and did not rely on whether the requirements of title V are "impracticable" or "infeasible", which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are "impracticable, infeasible *or* unnecessarily burdensome." See CAA section 502 (*emphasis added*). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word "and," in place of "or".

Comment: One commenter stated that in order to demonstrate that compliance with title V would be "unnecessarily burdensome," EPA must show, among other things, that the "burden" of compliance is *unnecessary*. According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for any of the categories it proposes to exempt.

Response: EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 ("Exemption Rule"). In addition to interpreting the term "unnecessarily burdensome" and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

The commenter asserts that "EPA must show * * * that the "burden" of compliance is unnecessary." This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term "unnecessarily burdensome" in CAA section 502, but rather a new test that the commenter maintains EPA "must" meet in determining what is "unnecessarily burdensome" under CAA section 502. EPA did not re-open its interpretation of the term "unnecessarily burdensome" in CAA section 502 in the April 6, 2007 proposed rule for the categories at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source categories for which we proposed title V exemptions. Had we sought to re-open our interpretation of the term "unnecessarily burdensome" in CAA section 502 and modify it from what was articulated in the Exemption Rule,

we would have stated so in the April 6, 2007 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes "unnecessarily burdensome" under CAA section 502, as that issue falls outside the purview of this rulemaking.[11]

Moreover, even were the comment framed as a request to re-open our interpretation of the term "unnecessarily burdensome" in CAA section 502, which it is not, we would deny such request because we have a court-ordered deadline to complete this rulemaking by June 15, 2007, and we are not in a position to expand the scope of the rulemaking at this juncture. In any event, we believe that the commenter's position that "EPA must show * * * that the "burden" of compliance is *unnecessary*" is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at his discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in section 502.[12] In addition, it is worth noting that although the commenter espouses a new interpretation of the term "unnecessarily burdensome" in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are "unnecessarily burdensome" for an area source category, the commenter does not explain why EPA's interpretation of the term "unnecessarily burdensome" is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term "unnecessarily burdensome" in section 502, as set forth in the Exemption Rule, is reasonable.

Finally, in this rule, we appropriately applied the four-factor balancing test set forth in the Exemption Rule to the particular area source categories at issue in this rule. In response to comments, we provide above a more detailed discussion of our consideration of the four factors for the source categories at issue. Based on our consideration of the four factors, we are taking final action to finalize the exemptions from title V for the acrylic and modacrylic fibers production, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving categories.[13]

Comment: One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level. The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt *without* title V permits. The commenter also said that likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt. The commenter concluded that EPA does not *acknowledge* these benefits or explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response: Once again, the commenter attempts to create a new test for determining whether the requirements of title V are "unnecessarily burdensome" on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with *substantial evidence* that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term "unnecessarily burdensome" in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is "unnecessarily burdensome" on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term "unnecessarily burdensome" in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the source categories at issue here, which is the sole title V issue in this rulemaking, the comments provide no basis for the Agency to reconsider its proposal to exempt the area source categories from title V. Today, we finalize the

[11] If the commenter objected to our interpretation of the term "unnecessarily burdensome" in the Exemption Rule, it should have commented on, and challenged, that rule. Any challenge to the Exemption Rule is now time barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

[12] See, *e.g.*, section 112(d)(5) (authorizing generally available control technologies or management practices in lieu of maximum achievable control technology standards for area sources); section 112(f)(5) (exempting area sources regulated under section 112(d)(5) from the 8-year residual risk review requirement); Compare, section 110(a)(2)(c) (requiring minor source permitting program without a detailed statutory structure) with section 165 (providing detailed permitting requirements for major sources locating in prevention of significant deterioration areas).

[13] In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 72 FR 15254–15255, March 25, 2005. As shown above, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare and the environment, and found that it would not.

exemptions proposed in the April 6, 2007 rule.

Moreover, as explained in the proposal and above, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. See 70 FR 75326. In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. Nowhere in the Exemption Rule did the Agency state that we had to demonstrate that citizen enforcement would be identical absent title V before an area source category could be exempted from title V.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. We do not have enforcement data available because we are only today finalizing the NESHAP at issue here. As stated in the proposal, however, States with delegated programs have enforcement and compliance assistance and implementation programs in place to enforce the provisions of these NESHAP. See 72 FR 16656. In fact, a State must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to enforce the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of these NESHAP. Furthermore, the fourth factor is one factor that we evaluated. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemptions for the area source categories at issue in this rule.

Comment: One commenter explained that title V provides important monitoring benefits and stated that EPA admits that "[o]ne way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to *assure* compliance with emission limitations and control technology requirements imposed in the standard" (72 FR 16654). According to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for each category. The commenter said that with respect to acrylic and modacrylic fibers production, EPA states "[b]ecause both the continuous and noncontinuous monitoring methods required by the proposed NESHAP would provide periodic monitoring, title V would not add any monitoring to the proposed NESHAP." Id. The commenter stated that EPA makes a similar claim with respect to lead acid battery manufacturing (72 FR 16655), and that such claims miss the point. As EPA admits, according to the commenter, title V does not merely require periodic monitoring; it requires monitoring to "assure compliance." The commenter continued by stating that if additional monitoring is necessary to assure compliance, it must be required to satisfy title V, regardless of whether the underlying NESHAP provides for periodic monitoring. The commenter concludes that the "burden" imposed on a category by title V is not unnecessary unless EPA shows that, in all instances, the periodic monitoring requirements established in the underlying NESHAP for that category "assure" compliance. According to the commenter, EPA does not even claim—far less demonstrate with substantial evidence—that the monitoring requirements in the NESHAP for any of the categories it proposes to exempt "assure" compliance. The commenter stated that for this reason as well, its claim that title V requirements are "unnecessarily burdensome" is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response: The commenter asserts that "EPA admits [that] title V does not merely require periodic monitoring; it requires monitoring to "assure compliance." The commenter does not accurately characterize the Agency's statements in the proposal. We stated:

> One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with the emissions limitations and control technology requirements imposed in the standard. The authority for adding new monitoring in the permit is in the *"periodic monitoring" provisions of 40 CFR 70.6(a)(3)(i)(B) and 40 CFR 71.6(a)(3)(i)(B), which allow new monitoring to be added to the permit when the underlying standard does not already require "periodic testing or instrumental or noninstrumental monitoring* (which may consist of recordkeeping designed to serve as monitoring)."

See 72 FR 16654 (*emphasis added*).

We nowhere state or imply that periodic monitoring is not sufficient to assure compliance. Moreover, the commenter's position that the Agency must make a specific finding that the monitoring in the proposed NESHAP assures compliance with the NESHAP is inconsistent with EPA's Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs (71 FR 75422, December 15, 2006) ("Interpretive Rule"). That rule interprets title V of the Clean Air Act and its implementing regulations at 40 CFR 70.6(c)(1) and 71.6(c)(1) and the Clean Air Act requirements which they implement. Under the Interpretive Rule, if an applicable requirement, such as a NESHAP, contains periodic testing or instrumental or noninstrumental monitoring (*i.e.*, periodic monitoring), permitting authorities are not authorized to assess the sufficiency of or impose new monitoring requirements on a case-by-case basis. Federal standards promulgated pursuant to the 1990 Clean Air Act Amendments are presumed to obtain monitoring sufficient to assure compliance. Thus, consistent with this interpretation and as demonstrated in the proposed rule and above, title V would not add any monitoring requirements to the NESHAP because the NESHAP contains periodic monitoring.

The commenter also attempts to create a new test for consideration in determining what is "unnecessarily

burdensome" under CAA section 502. Specifically, the commenter argues that EPA must demonstrate with substantial evidence that, in all instances, the periodic monitoring requirements assure compliance. As explained above, this rulemaking did not re-open EPA's interpretation of the term "unnecessarily burdensome" in CAA section 502. For all the reasons explained above, we reject the commenter's attempt to create a new test for determining whether title V is unnecessarily burdensome on an area source category. Moreover, EPA considered monitoring in the first factor of the four-factor balancing test that it developed in the Exemption Rule. EPA appropriately applied that factor to the area source categories at issue in this rule.

As noted above, under the first factor, EPA considers whether title V would result in significant improvements to the compliance requirements that are proposed for the area source categories. See 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. See 70 FR 75323. As noted above, and in the proposed rule, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not.

Specifically, EPA included in the NESHAP periodic monitoring it determined to be necessary to assure compliance. See 72 FR 16654–16655. In addition, for the Acrylic and Modacrylic Fibers Production area source category, the Lead Acid Battery Manufacturing area source category, the Flexible Polyurethane Foam Production area source category, and the Flexible Polyurethane Fabrication area source category, EPA found that title V would not add additional monitoring, and that determination is consistent with the title V Interpretive rule. See 72 FR 16654–16655. The commenter does not provide any evidence to support a claim that title V would add monitoring, consistent with our interpretation of title V in the Interpretive Rule, for any of these area source categories. For the Wood Preserving area source category, we imposed recordkeeping to serve as monitoring that was designed to document compliance with the management practices imposed on the industry. See 72 FR 16655. We concluded that title V would not add additional monitoring for this category because continuous monitoring is not necessary to ensure a reduction in HAP emissions for this category. We also concluded that the recordkeeping and reporting requirements in the rule are sufficient to assure compliance and that additional monitoring is not practical or necessary. The commenter did not take issue in its comment with the adequacy of the recordkeeping that serves as monitoring or the reporting requirements for the Wood Preserving area source category.

For the reasons described above, the first factor supports an exemption, and even if it did not, the four-factor balancing test requires EPA to examine the factors, in combination, and determine whether the factors, viewed together, weigh in favor of exemption. See 70 FR 75326. As explained above, we determined that the factors, weighed together, supported exemption of the area source categories from title V.

Comment: One commenter argued that title V provides important reporting certification benefits and that, specifically, plants must report deviations from emission standards and must certify at least annually whether they are in compliance with "any applicable requirements." See 42 U.S.C. 7661b(b)(2). The commenter stated that EPA fails to point to any requirement in the NESHAP for any of the categories it proposes to exempt that requires plants to report each deviation from requirements, as title V does. The commenter disagrees with EPA that reporting requirements for certain operating requirements, such as the daily average water flow to a wet scrubber, are sufficient and states that none of the NESHAP contain certification requirements. The commenter also stated that the compliance certification requirement obliges plant operators to certify—subject to criminal penalties—whether their sources were in or out of compliance with emission standards. According to the commenter, Congress determined that this requirement was necessary *in addition* to reporting requirements, and that is why it enacted the compliance certification requirement. The commenter stated that it is not up to EPA to declare that it disagrees with Congress and find that compliance certification requirements are not necessary. The commenter acknowledged that it might be possible for EPA to show that compliance certification requirements are not necessary for some specific area source category based on that specific category's characteristics. The commenter said that EPA has not done that here, however, and instead offers the generic claim that it thinks quarterly reports are enough. Thus, the commenter believes that EPA has essentially taken the position that compliance certification is never necessary. The commenter also stated that EPA contravenes the CAA by excusing sources from a compliance obligation without meeting the requirement of showing that requirement to be unnecessary. Further, according to the commenter, EPA acts arbitrarily by finding the compliance certification is unnecessary without providing a rational basis for that claim. The commenter concluded that the recording requirements that exist under the individual NESHAP are no replacement for the recording requirements under title V, which require prompt reporting of all "deviations" from any applicable requirements, not just reporting of exceedances of EPA-selected operating requirements. According to the commenter, because EPA has not shown that reporting of selected operating requirements renders reporting of all deviations from any applicable requirements unnecessary, the EPA's exemptions are unlawful and arbitrary.

Response: In this comment, the commenter again argues that EPA must specifically demonstrate that all title V requirements, deviation reporting and annual compliance certifications in this instance, are unnecessary in isolation before EPA can lawfully exempt an area source category from title V. We do not agree. As explained above, we interpreted the term "unnecessarily burdensome" in CAA section 502 and developed the four-factor balancing test in the Exemption Rule, and that balancing test does not require a determination that every title V requirement is unnecessary. Instead, in the first factor we consider "whether title V would result in significant improvements to the compliance requirement, including monitoring, recordkeeping, and reporting." As explained in the proposal preamble and noted above, we have determined that for these source categories title V would not result in significant improvements in compliance requirements.

The commenter argued that these NESHAP do not contain adequate deviation reporting requirements because the deviation reporting is limited to reporting on exceedances or variances of the operating requirements set forth in the standards. We are not clear what aspects of the deviation reporting contained in the NESHAP the commenter considers insufficient or what additional deviation reporting the commenter believes would be included

if title V applied. The proposed NESHAP contain deviation reporting requirements for each of the source categories that we are exempting from title V. In response to this comment, the Agency has re-evaluated the deviation requirements for these NESHAP and determined that any additional, unspecified, deviation reporting that title V might add would not lead to significant improvements in the compliance requirements finalized in this rulemaking.

The commenter also takes issue with EPA's conclusion that annual compliance certifications are not necessary for certain categories because of quarterly reporting requirements. The commenter implies that enforcement of the NESHAP is undermined without an annual compliance certification and states that EPA admitted that there are no certification requirements in the NESHAP. First, even absent the requirement to submit annual compliance certifications under the NESHAP, sources must nevertheless comply with all emission standards and requirements in the NESHAP. In addition, the Agency did not conclude that annual compliance certification is never necessary, but only that the annual compliance certification would not lead to significant improvements in the compliance requirements in the NESHAP because some of the NESHAP require quarterly reports. Furthermore, contrary to what the commenter states, and as discussed above in section IV of this preamble, there are certification requirements contained in the NESHAP (*e.g.*, initial certification of compliance status).

Moreover, we determined in our consideration of the fourth factor that there are adequate enforcement and implementation programs in place to assure compliance with the NESHAP and the commenter has provided no evidence that the lack of annual compliance certifications will undermine enforcement and implementation of the NESHAP.

Comment: One commenter believed EPA argued that its own belief that title V is a "significant burden" on area sources further justifies its exemption (72 FR 16655–16656). According to the commenter, regardless of whether EPA regards the burden as "significant," the Agency may not exempt a category from compliance with title V requirements unless compliance is "unnecessarily burdensome." The commenter stated that in any event, EPA's claims about the alleged significance of the burden of compliance is entirely conclusory and could be applied equally to any major or area source category. The commenter also stated that the Agency does not show that the compliance burden is especially great for any of the sources it proposes to exempt, and thus does not demonstrate that the alleged burden necessitates treating them differently from other categories by exempting them from compliance with title V requirements.

Response: The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is "unnecessarily burdensome" and not a "significant burden" as expressed in the second factor of the four factor balancing test. We note that the commenter in other parts of its comments on the title V exemptions argues that EPA must demonstrate that every title V requirement is "unnecessary" for a particular source category before an exemption can be granted but makes no mention of the "burden" of those requirements on area sources, but here the commenter argues that "significant burden" is not appropriate for the second factor. Notwithstanding the commenter's inconsistency, as explained above, the four-factor balancing test was established in the Exemption Rule and we did not re-open EPA's interpretation of the term "unnecessarily burdensome" in this rule.

Contrary to the commenter's assertions, we properly analyzed the second factor of the four-factor balancing test. See 70 FR 75320. Under that factor, EPA considers whether title V permitting would impose a significant burden on the area source categories and whether the burden would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies. See 70 FR 75324. The commenter appears to assert that the second factor *must* be satisfied for EPA to exempt an area source category from title V, but, as explained above, the four factors are considered in combination. We have concluded that the second factor, in combination with the other factors, supports an exemption for the area source categories at issue.

Comment: According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (72 FR 16656). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to any of the categories it proposes to exempt—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V but not in these NESHAP would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response: The commenter mischaracterizes the first and third factors of the four-factor balancing test and takes out of context certain statements in the proposed rule concerning those factors.

First, the commenter incorrectly characterizes our statements in the proposed rule in applying the third factor. Under the third factor, EPA evaluates "whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources." Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination.

Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In considering the third factor, we stated that, "[b]ased on our consideration of factor 1 (described above) and factor 4 (described below), *we did not identify potential gains in compliance from title V permitting.* Therefore, we conclude that the costs of title V permitting for these area source categories are not justified." (72 FR 16656) (*emphasis added*).

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. But the first factor calls for a consideration of "whether title V would result in *significant improvements to the compliance requirements,* including monitoring, recordkeeping, and reporting, that are proposed for an area source category." Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant

improvements in compliance requirements.

EPA applied the four-factor balancing test in determining whether title V was unnecessarily burdensome on the area source categories we are exempting from title V in this rule. This rulemaking did not re-open EPA's interpretation of the term "unnecessarily burdensome" in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the source categories at issue here, which is the sole title V issue in this rulemaking, the comments provide no basis for the Agency to reconsider its proposal to exempt the area source categories from title V. Furthermore, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts.

Comment: According to one commenter, EPA argued that alternative State implementation and enforcement programs assure compliance with the underlying NESHAP without relying on title V permits (72 FR 16656). The commenter stated that again, however, EPA's claim is entirely conclusory and generic. The commenter also stated that the Agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAPs—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary. Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter said that absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, however, the Agency's argument boils down to the claim that it generally views title V requirements as unnecessary. The commenter stated that may be EPA's view, but it was not Congress's view when Congress enacted title V and it does not suffice to show that title V compliance is unnecessarily burdensome.

Response: The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term "unnecessarily burdensome" is not the subject of this rulemaking. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. As explained in the proposal preamble and above, we considered the fourth factor and determined that there are adequate implementation and enforcement programs in place to assure compliance with the CAA, consistent with the fourth factor. As stated above, we do not have data available on the enforcement of these NESHAPs as in the Exemption Rule because, unlike in that rule, we are exempting the categories at the same time we are promulgating these NESHAPs. In the proposed rule, we did, however, explain that States with delegated programs have enforcement and compliance assistance programs in place to enforce the provisions of these NESHAPs (72 FR 16656). In addition, States must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAPs before EPA will delegate a program to the States. See 40 CFR part 63, subpart E. The commenter argues that the exemptions must fail because "[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary" (*emphasis added*). The standard that the commenter proposes is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V is unnecessarily burdensome for the source categories at issue. Furthermore, the standard the commenter suggests is an impossible standard to meet.

Comment: One commenter stated that, as EPA concedes, the legislative history the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. See 72 FR 16654; 16656. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare and the environment. The commenter stated that instead, EPA offered only the conclusory assertion that "the level of control would remain the same" whether title V permits are required are not (72 FR 16656). The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons given above, and therefore EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: to assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule *deprives* the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary. The commenter concluded that for the reasons given above, that attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response: Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his discretion, the Administrator "finds that compliance with [title v] is impracticable, infeasible, or unnecessarily burdensome." See CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, "unnecessarily burdensome", as requiring consideration of the four factors discussed above. EPA applied these four factors to the Acrylic and Modacrylic Fibers Production area source category, the Lead Acid Battery Manufacturing area source category, the Flexible Polyurethane Foam Production and Fabrication area source categories, and the Wood Preserving area source category and concluded that requiring title V for these area source categories would be unnecessarily burdensome.

In addition to determining that title V would be unnecessarily burdensome on the area source categories for which we proposed exemptions, as in the Exemption Rule, EPA also considered, consistent with our interpretation of the legislative history, whether exempting the area source categories would adversely affect public health, welfare or the environment. As explained in the proposal preamble and above, we concluded that exempting the area source categories at issue in this rule would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. The commenter has not provided any information that exemption of these area source categories from title V will adversely affect public health, welfare or the environment.

I. Compliance with Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Comment: One commenter disagreed with EPA's conclusion that this Executive Order does not apply to this action because it is not economically significant and does not present a disproportionate risk to children. According to the commenter, nothing in the language of the Executive Order limits EPA's obligation to consider risks to instances when it thinks the underlying regulatory action is economically significant. The commenter also claimed that the toxic emissions from the source categories included in the proposal have a disproportionate risk on children, who are especially at risk to all toxins and inhaled pollution. The commenter alleged that EPA has ample reason to believe that failing to require the degree of reduction required by the CAA and its exemption of source categories from title V requirements will have a disproportionate effect on children.

Response: We disagree with the commenter. Section 2–202 of Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) defines the actions subject to its terms. As we stated at proposal, this Executive Order 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 disproportionately affect children. If a regulatory action meets both criteria, the Executive Order directs EPA to 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.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis called for by section 5–501 of the Executive Order has the potential to influence the regulation. These final rules are not subject to Executive Order 13045 because they are not economically significant and, because the rules are based solely on technology performance, an analysis under section 5–501 of the Executive Order would not have had the potential to influence this regulation.

J. Compliance With Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Comment: One commenter alleged that minority and low income populations are located disproportionately near the source categories covered by the proposal. According to the commenter, these minority and low income populations will be adversely affected by any standard that is less protective than required by the CAA and also by any exemption from title V permitting requirements. The commenter claimed that EPA failed to consider these effects of its proposal.

Response: As we stated at proposal, we have determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The commenter provided no information to support the commenter's conclusion.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

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

The recordkeeping and reporting requirements in the final rules are based on the existing permit requirements as well as the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The information collection requirements for acrylic and modacrylic fibers production are the same as the requirements that are in the current State operating permit for the one existing source. The only new information collection requirements that apply to this area source consist of initial notifications, records of process and maintenance wastewater treated in a wastewater treatment systems, and an SSM plan. Any new acrylic and modacrylic fibers production area source is subject to all information collection requirements in the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 9 labor hours per year at a cost of $780 for the one existing acrylic and modacrylic fibers area source. No capital/startup costs or operation and maintenance costs are associated with the final requirements. No costs or burden hours are estimated for new acrylic and modacrylic fibers production area sources because no new area sources are estimated during the next 3 years.

As a result of public comments, we learned there are no existing carbon black production facilities that are area sources. Consequently, there are no costs or burden hours associated with the monitoring, reporting and recordkeeping requirements for existing area sources. No costs or burden hours are estimated for new carbon black production area sources because no new sources are estimated during the next 3 years.

The testing, monitoring, recordkeeping, and reporting requirements for existing chromium compounds manufacturing area sources are the same as the requirements that are in the current title V operating permit for the two existing facilities. The only new information collection requirements that apply to these area sources consist of initial notifications, SSM plans, and control device inspections at one plant. Any new chromium compounds manufacturing area source is subject to all information collection requirements in the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 194 labor hours per year at a cost

of $16,409 for the two existing chromium compounds manufacturing area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new chromium compounds manufacturing area sources because no new area sources are estimated during the next 3 years.

The final NESHAP for flexible polyurethane foam production and fabrication operations area sources require a one-time notification by slab stock foam facilities certifying that they do not use methylene chloride and records documenting that they do not use methylene chloride. One plant that uses methylene chloride is subject to additional reporting requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 925 labor hours per year at a cost of $78,337 for the 500 or more existing flexible foam fabrication and production area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new flexible foam production or fabrication area sources because no new sources are estimated during the next 3 years.

The testing and monitoring requirements for emissions sources equipped with a scrubbing system at new and existing lead acid battery manufacturing area sources are the same as the requirements that are in the NSPS (40 CFR part 60, subpart KK). Monitoring requirements for emissions sources equipped with fabric filter are also included in the final rule. New information collection requirements that apply to these area sources consist of notifications, records, and reports required by the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 2,302 labor hours per year at a cost of $172,477 for the approximately 60 existing lead acid battery manufacturing area sources, with capital/startup costs of $4,840 and no operation and maintenance costs. No costs or burden hours are estimated for new lead acid battery manufacturing area sources because no new sources are estimated during the next 3 years.

The final NESHAP for wood preserving area sources does not include testing or monitoring requirements because they are subject to management practices. The only new information collection requirements that apply to these existing area sources consist of initial notifications, records demonstrating compliance with the management practice requirements, and deviation reporting requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 1,055 labor hours per year at a cost of $89,324 for approximately 400 existing wood preserving area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new wood preserving area sources because no new sources are estimated during the next 3 years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 1,000 employees for acrylic and modacrylic fibers production and chromium compounds manufacturing and less than 500 employees for carbon black production, flexible polyurethane foam production and fabrication, lead-acid battery manufacturing, and wood preserving); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. There will not be adverse impacts on existing area sources in any of the seven source categories because the final rules do not create any new requirements or burdens for existing sources other than minimal notification requirements.

Although the final NESHAP contain emissions control requirements for new area sources in all seven source categories, we are not specifically aware of any new sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. These final rules are designed to harmonize with existing State or local requirements.

D. Unfunded Mandates Reform Act

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 by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 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.

EPA has determined that the final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rules do not significantly or uniquely affect small governments. The final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, the final rules are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

These final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

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

Executive Order 13175 (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." These final rules do not have tribal implications, as specified in Executive Order 13175. They 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 Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

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

Executive Order 13045, "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, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

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

These final rules are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these final rules are not likely to have any adverse energy effects because energy requirements would remain at existing levels. No additional pollution controls or other equipment that would consume energy are required by these final rules.

I. National Technology Transfer Advancement Act

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

The final rules involve technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9 and 22 in 40 CFR part 60, appendix A. The method ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see 40 CFR 63.14) is cited in one of these final rules for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B. This ASTM method is a VCS.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9 or 22. The search and review results are in the docket for these final rules.

The search for emissions measurement procedures identified 12 other VCS. The EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emissions standards in these final rules were impractical alternatives to EPA test

methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 12 methods are discussed in a memorandum included in the docket for these final rules.

For the methods required or referenced by these final rules, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These final rules establish national standards for each area source category.

K. Congressional Review Act

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 Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules 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 final rules 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). These final rules will be effective on July 16, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: June 15, 2007.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), and Table 5 of subpart DDDDD of this part.

* * * * *

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

Subpart LLLLLL—National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources

Sec.

Applicability and Compliance Dates

63.11393 Am I subject to this subpart?
63.11394 What are my compliance dates?

Standards and Compliance Requirements

63.11395 What are the standards and compliance requirements for existing sources?
63.11396 What are the standards and compliance requirements for new sources?

Other Requirements and Information

63.11397 What General Provisions apply to this subpart?
63.11398 What definitions apply to this subpart?
63.11399 Who implements and enforces this subpart?
Table 1 to Subpart LLLLLL of Part 63—Applicability of General Provisions to Subpart LLLLLL

Applicability and Compliance Dates

§ 63.11393 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an acrylic or modacrylic fibers production plant that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each acrylic or modacrylic fibers plant.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11394 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than January 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11395 What are the standards and compliance requirements for existing sources?

(a) You must operate and maintain capture or enclosure systems that collect

the gases and fumes containing acrylonitrile (AN) released from polymerization process equipment and monomer recovery process equipment and convey the collected gas stream through a closed vent system to a control device.

(b) Except as provided in paragraph (b)(3) of this section, you must not discharge to the atmosphere through any combination of stacks or other vents captured gases containing AN in excess of the emissions limits in paragraphs (b)(1) and (2) of this section.

(1) 0.2 pounds of AN per hour (lb/hr) from the control device for polymerization process equipment.

(2) 0.05 lb/hr of AN from the control device for monomer recovery process equipment.

(3) If you do not comply with the emissions limits in paragraphs (b)(1) and (2) of this section, you must comply with the new source standards for process vents in § 63.11396(a).

(c) If you use a wet scrubber control device, you must comply with the control device parameter operating limits in paragraphs (c)(1) and (2) of this section.

(1) You must maintain the daily average water flow rate to a wet scrubber used to control polymerization process equipment at a minimum of 50 liters per minute (l/min). If the water flow to the wet scrubber ceases, the polymerization reactor(s) must be shut down.

(2) You must maintain the daily average water flow rate to a wet scrubber used to control monomer recovery process equipment at a minimum of 30 l/min.

(d) You must comply with the requirements of the New Source Performance Standard for Volatile Organic Liquids (40 CFR part 60, subpart Kb) for vessels that store acrylonitrile. The provisions in 40 CFR 60.114b do not apply to this subpart.

(e) You must operate continuous parameter monitoring systems (CPMS) to measure and record the water flow rate to a wet scrubber control device for the polymerization process equipment and the monomer recovery process equipment. The CPMS must record the water flow rate at least every 15 minutes and determine and record the daily average water flow rate.

(f) You must determine compliance with the daily average control device parameter operating limits for water flow rate in paragraph (c) of this section on a monthly basis and submit a summary report to EPA or the delegated authority on a quarterly basis. Should the daily average water flow rate to a wet scrubber control device for the polymerization process equipment fall below 50 l/min or the daily average water flow rate to a wet scrubber control device for the monomer recovery process equipment fall below 30 l/min, you must notify EPA or the delegated authority in writing within 10 days of the identification of the exceedance.

(g) You must keep records of each monthly compliance determination for the water flow rate operating parameter limits in a permanent form suitable for inspection and retain the records for at least 2 years following the date of each compliance determination.

(h) You must conduct a performance test for each control device for polymerization process equipment and monomer recovery process equipment subject to an emissions limit in paragraph (b) of this section within 180 days of your compliance date and report the results in your notification of compliance status. You must conduct each test according to the requirements in § 63.7 of subpart A and § 63.1104 of subpart YY. You are not required to conduct a performance test if a prior performance test was conducted using the methods specified in § 63.1104 of subpart YY and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(i) If you do not use a wet scrubber control device for the polymerization process equipment or the monomer recovery process equipment, you must submit a monitoring plan to EPA or the delegated authority for approval. Each plan must contain the information in paragraphs (i)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with § 63.1104 of subpart YY verifying the performance of the device for reducing AN to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(j) If you do not operate a monomer recovery process that removes AN prior to spinning, you must comply with the requirements in paragraph (j)(1), (2), or (3) of this section for each fiber spinning line that uses a spin dope produced from either a suspension polymerization process or solution polymerization process.

(1) You must reduce the AN concentration of the spin dope to less than 100 parts per million by weight (ppmw); or

(2) You must design and operate a fiber spinning line enclosure according to the requirements in § 63.1103(b)(4) of subpart YY and reduce AN emissions by 85 weight-percent or more by venting emissions from the enclosure through a closed vent system to any combination of control devices meeting the requirements in § 63.982(a)(2) of subpart SS; or

(3) You must reduce AN emissions from the spinning line to less than or equal to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced.

(k) You may change the operating limits for a wet scrubber if you meet the requirements in paragraphs (k)(1) through (3) of this section.

(1) Submit a written notification to the Administrator to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emissions limit for a control device in paragraph (b) of this section.

(3) Establish revised operating limits according to the procedures in paragraphs (k)(3)(i) and (ii) of this section.

(i) Using the CPMS required in paragraph (e) of this section, measure and record the water flow rate to the wet scrubber in intervals of no less than 15 minutes during each AN test run.

(ii) Determine and record the average water flow rate for each test run. Your operating limit is the lowest average flow rate during any test run that complies with the applicable emissions limit.

(l) You must treat process and maintenance wastewater containing AN in a wastewater treatment system. You must keep records that list each process and maintenance wastewater stream that contains AN and a process flow diagram of the wastewater treatment system that identifies each wastewater stream.

§ 63.11396 What are the standards and compliance requirements for new sources?

(a) You must comply with the requirements in paragraph (a)(1) or (2) of this section for each process vent where the AN concentration of the vent stream is equal to or greater than 50 parts per million by volume (ppmv) and

the average flow rate is equal to or greater than 0.005 cubic meters per minute, as determined by the applicability and assessment procedures in § 63.1104 of subpart YY.

(1) You must reduce emissions of AN by 98 weight-percent or limit the concentration of AN in the emissions to no more than 20 ppmv, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements for process vents in § 63.982(a)(2) of subpart SS; or

(2) You must reduce emissions of AN by using a flare that meets the requirements of § 63.987 of subpart SS.

(b) You must comply with the requirements in paragraph (b)(1), (2), or (3) of this section for each fiber spinning line that uses a spin dope produced from either a suspension polymerization process or solution polymerization process.

(1) You must reduce the AN concentration of the spin dope to less than 100 ppmw; or

(2) You must design and operate a fiber spinning line enclosure according to the requirements in § 63.1103(b)(4) of subpart YY and reduce AN emissions by 85 weight-percent or more by venting emissions from the enclosure through a closed vent system to any combination of control devices meeting the requirements in § 63.982(a)(2) of subpart SS; or

(3) You must reduce AN emissions from the spinning line to less than or equal to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced.

(c) You must comply with the requirements for storage vessels holding acrylonitrile as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.

(d) You must comply with the requirements for equipment that contains or contacts 10 percent by weight or more of AN and operates 300 hours per year as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.

(e) You must comply with the requirements for process wastewater and maintenance wastewater from an acrylic and modacrylic fibers production process as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY. Process wastewater and maintenance wastewater that contains AN and is not subject to the requirements in Table 2 to § 63.1103(b)(3)(i) of subpart YY must be treated in a wastewater treatment system.

(f) You must comply with all testing, monitoring, recordkeeping, and reporting requirements in subpart SS (for process vents); subpart SS or WW (for AN tanks); subpart TT or UU (for equipment leaks); and subpart G (for process wastewater and maintenance wastewater). Only the provisions in §§ 63.132 through 63.148 and §§ 63.151 through 63.153 of subpart G apply to this subpart.

(g) If you use a control device other than a wet scrubber, flare, incinerator, boiler, process heater, absorber, condenser, or carbon adsorber, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (g)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (f) of this section verifying the performance of the device for reducing AN to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

Other Requirements and Information

§ 63.11397 What General Provisions apply to this subpart?

(a) You must meet the requirements of the General Provisions in 40 CFR part 63, subpart A, as shown in Table 1 to this subpart.

(b) If you own or operate an existing affected source, your notification of compliance status required by § 63.9(h) must include the following information:

(1) This certification of compliance, signed by a responsible official, for the standards in § 63.11395(a): "This facility complies with the management practices required in § 63.11395(a) for operation of capture systems for polymerization process equipment and monomer recovery process equipment."

(2) This certification of compliance, signed by a responsible official, for the emissions limits in § 63.11395(b): "This facility complies with the emissions limits in § 63.11395(b)(1) and (2) for control devices serving the polymerization process equipment and monomer recovery process equipment based on previous performance tests in accordance with § 63.11395(h)" or "This facility complies with the alternative standards for process vents in § 63.11395(b)(3) based on previous performance tests and assessments in accordance with § 63.11396(f)". If you conduct a performance test or assessment to demonstrate compliance, you must include the results of the performance test and/or assessment.

(3) This certification of compliance, signed by a responsible official, for the standards for storage tanks in § 63.11396(d): "This facility complies with the requirements of 40 CFR part 60, subpart Kb for each tank that stores acrylonitrile."

(4) This certification of compliance, signed by a responsible official, for the requirement in Table 1 to subpart LLLLLL for preparation of a startup, shutdown, and malfunction plan: "This facility has prepared a startup, shutdown, and malfunction plan in accordance with the requirements of 40 CFR 63.6(e)(3)."

(c) If you own or operate a new affected source, your notification of compliance status required by § 63.9(h) must include:

(1) The results of the initial performance test or compliance demonstration for each process vent (including closed vent system and control device, flare, or recovery device), fiber spinning line, AN storage tank, equipment, and wastewater stream subject to this subpart.

(2) This certification of compliance, signed by a responsible official, for the applicable emissions limit in § 63.11396(a) for process vents: "This facility complies with the emissions limits in § 63.11396(a) for each process vent subject to control."

(3) This certification of compliance, signed by a responsible official, for the applicable emissions limit in § 63.11396(b) for each fiber spinning line: "This facility complies with the emissions limit and/or management practice requirements in § 63.11396(b)(1), (2), or (3) for each fiber spinning line."

(4) This certification of compliance, signed by a responsible official, for the storage tank requirements in § 63.11396(c): "This facility complies with the requirements for storage vessels holding acrylonitrile as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY."

(5) This certification of compliance, signed by a responsible official, for the equipment leak requirements in § 63.11396(d): "This facility complies with the requirements for all equipment that contains or contacts 10 percent by weight or more of AN and operates 300 hours per year or more as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY."

(6) This certification of compliance, signed by a responsible official, for the process wastewater and maintenance wastewater requirements in § 63.11396(e): "This facility complies with the requirements in Table 2 to § 63.1103(b)(3)(i) of subpart YY for each process wastewater stream and each maintenance wastewater stream."

(d) If you own or operate a new affected source, you must report any deviation from the requirements of this subpart in the semiannual report required by 40 CFR 63.10(e)(3).

§ 63.11398 What definitions apply to this subpart?

Acrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

Acrylic and modacrylic fibers production means the production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber.

Acrylonitrile solution polymerization means a process where acrylonitrile and comonomers are dissolved in a solvent to form a polymer solution (typically polyacrylonitrile). The polyacrylonitrile is soluble in the solvent. In contrast to suspension polymerization, the resulting reactor polymer solution (spin dope) is filtered and pumped directly to the fiber spinning process.

Acrylonitrile suspension polymerization means a polymerization process where small drops of acrylonitrile and comonomers are suspended in water in the presence of a catalyst where they polymerize under agitation. Solid beads of polymer are formed in this suspension reaction which are subsequently filtered, washed, refiltered, and dried. The beads must be subsequently redissolved in a solvent to create a spin dope prior to introduction to the fiber spinning process.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or management practice;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Equipment means each of the following that is subject to this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve connector, instrumentation system in organic HAP service which contains or contacts greater than 10 percent by weight of acrylonitrile and operates more than 300 hours per year.

Fiber spinning line means the group of equipment and process vents associated with acrylic or modacrylic fiber spinning operations. The fiber spinning line includes (as applicable to the type of spinning process used) the blending and dissolving tanks, spinning solution filters, wet spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the process unit, whose primary product is a product produced by a source category subject to this subpart, into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the process unit, whose primary product is a product produced by a source category subject to this subpart, for repair.

Modacrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 35 percent by weight of acrylonitrile units but less than 85 percent by weight of acrylonitrile units.

Monomer recovery process equipment means the collection of process units and associated process equipment used to reclaim the monomer for subsequent reuse, including but not limited to polymer holding tanks, polymer buffer tanks, monomer vacuum pump flush drum, and drum filter vacuum pump flush drum.

Polymerization process equipment means the collection of process units and associated process equipment used in the acrylonitrile polymerization process prior to the fiber spinning line, including but not limited to acrylonitrile storage tanks, recovered monomer tanks, monomer measuring tanks, monomer preparation tanks, monomer feed tanks, slurry receiver tanks, polymerization reactors, and drum filters.

Process vent means the point of discharge to the atmosphere (or point of entry into a control device, if any) of a gas stream from the acrylic and modacrylic fibers production process.

Process wastewater means wastewater, which during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Responsible official means responsible official as defined at 40 CFR 70.2.

Spin dope means the liquid mixture of polymer and solvent that is fed to the spinneret to form the acrylic and modacrylic fibers.

§ 63.11399 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/ reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11397(a), you must comply with the requirements of the NESHAP General Provisions (40

CFR part 63, subpart A) as shown in the following table.

TABLE 1.—TO SUBPART LLLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLLL

Citation	Subject	Applies to subpart LLLLLL?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12) (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f) (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes	Subpart LLLLLL requires new and existing sources to comply with requirements for startups, shutdowns, and malfunctions in § 63.6(e)(3).
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart LLLLLL does not include opacity or visible emissions standards or require a continuous opacity monitoring system.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements.	Yes/No	Subpart LLLLLL requires performance tests for new and existing sources; a test for an existing source is not required if a prior test meets the conditions in § 63.11395(h).
63.7(b), (c)		Yes/No	Requirements for notification of performance test and for quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		Yes	Requirements apply to new sources if flares are the selected control option.
63.8(c)(4)–(c)(8), (d), (e), (f)(6), (g)		Yes	Requirements apply to new sources but not to existing sources.
63.9(a), (b)(1), (b)(5), (c), (d), (i), (j).	Notification Requirements	Yes.	
63.9(e)		Yes/No	Notification of performance test is required for new area sources.
63.9(b)(2)		Yes	Initial notification of applicability is required for new and existing area sources.
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (h)(5)		No.	
63.9(f), (g)		No	Subpart LLLLLL does not require a continuous opacity monitoring system or continuous emissions monitoring system.
63.9(h)(1)–(h)(3), (h)(6)		Yes	Notification of compliance status is required for new and existing area sources.
63.10(a)	Recordkeeping Requirements	Yes.	
63.10(b)(1)		Yes/No	Record retention requirement applies to new area sources but not existing area sources. Subpart LLLLLL establishes 2-year retention period for existing area sources.
63.10(b)(2)		Yes	Recordkeeping requirements for startups, shutdowns, and malfunctions apply to new and existing area sources.
63.10(b)(3)		Yes	Recordkeeping requirements for applicability determinations apply to new area sources.
63.10(c)(1), (c)(5)–(c)(14)		Yes/No	Recordkeeping requirements for continuous parameter monitoring systems apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(4), (e)(1), (e)(2), (f)	Reporting Requirements	Yes.	
63.10(d)(2)		Yes	Report of performance test results applies to each area source required to conduct a performance test.
63.10(d)(3)		No	Subpart LLLLLL does not include opacity or visible emissions limits.

TABLE 1.—TO SUBPART LLLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLLL—Continued

Citation	Subject	Applies to subpart LLLLLL?	Explanation
63.10(d)(5)		Yes	Requirements for startup, shutdown, and malfunction reports apply to new and existing area sources.
(e)(1)–(e)(2), (e)(4)		No	Subpart LLLLLL does not require a continuous emissions monitoring system or continuous opacity monitoring system.
63.10(e)(3)		Yes/No	Semiannual reporting requirements for excess emissions and parameter monitoring exceedances apply to new area sources but not existing area sources.
63.11	Control Device Requirements	Yes	Requirements apply to new sources if flares are the selected control option.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions.	Yes.	

■ 4. Part 63 is amended by adding subpart MMMMMM to read as follows:

Subpart MMMMMM—National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources

Sec.

Applicability and Compliance Dates

63.11400 Am I subject to this subpart?
63.11401 What are my compliance dates?

Standards and Compliance Requirements

63.11402 What are the standards and compliance requirements for new and existing sources?
63.11403 [Reserved]

Other Requirements and Information

63.11404 What General Provisions apply to this subpart?
63.11405 What definitions apply to this subpart?
63.11406 Who implements and enforces this subpart?

Applicability and Compliance Dates

§ 63.11400 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a carbon black production facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each carbon black production process unit. The affected source includes all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit.

(1) An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11401 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by July 16, 2007.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11402 What are the standards and compliance requirements for new and existing sources?

You must meet all the requirements in § 63.1103(f) of subpart YY.

§ 63.11403 [Reserved]

Other Requirements and Information

§ 63.11404 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, applicable to this subpart are §§ 63.1 through 63.5 and §§ 63.11 through 63.16.

§ 63.11405 What definitions apply to this subpart?

The terms used in this subpart are defined in §§ 63.1101 and 63.1103(f)(2).

§ 63.11406 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.992(b)(1).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

■ 5. Part 63 is amended by adding subpart NNNNNN to read as follows:

Subpart NNNNNN—National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds

Sec.

Applicability and Compliance Dates

63.11407 Am I subject to this subpart?
63.11408 What are my compliance dates?

Standards and Compliance Requirements

63.11409 What are the standards?
63.11410 What are the compliance requirements?

Other Requirements and Information

63.11411 What General Provisions apply to this subpart?
63.11412 What definitions apply to this subpart?
63.11413 Who implements and enforces this subpart?
Table 1 to Subpart NNNNNN of Part 63—HAP Emissions Units
Table 2 to Subpart NNNNNN of Part 63—Applicability of General Provisions to Subpart NNNNNN

Applicability and Compliance Dates

§ 63.11407 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a chromium compounds manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each chromium compounds manufacturing facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commence construction or reconstruction of the affected source after April 4, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11408 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart not later than January 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11409 What are the standards?

(a) You must operate a capture system that collects the gases and fumes released during the operation of each emissions source listed in Table 1 of this subpart and conveys the collected gas stream to a particulate matter (PM) control device.

(b) You must not discharge to the atmosphere through any combination of stacks or other vents process gases from an emissions source listed in Table 1 of this subpart that contain PM in excess of the allowable process rate determined according to Equation 1 of this section (for an emissions source with a process rate of less than 30 tons per hour) or Equation 2 of this section (for an emissions source with a process rate of 30 tons per hour or greater). If more than one process vents to a common stack, the applicable emissions limit for the stack is the sum of allowable emissions calculated for each process using Equation 1 or 2 of this section, as applicable.

$$E = 4.1 \times P^{0.67} \qquad \text{(Eq. 1)}$$

Where:

E = Emissions limit in pounds per hour (lb/hr); and

P = Process rate of emissions source in tons per hour (ton/hr).

$$E = 55 \times P^{0.11} - 40 \qquad \text{(Eq. 2)}$$

§ 63.11410 What are the compliance requirements?

(a) *Existing sources.* If you own or operate an existing area source, you must comply with the requirements in paragraphs (b) through (e) of this section.

(b) *Initial control device inspection.* You must conduct an initial inspection of each PM control device according to the requirements in paragraphs (b)(1) through (4) of this section. You must conduct each inspection no later than 60 days after your applicable compliance date for each installed control device which has been operated within 60 days of the compliance date. For an installed control device which has not been operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device.

(1) For each baghouse, you must visually inspect the system ductwork and baghouse unit for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action in the logbook required in paragraph (d) of this section. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(2) For each dry electrostatic precipitator, you must verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold. You must also visually inspect the system ductwork and electrostatic precipitator housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates. An initial inspection of the internal components of a dry electrostatic precipitator is not required if an inspection has been performed within the past 24 months.

(3) For each wet electrostatic precipitator, you must verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present. You must also visually inspect the system ductwork and electrostatic precipitator housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates. An initial inspection of the internal components of a wet electrostatic precipitator is not required if an inspection has been performed within the past 24 months.

(4) For each wet scrubber, you must verify the presence of water flow to the scrubber. You must also visually inspect the system ductwork and scrubber unit for leaks and inspect the interior of the scrubber for structural integrity and the condition of the demister and spray nozzle.

(i) An initial inspection of the internal components of a wet scrubber is not required if an inspection has been performed within the past 12 months.

(i) An initial inspection of the internal components of a wet scrubber is not required if an inspection has been performed within the past 12 months.

(ii) The requirement in paragraph (b)(4) of this section for initial inspection of the internal components of a wet scrubber does not apply to a cyclonic scrubber installed upstream of a wet or dry electrostatic precipitator.

(c) *Periodic inspections/maintenance.* Following the initial inspections, you must perform periodic inspections and maintenance of each PM control device according to the requirements in paragraphs (c)(1) through (4) of this section.

(1) You must inspect and maintain each baghouse according to the requirements in paragraphs (c)(1)(i) and (ii) of this section.

(i) You must conduct monthly visual inspections of the system ductwork for leaks.

(ii) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months. If an initial inspection is not required by paragraph (b)(1) of this section, the first inspection must not be more than 12 months from the last inspection.

(2) You must inspect and maintain each dry electrostatic precipitator according to the requirements in paragraphs (c)(2)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold.

(ii) You must conduct monthly visual inspections of the system ductwork, housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(3) You must inspect and maintain each wet electrostatic precipitator according to the requirements in paragraphs (c)(3)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present.

(ii) You must conduct monthly visual inspections of the system ductwork, electrostatic precipitator housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months. If an initial inspection is not required by paragraph (b)(2) of this section, the first inspection must not be more than 24 months from the last inspection.

(4) You must inspect and maintain each wet scrubber according to the requirements in paragraphs (c)(4)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the presence of water flow to the scrubber.

(ii) You must conduct monthly visual inspections of the system ductwork and scrubber unit for leaks.

(iii) You must conduct inspections of the interior of the scrubber to determine the structural integrity and condition of the demister and spray nozzle every 12 months. Internal inspections of cyclonic scrubbers installed upstream of wet or dry electrostatic precipitators are not required.

(d) *Recordkeeping requirements.* You must record the results of each inspection and maintenance action in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the permitting authority upon request. You must keep records of the information specified in paragraphs (d)(1) through (4) of this section for 5 years following the date of each recorded action.

(1) The date and time of each recorded action for a fabric filter, the results of each inspection, and the results of any maintenance performed on the bag filters.

(2) The date and time of each recorded action for a wet or dry electrostatic precipitator (including ductwork), the results of each inspection, and the results of any maintenance performed on the electrostatic precipitator.

(3) The date and time of each recorded action for a wet scrubber (including ductwork), the results of each inspection, and the results of any maintenance performed on the wet scrubber.

(4) Records of all required monitoring data and supporting information including all calibration and maintenance records, original strip-chart recordings for continuous monitoring information, and copies of all reports required by this subpart. You must maintain records of required monitoring data in a form suitable and readily available for expeditious review. All records must be kept onsite and made available to EPA or the delegated authority for inspection upon request. You must maintain records of all required monitoring data and supporting information for at least 5 years from the date of the monitoring sample, measurement, report, or application.

(e) *Reports.* (1) You must report each deviation (an action or condition not in accordance with the requirements of this subpart, including upset conditions but excluding excess emissions) to the permitting agency on the next business day after becoming aware of the deviation. You must submit a written report within 2 business days which identifies the probable cause of the deviation and any corrective actions or preventative actions taken. All reports of deviations must be certified by a responsible official.

(2) You must submit semiannual reports of monitoring and recordkeeping activities to your permitting authority.

(3) You must submit the results of any maintenance performed on each PM control device within 30 days of a written request by the permitting authority.

(f) *New sources.* If you own or operate a new affected source, you must comply with the requirements in paragraphs (g) and (h) of this section.

(g) *Bag leak detection systems.* You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in § 63.11409 according to paragraph (g)(1) of this section; prepare and operate by a site-specific monitoring plan according to paragraph (g)(2) of this section; take corrective action according to paragraph (g)(3) of this section; and record information according to paragraph (g)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (g)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 0.00044 grains per actual cubic foot or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (g)(1)(iv) of this section, and the alarm

must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (g)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (g)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to an approved site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (g)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (g)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (g)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate 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 process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (g)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(h) *Other control devices.* If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to EPA or the delegated authority for approval. You must operate and maintain the control device according to an approved site-specific monitoring plan at all times. Each plan must contain the information in paragraphs (h)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (i) of this section verifying the performance of the device for reducing PM to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(i) *Performance tests.* If you own or operate a new affected source, you must conduct a performance test for each emissions source subject to an emissions limit in § 63.11409(b) within 180 days of your compliance date and report the results in your notification of compliance status. If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the past 5 years of the effective date using the same methods specified in paragraph (j) of this section and either no process changes have been made since the test, or if you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(j) *Test methods.* You must conduct each performance test according to the requirements in § 63.7 and paragraphs (j)(1) through (3) of this section.

(1) Determine the concentration of PM according to the following test methods in 40 CFR part 60, appendix A:

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D to determine the concentration of particulate matter (front half filterable catch only). Three valid test runs are needed to comprise a performance test.

(2) During the test, you must operate each emissions source within ±10

and record the process rate during the test.

(3) Compute the mass emissions (E) in pounds per hour (lb/hr) for each test run using Equation 1 of this section and the process rate measured during the test. The PM emissions in lb/hr must be less than the allowable PM emissions rate for the emissions source.

$$E = \frac{C \times Q}{K} \qquad \text{(Eq. 1)}$$

Where:

E = Mass emissions of PM, pounds per hour (lb/hr);

C = Concentration of PM, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of stack gas, dry standard cubic foot per hour (dscf/hr); and

K = Conversion factor, 7,000 grains per pound (gr/lb).

(k) *Startups, shutdown, and malfunctions.* The requirements in paragraphs (k)(1) and (2) of this section apply to the owner or operator of a new or existing affected source.

(1) Except as provided in paragraph (k)(2) of this section, you must report emissions in excess of a PM emissions limit established by this subpart lasting for more than 4 hours that result from a malfunction, a breakdown of process or control equipment, or any other abnormal condition by 9 a.m. of the next business day of becoming aware of the occurrence. You must provide the name and location of the facility, the nature and cause of the malfunction or breakdown, the time when the malfunction or breakdown is first observed, the expected duration, and the estimated rate of emissions. You must also notify EPA or the delegated authority immediately when corrected measures have been accomplished and, if requested, submit a written report within 15 days after the request.

(2) As an alternative to the requirements in paragraph (k)(1) of this section, you must comply with the startup, shutdown, and malfunction requirements in § 63.6(e)(3).

Other Requirements and Information

§ 63.11411 What General Provisions apply to this subpart?

(a) You must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A as specified in Table 2 to this subpart.

(b) Your notification of compliance status required by § 63.9(h) must include the following information for a new or existing affected source:

(1) This certification of compliance, signed by a responsible official, for the standards in § 63.11409(a): "This facility complies with the management practice requirements in § 63.11409(a) for installation and operation of capture systems for each emissions source subject to an emissions limit in § 63.11409(b)."

(2) This certification of compliance by the owner or operator of an existing source (if applicable), signed by a responsible official, for the emissions limits in § 63.11409(b): "This facility complies with the emissions limits in § 63.11409(b) based on a previous performance test in accordance with § 63.11410(i)."

(3) The process rate for each emissions source subject to an emissions limit in § 63.11409(b) that represents normal and representative production operations.

(4) The procedures used to measure and record the process rate for each emissions source subject to an emissions limit in § 63.11409(b).

(5) This certification of compliance by the owner or operator of an existing affected source, signed by a responsible official, for the control device inspection and maintenance requirements in § 63.11410(b) through (d): "This facility has conducted an initial inspection of each control device according to the requirements in § 63.11410(b), will conduct periodic inspections and maintenance of control devices in accordance with § 63.11410(c), and will maintain records of each inspection and maintenance action in the logbook required by § 63.11410(d)."

(6) This certification of compliance by the owner or operator of a new affected source, signed by a responsible official, for the bag leak detection system monitoring plan requirement in § 63.11410(g)(2): "This facility has an approved bag leak detection system monitoring plan in accordance with § 63.11410(g)(2)."

(7) Performance test results for each emissions unit at a new affected source (or each emissions source at an existing affected source if a test is required) in accordance with § 63.11410(j). The performance test results for a new affected source must identify the daily average parameter operating limit for each PM control device.

(8) If applicable, this certification of compliance by the owner or operator of a new or existing source, signed by a responsible official, for the requirement in paragraph (k)(2) of this section to comply with the startup, shutdown, and malfunction provisions in 40 CFR 63.6(e)(3): "This facility has prepared a startup, shutdown, and malfunction plan in accordance with 40 CFR 63.6(e)(3)".

§ 63.11412 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Chromic acid means chromium trioxide (CrO_3). It is produced by the electrolytic reaction or acidification of sodium dichromate.

Chromium compounds manufacturing means any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide.

Chromium compounds manufacturing facility means the collection of processes and equipment at a plant engaged in chromium compounds manufacturing.

Chromite ore means an oxide of chromium and iron ($FeCr_2O_4$) that is the primary feedstock for chromium compounds manufacturing.

Chromic oxide means Cr_2O_3. In the production of chromic oxide, ammonium sulfate and sodium dichromate that have been concentrated by evaporation are mixed and fed to a rotary roasting kiln to produce chromic oxide, sodium sulfate and nitrogen gas.

Roasting means a heating (oxidizing) process where ground chromite ore is mixed with alkaline material (such as soda ash, sodium bicarbonate, and sodium hydroxide) and fed to a rotary kiln where it is heated to about 2,000 °F, converting the majority of the chromium in the ore from trivalent to hexavalent chromium.

Sodium chromate means Na_2CrO_4. It is produced by roasting chromite ore in a rotary kiln.

Sodium dichromate means sodium bichromate or sodium bichromate dihydrate and is known technically as sodium dichromate dihydrate ($Na_2Cr_2O_7 \cdot 2H_2O$). It is produced by the electrolytic reaction or acidification of sodium chromate.

§ 63.11413 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA

Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11409, you must install and operate capture systems and comply with the applicable emissions limit for each emissions source shown in the following table.

TABLE 1 TO SUBPART NNNNNN OF PART 63.—HAP EMISSIONS SOURCES

Process	Emissions sources
1. Sodium chromate production.	a. Ball mill used to grind chromite ore.
	b. Dryer used to dry chromite ore.
	c. Rotary kiln used to roast chromite ore to produce sodium chromate.
	d. Secondary rotary kiln used to recycle and refine residues containing chromium compounds.
	e. Residue dryer system.
	f. Quench tanks.
2. Sodium dichromate production.	a. Stack on the electrolytic cell system used to produce sodium dichromate.
	b. Sodium dichromate crystallization unit.
	c. Sodium dichromate drying unit.
3. Chromic acid production.	a. Electrolytic cell system used to produce chromic acid.
	b. Melter used to produce chromic acid.
	c. Chromic acid crystallization unit.
	d. Chromic acid dryer.
4. Chromic oxide production.	a. Primary rotary roasting kiln used to produce chromic oxide.
	b. Chromic oxide filter.
	c. Chromic oxide dryer.
	d. Chromic oxide grinding unit.
	e. Chromic oxide storage vessel.
	f. Secondary rotary roasting kiln.
	g. Quench tanks.
5. Chromium hydrate production.	a. Furnace used to produce chromium hydrate.
	b. Chromium hydrate grinding unit.

As required in § 63.11411(a), you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as shown in the following table.

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

Citation	Subject	Applies	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes	The startup, shutdown, and malfunction requirements in § 63.6(e)(3) apply at new and existing area sources that choose to comply with § 63.11410(k)(2) instead of the requirements in § 63.11410(k)(1).
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart NNNNNN does not include opacity or visible emissions standards or require a continuous opacity monitoring system.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements.	Yes	Subpart NNNNNN requires a performance test for a new source; a test for an existing source is not required under the conditions specified in § 63.11410(i).
63.7(b), (c)		Yes/No	Requirements for notification of performance test and for quality assurance program apply to new area sources but not existing area sources.
63.8(a)(1), (a)(2), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart NNNNNN does not require flares.
63.8(c)(4)–(c)(8), (d), (e), (f)(6), (g)		No	Subpart NNNNNN establishes requirements for continuous parameter monitoring systems.

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

Citation	Subject	Applies	Explanation
63.9(a), (b)(1), (b)(5), (c), (d), (i), (j).	Notification Requirements	Yes.	
63.9(e)		Yes/No	Notification of performance test is required only for new area sources.
63.9(b)(2)		Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (h)(5)		No.	
63.9(f), (g)		No	Subpart NNNNNN does not include opacity or visible emissions standards or require a continuous opacity monitoring system or continuous emissions monitoring system.
63.9(h)(1)–(h)(3), (h)(6)		Yes.	
63.10(a), (b)(1), (b)(2)(xii), (b)(2)(xiv), (b)(3).	Recordkeeping Requirements	Yes.	
63.10(b)(2)(i)–(b)(2)(v)		Yes.	Recordkeeping requirements for startups, shutdowns, and malfunctions apply to new and existing area sources that choose to comply with § 63.11410(k)(2).
63.10(b)(2)(vi)–(b)(2)(ix), (c)(1), (c)(5)–(c)(14).		Yes/No	Requirements apply to continuous parameter monitoring systems at new area sources but not existing area sources.
63.10(b)(2)(vii)(A)–(B), (b)(2)(x), (b)(2)(xiii).		No.	
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(4), (f)	Reporting Requirements	Yes.	
63.10(d)(2)		Yes	Report of performance test results applies to new area sources; the results of a previous test may be submitted for an existing area source under the conditions specified in § 63.11410(i).
63.10(d)(3)		No	Subpart NNNNNN does not include opacity or visible emissions limits.
63.10(d)(5)		Yes	Requirements for startup, shutdown, and malfunction reports apply to new and existing area sources that choose to comply with § 63.11410(k)(2).
63.10(e)(1)–(e)(2), (e)(4)		No	Subpart NNNNNN does not require a continuous emissions monitoring system or continuous opacity monitoring system.
63.10(e)(3)		Yes/No	Semiannual reporting requirements apply to new area sources but not existing area sources.
63.11	Control Device Requirements	No	Subpart NNNNNN does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 6. Part 63 is amended by adding subpart OOOOOO to read as follows:

Subpart OOOOOO—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources

Sec.

Applicability and Compliance Dates

63.11414 Am I subject to this subpart?
63.11415 What are my compliance dates?

Standards and Compliance Requirements

63.11416 What are the standards for new and existing sources?
63.11417 What are the compliance requirements for new and existing sources?

Other Requirements and Information

63.11418 What General Provisions apply to this subpart?
63.11419 What definitions apply to this subpart?
63.11420 Who implements and enforces this subpart?
Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO

Applicability and Compliance Dates

§ 63.11414 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an area source of hazardous air pollutant (HAP) emissions that meets the criteria in paragraph (a)(1) or (2) of this section.

(1) You own or operate a plant that produces flexible polyurethane foam or rebond foam as defined in § 63.1292 of subpart III.

(2) You own or operate a flexible polyurethane foam fabrication facility, as defined in § 63.11419.

(b) The provisions of this subpart apply to each new and existing affected source that meets the criteria listed in paragraphs (b)(1) through (4) of this section.

(1) A slabstock flexible polyurethane foam production affected source is the collection of all equipment and activities necessary to produce slabstock flexible polyurethane foam.

(2) A molded flexible polyurethane foam production affected source is the collection of all equipment and activities necessary to produce molded foam.

(3) A rebond foam production affected source is the collection of all equipment and activities necessary to produce rebond foam.

(4) A flexible polyurethane foam fabrication affected source is the collection of all equipment and activities at a flexible polyurethane foam fabrication facility where adhesives are used to bond foam to foam or other substrates. Equipment and activities at flexible polyurethane foam fabrication facilities which do not use adhesives to bond foam to foam or other substrates are not flexible polyurethane foam fabrication affected sources.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(e) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(f) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11415 What are my compliance dates?

(a) If you own or operate an existing slabstock flexible polyurethane foam production affected source, you must achieve compliance with the applicable provisions in this subpart by July 16, 2008.

(b) If you own or operate an existing molded flexible polyurethane foam affected source, an existing rebond foam production affected sources, or an existing flexible polyurethane foam fabrication affected source, you must achieve compliance with the applicable provisions in this subpart by July 16, 2007.

(c) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions in this subpart not later than July 16, 2007.

(d) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11416 What are the standards for new and existing sources?

(a) If you own or operate a slabstock flexible polyurethane foam production affected source, you must meet the requirements in paragraph (b) of this section. If you own or operate a molded foam affected source, you must meet the requirements in paragraph (c) of this section. If you own or operate a rebond foam affected source, you must meet the requirements in paragraph (d) of this section. If you own or operate a flexible polyurethane foam fabrication affected source, you must meet the requirements in paragraph (e) of this section.

(b) If you own or operate a new or existing slabstock polyurethane foam production affected source, you must comply with the requirements in either paragraph (b)(1) or (2) of this section.

(1) Comply with § 63.1293(a) or (b) of subpart III, except that you must use Equation 1 of this section to determine the HAP auxiliary blowing agent (ABA) formulation limit for each foam grade instead of Equation 3 of § 63.1297 of subpart III.

You must use zero as the formulation limitation for any grade of foam where the result of the formulation equation (using Equation 1 of this section) is negative (*i.e.*, less than zero):

$$ABA_{limit} = -0.2\,(IFD) - 19.1\left(\frac{1}{IFD}\right) - 15.3\,(DEN) - 6.8\left(\frac{1}{DEN}\right) + 36.5 \qquad \text{(Equation 1)}$$

where:

ABA_{limit} = HAP ABA formulation limitation, parts methylene chloride ABA allowed per hundred parts polyol (pph).

IFD = Indentation force deflection, pounds.

DEN = Density, pounds per cubic foot.

(2) Use no material containing methylene chloride for any purpose in any slabstock flexible foam production process.

(c) If you own or operate a new or existing molded foam affected source, you must comply with the requirements in paragraphs (c)(1) and (2) of this section.

(1) You must not use a material containing methylene chloride as an equipment cleaner to flush the mixhead or use a material containing methylene chloride elsewhere as an equipment cleaner in a molded flexible polyurethane foam process.

(2) You must not use a mold release agent containing methylene chloride in a molded flexible polyurethane foam process.

(d) If you own or operate a new or existing rebond foam affected source, you must comply with the requirements in paragraphs (d)(1) and (2) of this section.

(1) You must not use a material containing methylene chloride as an equipment cleaner in a rebond foam process.

(2) You must not use a mold release agent containing methylene chloride in a rebond foam process.

(e) If you own or operate a new or existing flexible polyurethane foam fabrication affected source, you must not use any adhesive containing methylene chloride in a flexible polyurethane foam fabrication process.

(f) You may demonstrate compliance with the requirements in paragraphs (b)(2) and (c) through (e) of this section using adhesive usage records, Material Safety Data Sheets, and engineering calculations.

§ 63.11417 What are the compliance requirements for new and existing sources?

(a) If you own or operate a slabstock flexible polyurethane foam production affected source, you must comply with the requirements in paragraph (b) of this section. If you own or operate a molded foam affected source, rebond foam affected source, or a loop slitter at a flexible polyurethane foam fabrication affected source you must comply with the requirements in paragraphs (c) and (d) of this section.

(b) Each owner or operator of a new or existing slabstock flexible polyurethane foam production affected source who chooses to comply with § 63.11416(b)(1) must comply with paragraph (b)(1) of this section. Each owner or operator of a new or existing slabstock flexible polyurethane foam production affected source who chooses to comply with § 63.11416(b)(2) must comply with paragraphs (b)(2) and (3) of this section.

(1) You must comply with paragraphs (b)(1)(i) through (v) of this section.

(i) The monitoring requirements in § 63.1303 of subpart III.

(ii) The testing requirements in § 63.1304 or § 63.1305 of subpart III.

(iii) The reporting requirements in § 63.1306 of subpart III, with the exception of the reporting requirements in § 63.1306(d)(1), (2), (4), and (5) of subpart III.

(iv) The recordkeeping requirements in § 63.1307 of subpart III, with the exception of the recordkeeping requirements in § 63.1307(a)(1), (b)(1)(i), and (b)(2).

(v) The compliance demonstration requirements in § 63.1308(a), (c), and (d) of subpart III.

(2) You must submit a notification of compliance status report no later than 180 days after your compliance date. The report must contain the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G), and must contain this certification of compliance, signed by a responsible official, for the standards in § 63.11416(b)(2): "This facility uses no material containing methylene chloride for any purpose on any slabstock flexible foam process."

(3) You must maintain records of the information used to demonstrate compliance, as required in § 63.11416(f). You must maintain the records for 5 years, with the last 2 years of data retained on site. The remaining 3 years of data may be maintained off site.

(c) You must have a compliance certification on file by the compliance date. This certification must contain the statements in paragraph (c)(1), (2), or (3) of this section, as applicable, and must be signed by a responsible official.

(1) For a molded foam affected source:

(i) "This facility does not use any equipment cleaner to flush the mixhead which contains methylene chloride, or any other equipment cleaner containing methylene chloride in a molded flexible polyurethane foam process in accordance with § 63.11416(c)(1)."

(ii) "This facility does not use any mold release agent containing methylene chloride in a molded flexible polyurethane foam process in accordance with § 63.11416(c)(2)."

(2) For a rebond foam affected source:

(i) "This facility does not use any equipment cleaner which contains methylene chloride in a rebond flexible polyurethane foam process in accordance with § 63.11416(d)(1)."

(ii) "This facility does not use any mold release agent containing methylene chloride in a rebond flexible polyurethane foam process in accordance with § 63.11416(d)(2)."

(3) For a flexible polyurethane foam fabrication affected source containing a loop slitter: "This facility does not use any adhesive containing methylene chloride on a loop slitter process in accordance with § 63.11416(e)."

(d) For molded foam affected sources, rebond foam affected sources, and flexible polyurethane foam fabrication affected sources containing a loop slitter, you must maintain records of the information used to demonstrate compliance, as required in § 63.11416(f). You must maintain the records for 5 years, with the last 2 years of data retained on site. The remaining 3 years of data may be maintained off site.

Other Requirements and Information

§ 63.11418 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, applicable to sources subject to § 63.11416(b)(1) are specified in Table 1 of this subpart.

§ 63.11419 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; § 63.1292 of subpart III; § 63.8830 of subpart MMMMM; § 63.2 of subpart A; and in this section as follows:

Flexible polyurethane foam fabrication facility means a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates.

§ 63.11420 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11418, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART OOOOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOOO

Subpart A reference	Applies to Subpart OOOOOO?	Comment
§ 63.1	Yes.	
§ 63.2	Yes	Definitions are modified and supplemented by § 63.11419.
§ 63.3	Yes.	
§ 63.4	Yes.	
§ 63.5	Yes.	
§ 63.6(a)–(d)	Yes.	
§ 63.6(e)(1)–(2)	Yes.	
§ 63.6(e)(3)	No	Owners and operators of subpart OOOOOO affected sources are not required to develop and implement a startup, shutdown, and malfunction plan.
§ 63.6 (f)–(g)	Yes.	
§ 63.6(h)	No	Subpart OOOOOO does not require opacity and visible emissions standards.
§ 63.6 (i)–(j)	Yes.	
§ 63.7	No	Performance tests not required by subpart OOOOOO.

TABLE 1 TO SUBPART OOOOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOOO—Continued

Subpart A reference	Applies to Subpart OOOOOO?	Comment
§ 63.8	No	Continuous monitoring, as defined in subpart A, is not required by subpart OOOOOO.
§ 63.9(a)–(d)	Yes.	
§ 63.9(e)–(g)	No.	
§ 63.9(h)	No	Subpart OOOOOO specifies Notification of Compliance Status requirements.
§ 63.9 (i)–(j)	Yes.	
§ 63.10(a)–(b)	Yes	Except that the records specified in § 63.10(b)(2) are not required.
§ 63.10(c)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)–(3)	No.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No.	
§ 63.10(e)	No.	
§ 63.10(f)	Yes.	
§ 63.11	No.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	
§ 63.16	Yes.	

■ 7. Part 63 is amended by adding subpart PPPPPP to read as follows:

Subpart PPPPPP—National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

Sec.

Applicability and Compliance Dates

63.11421 Am I subject to this subpart?
63.11422 What are my compliance dates?

Standards and Compliance Requirements

63.11423 What are the standards and compliance requirements for new and existing sources?
63.11424 [Reserved]

Other Requirements and Information

63.11425 What General Provisions apply to this subpart?
63.11426 What definitions apply to this subpart?
63.11427 Who implements and enforces this subpart?
Table 1 to Subpart PPPPPPP of Part 63—Applicability of General Provisions to Subpart PPPPPP

Applicability and Compliance Dates

§ 63.11421 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a lead acid battery manufacturing plant that is an area source of hazardous air pollutants (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each lead acid battery manufacturing plant. The affected source includes all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11422 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by no later than July 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions in this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11423 What are the standards and compliance requirements for new and existing sources?

(a) You must meet all the standards for lead in 40 CFR 60.372.

(b) You must meet the monitoring requirements in paragraphs (b)(1) and (2) of this section.

(1) For any emissions point controlled by a scrubbing system, you must meet the requirements in 40 CFR 60.373.

(2) For any emissions point controlled by a fabric filter, you must meet the requirements of paragraph (b)(2)(i) of this section and either paragraph (b)(2)(ii) or (iii) of this section. Fabric filters equipped with a high efficiency particulate air (HEPA) filter or other secondary filter are allowed to monitor less frequently, as specified in paragraph (b)(2)(iv) of this section.

(i) You must perform semiannual inspections and maintenance to ensure proper performance of each fabric filter. This includes inspection of structural and filter integrity. You must record the results of these inspections.

(ii) You must install, maintain, and operate a pressure drop monitoring device to measure the differential pressure drop across the fabric filter during all times when the process is operating. The pressure drop shall be recorded at least once per day. If a pressure drop is observed outside of the normal operational ranges, you must record the incident and take immediate

corrective actions. You must also record the corrective actions taken. You must submit a monitoring system performance report in accordance with § 63.10(e)(3).

(iii) You must conduct a visible emissions observation at least once per day to verify that no visible emissions are occurring at the discharge point to the atmosphere from any emissions source subject to the requirements of paragraph (a) of this section. If visible emissions are detected, you must record the incident and conduct an opacity measurement in accordance with 40 CFR 60.374(b)(3). You must record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 40 CFR 60.372(a)(7) or (8), you must submit this information in an excess emissions report required under § 63.10(e)(3).

(iv) Fabric filters equipped with a HEPA filter or other secondary filter are allowed to monitor less frequently, as specified in paragraph (b)(2)(iv)(A) or (B) of this section.

(A) If you are using a pressure drop monitoring device to measure the differential pressure drop across the fabric filter in accordance with paragraph (b)(2)(ii) of this section, you must record the pressure drop at least once per week. If a pressure drop is observed outside of the normal operational ranges, you must record the incident and take immediate corrective actions. You must also record the corrective actions taken. You must submit a monitoring system performance report in accordance with § 63.10(e)(3).

(B) If you are conducting visible emissions observations in accordance with paragraph (b)(2)(iii) of this section, you must conduct such observations at least once per week and record the results in accordance with paragraph (b)(2)(iii) of this section. If visible emissions are detected, you must record the incident and conduct an opacity measurement in accordance with 40 CFR 60.374(b)(3). You must record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 40 CFR 60.372(a)(7) or (8), you must submit this information in an excess emissions report required under § 63.10(e)(3).

(c) You must meet the testing requirements in 40 CFR 60.374.

(1) Existing sources are not required to conduct a performance test if a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Sources without a prior performance test, as described in paragraph (b) of this section, must conduct a performance test using the methods specified in 40 CFR 60.374 by 180 days after the compliance date.

§ 63.11424 [Reserved]

Other Requirements and Information

§ 63.11425 What General Provisions apply to this subpart?

(a) The provisions in 40 CFR part 63, subpart A, that are applicable to this subpart are specified in Table 1 to this subpart.

(b) For existing sources, the initial notification required by § 63.9(b) must be submitted not later than November 13, 2007.

(c) For existing sources, the notification of compliance required by § 63.9(h) must be submitted not later than September 15, 2008.

§ 63.11426 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; 40 CFR 60.371; 40 CFR 60.2 for terms used in the applicable provisions of part 60, subpart A, as specified in § 63.11425(a); and § 63.2 for terms used in the applicable provisions of part 63, subpart A, as specified in § 63.11425(b).

§ 63.11427 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under 40 CFR 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11425, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART PPPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPPP

Citation	Subject	Applies to Subpart PPPPPP?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations.		
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a)–(d), (e)(1), (f)–(j)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(e)(3)		No	Subpart PPPPPP does not require a startup, shutdown, and malfunction plan.
63.7	Performance Testing Requirements.	Yes.	
63.8	Monitoring Requirements	Yes.	

TABLE 1 TO SUBPART PPPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPPP—Continued

Citation	Subject	Applies to Subpart PPPPPP?	Explanation
63.9		Yes.	
63.10(a)–(c), (d)(1)–(4), (e), (f)	Recordkeeping and Reporting Requirements.	Yes.	
63.10(d)(5)		No	Subpart PPPPPP does not require a startup, shutdown, and malfunction plan.
63.11	Control Device Requirements	No	Subpart PPPPPP does not require flares.
63.12	State Authorities and Delegations.	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	
63.1(a)(5), (a)(7)–(9), (b)(2), (c)(3), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(c)(4), (c)(9).	Reserved	No.	

■ 8. Part 63 is amended by adding subpart QQQQQQ to read as follows:

Subpart QQQQQQ—National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

Sec.

Applicability and Compliance Dates

63.11428 Am I subject to this subpart?
63.11429 What are my compliance dates?

Standards

63.11430 What are the standards?
63.11431 [Reserved]

Other Requirements and Information

63.11432 What General Provisions apply to this subpart?
63.11433 What definitions apply to this subpart?
63.11434 Who implements and enforces this subpart?
Table 1 to Subpart QQQQQQ of Part 63—Applicability of General Provisions of Subpart QQQQQQ

Applicability and Compliance Dates

§ 63.11428 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a wood preserving operation that is an area source of hazardous air pollutant (HAP) emissions.

(b) The affected source is each new or existing wood preserving operation.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(c) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11429 What are my compliance dates?

(a) If you have an existing affected source, you must achieve compliance with applicable provisions in this subpart by July 16, 2007.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with applicable provisions in this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with applicable provisions in this subpart upon initial startup.

Standards

§ 63.11430 What are the standards?

(a) If you use a pressure treatment process with any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, the preservative must be applied to the wood product inside a retort or similarly enclosed vessel.

(b) If you use a thermal treatment process with any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, the preservative must be applied using process treatment tanks equipped with an air scavenging system to control emissions.

(c) If you use any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, you must prepare and operate according to a management practice plan to minimize air emissions from the preservative treatment of wood at a new or existing area source. You may use your standard operating procedures to meet the requirements for a management practice plan if it includes the minimum activities required for a management practice plan. The management practice plan must include, but is not limited to, the following activities:

(1) Minimize preservative usage;

(2) Maintain records on the type of treatment process and types and amounts of wood preservatives used at the facility;

(3) For the pressure treatment process, maintain charge records identifying pressure reading(s) inside the retorts (or similarly enclosed vessel);

(4) For the thermal treatment process, maintain records that the air scavenging system is in place and operated properly during the treatment process;

(5) Store treated wood product on drip pads or in a primary containment area to convey preservative drippage to a collection system until drippage has ceased;

(6) For the pressure treatment process, fully drain the retort to the extent practicable, prior to opening the retort door;

(7) Promptly collect any spills; and

(8) Perform relevant corrective actions or preventative measures in the event of a malfunction before resuming operations.

§ 63.11431 [Reserved]

Other Requirements and Information

§ 63.11432 What General Provisions apply to this subpart?

(a) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, according to Table 1 to this subpart.

(b) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must submit an initial notification of applicability required by § 63.9(a)(2) no later than 90 days after the applicable compliance date specified in § 63.11429. The initial notification may be combined with the notification of compliance status required in paragraph (c) of this section. The notification of applicability must include the following information:

(1) The name and address of the owner or operator;

(2) The address (*i.e.*, physical location) of the affected source; and

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

(c) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must submit a notification of compliance status required by § 63.9(h) no later than 90 days after the applicable compliance date specified in § 63.11429. Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the standards in § 63.11430: "This facility complies with the management practices to minimize air emissions from the preservative treatment of wood in accordance with § 63.11430."

(d) You must report any deviation from the requirements of this subpart within 30 days of the deviation.

§ 63.11433 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

Air scavenging system means an air collection and control system that collects and removes vapors from a thermal treatment process vessel and vents the emissions to a vapor recovery tank that collects condensate from the vapors.

Chromated copper arsenate (CCA) means a chemical wood preservative consisting of mixtures of water-soluble chemicals containing metal oxides of chromium, copper, and arsenic. CCA is used in pressure treated wood to protect wood from rotting due to insects and microbial agents.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or management practice;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Pressure treatment process means a wood treatment process involving an enclosed vessel, usually a retort, and the application of pneumatic or hydrostatic pressure to expedite the movement of preservative liquid into the wood.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means an airtight pressure vessel, typically a long horizontal cylinder, used for the pressure impregnation of wood products with a liquid wood preservative.

Thermal treatment process means a non-pressurized wood treatment process where the wood is exposed to a heated preservative.

Wood preserving means the pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers.

§ 63.11434 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART QQQQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQQ

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12)(b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	

TABLE 1 TO SUBPART QQQQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQQ—Continued

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii), (h)(v)(v), (h)(6)–(h)(9).	No	Subpart QQQQQQ does not require startup, shutdown, and malfunction plan or contain emission or opacity limits.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.7	Performance Testing Requirements.	No	Subpart QQQQQQ does not require performance tests.
63.8(a)(1), (a)(2), (a)(4), (b), (c), (d), (e), (f), (g).	Monitoring Requirements	No	Subpart QQQQQQ does not require monitoring of emissions.
63.8(a)(3)	Reserved	No.	
63.9(a), (b)(1), (b)(2), (b)(4), (b)(5), (c), (d), (h)(1), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(2)(i)–(b)(2)(v), (h)(2)(i)–(h)(2)(ii), (h)(3), (h)(5).		Yes.	
63.9(e), (f), (g)		No.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.10(a), (b), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(14), (d), (e), (f).	Recordkeeping and Reporting Requirements.	No	Subpart QQQQQQ establishes requirements for a report of deviations within 30 days.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.11	Control Device Requirements	No	Subpart QQQQQQ does not require flares.
63.12	State Authorities and Delegations.	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

[FR Doc. E7–12018 Filed 7–13–07; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0424; EPA–HQ–OAR–2006–0360; EPA–HQ–OAR–2006–0940; FRL–8508–5]

National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for the Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing area source categories. Each of these three final emissions standards reflects the generally available control technology or management practices used by sources within the respective area source category.

DATES: This final rule is effective on December 26, 2007. The incorporation by reference of certain publications listed in this rule are approved by the Director of the Federal Register as of December 26, 2007.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), Docket ID No. EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), and Docket ID No. EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing). All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule for Clay Ceramics Manufacturing, contact Mr. Bill Neuffer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–5435; *fax number:* (919) 541–3207; *e-mail address: Neuffer.Bill@epa.gov.* For questions about the final rule for Glass Manufacturing or Secondary Nonferrous Metals Processing, contact Ms. Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711, *telephone number:* (919) 541–5167, *fax number:* (919) 541–3207, *e-mail address: Fairchild.Susan@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background Information for Final Area Source Standards
III. Summary of Final Rules and Changes Since Proposal
A. Area Source NESHAP for Clay Ceramics Manufacturing
B. Area Source NESHAP for Glass Manufacturing
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IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements
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VI. Impacts of the Final Area Source Standards
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VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category (Industry)	NAICS code [1]	Examples of regulated entities
Clay Ceramics Manufacturing	327122 327111 327112	Area source facilities that manufacture ceramic wall and floor tile, vitreous plumbing fixtures, sanitaryware, vitreous china tableware and kitchenware, and/or pottery.
Glass Manufacturing	327211 327212 327213	Area source facilities that manufacture flat glass, glass containers, and other pressed and blown glass and glassware.
Secondary Nonferrous Metals Processing	331492 331423	Area source brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plants that melt post-consumer nonferrous metal scrap to make products, including bars, ingots, and blocks, or metal powders.[2]

[1] North American Industry Classification System.

[2] The Secondary Nonferrous Metals Processing area source category was originally established under SIC code 3341, a broader classification which included brass and bronze ingot makers. The corresponding NAICS code for brass and bronze ingot makers is 331423.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11435 of subpart RRRRRR (national emissions standards for hazardous air pollutants (NESHAP) for Clay Ceramics Manufacturing Area Sources), 40 CFR 63.11448 of subpart SSSSSS (NESHAP for Glass Manufacturing Area Sources), and 40 CFR 63.11462 of subpart TTTTTT (NESHAP for Secondary Nonferrous Metals Processing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP) which, as the result of emissions from area sources,[a] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "urban HAP." *See* 64 FR 38706, 38715–716, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the urban HAP emissions in the Integrated Urban Air Toxics Strategy.[b] Sierra Club sued EPA, alleging a failure to complete standards for the source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B) within the timeframe specified by the statute. *See Sierra Club* v. *Johnson*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B).

Among other things, the court order, as amended on October 15, 2007, requires that EPA complete standards for 9 area source categories by December 15, 2007. On September 20, 2007 (72 FR 53838), we proposed NESHAP for the following three listed area source categories: (1) Clay Ceramics Manufacturing; (2) Glass Manufacturing; and (3) Secondary Nonferrous Metals Processing as part of our effort to meet the December 15, 2007 deadline. The standards for the other categories are being issued in separate actions.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of MACT. As explained in the proposed NESHAP, we are setting standards for these three source categories pursuant to section 112(d)(5). *See* 72 FR 53840, September 20, 2007.

III. Summary of Final Rules and Changes Since Proposal

This section summarizes the final rules and identifies changes since proposal. For changes that were made as a result of public comments, we have provided detailed explanations of the changes and the rationale for the changes in the responses to comments in section V of this preamble.

A. Area Source NESHAP for Clay Ceramics Manufacturing

1. Applicability and Compliance Dates

The only substantive changes to the Clay Ceramics rule made since proposal are clarifications of applicability. There was an error in the wording of the applicable compliance dates, and we have revised the rule since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new source are consistent with the definitions specified in § 63.2.

The final standards apply to any new or existing affected source at a clay ceramics manufacturing facility that is an area source and uses more than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) of clay. The affected source are all kilns that fire glazed ceramic

[a] An area source is a stationary source of HAP emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[b] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, the area source category list has undergone several amendments.

ware and all atomized spray glaze operations located at such a facility.

The owner or operator of an existing affected source must comply with the standards by December 26, 2007. The owner or operator of a new affected source is required to comply with the standards by December 26, 2007 or upon startup, whichever is later.

2. Standards

The Clay Products Manufacturing area source category (which included clay ceramics manufacturing) was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: chromium, lead, manganese, and nickel. No changes have been made since proposal to the standards for clay ceramics manufacturing facilities.

For each kiln firing glazed ceramic ware, the final standards require the facility owner or operator to maintain the kiln peak temperature below 1540°C (2800°F) and either use natural gas, or an equivalent clean-burning fuel, as the kiln fuel. The facility owner or operator has the option of using an electric-powered kiln.

The requirements for atomized spray glaze operations at clay ceramic manufacturing area source facilities differ depending on whether a facility has annual wet glaze usage above or below 227 Mg/yr (250 tpy). Consequently, we are requiring that the facility owner or operator maintain annual wet glaze usage records in order to document whether they are above or below 227 Mg/yr (250 tpy) wet glaze usage.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), the final standards require the facility owner or operator to have an air pollution control device (APCD) on their glazing operations and operate and maintain the control device according to the equipment manufacturer's specifications. As a pollution prevention alternative to this requirement, we are also providing the option to use glazes containing less than 0.1 (weight) percent clay ceramics metal HAP for those facilities above the threshold, which is expected to provide emissions reductions equivalent or greater than those obtained using particulate matter (PM) controls.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), the final standards require the facility owner or operator to employ waste minimization practices in their glazing operations. In the preamble to the proposed rule, we acknowledged that some of these smaller facilities operate their atomized spray glaze operations with APCDs or use glazes containing less than 0.1 (weight) percent clay ceramics metal HAP. These alternative compliance options achieve reductions in metal HAP emissions that are at least equivalent to the metal HAP reductions from the waste minimization practices. Therefore, the final rule includes the use of glazes containing less than 0.1 (weight) percent clay ceramics metal HAP or an APCD as alternative compliance options for the waste minimization practices.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements for clay ceramics manufacturing facilities.

Initial compliance demonstration requirements. The owner or operator is required to include a compliance certification for the standards in their Notification of Compliance Status. For any wet spray glaze operations controlled with an APCD, an initial inspection of the control equipment must be conducted within 60 days of the compliance date and the results of the inspection included in the Notification of Compliance Status.

Monitoring requirements. For each kiln firing glazed ceramic ware, the final standards require the owner or operator to conduct a check of the kiln peak firing temperature on a daily basis. If the peak firing temperature exceeds 1540°C (2800°F), the owner or operator must take corrective action according to the facility's standard operating procedures.

For all sources that operate an APCD for their atomized spray glaze operations, we are requiring daily and weekly visual APCD inspections, daily EPA Method 22 visible emissions (VE) tests (40 CFR part 60, appendix A–7), or an EPA-approved alternative monitoring program to ensure that the APCD is kept in a satisfactory state of maintenance and repair and continues to operate effectively.

The owner or operator is allowed to use existing operating permit documentation to meet the monitoring requirements, provided it includes the necessary monitoring records (*e.g.*, the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring technique or method; the operating conditions during monitoring; and the monitoring results).

Notification and recordkeeping requirements. We are requiring that affected sources submit Initial Notifications and Notifications of Compliance Status according to the part 63 General Provisions. Facilities must submit the notifications by April 24, 2008.

B. Area Source NESHAP for Glass Manufacturing

1. Summary of Changes Since Proposal

Applicability

We have revised the applicability criteria of the rule in § 63.11448 to clarify that periodic or pot furnaces are not part of the source category. The final rule applies only to glass manufacturing plants that operate continuous furnaces and use one or more of the glass manufacturing metal HAP as raw materials.

In light of the changes made to the applicability criteria in § 63.11448, we added a new paragraph to § 63.11449(a)(1), which states that, to be an affected source, the furnace must be a continuous furnace. We added a definition of "continuous furnace" to § 63.11459 to further clarify how affected furnace is defined. We made an additional revision to § 63.11449(a) to clarify that, consistent with the proposed rule, to be an affected source, a furnace must produce least 45 Mg/yr (50 tpy) of glass that contains one or more of the glass manufacturing metal HAP as raw materials. In the proposed rule, it was unclear whether a furnace that is used to produce more than 45 Mg/yr (50 tpy) of glass, but less than 45 Mg/yr (50 tpy) of glass containing metal HAP as raw materials, would be an affected source. The revision clarifies that such a furnace would not be an affected furnace. Finally, we inserted a new paragraph § 63.11449(b) to clarify that furnaces that are used exclusively for research and development (R&D) are not part of the source category and are therefore not subject to regulation under this final rule. We also added a definition for "research and development process unit" to § 63.11459.

In addition, we identified an error in the wording of the applicable compliance dates, and we have revised § 63.11449 since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new source are consistent with the definitions specified in § 63.2. Finally, we added a paragraph to the regulation to clarify that affected facilities must obtain a title V permit.

Performance Test Requirements

We revised § 63.11452(a) by adding paragraph (a)(3), which addresses the situation in which a facility operates affected furnaces that are identical. The new paragraph allows the owner or operator to demonstrate compliance for all such identical furnaces by testing only one of the furnaces. The additional paragraph specifies the criteria for determining if one furnace is identical to another and the conditions under which the furnace must be tested.

Under § 63.11452(b), we deleted paragraph (b)(2), which was redundant and renumbered the remaining paragraphs accordingly. We revised § 63.11452(b)(8), which formerly was paragraph (b)(9), to state that sampling ports for performance testing are to be located at the outlet to the furnace control device or in the furnace stack. The proposed rule was unclear regarding the exact location for emission testing. We added an alternative test method to Methods 3, 3A, and 3B for gas molecular weight analysis. We reorganized the paragraphs that address testing for PM or metal HAP to clarify which procedures to follow to determine compliance with the PM emission limit and which procedures to follow to determine compliance with the metal HAP emission limit. We also revised the definition of the metal HAP mass emission rate in Equation 2, which is signified as the variable "ERM". This variable specifies which metals are to be included in the analysis of the emission samples that are collected during testing. The revised text clarifies that ERM represents the combined mass emission rates for only those glass manufacturing metal HAP that are added as raw materials in the batch formulation.

Monitoring and Continuous Compliance Requirements

We revised the monitoring requirements by adding paragraph § 63.11454(a)(7), which specifies that the required monitoring must be performed any time the affected furnace is producing glass that is charged with one or more of the glass manufacturing metal HAP. Monitoring also must be performed during all transition phases from glass containing metal HAP to glass that does not contain metal HAP (i.e., until all HAP-containing glass has left the furnace melter). These transition phases encompass the period that begins when the plant stops charging the metal HAP as raw materials and ends when the furnace is producing a saleable product that does not contain the glass manufacturing metal HAP as raw materials.

We revised § 63.11455(c) to clarify that the continuous compliance requirements apply whenever the affected furnace is producing glass that contains one or more of the glass manufacturing metal HAP, including any transition phases from metal HAP-containing glass to glass that does not contain the metal HAP. We also revised paragraph § 63.11455(c) to clarify the monitoring requirements for existing furnaces versus the monitoring requirements for new furnaces. We further revised § 63.11455 by adding paragraph (e) to clarify the continuous compliance requirements for affected furnaces that can meet the emission limits without the use of a control device. In such cases, the only requirements for demonstrating continuous compliance is to meet the applicable recordkeeping requirements specified in § 63.11457.

Notifications

We have revised § 63.11456 to simplify the section and clarify that the deadline for submitting the Initial Notification is 120 days after the furnace becomes subject to the rule, regardless of whether the furnace is existing or new.

Definitions

We have revised several of the definitions specified in § 63.11459 and added a number of new definitions to the section. We revised the definition of cullet to clarify that cullet is not considered a raw material when determining if a furnace is an affected source. We revised the definition of a glass melting furnace, which is defined in the final rule as the process unit in which raw materials are charged and melted at high temperature to produce molten glass. The previous definition included the raw material charging system and other appendages to the furnace. However, the revised definition is consistent with the procedures for testing furnaces to demonstrate compliance. We revised the definition of particulate matter by replacing the modifier "total" with "filterable." This revision makes the definition consistent with the test methods specified for demonstrating compliance with the PM emission limit. Finally, we revised the definition of raw material to clarify that it excludes cullet and material that is recycled from the furnace control device.

To clarify the applicability requirements in §§ 63.11448 and 63.11449, we added the definition of continuous furnace. To clarify the performance testing requirements, we have added a definition for furnace stack. We also added a definition for identical furnaces, which pertains to the performance testing requirements for a facility that operates more than one identical furnace. Finally, we added a definition for research and development process unit. This definition was needed to clarify in § 63.11449(b) that furnaces used strictly for R&D are not subject to regulation under this final rule. Glass manufacturing furnaces used only for R&D were not part of the 1990 inventory and are not part of the listed source category.

Implementation and Enforcement Authority

We deleted paragraph § 63.11460(c), which was redundant. We also added a new paragraph (b)(2) to clarify that EPA retains the authority for approving alternative test methods.

2. Summary of Final Rule

Applicability and Compliance Dates

This NESHAP applies to any glass manufacturing plant that is an area source of HAP emissions and operates one or more continuous furnaces which produce at least 45 Mg/yr (50 tpy) of glass per furnace by melting a mixture of raw materials that includes compounds of one or more of the glass manufacturing metal HAP. The rule does not apply to periodic furnaces or furnaces that are used strictly for research and development.

The compliance date for existing sources is December 28, 2009. However, owners or operators of affected sources may request an extension of one additional year to comply with the rule, as allowed under section 112(i)(3)(B) of the CAA and under § 63.6(i)(4)(A), if the additional time is needed to install emission controls. The compliance date for new sources is December 26, 2007 or the startup date for the source, whichever is later. The compliance date for facilities with no affected sources as of December 26, 2007 and which later change processes or increase production and trigger applicability of the rule, is 2 years following the date on which the facility made the process changes or increased production and thereby became subject to the NESHAP.

Standards

The Glass Manufacturing area source category was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: arsenic, cadmium, chromium, lead, manganese, and nickel. The glass manufacturing final rule requires each new or existing affected furnace to comply with a PM

emission limit of 0.1 gram per kilogram (g/kg) (0.2 pound per ton (lb/ton)) of glass produced or an equivalent metal HAP emission limit of 0.01 g/kg (0.02 lb/ton) of glass produced.

Performance Testing

This final rule requires an initial one-time performance test on each affected furnace unless the furnace had been tested during the previous 5 years, and the previous test demonstrated compliance with the emission limits in this rule using the same test methods and procedures specified in this rule. This final rule requires testing using EPA Methods 5 or 17 (for PM emissions) or EPA Method 29 (for metal HAP emissions) in 40 CFR part 60, appendix A. This final rule also allows the owner or operator of affected identical furnaces to test only one of the furnaces if certain conditions are met.

Monitoring

The owner or operator of an existing affected glass furnace that is controlled with an electrostatic precipitator (ESP) must monitor the secondary voltage and secondary electrical current to each field of the ESP continuously and record the results at least once every 8 hours. The owner or operator of a new affected furnace equipped with an ESP must install and operate one or more continuous parameter monitoring systems to continuously measure and record the secondary voltage and secondary electrical current to each field of the ESP. Either of these parameters dropping below established levels provides an indication that the electrical power to the ESP field in question has decreased, and collection efficiency may have decreased accordingly.

Owners or operators of an existing affected glass furnace that is controlled with a fabric filter must monitor the fabric filter inlet temperature continuously and record the results at least once every 8 hours. The owner or operator of a new affected furnace that is equipped with a fabric filter must install and operate a bag leak detector.

As an alternative to monitoring ESP secondary voltage and electrical current or fabric filter inlet temperature, owners or operators of affected furnaces equipped with either of these control devices have the option of requesting alternative monitoring, as allowed under § 63.8(f). The alternative monitoring request must include a description of the monitoring device or monitoring method to be used; instrument location; inspection procedures; quality assurance and quality control measures; the parameters to be monitored; and the frequency with which the operating parameter values would be measured and recorded. The owner or operator of an affected furnace that is equipped with a control device other than an ESP or fabric filter, or that uses other methods to reduce emissions, must submit a request for alternative monitoring, as described in § 63.8(f).

Control Device Inspections

The owner or operator of an affected furnace must conduct initial and periodic inspections of the furnace control device. For fabric filters, the final rule requires annual inspections of the ductwork, housing, and fabric filter interior. For electrostatic precipitators, this final rule requires annual inspections of the ductwork, hopper, and housing, and inspections of the ESP interior every 2 years.

Notification and Recordkeeping

Owners and operators of all affected glass manufacturing plants that operate at least one continuous furnace that produces at least 45 Mg/yr (50 tpy) of glass using any of the glass manufacturing metal HAP as raw materials must submit an Initial Notification, as required under § 63.9(b). Any facility with an affected source also must submit a Notification of Compliance Status, as specified in § 63.9(h).

Owners and operators of glass manufacturing facilities are required to keep records of all notifications, as well as supporting documentation for the notifications. In addition, they must keep records of performance tests; parameter monitoring data; monitoring system audits and evaluations; operation and maintenance of control devices and monitoring systems; control device inspections; and glass manufacturing batch formulation and production.

C. Area Source NESHAP for Secondary Nonferrous Metals Processing

1. Applicability and Compliance Dates

There was an error in the wording of the applicable compliance dates, and we have revised the rule since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new sources are consistent with the definitions specified in § 63.2.

The final standards apply to any new or existing affected source at an area source secondary nonferrous metals processing facility. The affected source includes all crushing or screening operations at a secondary zinc processing facility and all furnace melting operations located at a secondary nonferrous metals processing facility.

The owner or operator of an existing affected source must comply with the standards by December 26, 2007. The owner or operator of a new affected source is required to comply with the standards by December 26, 2007, or upon initial startup, whichever is later.

2. Standards

The Secondary Nonferrous Metals Processing area source category was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: arsenic, chromium, lead, manganese, and nickel. We proposed to require the use of a fabric filter or baghouse that achieves a PM control efficiency of 99 percent for existing sources and 99.5 percent for new sources. Since our proposal, we learned that a facility had insufficient inlet ductwork to conduct a performance test for determining collection efficiency. The facility requested that we add an alternate emission limit expressed as an outlet concentration limit to the final standards.

As we noted in the proposed rule, the 10 existing facilities reported using baghouses on crushing or screening operations at secondary zinc facilities and on furnace melting operations at all facilities and that such baghouses performed at a PM collection efficiency of at least 99 percent or achieved an outlet PM concentration not exceeding 0.050 grams per dry standard cubic meter (g/dscm) (0.022 grains per dry standard cubic foot (gr/dscf)) where collection efficiency was not reported. Based on available outlet concentration data from ICR responses in the proposal docket and consideration of baghouse performance at similar sources, we have determined that limiting outlet PM concentrations to 0.034 g/dscm (0.015 gr/dscf) and 0.023 g/dscm (0.010 gr/dscf) would control PM and metal HAP emissions at levels that are equivalent to the levels of control from using a baghouse with a control efficiency of 99 and 99.5 percent, respectively. Because both the proposed control efficiency standards and the equivalent outlet concentration limits reflect the GACT levels of control, we have revised the proposed standards to include the outlet concentration limits as alternatives to the control efficiency standards.

The final standards require the owner or operator of an existing affected source

to route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.0 percent or an outlet PM concentration limit of 0.034 g/dscm (0.015 gr/dscf). The owner or operator of a new affected source must route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.5 percent or an outlet PM concentration limit of 0.023 g/dscm (0.010 gr/dscf).

3. Compliance Requirements

Performance test requirements. The owner or operator of any existing or new affected source must conduct a one-time initial performance test on the affected source. However, a new performance test is not required for existing affected sources that were tested within the past 5 years of the compliance date if the test was conducted using the same procedures specified in the standards and either no process changes had been made since the test, or the owner or operator demonstrates that the results of the performance test, with or without adjustments, reliably demonstrated compliance despite process changes. The tests for new and existing affected sources are to be conducted using EPA Method 5 in 40 CFR part 60, appendix A–3 or EPA Method 17 in 40 CFR part 60, appendix A–6.

Initial control device inspection. The owner or operator of each existing and new affected source is required to conduct an initial inspection of each baghouse. The owner or operator must visually inspect the system ductwork and baghouse unit for leaks and inspect the inside of each baghouse for structural integrity and fabric filter condition. The owner or operator must record the results of the inspection and any maintenance action taken.

For each installed baghouse which is in operation during the 60 days after the compliance date, the owner or operator must conduct the initial inspection no later than 60 days after the applicable compliance date. For an installed baghouse which is not in operation during the 60 days after the compliance date, the owner or operator is required to conduct an initial inspection prior to startup of the baghouse. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

Monitoring requirements. For existing affected sources, the owner or operator must conduct either daily visible emission (VE) tests using EPA Method 22 (40 CFR part 60, appendix A–7) or weekly visual inspections of the baghouse system ductwork for leaks, as well as annual inspections of the interior of the baghouse to determine its structural integrity and to determine the condition of the fabric filter. For new affected sources, the owner or operator must operate and maintain a bag leak detection system for each baghouse used to comply with the standards. The final standards require the owner or operator to keep records of the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring technique or method; the operating conditions during monitoring; and the monitoring results.

Notification and recordkeeping requirements. The owner or operator of an affected source must submit an Initial Notification and Notification of Compliance Status. The Notification of Compliance status must include, among other information, the results from the one-time initial performance test and certifications of compliance for the standards. We proposed to require facilities to submit both notifications no later than 120 days after the applicable compliance date regardless of whether they were required to conduct a performance test. Since our proposal, we discovered that, although we had intended to allow sources 180 days from the compliance date to conduct the initial performance test and an additional 60 days to submit the results of the performance test, the proposed rule implicitly shortened that time frame by 120 days because it required that the Notification of Compliance status include the performance test results and be submitted within 120 days of the compliance date. Therefore, to afford sources the full time to conduct the performance test and submit the results of the testing, we have revised our proposal in this final rule to require that sources required to do performance testing submit the Notification of Compliance Status before the close of business of the 60th day following the completion of a performance test.

IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements

We did not receive any comments on our proposal to exempt facilities in the Clay Ceramics and Secondary Nonferrous Metals Processing area source categories from title V permitting requirements. Therefore, this final rule does not require facilities in these source categories to obtain an operating permit under 40 CFR part 70 or part 71.

The proposed Glass Manufacturing Area Source NESHAP would have required affected facilities to obtain title V permits. Although we received public comments requesting that we exempt the Glass Manufacturing Area Source Category from title V, we are finalizing the approach in the proposed rule and are not exempting the source category from title V. The reasons for this decision are summarized in this notice in the Summary of Comments and Responses section for the Area Source NESHAP for Glass Manufacturing.

V. Summary of Comments and Responses

A. Area Source NESHAP for Clay Ceramics Manufacturing

Comment: One commenter noted that the intent of the CAA, as it relates to the Area Source Program, was to bring about reductions in HAP emissions from area sources. The commenter expressed disappointment that some of the rules proposed under the Area Source Program (e.g., Clay Ceramics Manufacturing) will not result in emissions reductions and recommended that future area source rules incorporate provisions that will provide additional public health protection from the effects of HAP emissions from area sources.

Response: As previously explained, we have determined that GACT for the Clay Ceramics Manufacturing area source category is (1) maintaining the peak firing temperatures of kilns firing glaze ceramic ware below 1540 °C (2800 °F), (2) implementing the equipment requirement (wet control systems for PM emissions) for glaze spray booths at facilities with wet glaze usage above 227 Mg/yr (250 tpy), and (3) implementing the waste minimization practices for glaze spray booths at facilities with wet glaze usage at or below 227 Mg/yr (250 tpy). The use of PM controls and waste minimization practices has been shown to be very effective in controlling PM and metal HAP emissions from this area source category. Keeping kiln peak firing temperatures below the volatilization temperatures of the clay ceramics metal HAP in the spray glazes would also be effective in preventing volatilization of the clay ceramics metal HAP.

The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (i.e., sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to

the area source category's current emission and control status. Such a comparison is flawed and irrelevant.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 listed HAP are subject to regulation. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from clay manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources that reflect GACT for the source category. To qualify as being generally available, a GACT standard would most likely be an existing control technology or management practice. Thus, it is not surprising that the GACT standard being finalized today codifies the existing effective HAP control approach being used by sources in the category. For the reasons stated above, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

B. Area Source NESHAP for Glass Manufacturing

1. Definition of Source Category

Comment: Three commenters from companies that make stained glass commented that they own small facilities that operate, with one exception, small periodic furnaces (pot furnaces) that are charged with small amounts of the glass manufacturing metal HAP. They claim that their furnaces would be subject to the emission standards because they use the metal HAP and exceed the 45 Mg/yr (50 tpy) threshold. However, these companies allege that the costs of installing controls on their furnaces could put them out of business. One commenter stated that some artisans and schools also would be subject to the proposed rule based on the applicability criteria. Two of the commenters suggested that the rule exempt small businesses due to the burden that would result from complying with the proposed requirements. One commenter stated that the rule was based on an analysis of the glass manufacturing industry using data on large continuous furnaces that did not account differences in the manufacturing process and emissions associated with stained glass manufacturing. The commenter stated that the rule should exempt periodic furnaces.

Response: After reviewing the emissions inventory in support of the listing decisions made pursuant to sections 112(c)(3) and 112(k) and available information, we have concluded that the glass manufacturing area source category was listed based on emissions from relatively large manufacturing plants that operated continuous glass furnaces. Periodic furnaces were not included in the inventory.

The 45 Mg/yr (50 tpy) threshold that was proposed was meant to define the source category to include only these large manufacturers, but did not properly reflect this criterion. Therefore, we have revised § 63.11448 to specify that periodic or pot furnaces are not subject to the final Glass Manufacturing Area Source NESHAP. We believe this revision will address most of the concerns of the stained glass manufacturing sector as well as other sectors and organizations, such as artisans, schools, studios, and other small facilities that produce glass using periodic furnaces.

Comment: One commenter stated that flat glass should be excluded from the area source category for several reasons. According to the commenter, flat glass was not identified in the Integrated Urban Air Toxics Strategy as a source category for regulation. Therefore, the commenter suggests that EPA cannot regulate the flat glass industry under an area source standard. The commenter added that the administrative record refers only to pressed and blown glass, which has different Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes than does flat glass manufacturing. The commenter also stated that the administrative record lacks evidence that flat glass manufacturers emit significant quantities of Urban HAP. The commenter pointed out that the Arsenic NESHAP does not apply to flat glass manufacturing for this same reason. Finally, the commenter stated that the proposed rule would not require any flat glass manufacturing plants to install or operate emission control devices.

Response: As explained in the **Federal Register** Notice announcing the Integrated Urban Air Toxics Strategy (64 FR 38707, July 19, 1999), the process of listing area source categories for regulation would be an iterative ongoing approach that would be refined and modified as we obtained better data on emissions. Furthermore, as indicated in section 112(e)(4) of the CAA, the listing of a particular source category is not considered final agency action until we issue emission standards for that source category. Therefore, the source category listing is not necessarily limited only to those sources initially identified by the listing. We considered this authority in light of the legislative history regarding glass manufacturing. The flat glass industry sector has always been part of the glass manufacturing industry, as evidenced by environmental statutes including the glass New Source Performance Standard (NSPS), the Arsenic NESHAP, as well as numerous State rules nationwide. Our study of the glass manufacturing industry includes container glass, pressed and blown glass, and flat glass sectors; these are generally similar with respect to the types of raw materials used and furnaces used to melt those raw materials.

Regarding the comment that the administrative record lacks evidence that flat glass manufacturers emit significant quantities of Urban HAP, we point out that the record does show that some flat glass plants emit some of the glass manufacturing metal HAP. Because several flat glass manufacturers do use the glass manufacturing metal HAP in their formulations, and emit metal HAP as a result, because the raw materials and the melting process are the focal points of the proposed Glass Manufacturing Area Source NESHAP, and because of evidence in the legislative history, we determined that it was appropriate to include flat glass within the area source category.

Based on our knowledge of the flat glass industry, the commenter is correct that no existing flat glass plants would have to install additional controls to comply with this final rule. However, there are existing flat glass plants that use the metal HAP as raw materials and will be subject to the other requirements of this final rule. Our data indicate these plants currently meet the emission limits and keep detailed records. Therefore, their additional burden as a result of this final rule is only related to notifications, which we believe are

justified. The notification requirements apply only if the plant uses one or more of the glass manufacturing metal HAP as raw materials; if the plant does not use any of the glass manufacturing metal HAP, this final rule does not apply. In the event that other flat glass manufacturers decide to change their current glass formulations to include metal HAPs, it is appropriate that those flat glass plants be subject to this final rule. Even in such an instance, an existing facility that changed their formulation such that it became subject to the requirements of the rule would have 2 years following the formulation change to comply with this final rule. For these reasons, we have concluded that inclusion of flat glass manufacturers in the Glass Manufacturing Area Source Category is warranted.

Comment: One commenter requested clarification that the proposed rule applies only to area sources and not major sources of HAP emissions.

Response: As specified in § 63.11448, the Glass Manufacturing Area Source NESHAP applies only to area sources of the glass manufacturing metal HAP.

2. Definition of Affected Source

Comment: Two commenters stated that, although the 45 Mg/yr (50 tpy) furnace threshold was meant to exclude small manufacturers, the proposed threshold is less than the amounts that some stained glass manufacturers, glass studios, and schools produce. The commenters believe that a higher threshold level is warranted to ensure that the small facilities that were meant to be excluded would not be subject to this final rule.

Response: Although we considered revising the definition of affected source in response to the commenters' concerns, we have no data to indicate a specific higher threshold and why that threshold would be more appropriate than the 45 Mg/yr (50 tpy) level specified in the proposed rule. However, based on our review of the comments received on the proposed rule and the available data, we have decided to clarify that this final rule only applies to continuous furnaces and not to periodic furnaces. We believe this clarification ameliorates the commenters' concerns regarding the production threshold. In this final rule, we have revised § 63.11448 to apply only to facilities that use continuous furnaces to produce glass.

Comment: Two commenters expressed concern with the definition of affected source (i.e., furnace). Both commenters stated that the definition in the proposed rule, which was adopted from 40 CFR 60, subpart CC, Standards of Performance for Glass Manufacturing Plants (Glass NSPS), defines furnace to include the "raw material charging system" and "appendages for conditioning and transferring molten glass to forming machines." One commenter pointed out that, in the proposed rule, compliance is demonstrated by testing the furnace stack. However, emissions from the "charging system" or "appendages" are not generally ducted to the furnace stack. The commenter stated that furnace was defined as it was in the NSPS to clarify what constitutes a modification; the definition was not meant to identify emission points or where stack testing should be performed. The other commenter explained that one of the company's plants adds colored frit to the molten glass in the forehearth, which is one of the "appendages" referenced in the definition of furnace. The commenter pointed out that emissions from the forehearth are not ducted to the furnace stack. Since the GACT analysis for glass furnaces was based on emissions from furnace stacks, the proposed emission limits should not apply to emissions from forehearths.

Response: In developing the proposed rule, we determined GACT for this source category based on technology used to reduce emissions from glass melting furnace stacks. Glass furnace stacks generally exhaust emissions from the furnace melter, which is the part of the furnace where raw materials are charged and melted. Although furnace stacks may also exhaust emissions from other parts of, or appendages to, the furnace, it was our intent to regulate emissions from the furnace melter. This is consistent with our understanding of the emissions profile of glass manufacturing raw materials; that is, metal HAP are emitted from glass furnaces upon the initial melting step. Later remelting of glass, such as cullet and frit, does not re-emit the metal HAP once the glass has been formed or vitrified.

To clarify this requirement, we have revised § 63.11459 of this final rule to redefine the glass melting furnace as the "* * * process unit in which raw materials are charged and melted at high temperature to produce molten glass." In addition, we have added to § 63.11459 a definition of furnace stack as the conduit or conveyance through which emissions from the furnace melter are released to the atmosphere. We also have revised § 63.11452 in this final rule to clarify that compliance with the emission limits is determined by testing the furnace stack.

Comment: One commenter requested that the rule exempt furnaces that are used strictly for R&D.

Response: We agree with the commenter that this final rule should clarify that sources that are used exclusively for R&D purposes are not regulated by this rule because these sources were not part of the inventory. Therefore, we have added a provision to § 63.11449 that clarifies that such furnaces are not covered by this final rule. We also have added to § 63.11459 of this final rule a definition for research and development process units.

Comment: Three commenters stated that the rule should specify a *de minimis* level for metal HAP usage, below which plants would have no requirements. Two of the commenters suggested setting annual *de minimis* levels for each regulated HAP, below which the rule limit would not apply.

Response: With respect to the use of the glass manufacturing metal HAP in relatively small amounts, the proposed 0.01 g/kg (0.02 lb/ton) metal HAP emission limit should address the commenters' concerns. If metal HAP are added to the batch in very small amounts, compliance with the HAP emission limit could be achieved without having to install a control device on the affected furnace.

It is appropriate under the area source program that glass manufacturers using large amounts of metal HAP in their furnaces install controls to reduce those emissions. Therefore, we have concluded that if would not be appropriate to develop de minimis levels for metal HAP usage.

Comment: One commenter stated that the rule does not define reconstruction as it pertains to reconstructed sources. The commenter suggested that the NSPS definition of reconstruction be adopted or incorporated by reference.

Response: Although the proposed rule did not define reconstruction, § 63.11472 states that the definitions specified in the CAA and § 63.2 of the General Provisions to part 63 also apply to the proposed rule. This is the definition of reconstruction that applies to all part 63 standards. Therefore, we believe it is the appropriate definition for the Glass Manufacturing Area Source NESHAP.

Comment: One commenter addressed the applicability of the proposed rule for furnaces that are used both for making glass that does not contain metal HAP and glass that contains metal HAP. The commenter asked if the 45 Mg/yr (50 tpy) threshold that defines an affected source is based only on the amount of HAP-containing glass produced or on the total amount of glass produced, even

if the amount of HAP-containing glass was less than 45 Mg/yr (50 tpy).

Response: It was our intent for the rule to apply to furnaces that produce at least 45 Mg/yr (50 tpy) of glass that contains one or more of the glass manufacturing metal HAP as raw materials. Therefore, a furnace that produces more than 45 Mg/yr (50 tpy) of glass would not be subject to this final rule if the amount of HAP-containing glass produced in the furnace were less than 45 Mg/yr (50 tpy). We have revised the definition of affected source in § 63.11449 to clarify that a source is an affected source only if it produces at least 45 Mg/yr (50 tpy) of glass that contains one or more of the metal HAP as raw materials.

3. Regulated Pollutants

Comment: One commenter stated that the rule should not regulate arsenic because arsenic emissions are already regulated under the Glass Arsenic NESHAP. The commenter believes that the requirements for both rules will create overlapping and sometimes conflicting requirements. The commenter added that the reporting and recordkeeping burden for a second rule to regulate the same pollutant would be excessive.

Response: The listing of glass manufacturing as an area source category was based in part on arsenic, which was identified in the section 112(k) inventory as one of the HAP emitted by glass manufacturing facilities. Therefore, we are required under sections 112(c)(3) and (d) of the CAA to regulate emissions of arsenic from glass manufacturing plants that are area sources of HAP based on GACT for the glass manufacturing industry.

With respect to the burden associated with complying with both rules, we have tried to minimize the burden associated with the Glass Manufacturing Area Source NESHAP. This final rule will require affected plants to submit an Initial Notification and a Notification of Compliance Status, but will require no additional reporting. Furthermore, the recordkeeping requirements are similar for both the proposed rule and the Glass Arsenic NESHAP. Therefore, we disagree that the reporting and recordkeeping burden associated with complying with both rules will be excessive. With respect to monitoring, the Glass Area Source NESHAP allows affected sources to request approval of alternative monitoring, which likely would result in no changes to the monitoring that is currently performed to comply with the Glass Arsenic NESHAP. In terms of testing, the Glass Area Source NESHAP requires only a one-time test and includes a provision for using data from a previous emission test conducted within the last 5 years, if the test demonstrates compliance with the emission limits specified in the Glass Area Source NESHAP.

4. Title V Permitting

Comment: Two commenters addressed EPA's decision to not exempt the Glass Manufacturing Area Source Category from title V permitting. Both commenters disagreed with the statement in the preamble to the proposed rule that all of the facilities that would be affected by the proposed rule are already subject to title V. One commenter stated that at least one of the company's facilities, which is not subject to title V, would be subject to the proposed rule. The commenter also stated that EPA's reasons for exempting the Clay Ceramics Manufacturing and Secondary Nonferrous Metals Processing Source Categories from title V permitting also apply to the Glass Manufacturing Source Category. The other commenter stated that the company operates two plants that are not currently subject to title V, each with a furnace that would be subject to the proposed rule. Although both furnaces are scheduled for shutdown, the company may reconsider this decision to shut them down if market conditions change. The same commenter stated that it is possible that there are other non-title V facilities that would be subject to the proposed rule, and that it appears it was EPA's intent for the proposed rule to not cause additional facilities to become subject to title V. Both commenters requested that the proposed rule provide title V exemptions for facilities that are not currently subject to title V permitting.

Response: Section 502(a) of the CAA requires sources subject to regulation under section 112 of the CAA to obtain a permit to operate. However, Section 502(a) authorizes the Administrator, in his discretion, to "promulgate regulations to exempt one or more source categories (in whole or in part) from the requirement of (title V) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories * * *." EPA promulgated a rule interpreting section 502(a) and therein stated that EPA may only exempt a category from title V permitting if we find compliance to be "impracticable, infeasible, or unnecessarily burdensome" and we determine that exempting the category would not adversely affect public health, welfare, or the environment (see 70 FR 75,320, 75,323 (Dec. 19, 2005)). Nowhere in the rule did we establish a presumption in favor of exempting sources from title V permitting, and the statute leaves such determinations to the discretion of the Administrator.

The commenters have identified three glass manufacturer area source plants that are currently not subject to the operating permit requirements of CAA title V, which renders incorrect our assertion at proposal that all glass manufacturers that would be subject to this final rule were already subject to title V requirements. Notwithstanding this error, comments and other information in the record for this rulemaking do not demonstrate that compliance with title V permitting would be impracticable, infeasible, or unnecessarily burdensome for the sources in this category. Other than these two comments, we did not receive information during the comment period indicating that there are other sources that will be subject to this rule that do not have title V permits already. In this case, more than 80 percent of the sources in the category have title V permits, and of the 3 facilities that do not have such permits, the affected furnaces at two of those facilities are currently scheduled for shutdown. Based on these facts, it is not readily apparent why it would be impracticable, infeasible, or unnecessarily burdensome for sources in this category to comply with the title V requirements.

The two commenters that opposed our decision to not exempt the Glass Manufacturing Area Source Category from title V permitting did not identify their plants in question, did not explain how those plants differed in any way from other plants in this category that currently hold a title V permit, and did not explain how those differences would be relevant to the criteria for an exemption from title V.

For example, one commenter supported its request for exempting its two plants from title V by stating a desire for flexibility in the event that one or more of the affected furnaces at the plants actually do not shut down. (As noted above, the commenter's current plan is to shut down the affected furnaces at these two facilities.) Source flexibility, while important, is not a factor EPA considers in determining whether to exempt a source from title V permitting requirements.

The second commenter seeking a title V exemption for the glass manufacturing source category asserted that the reasons for exempting the other two source categories addressed in today's notice (Clay Ceramics Manufacturing and Secondary Non-ferrous Metals

Processing area sources) applied equally to this category. The commenter, however, offered no information substantiating this assertion, and we cannot dismiss obvious differences between the glass manufacturing source category and the source categories which received a title V exemption. These differences include whether most of the category already has a title V permit and whether most of the category is composed of small businesses that would incur economic hardship were title V requirements imposed on them.

The decision to exempt a source category is made on a case-by-case basis according to the facts of the industry. According to information we have collected on the glass manufacturing area source category, we conclude, in the absence of contrary information, that a title V exemption for this area source category is not warranted. Therefore, in light of the lack of information supporting an exemption of this source category from the title V requirements, we have not exempted the Glass Manufacturing Area Source Category from title V under today's rule.

5. Emission Limits

Comment: One commenter stated that, although emissions from glass furnaces vary by the type of glass produced, the proposed emission limits do not account for the relationship between PM emissions and glass type. The commenter noted that the Glass NSPS accounts for these differences by specifying different PM emission limits depending on the glass formulation and fuel type. The commenter explained that the differences in PM emissions result from differences in the volatilization rate of the constituents of the glass recipe. The commenter suggested that the proposed rule adopt the NSPS emission limits to account for these differences and to avoid confusion.

Response: While the Glass NSPS does regulate glass manufacturing furnaces for emissions of PM, the purpose of the proposed area source NESHAP is to address metal HAP emissions from continuous glass manufacturing furnaces.

Section 112(d)(5) of the CAA requires us to develop emission limits to reduce HAP emissions from area sources based on GACT. For the Glass Manufacturing Area Source Category, we determined GACT to be the level of control achieved by an ESP. In developing the PM emission limit for the proposed rule, our approach was to consider all of the available data on ESP-controlled PM emissions from glass manufacturing furnaces. Those data do not indicate that the variations in PM emissions due to glass formulation that are reflected in the emission limits of the Glass NSPS are appropriate for this rule. For example, the NSPS emission limits (in the format of PM emission factors) are higher for pressed and blown glass formulations than for container or flat glass formulations. However, the data used in developing the proposed PM emission limit do not indicate that controlled PM emissions from pressed and blown glass furnaces are higher than PM emissions from container or flat glass furnaces. In fact, the data with the lowest emission factors are from controlled pressed and blown glass furnaces. Although there are several possible explanations for this discrepancy, we point out that the NSPS emission limits are based on data from the 1970s and may not be representative of current glass manufacturing furnace PM emissions and control device performance. In conclusion, we developed the proposed PM emission limit based on the best available data, and because those data do not indicate variations in controlled PM levels due to glass formulation, we are not adopting the NSPS emission limits or differentiating by glass formulation, as suggested by the commenter.

Comment: One commenter pointed out that many existing glass furnaces comply with the Glass NSPS using modified processes without having to install emission controls. The commenter urged EPA to consider incorporating in this final rule the alternate emission limits for modified processes established in the NSPS. The commenter explained that the cost to retrofit a glass furnace with a control device is prohibitive, particularly in view of the amount of metal HAP reduced by such controls.

Response: The Glass NSPS defines modified process as "* * * any technique designed to minimize emissions without the use of add-on pollution controls." Thus, even though the regulated pollutant for the Glass NSPS is PM, the term "modified process" can apply to emissions of any pollutant. Several glass manufacturing furnaces subject to the NSPS have used this provision for meeting the less stringent PM emission limits for modified processes by installing controls or process modifications to reduce emissions of other pollutants, such as nitrogen oxides (NO_X). However, under Section 112(d) of the CAA, we are required to establish area source standards specifically for emissions of the Urban HAP. Furthermore, we are required to base those emission standards on GACT. As noted above, we determined GACT for this source category based on the level of control achieved by an ESP in controlling metal HAP emissions, and for controlling PM emissions as a surrogate for metal HAP emissions.

We understand that the costs of installing an ESP or equivalent control device on a glass furnace can be high. For example, we estimate the capital costs for installing a control device on a typical container furnace to be $800,000. However, our economic analysis of the industry indicates that the compliance costs for this final rule would be no more than 1 percent of sales, which we do not consider to be prohibitive. Although the metal HAP emissions reductions from an affected facility may be relatively low in terms of control costs, we note that, for facilities that use very small amounts of metal HAP in their glass formulations, the 0.01 g/kg (0.02 lb/ton) metal HAP emission limit can be met without having to install a control device. Finally, in addition to reductions in HAP emissions, the Glass Manufacturing Area Source NESHAP also will achieve significant reductions in fine PM emissions and will result in significant health benefits as a result of those reductions.

Comment: One commenter stated that the proposed rule should incorporate factors to account for emissions during periods of low production, similar to the "zero production rate" factors specified in the Glass NSPS. The commenter reasoned that, without these factors, there will be confusion. Although the PM emission limit in the proposed rule (0.1 g/kg (0.2 lb/ton)) is the same as the NSPS limit for container glass furnaces and for soda lime and lead pressed and blown glass furnaces, the NSPS includes the zero production rate factor, whereas the proposed rule does not incorporate such a factor.

Response: We appreciate the need to avoid confusion and to promote clarity in rulemaking, and we are sensitive to the need to implement the rule with easily understood materials and clear instruction. To that end, EPA currently plans to provide implementation guidance to minimize confusion that may be caused by the applicability of three Federal air pollution regulations that apply to this industry sector: the Arsenic NESHAP, the Glass NSPS, and this Area Source NESHAP. However, we have concluded that it would not be appropriate to incorporate one or more zero production rate factors in the final rule as suggested by the commenter. As specified in § 63.11452(b)(4), compliance with the emission limits in the proposed rule must be determined

through emission testing when the furnace is operating at maximum production rate. Therefore, emission levels when the furnace is operating at low production rates are not relevant with respect to compliance with the emission limits. If the rule were to require demonstrating compliance with the emission limits on a continuous basis, such as by using a continuous emissions monitoring system, it could be argued that there is reason to incorporate a zero production rate factor. In such a case, the emission factor would likely increase as production approached zero, and at zero production, the emission factor would be undefined. However, that is not the case for the proposed rule, which requires parameter monitoring and recordkeeping to demonstrate continuous compliance. Finally, it should be noted that the proposed emission limits were developed from data that did not account for zero production rate emissions. Furthermore, specifying an emission limit without zero production rate factors is consistent with other NESHAP.

Comment: One commenter questioned whether the proposed emission limits were based on data exclusively from large furnaces. The commenter explained that, when emissions are normalized for production, as is the case for the proposed emission factor format, they may not be representative of emissions from small furnaces if the limits are based on data from large furnaces. The commenter stated that, since the rule is likely to apply to small furnaces, the proposed limits should account for the higher emission factors characteristic of smaller furnaces. The commenter's company operates a small furnace that would be subject to the rule, as proposed, but would not be able to meet the proposed emission limit, even though the furnace is exhausted to a fabric filter. The commenter stated that a control efficiency of 99.91 percent would be needed for the furnace to meet the proposed limit. The commenter suggested including a correction factor for small furnaces, such as the zero production rate factors specified in the Glass NSPS, to account for this difference in emission levels between large and small furnaces.

Response: In developing the emission limits for the proposed rule, we reviewed all available emission test data on controlled furnaces, which included the results of tests on a wide range of furnace sizes or production rates. Because the production data for many of the furnaces were claimed as confidential business information, we cannot release the actual production rates to the public. However, we can provide information on the range of the data. The production data for the furnaces used to develop for the PM emission limit ranged from less than 0.9 megagram per hour (Mg/hr) (1 ton per hour (tph)) to just under 27 Mg/hr (30 tph). Of the 19 data points used, 3 data points were for furnaces with production rates of less than 0.9 Mg/hr (1 tph) and 9 data points were for furnaces with production rates less than 4.5 Mg/hr (5 tph). To develop the metal HAP emission limit, the furnace production rates ranged from less than 0.9 Mg/hr (1 tph) to just under 23 Mg/hr (25 tph). Of the 15 data points used, the production rates for 2 furnaces were less than 0.9 Mg/hr (1 tph), and the rates for 9 furnaces were less than 4.5 Mg/hr (5 tph). Although the commenter did not specify the actual production rate for the furnace in question, furnaces with production rates less than 4.5 Mg/hr (5 tph) would most likely be considered small and furnaces with production rates less than 0.9 Mg/hr (1 tph) would certainly be considered small. Therefore, we disagree with the commenter's assumption that only data from large furnaces were used to develop the proposed emission limits.

Although the commenter's suggestion about including a zero production rate factor would reduce the stringency of the standard for small furnaces, we do not believe such a factor is needed for the reasons described in the previous paragraph. Furthermore, as discussed in our response to the previous comment, we do not believe a zero production rate factor is relevant for an emission limit that must be demonstrated by testing when the source is operating at the maximum production rate.

Comment: One commenter stated that the process of manufacturing glass tableware is significantly different from container glass due to the need for higher quality requirements. The raw material formulations differ, and tableware furnaces operate at higher temperatures with longer residence times. Tableware furnaces also are smaller. The commenter stated that the South Coast Air Quality Management District uses an emission factor for tableware furnaces that is nearly five times the factor used for container glass furnaces.

Response: We acknowledge that PM emissions from glass furnaces can vary as a function of the type of glass produced. We also recognize that glass tableware manufacturing is generally classified as a type of pressed and blown glass rather than container glass, and PM emission factors for pressed and blown glass furnaces typically are greater than PM emission factors for container glass furnaces. When determining GACT for the proposed rule, we used all the available data on emissions of PM and metal HAP from furnaces controlled with ESP. Most of the data used in developing the proposed emission factors were from emission tests on pressed and blown glass furnaces. Therefore, we believe those emission limits are generally representative of the emission levels that can be achieved by an ESP-controlled furnace manufacturing pressed and blown glass. We also point out that the NESHAP specifies a metal HAP emission limit which may be more appropriate for specific furnaces that have unusually high PM emissions.

Commenter: One commenter noted that the proposed GACT does not take into consideration the unique nature of the stained glass industry, which generally uses small periodic furnaces rather than large continuous furnaces to produce glass. The commenter believes stained glass manufacturing should be a separate subcategory with GACT defined in terms of the practices and emission reduction methods followed by stained glass manufacturers.

Response: Although we conducted an extensive information gathering effort to compile data for developing the proposed NESHAP, we had little data on the stained glass sector and no basis for identifying stained glass as a separate subcategory of the glass manufacturing industry. We agree with the commenter that GACT for stained glass, if identified as a subcategory, should be based on methods and practices used by that sector to reduce metal HAP emissions. Although we still do not have the data to warrant creating a separate subcategory for stained glass, we have revised § 63.11448 of the rule to clarify that the rule applies to continuous furnaces and not to periodic furnaces. In doing so, we believe we have addressed the commenter's concerns.

6. Compliance Dates

Comment: One commenter stated that most glass manufacturing furnaces are rebuilt every 10 to 15 years. The commenter suggested that the compliance date for an existing furnace should coincide with the next rebuild planned for that furnace. Otherwise, affected facilities would have to install controls "on the fly," and doing so would interrupt glass production by forcing the facility to shut down affected furnaces for long periods. These shutdowns would result in significant costs to the affected facilities. The commenter pointed out that these costs

were not accounted for in the estimated cost effectiveness and impacts for the proposed rule.

Response: Section 112(i) of the CAA specifies that NESHAP require compliance "* * * as expeditiously as practicable, but in no event later than three years after the effective date* * *" of the standard. Since we had no information indicating this would be the case for the glass manufacturing industry, we proposed a compliance date of 2 years after promulgation of this final rule, which is consistent with the compliance date for other NESHAP. We believe this provision should allow adequate time for affected sources to install the controls needed to comply with this final rule. However, in the event that 2 years in not adequate, § 63.6(i)(3) of the General Provisions to part 63 allows owners or operators of affected facilities to request a 1-year extension of the compliance date if they can demonstrate that they need the additional time to install controls.

Comment: One commenter noted that additional time is needed for reconstructed furnaces to install controls. The company is rebuilding several furnaces in 2008, which would make them reconstructed furnaces. The compliance date for reconstructed sources would be the startup date (sometime in 2008), but it will take additional time to design, receive, and install a control device on the reconstructed furnaces.

Response: The General Provisions to 40 CFR part 63 define "new source" to include reconstructed sources, and for sources subject to 40 CFR part 63 standards, the compliance date for new sources is dictated by § 63.6(b) of the General Provisions to part 63. That is, new sources must be in compliance on the effective date of the rule or upon startup, whichever is later. Based on the limited facts submitted by the commenter, it is unclear if the subject furnaces would be considered existing furnaces or new furnaces. The General Provisions to part 63 define "commenced" as it relates to reconstruction as entering "* * * into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction." The commenter should evaluate the facts of its particular situations in light of the definitions incorporated into this final rule.

7. Other Compliance Requirements

Comment: One commenter identified an issue concerning furnaces that are used both for making glass that does not contain metal HAP and for making glass that contains metal HAP. The commenter requested clarification of the compliance requirements when the affected furnace is not producing glass that contains metal HAP.

Response: We agree with the commenter that additional clarification is needed on furnaces that are used to produce HAP-containing glass and non-HAP glass. Our intent was that the emission limits and other compliance requirements would apply when the affected furnace is producing glass that contains one or more of the glass manufacturing metal HAP. We have revised § 63.11454 to clarify that the monitoring requirements apply only during times when any of the glass manufacturing metal HAP are used in the glass being produced. We also have revised § 63.11455 to clarify that the continuous compliance requirements apply under the same conditions. However, owners and operators must still keep the applicable records specified in § 63.11457, including records of production data, during any period when an affected furnace is operated, regardless of the batch formulation used.

Comment: One commenter stated that the rule is unclear on the continuous compliance requirements for existing sources, particularly for sources that meet the metal HAP emission limit without having to install a control device.

Response: We agree with the commenter that additional clarification is needed regarding continuous compliance requirements for affected furnaces that meet the emission limit without the use of an emission control device. We have revised § 63.11455 of this final rule to clarify how owners or operators of affected sources must demonstrate continuous compliance. For the specific case cited by the commenter, the only continuous compliance requirement would be the recordkeeping requirements specified in § 63.11457.

Comment: One commenter stated that, even if a plant could meet the emission limit without installing a control device, the reporting and recordkeeping requirements of the rule are unnecessarily burdensome.

Response: We disagree that the reporting and recordkeeping requirements of the proposed rule are overly burdensome. This final rule will require affected plants to submit an Initial Notification and a Notification of Compliance Status, but will require no reporting. As for the recordkeeping requirements, the proposed rule incorporates the basic requirements specified in the General Provisions to part 63, and our understanding is that most facilities routinely maintain these records.

8. Emission Testing

Comment: Two commenters requested clarification of how emissions are tested and analyzed to show compliance with the proposed metal HAP emission limit. Both pointed out that the test method (Method 29) quantifies a wide range of metals, including metals that are not urban HAP and urban HAP metals that may not have been charged to the furnace as raw materials but could be present as contaminants in charge materials or fuels. The commenters stated that the rule should specify that emissions should be analyzed only for the metal HAP that are intentionally added to the batch as raw materials.

Response: We agree with the commenters that the testing requirements specified in the proposed rule need further clarification regarding how the sampled emissions are analyzed. We have revised § 63.11452 in this final rule to clarify Equation 2, which is used to determine compliance with the metal HAP emission limit. We have defined the variable "ERM" in this final rule as the sum of the mass emission rates for the glass manufacturing metal HAP that are charged to the furnace as raw materials. We believe this revision addresses the commenters' concern.

Comment: One commenter noted the definition of PM in the rule is ambiguous and could be interpreted to include filterable PM and condensible PM. Because the rule requires testing by Methods 5 or 17, and both of those methods measure filterable PM, the rule needs to clarify that the proposed PM emission limit refers to filterable PM. The commenter suggested that removing the word "total" from the definition would eliminate this ambiguity.

Response: We agree with the commenter and have revised the definition of PM in § 63.11458 by replacing the phrase "total particulate emissions" with "filterable particulate emissions." This revised definition is consistent with the test methods (Methods 5 and 17) that are specified for determining compliance.

Comment: One commenter operates several identical furnaces that would be subject to the proposed rule. The commenter requested that the rule require testing on only one such furnace rather than on all of them.

Response: We agree with the commenter that it should not be necessary to test multiple identical furnaces to demonstrate that all of the furnaces meet the emission limit. To

address this issue, we revised § 63.11452(a) by adding paragraph (a)(3), which specifies conditions under which testing of a single furnace would be allowed as the compliance demonstration for other identical furnaces. Specifically, the owner or operator must certify that the furnaces that are not tested are identical in design to the furnace that is tested, including manufacturer, dimensions, production capacity, charging method, operating temperature, fuel type, burner configuration, and exhaust system configuration and design. Furthermore, the compliance test must be performed while the furnace is producing the glass formulation with the greatest potential to emit the glass manufacturing metal HAP, and the owner or operator must provide documentation that demonstrates why the tested glass formulation has the greatest potential to emit metal HAP.

9. Other Issues

Comment: Two commenters requested clarification of the definition of raw material. The commenters stated it was not clear if cullet is considered a raw material, and they suggested revising the definition to exclude cullet. One of the commenters suggested adding the phrase "excluding glass manufacturing metal HAP that are introduced as cullet, trace constituents, or contaminants of other substances" to §§ 63.11448 and 63.11449(a)(1) to clarify what is considered a raw material. The other commenter suggested revising the definition of raw material to exclude material captured by control devices and recycled into the process.

Response: We agree with the commenters that the proposed rule is not clear on whether or not cullet is considered a raw material. We also agree that material that is captured in a furnace control device and recycled should not be considered a raw material. We have revised the definition of raw material to state that cullet and material captured by the furnace control device are excluded. However, this definition does not exclude material collected from other sources, such as from fabric filters that are used to control emissions from raw material handling or transporting, because, while pre-vitrified materials do not re-emit metal HAP when remelted, baghouse fines from raw material handling and transporting have not been previously vitrified.

Comment: One commenter stated that the rule is unclear as to the notification requirements for furnaces that, at the time of promulgation, were not subject, but later became subject due to increased production or changes in glass formulation.

Response: To address the commenter's concern, we have revised § 63.11456(a) to indicate that the Initial Notification is due 120 days after the furnace becomes subject to this final rule due to increased production or changes in glass formulation. We also have revised § 63.11456(a) to specify deadlines for submitting the Notification of Compliance Status.

C. Area Source NESHAP for Secondary Nonferrous Metals Processing

Comment: One commenter noted that the intent of the CAA, as it relates to the Area Source Program, was to bring about reductions in HAP emissions from area sources. The commenter expressed disappointment that some of the rules proposed under the Area Source Program (*e.g.*, Secondary Nonferrous Metals Processing) will not result in emissions reductions and recommended that future area source rules incorporate provisions that will provide additional public health protection from the effects of HAP emissions from area sources.

Response: As previously explained, we have determined that GACT for the Secondary Nonferrous Metals Processing area source category is the use of a baghouse or fabric filter that achieves a control efficiency of 99 percent for existing sources and 99.5 percent for new sources.[c] The use of baghouses and fabric filters has been shown to be very effective in controlling PM and metal HAP emissions from this area source category. The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (*i.e.*, sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to the area source category's current emission and control status. Such a comparison is flawed and irrelevant.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 listed HAP are subject to regulation. As explained in the *Integrated Urban Air Toxics Strategy*, EPA based its listing decisions on the baseline NTI that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments. 64 FR 38706, 38711, n. 10. The baseline NTI reflected HAP emissions from glass manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Based on EPA's baseline NTI, emissions of urban metal HAP from this area source category have been reduced from approximately 25 Mg/yr (28 tpy) to less than 0.9 Mg/yr (1 tpy) since 1990. Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources, and those standards are to reflect GACT for the source category. To qualify as being generally available, a GACT standard would most likely be an existing control technology or management practice. Thus, it is not surprising that the GACT standard being finalized today codifies the existing effective HAP control approach being used by sources in the category. For the reasons stated above, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

D. Area Source NESHAP—General

Comment: A commenter expressed his "understanding that Congress only gave EPA [the authority] to establish requirements for new * * * [sic] major sources under the MACT and NSPS standards, and not new area sources." The commenter further claimed that new area sources are the "jurisdiction" of State and local authorities. The commenter also expressed the policy objection "that to allow EPA to establish new and modified source requirements is tantamount to overriding the authority given the States and locals for establishing Best Available Control Technology (BACT) through their new source review programs." The commenter further questioned which standard would apply to a new area source if EPA established GACT requirements on a new source, and

[c] As previously explained, we have determined that outlet concentration limits of 0.034 g/dscm (0.015 gr/dscf) and 0.023 g/dscm (0.010 gr/dscf) reflect the GACT levels of control for existing and new secondary nonferrous processing area sources, respectively.

these requirements were to differ from BACT requirements in the NSR permit for the source.

Response: The comment above raises issues of EPA's authority for establishing GACT for new area sources and the appropriateness of potentially "overriding" locally-made BACT determinations for such sources. As generally discussed in the background section of this final rule, section 112 explicitly requires that EPA list categories of major sources, 42 U.S.C. 7412(c)(1), and area sources if those area sources meet the listing criteria in 42 U.S.C. 7412(c)(3). Furthermore, the statute requires EPA to promulgate emission standards for all listed categories whether the category is composed of major sources of HAP or area sources and directs that these standards address new as well as existing sources (42 U.S.C. 7412(d) & 7412(f)(2)). For area sources, Congress has provided EPA the option to promulgate GACT in lieu of MACT standards (42 U.S.C. 7412(d)(5)). In establishing timeframes for compliance for "any emission standard, limitation or regulation promulgated under this section [*i.e.*, section 112]," Congress allowed for different compliance dates for new and existing sources (42 U.S.C. 112(i)(3). This provision reinforces Congress's intent that standards under section 112, including the required area source standards, address both new and existing sources. Therefore, the commenter's understanding of EPA's authority does not reflect these express provisions of the statute. Based on these statutory provisions, EPA disagrees with the commenter's position that EPA lacks authority to establish GACT for new area sources.

Regarding the appropriateness of what the commenter calls "overriding" the authority to set BACT and BACT limits, we agree that there is a theoretical possibility inherent in the statute to have a GACT standard differ in stringency with a BACT limit in a permit. Initially, we note that BACT is triggered by the emission of different pollutants than those regulated under section 112 (see 42 U.S.C. 7412(b)(6)). The applicability provisions differ, and a major source under one program may or may not be a minor or area source under the other. Nevertheless, in many circumstances, a BACT limit targeting one pollutant may also, in effect, limit HAP emissions, and a HAP limit may incidentally limit a pollutant to which BACT would apply. It is a requirement for the owner or operator of a stationary source to comply with all air pollution control obligations that apply to the source under the CAA. To the extent that these obligations conflict and cannot be met simultaneously, the statute and EPA's regulations provide several mechanisms for resolving conflicts (*e.g.*, provisions for developing alternate control and monitoring requirements, delegation mechanisms that allow States and local agencies to develop approvable alternate standards, etc.).

Comment: One commenter recommended that EPA provide State and local agencies with sufficient additional grants so that they may participate in the implementation of additional area source rules. According to the commenter, Federal grants currently fall far short of what is needed to support State and local agencies in carrying out their existing responsibilities, and budget requests for the last two years have called for additional cuts. The commenter claimed that, without additional funding, some State and local air agencies may not be able to adopt and enforce additional area source rules. The commenter further stated that, even for permitting authorities that do not adopt these area source rules, it is possible that these rules will increase their work loads and resource needs. The commenter stated that, for example, synthetic minor permits (or Federally Enforceable State Operating Permits) will need to incorporate all applicable requirements, including area source standards. Noting that the title V permit fee funds are not available for these efforts, the commenter asserted that many State and local air agencies do not have sufficient resources for these responsibilities.

Response: State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, we do not believe that this issue can be addressed through this rulemaking.

EPA today is promulgating standards for the Secondary Nonferrous Metals Processing, Glass Manufacturing, and Clay Ceramics Manufacturing area source categories that reflect the practices currently in use by sources in these area source categories, and these standards represent what constitutes GACT for these categories under section 112(d)(5). GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT under section 112(d)(5). Moreover, we note that the commenter did not challenge our proposed determination to exempt from title V the Secondary Nonferrous Metals Processing or Clay Ceramics Manufacturing area source categories.

Although the resource issue cannot be resolved through this rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this final rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

VI. Impacts of the Final Area Source Standards

A. Glass Manufacturing

1. Air Quality Impacts

For the three sources that will be required to install emission controls to meet the emission limits specified in this final rule, we estimate nationwide emissions of the glass manufacturing metal HAP to be 26.2 Mg/yr (28.9 tpy). We estimate that this final rule will reduce nationwide emissions of the glass manufacturing metal HAP by about 25.6 Mg/yr (28.2 tpy). This final rule will also reduce emissions of PM by 377 Mg/yr (415 tpy). These estimates are based on the assumption that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces.

We project that, during the first three years of the standard, nine new furnaces will be constructed and that all nine furnaces will be in the container glass sector. Because none of these new furnaces are expected to use any of the glass manufacturing metal HAP as raw materials, we project that none of the nine new furnaces will be affected by this final rule. Therefore, we estimate that this final rule will have no air quality impacts on new sources.

Indirect or secondary air impacts of this final rule will result from the increased electricity usage associated with the operation of control devices. Assuming that plants will purchase electricity from a power plant, we estimate that the final standards will increase secondary emissions of criteria pollutants, including PM, sulfur dioxide (SO_2), NO_x, and carbon monoxide (CO)

from power plants. For the three existing sources that will be required to install emission controls, this final rule will increase secondary PM emissions by 0.28 Mg/yr (0.31 tpy); secondary SO_2 emissions by about 11.1 Mg/yr (12.2 tpy); secondary NO_X emissions by about 5.5 Mg/yr (6.1 tpy); and secondary CO emissions by about 0.18 Mg/yr (0.20 tpy).

For the estimated nine new sources within the Glass Manufacturing industry over the next three years, we estimate no secondary air impacts because we project that none of the new sources will be affected sources under this rule.

2. Water and Solid Waste Impacts

To comply with this final rule, we expect that affected facilities will control emissions by installing and operating ESP or fabric filters, neither of which generates wastewater. Therefore, we project that this final rule will have no water impacts. Glass manufacturers typically purchase highly refined and purified raw materials, and they usually recycle internal captured baghouse and ESP fines into the raw material to be fed back into the furnace. Therefore, we expect the solid waste impacts to be far less than if facilities were to dispose of their ESP and baghouse fines. We estimate that this final rule will generate 37.7 Mg/yr (41.6 tpy) of solid waste from existing sources. These estimates are based on the assumption that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces. For new sources, we estimate that this final rule will have no impacts on solid waste generation.

3. Energy Impacts

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that are required under this final rule. We assume that affected facilities will comply with this final rule by installing and operating either ESP or fabric filters, which require electricity to operate. Specifically, we assumed that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces. Under this scenario, we project that this final rule will increase overall energy demand (i.e., electricity demand) for existing sources by about 1,970 megawatt-hours per year, or 7.1 thousand gigajoules per year (6.7 billion British thermal units per year). We estimate that none of the nine new sources projected to go into operation during the first three years of the standard will be affected by this final rule. Therefore, we are not expecting any energy impacts for new sources.

4. Cost Impacts

The estimated total capital costs of this final rule for existing sources are $1.42 million. These capital costs include the costs to purchase and install ESP or fabric filters on the three affected furnaces that are not currently controlled. The estimated annualized cost of this final rule for existing sources is $491,000 per year. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping costs for the three existing facilities within the source category that will be required to install new emission controls. The other affected facilities will incur costs only for submitting the notifications and for annual control device inspections because those facilities already meet the testing, monitoring, and recordkeeping requirements that are required under this final rule.

We estimate that none of the nine new sources projected to go into operation during the first three years of the standard will be affected sources under this final rule. Therefore, we estimate no cost impacts for new sources.

5. Economic Impacts

Both the magnitude of control costs needed to comply with this final rule and the distribution of these costs among affected facilities can have an impact in determining how the market will change in response to the rule. Total annualized costs for this final rule are estimated to be approximately $0.48 million. Only three facilities are estimated to require additional capital costs because of this final rule.

We obtained revenue data for two of the three companies that operate facilities that will be required to install emission controls under this final rule. Based on those data, cost-to-sales estimates for those two affected facilities are 0.66 percent and 1.0 percent, respectively. Revenue data were not available for the other facility that will be affected by this final rule, so the national average value of shipments per worker from the 2002 Census of Manufacturers was used along with the average number of workers per facility to estimate revenues. The resulting costs for this and the other two facilities are relatively small and are not expected to result in a significant market impact whether they are passed on to the purchaser or absorbed by the company.

B. Clay Ceramics Manufacturing

Unlike the glass manufacturing industry, which still has some uncontrolled sources of urban HAP, sources in the clay ceramics manufacturing source category have made significant emission reductions through process changes and installation of control equipment. Affected sources are well-controlled, and our GACT determination reflects such controls. We estimate that the only impact to affected sources is the labor burden associated with the reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $974 per facility.

C. Secondary Nonferrous Metals Processing

Similar to the clay ceramics manufacturing industry, all of the affected sources in the secondary nonferrous metal processing category have installed control equipment on their furnace melting operations. Affected sources are well-controlled, and our GACT determination reflects such controls. We estimate that the only impact associated with this final rule is the reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $390 per facility.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in these NESHAP for Clay Ceramics Manufacturing Area Sources, Glass Manufacturing Area Sources, and Secondary Nonferrous Metals Processing Area Sources have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in these final rules are based on the information collection

requirements in the part 63 General Provisions (40 CFR part 63, subpart A). These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to EPA's implementing regulations at 40 CFR part 2, subpart B.

The NESHAP for Clay Ceramics Manufacturing area sources requires applicable one-time notifications required by the General Provisions. Plant owners or operators are required to include compliance certifications for the management practices in their Notifications of Compliance Status. The affected sources are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to total 196 labor hours per year at a cost of approximately $16,600 for 17 existing clay ceramics manufacturing area sources (51 existing sources averaged over three years). No capital/startup costs or operation and maintenance costs are associated with the information collection requirements. No costs or burden hours are estimated for new clay ceramics manufacturing area sources because no new area sources are projected for the next three years.

The NESHAP for Glass Manufacturing also requires applicable one-time notifications required by the General Provisions, monitoring of control device parameters, and recordkeeping. The annual burden for this collection of information averaged over the first three years of this ICR is estimated to total 190 labor hours per year at a cost of $16,130 for the 21 glass manufacturing area source facilities that will be subject to this final rule. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems, one-time notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements (e.g., costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the three-year period of the ICR are estimated at $15,990, with operation and maintenance costs of $9,850/yr. No costs or burden estimates are estimated for new sources because no new sources are project for the next three years.

The NESHAP for Secondary Nonferrous Metals Processing area sources requires one-time notifications required by the General Provisions. Plant owners or operators are required to conduct performance tests and include compliance certifications for the percent PM reduction achieved by the required control device in their Notifications of Compliance Status. The affected sources are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to total 15 labor hours per year at a cost of approximately $1,300 for three existing secondary nonferrous metals processing area sources (10 existing sources averaged over three years). No capital/startup costs or operation and maintenance costs are associated with the information collection requirements. No costs or burden hours are estimated for new secondary nonferrous metals processing area sources because no new area sources are projected for the next three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to, respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these final rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, a small entity is defined as: (1) A small business whose parent company meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 to 750 employees for Clay Ceramics Manufacturing, less than 750 to 1,000 employees for Glass Manufacturing, and less than 750 employees for Secondary Nonferrous Metals Processing, depending on the size definition for the affected NAICS code); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Based on our estimates, EPA does not expect any new clay ceramic or secondary nonferrous metal processing sources to be constructed in the foreseeable future and so, therefore, did not estimate the impacts for new clay ceramics manufacturing or secondary nonferrous metal processing sources. There would be no significant impacts on new or existing clay ceramics manufacturing facilities or secondary nonferrous metals processing facilities because these final rules do not create any new requirements or burdens other than minimal notification requirements. The minimal notification requirements consist of reading this final rule and providing two initial notifications to EPA: one notifying EPA that the facility is subject to this final rule and one notifying EPA that the facility is in compliance with this final rule. These notifications may be submitted together. We estimate the cost of these one-time notification requirements to be $974 for each clay ceramics manufacturing facility and $390 for each secondary nonferrous metals processing facility. These costs were estimated based on the costs of technical, management, and clerical support salaries. We also estimate that 34 clay ceramics facilities and 6 secondary nonferrous metals

processing facilities are owned and operated by small businesses. These notification costs would be less than 0.25 percent for any of these small businesses.

Twenty-one glass manufacturing facilities are estimated to require additional costs because of this final rule. Only one of these facilities is a small business.

Although these final rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. These final rules are designed to harmonize with existing State and local requirements.

D. Unfunded Mandates Reform Act

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 by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one 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.

EPA has determined that these final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. Thus, these final rules are not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that these final rules contain no regulatory requirement that might significantly or uniquely affect small governments. These final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to assure "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."

These final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to assure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rules do not have tribal implications, as specified in Executive Order 13175. They 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 Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

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

Executive Order 13045: "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, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

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

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

The glass manufacturing final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Existing energy requirements for this industry will not be significantly impacted by the additional pollution controls or other equipment that may be required by this final rule. Further, we have concluded that this final rule is not likely to have any significant adverse energy effects.

The clay ceramics manufacturing and the secondary nonferrous metals processing final rules are not "significant energy actions" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The energy requirements for these industries will remain at existing levels. No additional pollution controls or other equipment that would consume energy are required by these final rules. Further, we have concluded that these final rules are not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

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

These rules involve technical standards. EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2F, 2G, 3, 3A, 3B, 4, 5, 17, 22, and 29 (40 CFR part 60, appendix A).

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2F, 2G, 22, and 29. The search and review results are in the dockets for these final rules.

The search identified one voluntary consensus standard as acceptable alternatives to an EPA Method. The standard ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 12 other voluntary consensus standards. EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in these final rules were impractical alternatives to EPA test methods for the purposes of the rules. Therefore, EPA does not intend to adopt these standards for these purposes. The reasons for the determinations for the 12 methods are discussed in the dockets to these final rules.

Under § 63.7(f) and § 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These final rules establish national standards for each area source category.

K. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rules 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 these final rules 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). These final rules will be effective on December 26, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), Table 5 of subpart DDDDD of this part, 63.11452(b)(11), and 63.11466(c)(1)(iii).

* * * * *

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

Subpart RRRRRR—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

Applicability and Compliance Dates

Sec.

63.11435 Am I subject to this subpart?
63.11436 What parts of my plant does this subpart cover?
63.11437 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11438 What are the standards for new and existing sources?
63.11439 What are the initial compliance demonstration requirements for new and existing sources?
63.11440 What are the monitoring requirements for new and existing sources?
63.11441 What are the notification requirements?
63.11442 What are the recordkeeping requirements?

Other Requirements and Information

63.11443 What General Provisions apply to this subpart?
63.11444 What definitions apply to this subpart?
63.11445 Who implements and enforces this subpart?
63.11446 [Reserved]
63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

Table 1 to Subpart RRRRRR of Part 63—Applicability of General Provisions to Subpart RRRRRR

Applicability and Compliance Dates

§ 63.11435 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a clay ceramics manufacturing facility (as defined in § 63.11444), with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) of wet clay and is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. You must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11436 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing or new affected source located at a clay ceramics manufacturing facility.

(b) The affected source includes all atomized glaze spray booths and kilns that fire glazed ceramic ware located at a clay ceramics manufacturing facility.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

§ 63.11437 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than December 26, 2007.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with this subpart no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11438 What are the standards for new and existing sources?

(a) For each kiln that fires glazed ceramic ware, you must maintain the peak temperature below 1540 °C (2800 °F) and comply with one of the management practices in paragraphs (a)(1) and (2) of this section:

(1) Use natural gas, or equivalent clean-burning fuel, as the kiln fuel; or

(2) Use an electric-powered kiln.

(b) You must maintain annual wet glaze usage records for your facility.

(c) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must comply with the equipment standard requirements in paragraph (c)(1) of this section or the management practice in paragraph (c)(2) of this section.

(1) Control the emissions from the atomized glaze spray booth with an air pollution control device (APCD), as defined in § 63.11444.

(i) Operate and maintain the APCD in accordance with the equipment manufacturer's specifications; and

(ii) Monitor the APCD according to the applicable requirements in § 63.11440.

(2) Alternatively, use wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP.

(d) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must comply with one of the management practices or equipment standards in paragraphs (d)(1) and (2) of this section.

(1) Employ waste minimization practices, as defined in § 63.11444; or

(2) Alternatively, comply with the equipment standard requirements described in paragraph (c)(1) of this section or the management practice described in paragraph (c)(2) of this section.

(e) Surface applications (*e.g.*, wet glazes) containing less than 0.1 (weight) percent clay ceramics metal HAP do not have to be considered in determination of the 227 Mg/yr (250 tpy) threshold for wet glaze usage.

§ 63.11439 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable management practices and equipment standards in § 63.11438 by submitting a Notification of Compliance Status. For any wet spray glaze operation controlled with an APCD, you must conduct an initial inspection of the control equipment as described in § 63.11440(b)(1) within 60 days of the compliance date and include the results of the inspection in the Notification of Compliance Status.

(b) You must demonstrate initial compliance with the applicable management practices or equipment standards in § 63.11438 by submitting the Notification of Compliance Status within 120 days after the applicable compliance date specified in § 63.11437.

§ 63.11440 What are the monitoring requirements for new and existing sources?

(a) For each kiln firing glazed ceramic ware, you must conduct a daily check of the peak firing temperature. If the peak temperature exceeds 1540 °C (2800 °F), you must take corrective action according to your standard operating procedures.

(b) For each existing or new atomized glaze spray booth equipped with an APCD, you must demonstrate compliance by conducting the monitoring activities in paragraph (b)(1) and either paragraph (b)(2) or (3) of this section:

(1) *Initial control device inspection.* You must conduct an initial inspection of each particulate matter (PM) control device according to the requirements in paragraphs (b)(1)(i) or (ii) of this section. You must conduct each inspection no later than 60 days after your applicable compliance date for each installed control device which has been operated within 60 days of the compliance date. For an installed control device which has not been operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the system ductwork and control equipment for leaks and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system. An initial inspection of the internal components of a wet control system is not required if an inspection has been performed within the past 12 months.

(ii) For each baghouse, you must visually inspect the system ductwork and baghouse unit for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in paragraph (d) of this section. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(2) *Periodic inspections/maintenance.* Except as provided in paragraph (b)(3) of this section, you must perform periodic inspections and maintenance of each PM control device following the initial inspection according to the requirements in paragraphs (b)(2)(i) or (ii) of this section.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet control system.

(B) You must conduct weekly visual inspections of the system ductwork and control equipment for leaks.

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each baghouse according to the requirements in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) You must conduct weekly visual inspections of the system ductwork for leaks.

(B) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(3) As an alternative to the monitoring activities in paragraph (b)(2) of this section, you may demonstrate compliance by:

(i) Conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7); or

(ii) Using an approved alternative monitoring technique under § 63.8(f).

(c) If the results of the visual inspection, VE test, or alternative monitoring technique conducted under paragraph (b) of this section indicate an exceedance, you must take corrective action according to the equipment manufacturer's specifications or instructions.

(d) You must maintain records of your monitoring activities described in paragraphs (a) through (c) of this section. You may use your existing operating permit documentation to meet the monitoring requirements if it includes, but is not limited to, the monitoring records listed in paragraphs (d)(1) through (5) of this section related to any kiln peak temperature checks, visual inspections, VE tests, or alternative monitoring:

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity; and

(5) Results.

§ 63.11441 What are the notification requirements?

(a) You must submit an Initial Notification required by § 63.9(b)(2) no later than 120 days after the applicable compliance date specified in § 63.11437. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv) and may be combined with the Notification of Compliance Status required in paragraph (b) of this section.

(b) You must submit a Notification of Compliance Status required by § 63.9(h) no later than 120 days after the applicable compliance date specified in § 63.11437. In addition to the information required in § 63.9(h)(2), your notification(s) must include each compliance certification in paragraphs (b)(1) through (3) of this section that applies to you and may be combined with the Initial Notification required in paragraph (a) of this section.

(1) For each kiln firing glazed ceramic ware, you must certify that you are maintaining the peak temperature below 1540 °C (2800 °F) according to § 63.11438(a) and complying with one of the management practices in § 63.11438(a)(1) or (2).

(2) For atomized glaze spray booths, you must certify that your facility's annual wet glaze usage is above or below 227 Mg/yr (250 tpy).

(3) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must certify that:

(i) You are operating and maintaining an APCD in accordance with § 63.11438(c)(1), and you have conducted an initial control device inspection for each wet control system and baghouse associated with an atomized glaze spray booth; or

(ii) Alternatively, you are using wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP according to § 63.11438(c)(2).

(4) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must certify that:

(i) You are employing waste minimization practices according to § 63.11438(d)(1); or

(ii) You are complying with the requirements in § 63.11438(c)(1) or (2).

§ 63.11442 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of all required measurements needed to document compliance with management practices as required in § 63.10(b)(2)(vii), including records of monitoring and inspection data required by § 63.11440.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(d) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11443 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11444 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air. Examples of APCD currently used on glaze spray booths include, but are not limited to, wet scrubbers, fabric filters, water curtains, and water-wash systems.

Atomization means the conversion of a liquid into a spray or mist (i.e., collection of drops), often by passing the liquid through a nozzle.

Clay ceramics manufacturing facility means a plant site that manufactures pressed tile, sanitaryware, dinnerware, or pottery. For the purposes of this area

source rule, the following types of facilities are not part of the regulated category: artisan potters, art studios, school and university ceramic arts programs, and any facility that uses less than 45 Mg/yr (50 tpy) of wet clay.

Clay ceramics metal HAP means an oxide or other compound of chromium, lead, manganese, or nickel, which were listed for Clay Ceramics Manufacturing in the Revised Area Source Category List (67 FR 70428, November 22, 2002).

Glaze means a coating of colored, opaque, or transparent material applied to ceramic products before firing.

Glaze spray booth means a type of equipment used for spraying glaze on ceramic products.

High-volume, low-pressure (HVLP) spray equipment means a type of air atomized spray equipment that operates at low atomizing air pressure (0.1 to 10 pounds per square inch (psi) at the air nozzle) and uses 15 to 30 cubic feet per minute (cfm) of air to minimize the amount of overspray and bounce back.

Kiln means equipment used for the initial curing or firing of glaze on ceramic ware. A kiln may operate continuously or by batch process.

Nonatomizing glaze application technique means the application of glaze in the form of a liquid stream without atomization. Such techniques include, but are not limited to, dipping, centrifugal disc, waterfall, flow coaters, curtain coaters, silk-screening, and any direct application by roller, brush, pad, or other means facilitating direct transfer of glaze.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Waste minimization practices mean those procedures employed to minimize material losses and prevent unnecessary waste generation, for example, minimizing glaze overspray emissions using HVLP spray equipment (defined in this section) or similar spray equipment; minimizing HAP emissions during cleanup of spray glazing equipment; operating and maintaining spray glazing equipment according to manufacturer's instructions; and minimizing spills through careful handling of HAP-containing glaze materials.

Water curtain means an APCD that draws the exhaust stream through a continuous curtain of moving water to remove suspended particulate. A water curtain may also be called a drip curtain or waterfall.

Water-wash system means an APCD that uses a series of baffles to redirect the upward exhaust stream through a water wash chamber with downward water flow to remove suspended particulate.

§ 63.11445 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.11435 and 63.11436, the compliance date requirements in § 63.11437, and the management practices and equipment standards in § 63.11438.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

§ 63.11446 [Reserved]

§ 63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

As stated in § 63.11443, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART RRRRRR OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRRR

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2),[1] (c)(5), (e)	Applicability.
63.2	Definitions.
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (c)(1), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11435(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

■ 4. Part 63 is amended by adding subpart SSSSSS to read as follows:

Subpart SSSSSS—National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

Applicability and Compliance Dates

Sec.

63.11448 Am I subject to this subpart?
63.11449 What parts of my plant does this subpart cover?
63.11450 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11451 What are the standards for new and existing sources?
63.11452 What are the performance test requirements for new and existing sources?
63.11453 What are the initial compliance demonstration requirements for new and existing sources?
63.11454 What are the monitoring requirements for new and existing sources?
63.11455 What are the continuous compliance requirements for new and existing sources?

Notifications and Records

63.11456 What are the notification requirements?
63.11457 What are the recordkeeping requirements?

Other Requirements and Information

63.11458 What General Provisions apply to this subpart?
63.11459 What definitions apply to this subpart?
63.11460 Who implements and enforces this subpart?
63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

Table 1 to Subpart SSSSSS of Part 63—Emission Limits
Table 2 to Subpart SSSSSS of Part 63—Applicability of General Provisions to Subpart SSSSSS

Applicability and Compliance Dates

§ 63.11448 Am I subject to this subpart?

You are subject to this subpart if you own or operate a glass manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions and meets all of the criteria specified in paragraphs (a) through (c) of this section.

(a) A glass manufacturing facility is a plant site that manufactures flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, as defined in § 63.11459, to produce molten glass and form the molten glass into sheets, containers, or other shapes.

(b) An area source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that does not have the potential to emit any single HAP at a rate of 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more and any combination of HAP at a rate of 22.68 Mg/yr (25 tpy) or more.

(c) Your glass manufacturing facility uses one or more continuous furnaces to produce glass that contains compounds of one or more glass manufacturing metal HAP, as defined in § 63.11459, as raw materials in a glass manufacturing batch formulation.

§ 63.11449 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing or new affected glass melting furnace that is located at a glass manufacturing facility and satisfies the requirements specified in paragraphs (a)(1) through (3) of this section.

(1) The furnace is a continuous furnace, as defined in § 63.11459.

(2) The furnace is charged with compounds of one or more glass manufacturing metal HAP as raw materials.

(3) The furnace is used to produce glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 45 Mg/yr (50 tpy).

(b) A furnace that is a research and development process unit, as defined in § 63.11459, is not an affected furnace under this subpart.

(c) An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is a new source if you commenced construction or reconstruction of the affected source after September 20, 2007.

(e) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11450 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the applicable emission limits specified in § 63.11451 of this subpart no later than December 28, 2009. As specified in section 112(i)(3)(B) of the Clean Air Act and in § 63.6(i)(4)(A), you may request that the Administrator or delegated authority grant an extension allowing up to 1 additional year to comply with the applicable emission limits if such additional period is necessary for the installation of emission controls.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with the applicable emission limit specified in § 63.11451 no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with the applicable emission limit specified in § 63.11451 upon initial startup of your affected source.

(c) If you own or operate a furnace that produces glass containing one or more glass manufacturing metal HAP as raw materials at an annual rate of less than 45 Mg/yr (50 tpy), and you increase glass production for that furnace to an annual rate of at least 45 Mg/yr (50 tpy), you must comply with the applicable emission limit specified in § 63.11451 within 2 years of the date on which you increased the glass production rate for the furnace to at least 45 Mg/yr (50 tpy).

(d) If you own or operate a furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) and is not charged with glass manufacturing metal HAP, and you begin production of a glass product that includes one or more glass manufacturing metal HAP as raw materials, and you produce at least 45 Mg/yr (50 tpy) of this glass product, you must comply with the applicable emission limit specified in § 63.11451 within 2 years of the date on which you introduced production of the glass product that contains glass manufacturing metal HAP.

(e) You must meet the notification requirements in § 63.11456 according to the schedule in § 63.11456 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with emission limits specified in this subpart.

Standards, Compliance, and Monitoring Requirements

§ 63.11451 What are the standards for new and existing sources?

If you are an owner or operator of an affected furnace, as defined in § 63.11449(a), you must meet the applicable emission limit specified in Table 1 to this subpart.

§ 63.11452 What are the performance test requirements for new and existing sources?

(a) If you own or operate an affected furnace that is subject to an emission limit specified in Table 1 to this subpart, you must conduct a performance test according to paragraphs (a)(1) through (3) and paragraph (b) of this section.

(1) For each affected furnace, you must conduct a performance test within 180 days after your compliance date and report the results in your Notification of Compliance Status, except as specified in paragraph (a)(2) of this section.

(2) You are not required to conduct a performance test on the affected furnace if you satisfy the conditions described in paragraphs (a)(2)(i) through (iii) of this section.

(i) You conducted a performance test on the affected furnace within the past 5 years of the compliance date using the same test methods and procedures specified in paragraph (b) of this section.

(ii) The performance test demonstrated that the affected furnace met the applicable emission limit specified in Table 1 to this subpart.

(iii) Either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance with the applicable emission limit.

(3) If you operate multiple identical furnaces, as defined in § 63.11459, that are affected furnaces, you are required to test only one of the identical furnaces if you meet the conditions specified in paragraphs (a)(3)(i) through (iii) of this section.

(i) You must conduct the performance test while the furnace is producing glass that has the greatest potential to emit the glass manufacturing metal HAP from among the glass formulations that are used in any of the identical furnaces.

(ii) You certify in your Notification of Compliance Status that the identical furnaces meet the definition of identical furnaces specified in § 63.11459.

(iii) You provide in your Notification of Compliance Status documentation that demonstrates why the tested glass formulation has the greatest potential to emit the glass manufacturing metal HAP.

(b) You must conduct each performance test according to the requirements in § 63.7 and paragraphs (b)(1) through (12) and either paragraph (b)(13) or (b)(14) of this section.

(1) Install and validate all monitoring equipment required by this subpart before conducting the performance test.

(2) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(3) Conduct the test while the source is operating at the maximum production rate.

(4) Conduct at least three separate test runs with a minimum duration of 1 hour for each test run, as specified in § 63.7(e)(3).

(5) Record the test date.

(6) Identify the emission source tested.

(7) Collect and record the emission test data listed in this section for each run of the performance test.

(8) Locate all sampling sites at the outlet of the furnace control device or at the furnace stack prior to any releases to the atmosphere.

(9) Select the locations of sampling ports and the number of traverse points using Method 1 or 1A of 40 CFR part 60, appendix A–1.

(10) Measure the gas velocity and volumetric flow rate using Method 2, 2A, 2C, 2F, or 2G of 40 CFR part 60, appendices A–1 and A–2, during each test run.

(11) Conduct gas molecular weight analysis using Methods 3, 3A, or 3B of 40 CFR part 60, appendix A–2, during each test run. You may use ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(12) Measure gas moisture content using Method 4 of 40 CFR part 60, appendix A–3, during each test run.

(13) To meet the particulate matter (PM) emission limit specified in Table 1 to this subpart, you must conduct the procedures specified in paragraphs (b)(13)(i) through (v) of this section.

(i) Measure the PM mass emission rate at the outlet of the control device or at the stack using Method 5 or 17 of 40 CFR part 60, appendices A–3 or A–6, for each test run.

(ii) Calculate the PM mass emission rate in the exhaust stream for each test run.

(iii) Measure and record the glass production rate (kilograms (tons) per hour of product) for each test run.

(iv) Calculate the production-based PM mass emission rate (g/kg (lb/ton)) for each test run using Equation 1 of this section.

$$MP = \frac{ER}{P} \qquad \text{(Equation 1)}$$

Where:

MP = Production-based PM mass emission rate, grams of PM per kilogram (pounds of PM per ton) of glass produced.

ER = PM mass emission rate measured using Methods 5 or 17 during each performance test run, grams (pounds) per hour.

P = Average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(v) Calculate the 3-hour block average production-based PM mass emission rate as the average of the production-based PM mass emission rates for each test run.

(14) To meet the metal HAP emission limit specified in Table 1 to this subpart, you must conduct the procedures specified in paragraphs (b)(14)(i) through (v) of this section.

(i) Measure the metal HAP mass emission rate at the outlet of the control device or at the stack using Method 29 of 40 CFR part 60, appendix A–8, for each test run.

(ii) Calculate the metal HAP mass emission rate in the exhaust stream for the glass manufacturing metal HAP that are added as raw materials to the glass manufacturing formulation for each test run.

(iii) Measure and record the glass production rate (kilograms (tons) per hour of product) for each test run.

(iv) Calculate the production-based metal HAP mass emission rate (g/kg (lb/ton)) for each test run using Equation 2 of this section.

$$MPM = \frac{ERM}{P} \qquad \text{(Equation 2)}$$

Where:

MPM = Production-based metal HAP mass emission rate, grams of metal HAP per kilogram (pounds of metal HAP per ton) of glass produced.

ERM = Sum of the metal HAP mass emission rates for the glass manufacturing metal HAP that are added as raw materials to the glass manufacturing formulation and are measured using Method 29 during each performance test run, grams (pounds) per hour.

P = Average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(v) Calculate the 3-hour block average production-based metal HAP mass emission rate as the average of the production-based metal HAP mass emission rates for each test run.

§ 63.11453 What are the initial compliance demonstration requirements for new and existing sources?

(a) If you own or operate an affected source, you must submit a Notification of Compliance Status in accordance with §§ 63.9(h) and 63.11456(b).

(b) For each existing affected furnace that is subject to the emission limits specified in Table 1 to this subpart, you must demonstrate initial compliance according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) For each fabric filter that is used to meet the emission limit specified in Table 1 to this subpart, you must visually inspect the system ductwork and fabric filter unit for leaks. You must also inspect the inside of each fabric filter for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11457(a)(6).

(2) For each electrostatic precipitator (ESP) that is used to meet the emission limit specified in Table 1 to this subpart, you must verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold. You must also visually inspect the system ductwork and ESP housing unit and hopper for leaks and inspect the interior of the ESP to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates. You must record the results of the inspection and any maintenance action as required in § 63.11457(a)(6).

(3) You must conduct each inspection specified in paragraphs (b)(1) and (2) of this section no later than 60 days after your applicable compliance date specified in § 63.11450, except as specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) An initial inspection of the internal components of a fabric filter is not required if an inspection has been performed within the past 12 months.

(ii) An initial inspection of the internal components of an ESP is not required if an inspection has been performed within the past 24 months.

(4) You must satisfy the applicable requirements for performance tests specified in § 63.11452.

(c) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM 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 fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(d) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must install, operate, and maintain according to the manufacturer's specifications, one or more continuous parameter monitoring systems (CPMS) for measuring and recording the secondary voltage and secondary electrical current to each field of the ESP according to paragraphs (d)(1) through (13) of this section.

(1) The CPMS must have an accuracy of 1 percent of the secondary voltage and secondary electrical current, or better.

(2) Your CPMS must be capable of measuring the secondary voltage and secondary electrical current over a range that extends from a value that is at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value that is at least 20 percent greater than the highest value that you expect your CPMS to measure.

(3) The signal conditioner, wiring, power supply, and data acquisition and recording system of your CPMS must be compatible with the output signal of the sensors used in your CPMS.

(4) The data acquisition and recording system of your CPMS must be able to record values over the entire range specified in paragraph (d)(2) of this section.

(5) The data recording system associated with your CPMS must have

a resolution of one-half of the required overall accuracy of your CPMS, as specified in paragraph (d)(1) of this section, or better.

(6) Your CPMS must be equipped with an alarm system that will sound when the system detects a decrease in secondary voltage or secondary electrical current below the alarm set point established according to paragraph (d)(7) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(7) In the initial adjustment of the CPMS, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(8) You must install each sensor of the CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(9) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(10) Your CPMS must be designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally-spaced data values (or at least 75 percent of the total number of values if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out of control periods).

(11) You must record valid data from at least 90 percent of the hours during which the affected source or process operates.

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain your CPMS including, but not limited to, maintaining necessary parts for routine repairs of the CPMS.

(e) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled by a device other than a fabric filter or an ESP, you must prepare and submit a monitoring plan to EPA or the delegated authority for approval. Each plan must contain the information in paragraphs (e)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with § 63.11452 verifying the performance of the device for reducing PM or metal HAP to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system;

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

§ 63.11454 What are the monitoring requirements for new and existing sources?

(a) For each monitoring system required by this subpart, you must install, calibrate, operate, and maintain the monitoring system according to the manufacturer's specifications and the requirements specified in paragraphs (a)(1) through (7) of this section.

(1) You must install each sensor of your monitoring system in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(2) You must perform an initial calibration of your monitoring system based on the manufacturer's recommendations.

(3) You must use a monitoring system that is designed to complete a minimum of one cycle of operation for each successive 15-minute period.

(4) For each existing affected furnace, you must record the value of the monitored parameter at least every 8 hours. The value can be recorded electronically or manually.

(5) You must record the results of each inspection, calibration, monitoring system maintenance, and corrective action taken to return the monitoring system to normal operation.

(6) At all times, you must maintain your monitoring system including, but not limited to, maintaining necessary parts for routine repairs of the system.

(7) You must perform the required monitoring whenever the affected furnace meets the conditions specified in paragraph (a)(7)(i) or (ii) of this section.

(i) The furnace is being charged with one or more of the glass manufacturing metal HAP as raw materials.

(ii) The furnace is in transition between producing glass that contains one or more of the glass metal HAP as raw materials and glass that does not contain any of the glass manufacturing metal HAP as raw materials. The transition period begins when the furnace is charged with raw materials that do not contain any of the glass manufacturing metal HAP as raw materials and ends when the furnace begins producing a saleable glass product that does not contain any of the glass manufacturing metal HAP as raw materials.

(b) For each existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must meet the requirements specified in paragraphs (b)(1) or (2) of this section.

(1) You must monitor the secondary voltage and secondary electrical current to each field of the ESP according to the requirements of paragraph (a) of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(c) For each existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must meet the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) You must monitor the inlet temperature to the fabric filter according to the requirements of paragraph (a) of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(d) For each new furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must monitor the voltage and electrical current to each field of the ESP on a continuous basis using one or more CPMS according to the requirements for CPMS specified in § 63.11453(d).

(e) For each new furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must install and operate a bag leak detection system according to the requirements specified in § 63.11453(c).

(f) For each new or existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is equipped with a control device other than an ESP or fabric filter, you must meet the requirements in § 63.8(f) and submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (f)(1) through (5) of this section.

(1) Description of the alternative add-on air pollution control device (APCD).

(2) Type of monitoring device or method that will be used, including the sensor type, location, inspection

procedures, quality assurance and quality control (QA/QC) measures, and data recording device.

(3) Operating parameters that will be monitored.

(4) Frequency that the operating parameter values will be measured and recorded.

(5) Procedures for inspecting the condition and operation of the control device and monitoring system.

(g) If you wish to use a monitoring method other than those specified in paragraph (b)(1) or (c)(1) of this section, you must meet the requirements in § 63.8(f) and submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (g)(1) through (5) of this section.

(1) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, QA/QC measures, and data recording device.

(2) Operating parameters that will be monitored.

(3) Frequency that the operating parameter values will be measured and recorded.

(4) Procedures for inspecting the condition and operation of the monitoring system.

(5) Explanation for how the alternative monitoring method will provide assurance that the emission control device is operating properly.

§ 63.11455 What are the continuous compliance requirements for new and existing sources?

(a) You must be in compliance with the applicable emission limits in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) For each affected furnace that is subject to the emission limit specified in Table 1 to this subpart, you must monitor the performance of the furnace emission control device under the conditions specified in § 63.11454(a)(7) and according to the requirements in §§ 63.6(e)(1) and 63.8(c) and paragraphs (c)(1) through (6) of this section.

(1) For each existing affected furnace that is controlled with an ESP, you must monitor the parameters specified in § 63.11454(b) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(2) For each new affected furnace that is controlled with an ESP, you must comply with the monitoring requirements specified in § 63.11454(d) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(3) For each existing affected furnace that is controlled with a fabric filter, you must monitor the parameter specified in § 63.11454(c) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(4) For each new affected furnace that is controlled with a fabric filter, you must comply with the monitoring requirements specified in § 63.11454(e) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(5) For each affected furnace that is controlled with a device other than a fabric filter or ESP, you must comply with the requirements of your approved alternative monitoring plan, as required in § 63.11454(g).

(6) For each monitoring system that is required under this subpart, you must keep the records specified in § 63.11457.

(d) Following the initial inspections, you must perform periodic inspections and maintenance of each affected furnace control device according to the requirements in paragraphs (d)(1) through (4) of this section.

(1) For each fabric filter, you must conduct inspections at least every 12 months according to paragraphs (d)(1)(i) through (iii) of this section.

(i) You must inspect the ductwork and fabric filter unit for leakage.

(ii) You must inspect the interior of the fabric filter for structural integrity and to determine the condition of the fabric filter.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(i), the first inspection must not be more than 12 months from the last inspection.

(2) For each ESP, you must conduct inspections according to the requirements in paragraphs (d)(2)(i) through (iii) of this section.

(i) You must conduct visual inspections of the system ductwork, housing unit, and hopper for leaks at least every 12 months.

(ii) You must conduct inspections of the interior of the ESP to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(ii), the first inspection must not be more than 24 months from the last inspection.

(3) You must record the results of each periodic inspection specified in this section in a logbook (written or electronic format), as specified in § 63.11457(c).

(4) If the results of a required inspection indicate a problem with the operation of the emission control system, you must take immediate corrective action to return the control device to normal operation according to the equipment manufacturer's specifications or instructions.

(e) For each affected furnace that is subject to the emission limit specified in Table 1 to this subpart and can meet the applicable emission limit without the use of a control device, you must demonstrate continuous compliance by satisfying the applicable recordkeeping requirements specified in § 63.11457.

Notifications and Records

§ 63.11456 What are the notification requirements?

(a) If you own or operate an affected furnace, as defined in § 63.11449(a), you must submit an Initial Notification in accordance with § 63.9(b) and paragraphs (a)(1) and (2) of this section by the dates specified.

(1) As specified in § 63.9(b)(2), if you start up your affected source before December 26, 2007, you must submit an Initial Notification not later than April 24, 2008 or within 120 days after your affected source becomes subject to the standard.

(2) The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv).

(b) You must submit a Notification of Compliance Status in accordance with § 63.9(h) and the requirements in paragraphs (b)(1) and (2) of this section.

(1) If you own or operate an affected furnace and are required to conduct a performance test, you must submit a Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test, according to § 60.8 or § 63.10(d)(2).

(2) If you own or operate an affected furnace and satisfy the conditions specified in § 63.11452(a)(2) and are not required to conduct a performance test, you must submit a Notification of Compliance Status, including the results of the previous performance test, before the close of business on the compliance date specified in § 63.11450.

§ 63.11457 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) through (8) of this section.

(1) A copy of any Initial Notification and Notification of Compliance Status that you submitted and all documentation supporting those notifications, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records specified in § 63.10(b)(2) and (c)(1) through (13).

(3) The records required to show continuous compliance with each emission limit that applies to you, as specified in § 63.11455.

(4) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit). The production data must include the amount (weight or weight percent) of each ingredient in the batch formulation, including all glass manufacturing metal HAP compounds.

(5) Records of maintenance activities and inspections performed on control devices as specified in §§ 63.11453(b) and 63.11455(d), according to paragraphs (a)(5)(i) through (v) of this section.

(i) The date, place, and time of inspections of control device ductwork, interior, and operation.

(ii) Person conducting the inspection.

(iii) Technique or method used to conduct the inspection.

(iv) Control device operating conditions during the time of the inspection.

(v) Results of the inspection and description of any corrective action taken.

(6) Records of all required monitoring data and supporting information including all calibration and maintenance records.

(7) For each bag leak detection system, the records specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(8) Records of any approved alternative monitoring method(s) or test procedure(s).

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) You must record the results of each inspection and maintenance action in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the permitting authority upon request.

(d) As specified in § 63.10(b)(1), you must keep each record for a minimum of 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11458 What General Provisions apply to this subpart?

You must satisfy the requirements of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 2 to this subpart.

§ 63.11459 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Continuous furnace means a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.

Cullet means recycled glass that is mixed with raw materials and charged to a glass melting furnace to produce glass. Cullet is not considered to be a raw material for the purposes of this subpart.

Electrostatic precipitator (ESP) means an APCD that removes PM from an exhaust gas stream by applying an electrical charge to particles in the gas stream and collecting the charged particles on plates carrying the opposite electrical charge.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media.

Furnace stack means a conduit or conveyance through which emissions from the furnace melter are released to the atmosphere.

Glass manufacturing metal HAP means an oxide or other compound of any of the following metals included in the list of urban HAP for the Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.

Glass melting furnace means a unit comprising a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass.

Identical furnaces means two or more furnaces that are identical in design, including manufacturer, dimensions, production capacity, charging method, operating temperature, fuel type, burner configuration, and exhaust system configuration and design.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of filterable particulate emissions, as measured by Methods 5 or 17 (40 CFR part 60, appendices A–3 and A–6), and as a surrogate for glass manufacturing metal HAP compounds contained in the PM including, but not limited to, arsenic, cadmium, chromium, lead, manganese, and nickel.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials. Cullet and material that is recovered from a furnace control device for recycling into the glass formulation are not considered to be raw materials for the purposes of this subpart.

Research and development process unit means a process unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

§ 63.11460 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the applicability requirements in §§ 63.11448 and 63.11449, the compliance date requirements in § 63.11450, and the emission limits specified in § 63.11451.

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping under § 63.10(f) and as defined in § 63.90.

§ 63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

As required in § 63.11451, you must comply with each emission limit that applies to you according to the following table:

TABLE 1 TO SUBPART SSSSSS OF PART 63—EMISSION LIMITS

For each. . .	You must meet one of the following emission limits. . .
1. New or existing glass melting furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) AND is charged with compounds of arsenic, cadmium, chromium, manganese, lead, or nickel as raw materials.	a. The 3-hour block average production-based PM mass emission rate must not exceed 0.1 gram per kilogram (g/kg) (0.2 pound per ton (lb/ton)) of glass produced; OR b. The 3-hour block average production-based metal HAP mass emission rate must not exceed 0.01 g/kg (0.02 lb/ton) of glass produced.

As stated in § 63.11458, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A), as shown in the following table:

TABLE 2 TO SUBPART SSSSSS OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSSS

Citation	Subject
§ 63.1(a), (b), (c)(1), (c)(2), (c)(5), (e)	Applicability.
§ 63.2	Definitions.
§ 63.3	Units and Abbreviations.
§ 63.4	Prohibited Activities.
§ 63.5	Construction/Reconstruction.
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
§ 63.7	Performance Testing Requirements.
§ 63.8(a)(1), (a)(2), (b), (c)(1)–(c)(4), (c)(7)(i)(B), (c)(7)(ii), (c)(8), (d), (e)(1), (e)(4), (f).	Monitoring Requirements.
§ 63.9(a), (b)(1)(i)–(b)(2)(v), (b)(5), (c), (d), (h)–(j)	Notification Requirements.
§ 63.10(a), (b)(1), (b)(2)(i)–(b)(2)(xii)	Recordkeeping and Reporting Requirements.
§ 63.10(b)(2)(xiv), (c), (f)	Documentation for Initial Notification and Notification of Compliance Status.
§ 63.12	State Authority and Delegations.
§ 63.13	Addresses.
§ 63.14	Incorporations by Reference.
§ 63.15	Availability of Information.
§ 63.16	Performance Track Provisions.

■ 5. Part 63 is amended by adding subpart TTTTTT to read as follows:

Subpart TTTTTT—National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

Applicability and Compliance Dates

Sec.

63.11462 Am I subject to this subpart?

63.11463 What parts of my plant does this subpart cover?

63.11464 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11465 What are the standards for new and existing sources?

63.11466 What are the performance test requirements for new and existing sources?

63.11467 What are the initial compliance demonstration requirements for new and existing sources?

63.11468 What are the monitoring requirements for new and existing sources?

63.11469 What are the notification requirements?

63.11470 What are the recordkeeping requirements?

Other Requirements and Information

63.11471 What General Provisions apply to this subpart?

63.11472 What definitions apply to this subpart?

63.11473 Who implements and enforces this subpart?

63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

Table 1 to Subpart TTTTTT of Part 63—Applicability of General Provisions to Subpart TTTTTT

Applicability and Compliance Dates

§ 63.11462 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a secondary nonferrous metals processing facility (as defined in § 63.11472) that is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11463 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing or new affected source located at a secondary nonferrous metals processing facility.

(b) The affected source includes all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facilities.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

§ 63.11464 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than December 26, 2007.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (b)(2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with this subpart no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11465 What are the standards for new and existing sources?

(a) You must route the emissions from each existing affected source through a fabric filter or baghouse that achieves a particulate matter (PM) control efficiency of at least 99.0 percent or an outlet PM concentration limit of 0.034 grams per dry standard cubic meter (g/dscm)(0.015 grains per dry standard cubic feet (gr/dscf)).

(b) You must route the emissions from each new affected source through a fabric filter or baghouse that achieves a PM control efficiency of at least 99.5 percent or an outlet PM concentration limit of 0.023 g/dscm (0.010 gr/dscf).

§ 63.11466 What are the performance test requirements for new and existing sources?

(a) Except as specified in paragraph (b) of this section, if you own or operate an existing or new affected source, you must conduct a performance test for each affected source within 180 days of your compliance date and report the results in your notification of compliance status.

(b) If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the past 5 years of the compliance date using the same methods specified in paragraph (c) of this section and you meet either of the following two conditions:

(1) No process changes have been made since the test; or

(2) You demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(c) You must conduct each performance test according to the requirements in § 63.7 and paragraphs (c)(1) and (2) of this section.

(1) Determine the concentration of PM according to the following test methods in 40 CFR part 60, appendices:

(i) Method 1 or 1A (Appendix A–1) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2F, or 2G (Appendices A–1 and A–2) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (Appendix A–2) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference-see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (Appendix A–3) to determine the moisture content of the stack gas.

(v) Method 5 or 17 (Appendix A–3) to determine the concentration of particulate matter (front half filterable catch only). Three valid test runs are needed to comprise a performance test.

(2) During the test, you must operate each emissions source within ±10 percent of its normal process rate. You must monitor and record the process rate during the test.

§ 63.11467 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable standards in § 63.11465 by submitting a Notification of Compliance Status in accordance with § 63.11469(b).

(b) You must conduct the inspection specified in paragraph (c) of this section and include the results of the inspection in the Notification of Compliance Status.

(c) For each existing and new affected source, you must conduct an initial inspection of each baghouse. You must visually inspect the system ductwork and baghouse unit for leaks. Except as specified in paragraph (e) of this section, you must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11470.

(d) For each installed baghouse that is in operation during the 60 days after the applicable compliance date, you must conduct the inspection specified in paragraph (c) of this section no later than 60 days after your applicable compliance date. For an installed baghouse that is not in operation during the 60 days after the applicable compliance date, you must conduct an initial inspection prior to startup of the baghouse.

(e) An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(f) If you own or operate an existing affected source and are not required to conduct a performance test under § 63.11466, you must submit the Notification of Compliance Status within 120 days after the applicable compliance date specified in § 63.11464.

(g) If you own or operate an existing affected source and are required to conduct a performance test under § 63.11466, you must submit the Notification of Compliance Status within 60 days after completing the performance test.

§ 63.11468 What are the monitoring requirements for new and existing sources?

(a) For an existing affected source, you must demonstrate compliance by conducting the monitoring activities in paragraph (a)(1) or (a)(2) of this section:

(1) You must perform periodic inspections and maintenance of each

baghouse according to the requirements in paragraphs (a)(1)(i) and (ii) of this section.

(i) You must conduct weekly visual inspections of the system ductwork for leaks.

(ii) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(2) As an alternative to the monitoring requirements in paragraph (a)(1) of this section, you may demonstrate compliance by conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7).

(b) If the results of the visual inspection or VE test conducted under paragraph (a) of this section indicate a problem with the operation of the baghouse, including but not limited to air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions, you must take immediate corrective action to return the baghouse to normal operation according to the equipment manufacturer's specifications or instructions and record the corrective action taken.

(c) For each new affected source, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM 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 fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

§ 63.11469 What are the notification requirements?

(a) You must submit the Initial Notification required by § 63.9(b)(2) no later than 120 days after the applicable compliance date specified in § 63.11464. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv) and may be combined with the Notification of Compliance Status required in § 63.11467 and paragraph (b) of this section if you choose to submit both notifications within 120 days.

(b) You must submit a Notification of Compliance Status in accordance with § 63.9(h) and the requirements in paragraphs (c) and (d) of this section. In addition to the information required in § 63.9(h)(2), § 63.11466, and § 63.11467, your notification must include the following certification(s) of compliance, as applicable, and signature of a responsible official:

(1) This certification of compliance by the owner or operator of an existing affected source who is relying on a previous performance test: "This facility complies with the control efficiency requirement [or the outlet concentration limit] in § 63.11465 based on a previous performance test in accordance with § 63.11466."

(2) This certification of compliance by the owner or operator of any new or existing affected source: "This facility has conducted an initial inspection of each control device according to the requirements in § 63.11467, will conduct periodic inspections and maintenance of control devices in accordance with § 63.11468, and will maintain records of each inspection and maintenance action required by § 63.11470."

(3) This certification of compliance by the owner or operator of a new affected source: "This facility has an approved bag leak detection system monitoring plan in accordance with § 63.11468(c)(2)."

(c) If you own or operate an affected source and are required to conduct a performance test under § 63.11466, you must submit a Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test.

(d) If you own or operate an affected source and are not required to conduct a performance test under § 63.11466, you must submit a Notification of Compliance Status, including the results of the previous performance test, no later than 120 days after the applicable compliance date specified in § 63.11464.

§ 63.11470 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.

(2) You must keep the records of all inspection and monitoring data required by §§ 63.11467 and 63.11468, and the information identified in paragraphs (a)(2)(i) through (a)(2)(v) for each required inspection or monitoring.

(i) The date, place, and time;

(ii) Person conducting the activity;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(d) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11471 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11472 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Furnace melting operation means the collection of processes used to charge post-consumer nonferrous scrap material to a furnace, melt the material, and transfer the molten material to a forming medium.

Secondary nonferrous metals processing facility means a brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plant that uses furnace melting operations to melt post-consumer nonferrous metal scrap to make products including bars, ingots, blocks, or metal powders.

§ 63.11473 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in § 63.11462 and 63.11463, the compliance date requirements in § 63.11464, and the applicable standards in § 63.11465.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

§ 63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

As stated in § 63.11471, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART TTTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1),[1] (c)(2), (c)(5), (e)	Applicability.
63.2	Definitions.
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance With Standards and Maintenance Requirements.
63.7	Performance Testing Requirements
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.

TABLE 1 TO SUBPART TTTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT—Continued

Citation	Subject
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11462(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

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December 28, 2007

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0083; FRL–8509–5]

RIN 2060–AM71

National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for electric arc furnace steelmaking facilities that are area sources of hazardous air pollutants. The final rule establishes requirements for the control of mercury emissions that are based on the maximum achievable control technology and requirements for the control of other hazardous air pollutants that are based on generally available control technology or management practices.

DATES: This final rule is effective on December 28, 2007. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of December 28, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0083. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities Docket at the EPA Docket and Information Center in the EPA Headquarters Library, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Sector Policies and Program Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5289; fax number (919) 541–3207, e-mail address: *mulrine.phil@epa.gov*.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background Information for the Final Rule
III. Summary of Final Rule and Changes Since Proposal
A. Applicability and Compliance Date
B. Final MACT Standards for the Control of Mercury
C. Final GACT Standards for EAF and AOD Vessels
D. Final GACT Standards for Scrap Management
E. Recordkeeping and Reporting Requirements
IV. Summary of Comments and Responses
A. Basis for Area Source Standards
B. Proposed MACT Standard for Mercury
C. Proposed GACT Standard for Metal HAP Other Than Mercury
D. Proposed GACT Standards for Scrap to Control HAP Other Than Mercury
E. Miscellaneous Comments
V. Impacts of the Final Rule
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this final action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	331111	Steel mills with electric arc furnace steelmaking facilities that are area sources.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.10680 of subpart YYYYY (National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 26, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal

proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

II. Background Information for the Final Rule

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP), which, as the result of emissions of area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "Urban HAP." See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. See *Sierra Club* v. *Johnson*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3). Among other things, the court order, as amended on October 15, 2007, requires that EPA complete standards for 9 area source categories by December 15, 2007. On September 20, 2007 (72 FR 53814), we proposed NESHAP for the electric arc furnace (EAF) steelmaking area source category. Other final NESHAP will complete the required regulatory action for the remaining area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." As explained in the preamble to the proposed NESHAP, we are issuing standards based on GACT for the control of the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel from area source EAF steelmaking facilities.

Section 112(c)(6) requires EPA to list, and subject to standards pursuant to section 112(d)(2) or (d)(4), categories of sources accounting for not less than 90 percent of emissions of each of seven specific HAP: Alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,9-tetrachlorodibenzofurans, and 2,3,7,8-tetrachloridibenzo-p-dioxin. Standards established under CAA section 112(d)(2) must reflect performance of MACT. On September 20, 2007 (72 FR 53817), we added EAF steelmaking facilities that are area sources to this list of source categories under CAA section 112(c)(6) solely on the basis of mercury emissions. As discussed in the preamble to the proposed NESHAP, we are issuing MACT standards pursuant to CAA section 112(d)(2) for mercury emissions from all EAF steelmaking facilities that are area sources of HAP. The notice also announced a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision changed the name of the listed area source category "Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)" to "Electric Arc Furnace Steelmaking Facilities."

III. Summary of Final Rule and Changes Since Proposal

A. Applicability and Compliance Date

The final NESHAP applies to each new or existing EAF steelmaking facility that is an area source of HAP. The owner or operator of an existing area source that does not have to install or modify emissions control equipment to meet the opacity limit for fugitive emissions must comply with all applicable rule requirements no later than June 30, 2008. The owner or operator of an existing area source that must install or modify emission control equipment to meet the opacity limit for fugitive emissions may request a compliance date for the opacity limit that is no later than December 28, 2010 and must demonstrate to the satisfaction of the permitting authority that the additional time is needed. We revised the compliance date from 2 years to 3 years if a facility can demonstrate the additional time is needed to install controls after considering comments on the upgrades that some facilities may need to meet the opacity limit. The owner or operator of a new affected source must comply with all applicable rule requirements by December 28, 2007 (if the startup date is on or before December 28, 2007) or upon startup (if the startup date is after December 28, 2007).

B. Final MACT Standards for the Control of Mercury

The final standards for mercury are based on pollution prevention and require an EAF owner or operator who melts scrap from motor vehicles either to purchase (or otherwise obtain) the motor vehicle scrap only from scrap providers participating in an EPA-approved program for the removal of mercury switches or to fulfill the alternative requirements described below. EAF facilities participating in an approved program must maintain records identifying each scrap provider and documenting the scrap provider's participation in the EPA-approved mercury switch removal program. A compliance option requires the EAF facility to prepare and operate pursuant to an approved site-specific plan that includes specifications to the scrap

[1] An area source is a stationary source of hazardous air pollutant (HAP) emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

provider that mercury switches must be removed from motor vehicle bodies at an efficiency comparable to that of the EPA-approved mercury switch removal program (see below). An equivalent compliance option is provided for facilities that do not utilize motor vehicle scrap that contains mercury switches. We have added a new provision to the final rule for scrap that does not contain motor vehicle scrap to require certification and records documenting that the scrap does not contain motor vehicle scrap.

We expect most facilities that use motor vehicle scrap will choose to comply by purchasing motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator. The NVMSRP [3] is an approved program under this final standard. In response to comments, we are also identifying the Vehicle Mercury Switch Removal Program mandated by Maine State law as an EPA-approved program. Facilities choosing to use an EPA-approved program as a compliance option are required to assume all of the responsibilities for EAF steelmakers as described in the NVMSRP MOU. The NVMSRP is described in detail in section III.D.1 of the preamble to the proposed rule. In response to comments, we are including in the final rule provisions for EPA-approved programs that specify certain responsibilities that the EAF steelmaking industry agreed to in signing the MOU, including developing a plan that demonstrates how the facility is participating in the program, documenting communication and outreach to scrap providers, and corroboration to ensure mercury switches are being removed.

EAF facilities may also obtain scrap from scrap providers participating in other programs if they obtain EPA approval of the program. To do so, the facility owner or operator must submit a request to the Administrator for approval to comply by purchasing scrap from scrap providers that are participating in another switch removal program and demonstrate to the Administrator's satisfaction that the program meets the following specified criteria: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed (from which a percentage of switches removed is derivable).

EAF facilities that purchase motor vehicle scrap from scrap providers that do not participate in an EPA-approved mercury switch removal program have to prepare and operate pursuant to and in conformance with a site-specific plan for the removal of mercury switches. The facility's scrap specifications must include a requirement for the removal of mercury switches, and the plan must include provisions for obtaining assurance from scrap providers that mercury switches have been removed. The plan must be submitted to the permitting authority for approval and demonstrate how the facility will comply with specific requirements that include: (1) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper disposal of the mercury switches, (2) provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meets the scrap specifications, (3) provisions for periodic inspection, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap, (4) provisions for taking corrective actions if needed, and (5) requiring each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The permitting authority may request documentation or additional information from the owner or operator at any time. The site-specific plan must establish a goal for the removal of at least 80 percent of the mercury switches. All documented and verifiable mercury-containing components removed from motor vehicle scrap counts towards the 80 percent goal. We have clarified in the final rule that the owner or operator must operate according to the plan during the review and approval process, must address any deficiencies noted by the permitting authority within 60 days, and may request changes to the plan.

An equivalent compliance option is provided for EAF owners or operators who do not utilize motor vehicle scrap that contains mercury. The option requires the facility to certify that the only materials they are charging from motor vehicle scrap are materials recovered for their specialty alloy, such as chromium in certain exhaust systems.

C. Final GACT Standards for EAF and AOD Vessels

The final rule requires the owner or operator to install, operate, and maintain capture systems for EAF and AOD vessels that convey the collected emissions to a venturi scrubber or baghouse for the removal of PM. We are establishing separate emissions limits for new and existing EAF steelmaking facilities that produce less than 150,000 tpy of stainless or specialty steel, and for larger, non-specialty EAF steelmaking facilities. The small facilities are required to comply with a PM emissions limit of 0.8 pounds of PM per ton (lb/ton) of steel for each control device serving an EAF or AOD vessel. Alternatively, small specialty producers may elect to comply with a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf). The final rule also includes an opacity limit of 6 percent for melt shop emissions. All other EAF steelmaking facilities (both existing and new) are required to meet a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf) for emissions from a control device for an EAF or AOD vessel. The opacity of emissions from melt shops from these sources is limited to 6 percent. We have clarified in the final rule that the emission limits apply to AOD vessels and do not apply to ladle metallurgy operations.

Performance tests are required for each emissions source to demonstrate initial compliance with the PM and opacity limits. Provisions are included in the rule for conducting the tests. The owner or operator of an existing EAF steelmaking facility is allowed to certify initial compliance with the emissions limits if a previous test was conducted during the past 5 years using the methods and procedures in the rule and either no process changes have been made since the test, or the owner or operator can demonstrate that the test results, with or without adjustments, reliably demonstrate compliance despite process changes.

All EAF steelmaking facilities are required to have or obtain a title V permit. We have clarified in the final rule that sources that already have a title V permit are not required to obtain a new title V permit as a result of this area source rule. However, sources that already have a title V permit must include the requirements of this rule through a permit reopening or at

[3] Additional details can be found at *http://www.epa.gov/mercury/switch.htm* and in section IV.D.1 of this preamble. In particular, see the signed Memorandum of Understanding.

renewal according to the requirements of 40 CFR part 70 and the title V permit program. See 40 CFR 70.7(f). The final rule requires each EAF steelmaking facility to monitor the capture system, PM control device, and melt shop; maintain records; and submit reports according to the CAM requirements in 40 CFR part 64. The existing part 64 rule requires the owner or operator to establish appropriate ranges for selected indicators for each emissions unit (i.e., operating limits) such that operation within the ranges will provide a reasonable assurance of compliance with the emissions limitations or standards.

The CAM rule requires the owner or operator to submit certain monitoring information to the permitting authority for approval. This information includes: (1) The indicators to be monitored; (2) the ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions will be established; (3) performance criteria for the monitoring; and if applicable, (4) the indicator ranges and performance criteria for a CEMS, COMS, or predictive emissions monitoring system. The owner or operator also must submit a justification for the proposed elements of the monitoring control device (and process and capture system, if applicable) and operating parameter data obtained during the conduct of the applicable compliance or performance test.

If monitoring indicates that the unit is operating outside of the acceptable range established in its permit, the owner or operator must return the operation to within the established range consistent with 40 CFR 64.7(d).

D. Final GACT Standards for Scrap Management

In addition to meeting PM and opacity limits reflecting GACT, we are also requiring EAF facilities to restrict the use of certain scrap or follow a pollution prevention plan for scrap inspection and selection that minimizes the amount of specific contaminants in the scrap.

The requirements are based on two pollution prevention approaches depending on the type of scrap that is used, and a facility may have some scrap subject to one approach and other scrap subject to the other approach. One provision is for scrap that does not contain certain contaminants and simply prohibits the processing of scrap containing these contaminants (restricted scrap). Compliance is demonstrated by a certification that the scrap does not contain the contaminants. This scrap management approach is expected to be most useful to stainless and specialty steel producers with stringent scrap specifications that do not permit the use of motor vehicle scrap and scrap containing free organic liquids. The other approach for scrap that may contain certain contaminants is more prescriptive and requires a pollution prevention plan, scrap specifications, and procedures for determining that these requirements are met. This pollution prevention approach was developed primarily for carbon steel producers that accept motor vehicle scrap and many other types of ferrous scrap.

Under the restricted scrap provision, the plant owner or operator must agree to restrict the use of certain scrap, including metallic scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers and capacitors containing polychlorinated biphenyls (PCBs), lead-containing components, chlorinated plastics, or free organic liquids. The restriction on lead-containing components does not apply to the production of leaded steel (where lead is obviously needed for production).

The other scrap management provision requires the plant owner or operator to prepare a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead (except for the production of leaded steel), and free organic liquids. This plan must be submitted to the permitting authority for approval. The owner or operator is required to keep a copy of the plan onsite and train plant personnel with materials acquisition or inspection duties in the plan's requirements.

The plan must include specifications for scrap materials to be depleted (to the extent practicable) of lead-containing components (except for the production of leaded steel), undrained used oil filters, chlorinated plastics, and free organic liquids. The plan must also contain procedures for determining if these requirements are met (e.g., visual inspection or periodic audits of scrap suppliers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

E. Recordkeeping and Reporting Requirements

Area sources subject to the requirements for EAF and AOD vessels are subject to the recordkeeping and reporting requirements of the part 64 CAM rule. The general recordkeeping requirements of the part 64 rule directs the owner or operator to comply with the recordkeeping requirements for title V operating permits in 40 CFR 70.6(a)(3)(ii), which require records of analyses, measurements, and sampling data. The part 64 rule also requires the owner or operator to maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan (QIP), any activities undertaken to implement a QIP, and other supporting information required by the part 64 rule (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

The general reporting requirements of part 64 require the owner or operator to submit monitoring reports to the permitting authority in accordance with the requirements for facilities with title V operating permits. The title V reporting requirements in 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1) include a 6-month monitoring report, deviation reports, and annual compliance certifications. The part 64 reporting requirements specify that the 6-month monitoring report include: (1) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken; (2) summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and (3) a description of the actions taken to implement a QIP during the reporting period. Upon completion of a QIP, the owner or operator must include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

All EAF steelmaking facilities subject to this NESHAP are also subject to certain specified requirements of the NESHAP general provisions (40 CFR part 63, subpart A). The general provisions include requirements for initial notifications; startup, shutdown, and malfunction records and reports; recordkeeping; and semiannual excess emissions and monitoring system performance reports. The information required in these records and reports is similar to the information required by the CAM rule (40 CFR part 64) and the operating permits rules (40 CFR parts 70 and 71).

The NESHAP also includes specific recordkeeping and reporting requirements for area source facilities subject to requirements for control of contaminants from scrap. The area

source facilities are required to keep records to demonstrate compliance with the requirements for their pollution prevention plan for minimizing the amount of chlorinated plastics, lead, and free organic liquids charged to a furnace or for the use of only restricted scrap and the site-specific plan for mercury or any of the mercury compliance options.

As noted above, facilities subject to the site-specific plan for mercury are required to keep records and submit semiannual reports on the number of mercury switches removed by the scrap providers or the weight of mercury recovered from those switches, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were managed at RCRA-permitted facilities. We have clarified that the requested information can be aggregated in the semiannual report and does not have to reported separately for every scrap shipment. Facilities participating in an EPA-approved program for switch removal must keep records that identify their scrap providers and document that they participate in an approved switch removal program. The final rule requires more extensive records for a site-specific plan than for an approved program because extensive recordkeeping, reporting, and measurement of success are already required for approval of such a removal program, the NVMSRP being the prime example.

All facilities subject to the requirements for the control of contaminants from scrap are required to submit semiannual reports according to the requirements in § 63.10(e) of the general provisions. The report must identify any deviation from the rule requirements and the corrective action taken.

IV. Summary of Comments and Responses

We received a total of 20 comments on the proposed NESHAP from two trade associations representing the steelmaking industry, two trade associations representing the scrap recycling industry, two associations representing State agencies, six environmental groups, four State agencies, two companies, a consultant, and one private citizen during the public comment period. Sections IV.A through IV.E of this preamble provide responses to the significant public comments received on the proposed NESHAP.

A. Basis for Area Source Standards

Comment: One commenter stated that EPA's decision to issue GACT standards for mercury pursuant to section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (d)(3), is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter further stated that EPA's proposed GACT for mercury emissions from EAFs does not satisfy section 112(d)(5) of the CAA because EPA is relying on a voluntary program to keep switches that contain mercury out of the EAF rather than evaluating potential reduction measures that are commercially available.

Response: The commenter evidently misread the proposed rule. The proposed standard for mercury is based on MACT and is not based on GACT. As we explained at proposal (72 FR 53816), EAF steelmaking facilities were listed under CAA section 112(c)(6) solely on the basis of mercury emissions, and we proposed standards for mercury under CAA section 112(d)(2) that reflect the performance of MACT. We identified the MACT floor (72 FR 53822) as the pollution prevention approach of using scrap only from scrap providers that are first removing mercury switches pursuant to an EPA-approved program. We also evaluated more stringent beyond-the-floor options for MACT (72 FR 53824). Additional discussion of our MACT determination is provided in section IV.B.1 of this preamble. Since the commenter did not address any aspect of the actual proposal, further response is unnecessary.

If, against all natural readings, the comment is construed as stating that EPA must first provide a rationale as to why it is not issuing a MACT standard before it can issue a GACT standard under CAA section 112(d)(5) for HAP other than mercury, we disagree with the commenter for the reasons set forth in the final rules for Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (72 FR 38880, July 16, 2007). We reiterate that we do not view the commenter as having raised an issue with respect to GACT vs. MACT for HAP other than mercury; however, we provide this response in an abundance of caution to the extent the comment is, in some way, construed in this manner.

B. Proposed MACT Standard for Mercury

We determined at proposal that the MACT floor and MACT for mercury emissions was the pollution prevention practice of removing mercury switches from end-of-life vehicles before the vehicles were crushed and shredded for use in EAFs. MACT would be implemented by EAF owners or operators purchasing scrap only from scrap providers that were participating in an EPA-approved program for switch removal, operating pursuant to an EPA-approved site-specific plan (of equal effectiveness to an EPA-approved program) that ensured scrap providers had removed mercury switches, or by not melting scrap from end-of-life vehicles. We further proposed that the National Vehicle Mercury Switch Recovery Program (NVMSRP) met the requirements of an EPA-approved program. However, we received several comments questioning how the effectiveness of an EPA-approved program would be ensured and suggestions for improving aspects of the rule related to program transparency, enforceability, and implementability. We have incorporated several of these suggested improvements into the final rule, and we address these comments and describe these improvements in detail in section IV.B.3 of this preamble. The improvements include developing and maintaining a plan showing how the facility is participating in the approved program, documentation of communication to suppliers of the need for them to remove mercury switches, or other means of corroboration by the facility to ensure suppliers are implementing switch removal procedures. We note here that the Administrator is committed to evaluating the effectiveness of the approved program on a continuing basis and is a party to the agreement that established the NMVSRP. The parties (including the Administrator) recently reviewed the program's effectiveness after 1 year. The 1-year review showed reasonable progress, with recycling programs now available in every State. The national program was slightly ahead of the schedule projected for start-up. We now expect switch removals to steadily increase over the next year as these programs begin to fully operate. If the Administrator finds the program to be ineffective at the next scheduled review under the MOU, or at any time as provided in the rule, the Administrator may disapprove the program in whole or in part (e.g., for a particular State), and participation in the program would no longer be a

compliance option, leaving EAF owners or operators obliged to develop site-specific programs for EPA approval in order to meet the requirements of this rule. Under the site-specific program, it would fall on the EAF owner or operator to provide a detailed accounting of switches removed and vehicles processed from all of their scrap providers to enable the Administrator or permitting authority to evaluate whether the facility is in compliance with the switch removal requirements. The somewhat lower documentation feature of the NVMSRP provides a strong incentive to all of the parties involved in switch removal to make every effort to ensure the NVMSRP is effective on a continuing basis. However, if the national program were to prove unsatisfactory and be subsequently disapproved as a compliance option, the burden would be on the EAF owner or operator to implement a site-specific approach. In either case (whether a national program or site-specific program), we have codified an approach that provides accountability and measures of effectiveness as described in detail in section IV.B.3 of this preamble.

We also considered a standard based on the performance of activated carbon injection (ACI) with continuous monitoring for mercury as a beyond-the-floor option, and as we discuss in detail in section IV.B.1 of this preamble, we rejected this option for several reasons. In summary, ACI has not been demonstrated for EAFs, its effectiveness is highly uncertain due in large part to the extreme variability in mercury loading from this batch operation (e.g., it is difficult to design and estimate the capacity of the ACI system that would be needed to handle the highly variable loading of mercury), and it would likely result in the landfilling of large quantities of hazardous waste (EAF dust) that is currently recycled (pursuant to RCRA subtitle C standards) to recover its zinc content. In addition, it would be costly, and the continuous monitoring that would be needed to assess the effectiveness of ACI is not feasible for the majority of EAF facilities because they have baghouses without stacks. (See 72 FR 53817.)

1. Emission Controls and an Emission Limit for Mercury

Comment: One commenter stated that the proposed standard for mercury does not satisfy the requirements of section 112(d)(5) of the CAA because EPA is relying solely upon a voluntary program to keep switches from cars out of the EAF rather than evaluating the potential reduction measures that are commercially available. One commenter noted that EPA's calculated cost effectiveness of $11,000/pound (lb) of mercury for ACI is similar to the cost effectiveness anticipated by EPA for municipal waste combustors and medical waste incinerators, and it is well below the control costs expected from implementation of the utility boiler Clean Air Mercury Rule—all rules where a technology-based standard for mercury is based upon performance of ACI. The commenter notes that without further analysis to determine the non-air quality health and environmental impacts and energy requirements, it appears that ACI is a cost effective control for mercury emissions and was rejected by EPA prematurely. Several commenters recommended that EPA require controls beyond the vehicle switch removal program. One of these commenters stated that ACI is widely used on other combustion sources (e.g., municipal waste combustors, medical waste incinerators, and hazardous waste incinerators) and that ACI has already been successfully applied to iron and steel melters in Europe. The commenter stated that coal-fired boilers use ACI successfully, and no circumstances specific to EAFs have been identified that would indicate that EAFs could not use the same technology efficaciously. The commenter noted that the State of New Jersey estimated the cost to implement source separation and to install ACI on an existing baghouse to be less than $1.80 per ton of scrap processed. The commenter claimed that the cost of compliance is minimal compared to the price of a ton of steel ($360 to $780/ton) or a ton of scrap ($300/ton) and is not expected to cause any facility to close. The commenter believes these cost estimates indicate that add-on controls for mercury for EAFs are cost effective when the impacts of mercury emissions on human health and the environment are weighed.

Several commenters requested that EPA include a mercury emission limit and monitoring strategy for EAFs rather than relying solely on a voluntary program. Three commenters said it is important to establish an emission limit and require testing for mercury because 40 to 50 percent of the mercury comes from non-automobile sources and would not be removed by the switch removal program. One commenter requested that EPA establish a mercury emission limit, require appropriate testing to verify compliance, and require add-on emission controls if the emission limit is not met. Another commenter suggested that EPA set a mercury emission standard that uses a tiered approach towards demonstrating compliance, e.g., sources that emit less than a certain amount of mercury per year may be allowed to comply with the pollution prevention standard along with a mercury emissions monitoring requirement. The commenter continues by stating that more stringent mercury monitoring should be required for more significant mercury emitters with the understanding that if a certain level is not reached within a given time frame (e.g., three years), the source must install mercury emissions controls and implement associated monitoring. Another commenter requested a protective backstop for the MACT requirement, including advanced mercury emissions removal technology and continuous emission monitoring systems (CEMS) for facilities that do not meet the mercury pollution prevention standards.

One commenter stated that two EAFs in Michigan have mercury emission limits and must perform stack testing. This commenter asks that if EPA determines that an emission limit is not practical for the area source standard, EPA should consider a percent reduction standard similar to what is required in the State of New Jersey (75 percent). The commenter asks that measures and targets be established and consequences identified if targets are not achieved. The commenter said measures and targets include an estimate of mercury-containing devices collected, inlet and outlet stack testing, and baghouse dust analysis to confirm reduced mercury inputs and emissions. The commenter stated that identifying spikes in the mercury concentration of baghouse dust provides information to conduct additional quality control on scrap shipments.

Two commenters claimed that ACI is not a demonstrated technology for EAFs and that there is a great deal of uncertainty about its potential effectiveness due in large part to the high variability of mercury emission levels. The commenters also stated that the use of ACI would have a negative effect on recycling EAF dust because the mercury in the dust makes it necessary to landfill the dust instead of recycling it. The commenters agreed with EPA's pollution prevention approach and stated that EPA properly explained the technological and economic feasibility difficulties associated with developing and enforcing a mercury emission limit for EAFs, including the fact that continuous monitoring for mercury from EAFs is impractical.

Response: At proposal, we determined that the MACT floor for

mercury was a pollution prevention approach based on preventing mercury switches from entering the EAF. We also explained at proposal that standards requiring pollution prevention were not work practices under section 112(h), and even assuming for the sake of argument that they were work practices, it is not feasible to prescribe or enforce an emissions limit for mercury within the meaning of section 112(h) (72 FR 53817). We received no adverse comments on or challenges to our MACT floor determination or our conclusion that pollution prevention standards were not work practices under section 112(h).

We evaluated ACI as a beyond-the-floor control option for mercury emissions and rejected the option for several reasons (72 FR 53824). We also considered the feasibility of establishing an emission limit for mercury and explained in detail why we chose instead an approach based on a pollution prevention standard (72 FR 53816). We disagree that the proposed standard for mercury relies solely on a voluntary program to keep mercury switches out of the scrap supply. First, there is nothing voluntary about the obligations of EAF owners or operators under the rule. They are not in compliance with the rule unless they obtain scrap from dealers participating in an effective program to remove mercury switches. Moreover, the standard contains detailed requirements for preparing and operating a pollution prevention plan that must be approved by the Administrator, specific criteria that will be used by the Administrator to review and approve plans, criteria for approval of switch removal programs to ensure they are effective, and reporting and recordkeeping requirements (including progress reports). The Administrator can evaluate the success of an approved switch removal program based on progress reports that provide the number of mercury switches removed, the estimated number of vehicles processed, and the percent of switches removed. Based on this evaluation, the Administrator may subsequently disapprove a previously approved switch removal program or a site-specific plan. An example of an existing switch recovery program that has been documented as successful is the one implemented by the State of Maine, which was one of the first such programs and was in place in advance of the NVMSRP. The Maine program is now fully operational and reported a recovery rate of over 90 percent for mercury switches in 2006.

The commenters provided no new information or additional facts with respect to ACI that were not considered and addressed at proposal when we evaluated it as a beyond-the-floor option (72 FR 53824, 53825) and concluded that:

> Based on the fact that activated carbon injection is not a demonstrated mercury control technology for EAF facilities, the uncertainty in design and performance of the add-on controls and hence of the actual mercury emission reductions for EAF facilities, the cost impacts per ton of emission reduction, and the adverse energy and solid waste impacts, we determined that control beyond the floor is not warranted for mercury. Therefore, we are proposing that the removal of mercury switches from the scrap before it is melted in the EAF represents MACT for mercury for new and existing EAF facilities.

We emphasize again that ACI was not rejected as a beyond-the-floor option solely on the basis of cost effectiveness. We concluded that ACI has not been demonstrated for EAFs and that there is a great deal of uncertainty in design (e.g., the carbon capacity that would be needed to treat a highly variable inlet loading of mercury) and potential performance (i.e., how much mercury would actually be removed), and hence of the actual mercury emission reductions that might be achieved. We also considered and discussed the adverse energy and solid waste impacts.

2. Monitoring for Mercury

Comment: Several commenters stated that stack monitoring for mercury emissions from EAFs was needed to assess the effectiveness of the NVMSRP and other programs. These commenters believe it is important to have information on the actual emissions, the emissions impact of pollution prevention measures, and an indication of need for additional actions that may be needed to further reduce mercury emissions. One commenter stated that CEMS are essential to establish that the voluntary switch removal program reduces emissions. Another commenter requested that the monitoring program include a requirement to test emissions within 6 months of publication of the final rule to establish a baseline for each facility.

One commenter stated that although the proposal states that no feasible methods of emissions testing exist for any EAF facility (e.g., continuous emissions monitoring), there are monitoring technologies that are adaptable for use by any facility in this industry. The commenter noted that batch process emissions are tested and monitored in many industrial sectors, and EPA has established emission standards for many batch processes without requiring the use of continuous monitors, including Pesticide Active Ingredient Manufacturing and Miscellaneous Organic Chemical Manufacturing. The commenter also noted that EPA has recently promulgated the "sorbent tube" method for sampling stack gases at coal-fired power plants (40 CFR part 75, appendix K). The commenter believes that because this method of monitoring mercury is capable of sampling flue gases over any period of time (hours or even days), there appears to be little impediment to using this method to sample "batch" processes like those at an EAF. Another commenter also noted that CEMS are available and in use at other types of mercury-emitting facilities.

One commenter stated that data from frequent monitoring will be essential to determine if actual reductions in mercury emissions have been achieved in order to determine whether the "sunset" of the pollution prevention standard in 2017 should be allowed to occur. One commenter was concerned that if there are no mercury emission standards, it may be very difficult for EPA to conduct its residual risk determination. The commenter wonders how EPA will calculate residual risk when there has been no attempt to establish a baseline of mercury emissions, determine the effectiveness of the switch removal program, or measure emissions after controls are implemented. One commenter stated that at least one steel mill of which they are aware has reported higher levels of mercury emissions since starting to participate in the NVMSRP. The commenter notes that frequent monitoring is needed to determine whether the program is effective.

One commenter suggested that EPA require facilities to keep records of the sources of scrap metal entering the facility in a manner that allows correlation of scrap sources with elevated mercury emissions and that these records be available to the Agency and accessible for public review.

Response: At proposal, we considered the use of CEMS for mercury (72 FR 53817):

> We therefore examined the technological and economic feasibility of continuous monitoring for mercury from these sources. We note first that mercury CEMS are not demonstrated for EAF, raising a threshold question of their technical feasibility for all EAF. Furthermore, most EAF discharge emissions from positive pressure baghouses without stacks. Continuous mercury monitoring would not be technically feasible for these EAF (i.e., stackless EAF), even assuming that mercury CEMS were otherwise

demonstrated for EAF. This is because volumetric flow rate and concentration would need to be determined by CEMS to measure the mass emission rate of mercury, and without a stack, it is nearly impossible to obtain an accurate measurement of volumetric flow rate or to obtain representative measurements of mercury concentration in the discharged emissions. Indeed, EPA has previously determined that the use of continuous opacity monitoring systems (COMS) was not feasible for positive pressure baghouses without stacks for this reason.

The commenters did not address any of these points that we made at proposal. After further consideration of CEMS, we continue to believe that CEMS are not feasible for monitoring baghouses without stacks.

One commenter stated that batch processes such as EAF steelmaking could be monitored for mercury emissions using the sorbent tube method. We agree that there are monitoring methods for mercury that can be used for batch processes; however, the problem with applying CEMS or the sorbent tube method is because of baghouses without stacks, not because steelmaking is a batch process. We received no other comments that addressed, much less refuted, EPA's view of the fundamental shortcomings of applying mercury CEMS to EAFs without stacks that were discussed at proposal.

We discuss in much greater detail in section IV.B.3 of this preamble the monitoring requirements of the rule and how they are used to determine the effectiveness of the standard. We have developed monitoring requirements that are appropriate for the pollution prevention standard, and since we have concluded it is not necessary or appropriate to establish a mercury stack emission limit, it is not appropriate and in most cases it is infeasible to require monitoring for mercury emissions.

The lack of a mercury emission standard will not affect our ability to conduct a residual risk assessment in the future. We will by that time have historical data on the effectiveness of the MACT standard, and mass balance approaches as well as innovative methods for sampling and analysis of sources or ambient air concentrations may provide additional data.

We cannot directly address the commenter who claimed that one plant's mercury emissions had increased since joining the NVMSRP because the commenter provided no details to substantiate the claim. However, there is no doubt that removal of mercury switches before motor vehicle scrap is melted will reduce mercury emissions, whether the removal takes place under the NVMSRP or under other switch removal programs.

3. Effectiveness of the Pollution Prevention Standard for Mercury

Comment: Several commenters stated that requirements to verify the effectiveness of the NVMSRP and other switch removal programs are needed and that accountability is not adequately addressed. The commenters claimed that there are no enforceable mechanisms to ensure effective participation in or compliance with the switch removal programs and identified the need for increased recordkeeping and reporting beyond just participation in a switch removal program. One commenter requested that EPA include enforceable measures of accountability that include consequences if the programs do not meet their goals. Two commenters requested that quantifiable performance measures be included to verify the effectiveness of mercury reduction programs. One commenter requested written documentation and audits of program participation of suppliers, evaluation of switch recovery rates, and mercury emissions testing and monitoring requirements. Another commenter suggested incorporating verifiable measurement and accountability systems and using some of the specific language from the MOU to make the scrap plans accountable and enforceable. This commenter also requested that EPA revise the rule to include enforceable scrap specification requirements and binding contracts with scrap suppliers (rather than a "means of communicating") and require recordkeeping, reporting, and certification to assure that scrap meets specifications, as well as contract termination in the event of deviations. This commenter also states that the switch removal requirements must be more than a "goal"; they must be achieved through binding contracts establishing removal requirements and effective tracking, recordkeeping, and reporting requirements. Two commenters noted that since there are no effective performance measures, goals, or consequences for failure to remove switches, there is no strong incentive for the NVMSRP to continue after the initial funding has been expended.

Two commenters requested achievement of specific switch recovery percentages as the rule is implemented. They suggest a ramped capture rate of 30 percent for year one, 50 percent for year two, and 80 percent in year three. The commenters believe it is essential that the rule require increasing mercury switch capture rates so that a rate of 80 percent or more is achieved within two to three years.

One commenter stated that two studies of switch removal and mercury emission reductions do not constitute evidence of a cause and effect relationship between removal of switches and mercury reductions. The commenter believes that documentation based on a large number of studies can determine the cause and effect relationship. The commenter further states that because no monitoring or testing of mercury emissions are required by the proposed rule, no evidence of correlation between amounts of mercury emitted and the quality of scrap can be demonstrated, and there would be no evidence that the switch removal program is working to reduce mercury emissions.

Several commenters noted that the proposed rule is silent on what happens if the 80 percent switch removal goal is not met. One commenter believes the rule should include a final date when the goal is to be met and identify emission standards to be met as an alternative to the 80 percent removal goal.

One commenter was concerned about using an estimate of the percentage of mercury switches removed to determine whether an approved plan should continue to be approved because the estimate of the percentage of mercury switches removed is highly uncertain and dependant on many assumptions. The commenter stated that determining the effectiveness of site-specific mercury switch removal programs by comparing uncertain statistics with an aggressive removal goal (80 percent) may cause effective programs to have their approval revoked.

Response: The NVMSRP resulted from a two-year process of collaboration and negotiation among a diverse group of stakeholders to create a dedicated nationwide effort to remove mercury-containing switches from end-of-life vehicles. The stakeholders included EPA, automakers, steel manufacturers, environmental groups, automobile scrap recyclers, and State agency representatives. These stakeholders signed an MOU detailing their respective responsibilities and commitments in the national switch recovery effort. This effort will result in substantial reductions in mercury emissions from EAFs by removing the majority of mercury from metal scrap. In addition, it will have environmental benefits from reducing mercury emissions from sources other than EAFs and will reduce mercury releases to media other than air. We disagree with

the commenter that without testing for mercury emissions, there would be no evidence that the switch removal program is working to reduce mercury emissions. Many States have implemented switch removal programs, and major environmental groups have participated in and signed agreements supporting the programs, both of which are indications of the participants' belief in the ability of such programs to reduce mercury emissions. EPA recounts this history not to show that the Agency is blindly accepting the negotiated agreement, but that EPA has examined the agreement anew in light of the requirements of section 112(d) and finds that the program resulting from that agreement meets the statutory requirements. The success of the program has been documented by direct measurements of mercury in switches removed, and as of November 28, 2007, over 843,000 switches with 1,855 pounds of mercury have been recovered.

As we stated in detail at proposal, this pollution prevention approach was determined to be the MACT floor and MACT for reducing mercury emissions from EAFs. Emissions of mercury result from the melting of scrap metal that contains mercury components. When these components are removed prior to charging the scrap to an EAF, the mercury emissions are prevented.

Thousands of automobile recyclers have already joined the NVMSRP, although not all members have yet sent in recovered switches. (As we discuss in more detail below, there is a lag time as dismantlers accumulate enough switches to fill a shipping container.) Information on the program, including scrap suppliers who have joined and the number of switches they have turned in to date, can be found on the End of Life Vehicle Solutions Web site (*http://www.elvsolutions.org*).

As we discussed at proposal, there are many elements in the NVMSRP that are designed to measure success and to evaluate its effectiveness. One year following the effective date of the MOU and each year thereafter, the parties or their designees and EPA agreed to meet to review the effectiveness of the program at the State level based upon recovery and capture rates. The parties to the agreement will use the results to improve the performance of the program and to explore implementation of a range of options in that effort. Two and one-half years from the inception of the program, the parties agreed to meet and review overall program effectiveness and performance. This review will include analysis of the number of switches that have been collected and what factors have contributed to program effectiveness. The Administrator is one of the parties committed to this review and assessment of effectiveness, and the Administrator may disapprove the program as a compliance option (in whole or in part) at any time based on the assessment of effectiveness.

A key element of measuring the success of the program is maintaining a database of participants that includes detailed contact information; documentation showing when the participant joined the program (or started submitting mercury switches); records of all submissions by the participant including date, number of mercury switches; and confirmation that the participant has submitted mercury switches as expected. Another important element is aggregated information to be updated on a quarterly basis, including progress reports, summaries of the number of program participants by State, individual program participants, and records of State and national totals for the number of switches and the amount of mercury recovered. The program is also estimating the number of motor vehicles recycled. The NVMSRP will issue reports quarterly during the first year of the program, every six months in the second and third year of the program, and annually thereafter. The reports prepared by ELVS will include the total number of dismantlers or other potential participants identified; the total number of dismantlers or others contacted; and the total number of dismantlers or others participating. The annual report will include the total mercury (in pounds) and number of mercury switches recovered nationwide; the total pounds of mercury recovered and number of mercury switches by State; and an estimated national capture rate. Other information includes the total number and identity of dismantlers or others dropped due to inactivity or withdrawal from the program. Mercury switch removal is already underway—more than 1,855 pounds of mercury from over 843,000 switches have been recovered to date by program participants. This represents almost 20 percent of our estimated reduction in mercury emissions of 5 tons per year once the final rule and NVMSRP are fully implemented.

The commenters make valid points that the effectiveness of the rule could be improved by incorporating certain elements that the steel manufacturers have already agreed to in the MOU. We have revised the proposed rule to provide more specificity to the EAF owner or operator responsibilities and to improve the effectiveness of EPA-approved programs, which may include programs other than the NVMSRP. In addition, we are including these same requirements in the option for developing a site-specific plan for switch removal. The rule changes include:

- EAF owners or operators must develop and maintain onsite a plan demonstrating the manner through which their facility is participating in the EPA-approved program. The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
- EAF owners or operators must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need for the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, the owner or operator must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.
- EAF owners or operators must conduct periodic inspections or provide other means of corroboration to ensure that suppliers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

One commenter claimed that because no monitoring or testing for mercury is required, there is no way to determine if the pollution prevention approach is reducing mercury emissions. We strongly disagree because the number of switches or weight of mercury recovered is a direct measure of the amount of mercury prevented from entering the environment. As we explained at proposal and in an earlier comment response, it is not feasible to require continuous emission monitoring at EAFs with baghouses without stacks, and because of the variability in mercury emissions from this batch process, periodic manual sampling is inadequate and provides only a snapshot in time of the emissions.

Commenters also asked what happens if the 80 percent goal is not met. Another stated that there is a great deal of uncertainty in estimating the percent of switches removed and that the use of this uncertain statistic could cause effective switch removal programs to have their approval revoked. We addressed these issues at proposal (72 FR 53824) and we note again that the 80 percent minimum recovery rate is a goal that all parties to the MOU agreed to work toward. We recognize that 80

percent recovery will not be achieved in the first year or two; however, the parties to the MOU agreed to aim for collection of at least four million switches in the first three years of the NVMSRP and agreed to exceed this amount if possible. We believe that recovery of four million switches (approximately 4.4 tons of mercury at 1 gram per switch) in the first three years is a good beginning for working toward recovery of 80 percent of mercury switches. It is necessary to acknowledge that there will be an initial delay in many States that have recently joined the NVMSRP while individual dismantlers accumulate sufficient switches to make a shipment for recovery. It has been estimated that it may take from 6 to 12 months to fill a switch collection bucket (e.g., according to the ELVS Web site at *http://www.elvsolutions.org,* switches are typically collected in 3.5 gallon buckets that can hold up to 450 mercury pellets from switch assemblies).

Furthermore, the goal of removing 80 percent of the mercury switches is not the only criteria used to evaluate the success of a program. In the proposed rule, we explained that the Administrator can evaluate the success of an EPA-approved program at any time, identify States where improvements might be needed, recommend options for improving the program in a particular State, and if necessary, disapprove the program as implemented in a State from being used to demonstrate compliance with the rule based on an assessment of this performance. The evaluation would be based on progress reports submitted to the Administrator that provide the number of mercury switches removed, the estimated number of vehicles processed, and percent of mercury switches recovered. The Administrator can assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates. For example, as the NVMSRP has ramped up, switch recovery rates have increased from 241,000 switches in 2006 to 602,000 through the first 10 months of 2007.

Comment: One commenter noted that in the NVMSRP MOU, funding was negotiated with the understanding that the EAF rule would provide strong incentives for switch removal after the incentive fund was depleted. The commenter states that the proposed rule does not appear to provide such incentives because there are no performance measures, goals, or consequences for failing to remove switches. The commenter further states that to provide accountability and enhance effectiveness, the rule should stipulate enforceable consequences for the EAF sector in the event that the pollution prevention approach is not sufficient to achieve necessary emission reductions. The commenter suggests that if existing and proposed programs are not successful, then additional emission control and monitoring requirements and/or further EAF financial support to the NVMSRP should be required.

Response: The rule provides a strong incentive for EAF owners or operators to continue their support for the NVMSRP even after the incentive fund is depleted. Facilities that do not participate in an EPA-approved program must develop and operate by site-specific switch removal plans that may prove to be more burdensome than that of participating in the NVMSRP. The rule requires that metal scrap purchased for use in an EAF be procured from a supplier that removes mercury convenience light switches. If an EAF owner or operator fails to meet the requirements related to audits of suppliers, reporting, recordkeeping or any other rule provisions, then the owner or operator is at risk of being found in violation of the rule. If the facility is at risk of non-compliance because of the actions of a scrap provider, then it is in the interest of the owner or operator to take corrective actions and fix the problem with the scrap provider or to terminate the scrap purchasing contract because of failure to meet scrap specifications.

Comment: One commenter stated that a review of the End of Life Vehicle Solutions (ELVS) database indicates a number of cases where individual dismantlers are participants in the NVMSRP, but have yet to submit collected switches.

Response: The ELVS Web site, which provides information on the NVMSRP and its members, includes the date when a particular automobile or scrap recycler joined the program. As the facility-specific data show, some recyclers joined the program during its first year of implementation or even earlier. We do not believe that this should cause undue concern at this time. Some States had instituted statutorily mandated programs prior to the establishment of the national program and, therefore, have been operating for a longer period of time. Automobile and scrap recyclers in these States have had more of incentive to participate early on in the program. It is possible that automobile and scrap recyclers in those States have already submitted switches to be recycled, some of which may have been stored in anticipation of a future opportunity to dispose or recycle them. States that have just joined the national program are clearly in a ramp-up phase. There will be an initial delay associated with many new programs while individual dismantlers accumulate sufficient switches to make a shipment for recovery. It has been estimated that it may take from 6 to 12 months to fill a switch collection bucket that typically holds about 400 mercury pellets from switches. The same type of lag time in shipping was noted when one of the first switch removal programs in the country was initiated by the State of Maine.

The data show that during its first full year, the program has made significant progress, and as we pointed out earlier, over 1,855 pounds of mercury has been recovered, and this represents almost 20 percent of our estimated annual reduction in mercury emissions (5 tons per year) once the rule is fully implemented. The second year of the program will shift from roll-out to ramping up participation and collection rates. We should see significant progress toward achieving 80 percent recovery of switches in the third year of program implementation.

Comment: One commenter questioned the meaning of "80 percent" in the reduction of mercury switches: Does it refer to the convenience switches in one automobile, the total weight of mercury in switches in a vehicle being turned into scrap, the total number of switches and other sources of mercury in one vehicle, or none of the above.

Response: "80 percent" switch recovery is the goal, and the percent of switches recovered (the capture rate as defined in the MOU) is the number of mercury switches removed from end-of-life vehicles divided by the total mercury switch population in end-of-life vehicles in a given time period (e.g., each year of the program) times 100.

Comment: One commenter objected to the credit allowed in calculating the 80 percent mercury switch removal goal for site-specific plans. The commenter objected to the credit because it allows counting of mercury removed from components other than convenience lighting while the approved plan requires only the removal of mercury switches from convenience lighting. The commenter stated that the provision is not consistent with the MOU, which states that only mercury switches used for convenience lighting will be counted for purposes of measuring program performance. The commenter argued that site-specific plans should not be held to a higher standard than the NVMSRP.

Response: While it is true that only switches from convenience lighting apply to the 80 percent minimum goal of the NVMSRP, ELVS accepts all automobile mercury switches (including those from anti-lock brake systems (ABS)), and the automobile or scrap recyclers that remove them are paid the incentive fee of $1.00 per switch. We believe that this provides an incentive to remove switches from other systems as well as for convenience lighting. In the requirements for site-specific plans, other sources of mercury are included in determining the 80 percent goal, such as ABS, security systems, active ride control, and other applications. Inclusion of these other components in the site-specific programs provides an incentive for their removal. These mercury-containing components contribute less mercury (13 percent compared to 87 percent from convenience light switches), and they are more difficult to locate, identify, and remove. Mercury-containing components in ABS will be the components other than convenience light switches that are most often removed. The removal of these components requires removing the rear seat and dismantling the ABS. We believe that if a dismantler chooses to take the time to remove and recover mercury components from ABS or other components, they should receive some type of credit for doing so, thus they can include them in their 80 percent minimum recovery goal.

Comment: One commenter stated that at least two EAF facilities are exempt from the proposed rule because they are collocated with major source integrated iron and steel manufacturing facilities. The commenter noted that if these facilities are not covered by the rule and choose not to participate in the voluntary NVMSRP, then these facilities and their suppliers will enjoy at least two competitive advantages over the 91 facilities that will have to comply with the rule: They will have lower costs and they will be free of any legal requirement to address mercury in the scrap that they receive, generate, and or use as feedstock. The commenter also stated that scrap from any supplier who chooses to ignore mercury will preferentially flow to these facilities because there will be no legal or voluntary obligation for that supply chain to address mercury.

Response: As we stated at proposal, we plan to list EAFs as a major source category and develop MACT standards for HAP emissions, including mercury.

Comment: One commenter noted that the criteria by which the Administrator will evaluate semiannual reports are not specified for the option of a site-specific plan for switch removal. The commenter went on to state that there is no incentive to meet the requirements and no penalty for failing to do so. Another commenter is concerned about the proposed rule's mechanism for approval of alternative switch recovery programs since States vary in their level of participation in the NVMSRP and have a variety of statutory and regulatory requirements, State level MOUs, State incentive funds, and other program components. The commenter said that to ensure consistency and enforceability, clear criteria and procedures that ensure any program's effectiveness need to be specified in the rule. One commenter suggested the Administrator specifically consider the participation rate of scrap suppliers to an area steel mill and the collection rate of the largest scrap suppliers to the facility prior to approving the goals. One of the commenters noted that as proposed, the rule directs the Administrator to determine if NVMSRP or alternative programs are adequately recovering switches, but provides no quantitative requirements.

Response: As we discussed above, the Administrator will evaluate the number of mercury switches removed, the estimated number of vehicles processed, and percent of mercury switches recovered. (See § 63.10685(b)(1)(v) and (b)(2)(iii)). The Administrator can assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates. The criteria are not hard and fixed because flexibility is needed to consider potentially lower recovery rates as the program is established and higher rates as the number of participants peaks. We have described earlier the database used for documenting and measuring mercury switch recovery. We believe that this database provides sufficient transparency to ensure that the program is making measurable program progress and assuring accountability while at the same time remaining flexible.

We have provided sufficient detail in the rule for the criteria used to approve State and other switch removal programs: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed.

4. Other Sources of Mercury in Scrap

Comment: Several commenters claimed that a significant amount of mercury comes from sources other than automobile scrap, including household and commercial appliances, heating and air conditioning units, and industrial equipment. Some of these commenters suggested addressing these sources of mercury by expanding the NVMSRP. One commenter stated that the mercury from sources other than automobiles was on the order of 40 to 50 percent of the mercury in scrap. Another commenter noted that the counteracting effect of increased use of ABS, more mercury containing electronic devices in cars, and other mercury-containing items, could conceivably lead to a net increase in the mercury in scrap processed by steel mills.

One commenter stated that the rule should address these mercury sources to scrap metal by incorporation into the NVMSRP or through the establishment and funding (by mercury product manufacturers and the EAF sector) of collection programs targeting other products that contribute to scrap metal. The commenter suggested as an example a possible requirement that mercury thermostat manufacturers and the EAF sector could fund an expansion of the Thermostat Recycling Corporation (TRC) program, a voluntary end-of-life mercury thermostat collection initiative supported by thermostat manufacturers. The commenter stated that the TRC is a well-established program but provides no recovery incentives and has achieved a poor national recovery rate.

Response: At proposal, we considered the removal of other mercury-containing components in automobiles, such as switches in ABS, and determined the option was not justified as a beyond-the floor standard (72 FR 53824). These sensors are considerably more difficult and time consuming to remove than are convenience light switches, and they contribute much less mercury (e.g., 87 percent of the mercury in end-of-life vehicles comes from convenience light switches). The commenters provided no data or rationale to support that the removal of other sources of mercury from the scrap supply was economically and technologically feasible as a beyond-the-floor option.

We have no data or documentation that non-automobile sources contribute 40 to 50 percent of the mercury as the commenters claim, and we have some indications their estimate is quite high. For example, a report (available at *http://www.epa.gov/region5/air/mercury/appliancereport.html*) prepared for the State of Massachusetts

stated that mercury switches in obsolete appliances accounted for less than 1 percent of the mercury in the solid waste stream. Most mercury-containing components in appliances were phased out several years ago, and any that might remain would contribute very little mercury to the scrap supply compared to switches in automobiles. In addition, end-of-life vehicles contribute approximately 7 times more in tons of total metal to the scrap supply than do obsolete appliances; consequently, these factors suggest that end-of-life vehicles are the primary contributor to mercury in the scrap supply. While some ABS contained mercury sensors as we noted at proposal, these too have been phased out and were much less common and contained less mercury than convenience light switches.

5. Role of State Agencies

Comment: One commenter claimed that State agencies would have little or no say in approving site-specific pollution prevention plans and that State and/or local agencies should have more authority over such approvals. Another commenter noted that part of the approval process can be delegated to the permitting authority, but there may be many varying programs and elements of programs that individual companies or facilities may wish to implement, some of which States do not have any experience with. The commenter recommends that EPA retain the responsibility for approving programs and provide clear criteria for an acceptable program, and use these criteria to approve existing State programs that are not part of the NVMSRP.

Two commenters were concerned about the ability of air agencies to enforce a pollution prevention program that will, in many cases, be overseen by solid and hazardous waste programs. The commenters noted that the requirements of the switch removal program must be incorporated into air permits, and the provisions must be clearly understood and enforceable by State air agencies in cooperation with their counterparts in other media programs. The commenters are concerned that if these provisions are not explicit in the program, this pollution prevention approach will not be effective.

One State agency commenter asked that EPA approve the vehicle mercury switch recovery program mandated by Maine State law as an EPA-approved program under the rule. The commenter noted that the Maine program has been the most successful switch recovery program to date, with a 2006 recovery rate of over 90 percent for all mercury switches—not just convenience light switches. The commenter further added that the program meets or exceeds all of the criteria that are identified in the proposed rule as necessary to effect mercury reductions from EAFs.

One commenter recommended that EPA grant pre-approval of existing State programs. The commenter argued that pre-approval of the eight existing State programs (which account for about 1,900 participants), would eliminate the need for scrap providers participating in those programs to obtain EPA approval of their site-specific plans.

Response: We agree that State agencies should be involved in reviewing and approving or disapproving site-specific pollution prevention plans. We expect that the State permitting authority will have a better understanding of the facilities in their State and their site-specific operating conditions and any special circumstances. We are clarifying that the rule delegates to the States the authority to implement and enforce those requirements in the rule dealing with contaminants from scrap except for the approval of national, State, or local agency programs under the option for approved mercury programs. We believe that such broad programs should require EPA approval and that it is not appropriate for a State agency to evaluate and approve a national program or their own program. The rule should be implemented by State air programs and not by solid and hazardous waste programs.

We are also identifying the mercury switch recovery program mandated by State law in Maine as an EPA-approved program because they submitted documentation that the requirements are equivalent to (or more stringent than) the approved national program. The program in Maine represents MACT, and we explained at proposal that MACT is a national, State, local or facility-specific switch recovery program that meets specific criteria. No other States made such requests or submitted information showing equivalency; consequently, we are not currently identifying other State programs as EPA-approved in the final rule.

6. Comments on Specific Rule Changes

Comment: One commenter stated that in § 63.10685(b)(1)(i) and (ii), the requirement for removal of mercury switches from vehicle bodies used to make scrap does not seem to recognize the possibility of inaccessible switches. The commenter suggests replacing "mercury switches" with "accessible mercury switches."

Response: We have defined mercury switch to include only those switches that are part of a convenience light switch mechanism. Our information indicates that these switches are accessible and are easily removed, and it is important to the success of the pollution prevention program that they be removed. Consequently, we are not adding the additional requirement that they be "accessible," which would introduce additional uncertainty because of the judgment that must be made as to what is accessible.

Comment: One commenter stated the requirement in § 63.10685(b)(1)(B) for assurances from scrap providers that scrap meets specifications does not seem to allow for uncertainty or error. The commenter suggested that the language read "Provisions for obtaining assurance from scrap providers that to the best of their knowledge, motor vehicle scrap provided to the facility meets the scrap specification".

Response: We disagree that the change recommended by the commenter is necessary because the phrase "to the best of their knowledge" is subjective and likely creates confusion rather than clarity. The EAF owner or operator must obtain assurance to their satisfaction that the scrap meets specifications.

Comment: One commenter said the requirement in § 63.10685(b)(1)(ii)(C) for a means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap should be replaced with appropriate steps "to encourage the removal of accessible mercury switches from motor vehicles to be shredded."

Response: We disagree because corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap is necessary to ensure the effectiveness and credibility of the pollution prevention requirements.

Comment: One commenter expressed concern that the requirements in § 63.10685(b)(1)(ii)(C), (b)(1)(iii), and (b)(1)(v) may require scrap providers to divulge confidential business information (CBI) or to provide sensitive information to EAF operators to comply.

Response: It is in the interest of both the scrap provider and EAF operator to provide the information required by the rule and to establish procedures if necessary to protect confidential information. The requirements cited by the commenter refer to: (1) Periodic

inspections of scrap providers and dismantlers to ensure appropriate steps are being taken to remove mercury switches; (2) estimates of the number of switches removed; and (3) semiannual progress reports that provide the number of switches or weight of mercury removed, number of vehicles processed, estimate of the percent of switches removed, and certification of proper disposal of the switches. This information is an essential monitoring component of the rule to measure the effectiveness of a facility's pollution prevention program. The information on number of vehicles processed can be aggregated for a facility if it is important not to reveal the number of vehicles processed by a given scrap provider. We do not see nor did the commenter identify exactly what component of the requested information would be CBI; however, if the case can be made that there is CBI involved, EPA and the permitting authorities have established procedures for managing and safeguarding CBI and will, of course, utilize them.

Comment: One commenter objected to the requirement in § 63.10685(b)(1)(iii), which effectively compels scrap providers to collect switch removal information from all upstream sources of end-of-life vehicles. The commenter stated that to impose such burdensome requirements on the suppliers of the regulated entity far exceeds the Agency's regulatory authority.

Response: The burden imposed by the Agency is on the EAF owner or operator to obtain switch removal information because it is a critical monitoring component of the rule. The EAF owner or operator in turn must require this information from scrap providers, and if such information is not obtained, the EAF owner or operator could be found in violation of the rule.

Comment: One commenter objected to the proposed requirement for EPA approval of the scrap pollution prevention plan and mercury switch removal plan if prior approval is needed before the plan can be implemented or a change made. The commenter argued that prior approval would require all EAF operations to be shut down from the effective date of the rule until the plan is approved (unless EPA can approve all plans in the limited time available), that the need to respond to scrap that is presently available precludes the ability of the facility to seek prior approval of changes, and that it is unclear that EPA can provide meaningful review of scrap plans. The commenter suggested language that would require facilities to keep a copy of the plan onsite and update the plan to address any deficiency within 90 days of receiving a written notice from the Administrator. The commenter stated that recordkeeping and compliance certification requirements should be added consistent with the requirement.

Response: We continue to believe that the pollution prevention plans must be submitted to the permitting authority for review and approval to ensure they adequately address the requirements in the rule. We are clarifying in the final rule that the owner or operator must operate according to the plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. We are also clarifying that the owner or operator may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority.

Comment: One commenter pointed to the provision in § 63.10685(b)(2)(iii) which allows the Administrator to revoke approval for all or part of the NVMSRP based on review of the reported data. The commenter asked if the 90-day period between the revocation notice and the effective date of the revocation provide sufficient time for the Administrator to approve 100 site-specific plans under § 63.10685(b)(1) and if there was a process in place for seeking reconsideration of revocation.

Response: We are clarifying in the final rule that the authority for the approval of site-specific plans is delegated to the permitting authority. This is what the proposed rule allowed because this authority was not among those listed in the rule as not being delegated. We believe the 90-day period is adequate for the approval process. The rule has no formal process for seeking reconsideration of revocation.

Comment: One commenter recommended that the proposed definition of "scrap provider" be revised because the definition includes brokers who have no oversight over scrap preparation and delivery. According to the commenter, a revised definition should allow brokers to be considered "scrap providers" as a contractual matter. The commenter suggested that EPA define "scrap provider" to mean "the final preparer of scrap delivered to a steel mill, or a broker when a brokered transaction specifies that the broker provide information to the steel mill from the scrap processors participating in the brokered transaction."

Response: We disagree because the definition as proposed allows a broker to be considered a scrap provider. The EAF owner or operator must ensure that the broker receives scrap only from suppliers participating in an EPA-approved program, and we have clarified this in the final rule. For the site-specific option, the EAF owner or operator must obtain assurance from all scrap providers that mercury switches have been removed and provide an accounting of the number of switches removed and vehicles processed for all scrap providers, along with all of the other requirements in the site-specific plan.

Comment: One commenter recommended that the proposed definition of "motor vehicle scrap" be revised to refer to shredded scrap that contains shredded end-of-life vehicles. The commenter explained that shredded scrap typically includes shredded end-of-life or obsolete appliances as well as other materials. Alternatively, the commenter suggested replacing the definition of "motor vehicle scrap" with a definition of "shredded scrap", which would contain some fraction of shredded end-of-life vehicles.

Response: The definition of motor vehicle scrap is specific to vehicles processed in a shredder. We do not see a need to revise the definitions as suggested by the commenter.

Comment: One commenter recommended that EPA revise § 63.10685(b) to clarify that scrap that does not contain motor vehicle scrap does not need to meet one of the three compliance options for mercury. The commenter suggested using the term "motor vehicle scrap provider" instead of "scrap provider." Otherwise, the commenter asked that EPA add a fourth compliance option under § 63.19685(b) for scrap that contains no motor vehicle scrap and require certification to that effect for the scrap provider, contract for scrap, or scrap shipment. The commenter stated that recordkeeping and compliance certification requirements should be added consistent with the requirement.

Response: We have clarified in the final rule that the mercury switch removal provisions and three compliance options apply to scrap that contains motor vehicle scrap. In addition, we have added a new provision to the rule for scrap that does not contain motor vehicle scrap to require a certification and documentation through records that the scrap does not contain motor vehicle scrap.

Comment: One commenter objected to the requirement for facilities to submit a semiannual report of all scrap shipments received under the site-specific compliance option. The commenter recommended that EPA review scrap management records to determine compliance. The commenter provided recommended language for a semiannual report containing a certification of compliance, along with records of how each motor vehicle scrap provider, contract, or shipment complies with the rule.

Response: We continue to believe that an accounting of mercury switches and estimated number of vehicles processed must be submitted in semiannual reports because it is an important monitoring provision that is necessary to determine if the site-specific plan is being implemented and to assess its effectiveness. However, we are clarifying that the information can be submitted in aggregate form and does not have to be submitted for each shipment, which could include hundreds of records for some large facilities. However, the owner or operator must maintain records for each motor vehicle scrap provider, contract, or shipment (as the commenter suggests) sufficient to demonstrate compliance with the rule and must make these records available upon the request of the permitting authority.

Comment: One commenter stated that the scrap specification requirements for mercury switches make unrealistic and unenforceable demands of metal purchasers. The commenter notes that steel mill staff are required to assure that the scrap is clean by visiting suppliers (who may be hundreds of miles away) by doing visual inspection of their facilities and treated scrap. The commenter further notes that suppliers change frequently, they buy from middlemen, and they ship scrap from combined sources. The commenter believes this shifts responsibility of "ensuring" quality of scrap to the steelmakers and makes no requirements of the steelmakers themselves, but asks them to inspect members of an independent industry at large cost in staffing and travel when it is unlikely to be effective.

Response: The rule applies to owners or operators of EAF steelmaking facilities, and it is the responsibility of these facilities to comply with the rule. Among other things, the final rule requires that EAF owners or operators conduct periodic inspections or provide other means of corroboration to ensure that suppliers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles. Periodic audits or inspections of scrap suppliers or dismantlers are one means of complying with this requirement. Although there are certainly other means to comply with this requirement, we note that periodic audits or inspections of scrap suppliers or dismantlers are consistent with the agreement reached in the NVMSRP among many stakeholders, including the scrap providers. Some EAF facilities already perform inspections of suppliers, and EAF facilities have historical experience in ensuring the quality of the scrap they receive because of safety concerns (e.g., radiation or explosion hazards) and the direct effect of scrap quality on steel quality.

The corroboration requirement in the final rule, as described above, is an important element of assuring program effectiveness and achieving the pollution prevention objective of section 112(d)(2)(A). EPA is thus adopting the requirement as an exercise of independent judgment, not simply because it is in the agreement.

C. Proposed GACT Standard for Metal HAP Other Than Mercury

1. Opacity Limit for the Melt Shop

Comment: Two commenters stated that a subcategory for older non-NSPS facilities is justified by the fact that the non-NSPS status of these facilities has a direct bearing on the technical and economic feasibility of retrofitting to achieve the six percent opacity standard during charging and tapping. According to the commenters, these facilities, by virtue of their design, are of a different class and type from the NSPS facilities. The commenters concluded that the alternative standard described in the proposal preamble with an opacity standard of six percent and an allowance of 20 percent opacity during charging and tapping was appropriate for these non-NSPS facilities. The commenters provided a discussion of EPA's authority to establish such a subcategory and information they claimed indicated that EPA's estimates of the costs to retrofit the non-NSPS facilities was understated. The commenters also argued that applying the NSPS to the non-NSPS facilities was not justified because the proposed standard was not as cost effective as EPA had estimated, and in addition, the cost effectiveness for HAP was much higher than what EPA had determined to be unacceptable in other rulemakings.

The commenters noted that CAA section 112 grants the EPA authority to categorize and subcategorize based on class, type, and size of source. According to the commenters, the Administrator "may distinguish among classes, types, and sizes of sources within a category or subcategory" under section 112(d)(1), and similarly, section 112(c) authorizes EPA to establish categories and subcategories of major and area sources in a manner that is consistent with the list of categories and subcategories under Section 111. The commenters also indicated that section 111(b)(2) provides EPA with authority to "distinguish among classes, types, and sizes within categories," and section 112 further provides that "(n)othing in the preceding sentence (referring to the desire to maintain consistency between source categories under Sections 111 and 112) limits the Administrator's authority to establish subcategories under this section, as appropriate."

The commenters pointed out that in the preamble to the proposed rule (72 FR 53826), EPA stated that it may be appropriate to consider a separate subcategory of facilities based on the technical and economic feasibility of retrofitting pre-1983 (non-NSPS) facilities. According to the commenters, such subcategorization is not new and falls within the Agency's discretion to create subcategories. The commenters continued by stating that while age is not specifically identified as a criterion for subcategorizing under Section 112, age may have a direct correlation to the design of a facility, the production and air pollution control equipment used by the facility, and other factors that allow for "class, type, or size" subcategory distinctions within an industry. The commenters stated that courts have confirmed this relationship between age and allowable subcategorization factors where there is a meaningful, discernable relationship between the age of the facility and the basis for subcategorization (e.g., the cost or feasibility of retrofitting or the effectiveness of anti-pollution devices on emissions) and cited *American Iron and Steel Inst.* v. *EPA*, 568 F.2d 244, 298 (3rd Cir. 1977) ("AISI") (also cited by EPA in the preamble to the proposed rule). The commenters claimed that the courts have recognized that age may play a direct role in a facility's ability to install anti-pollution devices (i.e., retrofitting costs) and on the effectiveness of reducing emissions (citing *American Iron and Steel Inst.* v. *EPA*, 526 F.2d 1046, 1048 (3rd Cir. 1975) (also cited by EPA), recognizing the "special problem" in requiring a one-size-fits-all anti-pollution device in industries where there is considerable variation in the age of facilities).

The commenters stated that they are not seeking subcategorization based strictly on the age of the facility, but rather to recognize that non-NSPS facilities (those that were constructed prior to 1983 and not subsequently modified) face design and equipment challenges in achieving the opacity standards that more modern facilities are engineered to meet. According to the commenters, non-NSPS facilities are a different "class" or "type" of facility from NSPS facilities, and consistent with the cases cited, the non-NSPS status of certain EAF steelmaking facilities bears directly on the technical and economic feasibility of reducing fugitive emissions and warrants a separate subcategory. The commenters claimed that non-NSPS facilities vary substantially in design and compliance requirements, but in almost all cases the buildings are not fully closed and the furnace design and emission capture systems are such that modifications are required to achieve the NSPS standards. According to the commenters, these design and equipment differences are reasonable bases on which to justify a non-NSPS subcategory.

The commenters provided information concerning the modifications and retrofitting that would be required at the non-NSPS facilities to meet the six percent opacity limit. In addition, the commenters submitted estimates of the costs and identified additional non-NSPS facilities not previously included in EPA's analysis of impacts. The commenters noted that there are 11 non-NSPS facilities that cannot currently meet the NSPS opacity limit (rather than the six identified at proposal) and estimated that the capital cost to meet the standard as $85 to $99 million instead of EPA's estimate at proposal of $29 million. Among the plants identified by the commenter was one plant that the commenter stated could meet the opacity limit 99 percent of the time, but the commenter claimed that costs would be incurred to address trivial and infrequent excursions to ensure the facility could meet the limit 100 percent of the time.

The commenters stated that applying the NSPS opacity limit to the non-NSPS plants was less cost effective than EPA's estimates at proposal because costs were underestimated and emission reductions were overestimated. The commenters cited the higher capital costs described above and also stated that other costs, such as lost revenue due to downtime to perform upgrades and annual operating costs (including increased power consumption and maintenance labor) had not been included in EPA's estimates. In addition, the commenters claimed that EPA's estimates of emission reductions were overstated because some of the dust assumed to be collected by the improved capture system would have settled within the melt shop rather than being emitted as fugitive emissions through the melt shop roof. The commenter also stated that the improved capture efficiency estimated for three facilities (from 85 percent to 95 percent) assumed an open roof monitor; however the improvement in capture is more likely from 90 percent to 95 percent because these facilities do not have open roofs. The commenter believes that the emission reductions for these facilities is about half of that estimated by EPA.

The commenter also stated that EPA's cost effectiveness estimate of $160,000/ton of HAP was higher than what had been accepted in other rulemakings: $6,800/ton chlorine rejected and $1,100/ton chlorine accepted (hazardous waste combustors); $45,000/ton hydrogen chloride rejected (industrial boilers); $90,000/ton acrylonitrile rejected (acrylic and modacrylic fibers); $724 to $9,000/ton of organic HAP accepted (halogenated solvent cleaning); and $300 to $10,000/ton of organic HAP accepted (gasoline distribution). The commenters stated that it was inappropriate to compare the particulate matter (PM) cost effectiveness of the proposed rule with that of mobile source programs because those programs were geared towards addressing PM while the area source rule is focused on HAP emissions. The commenters believe the proper comparison is with respect to the cost effectiveness of HAP emission reductions as described above.

Response: We proposed a standard of six percent opacity for the EAF melt shop for all plants in the source category (i.e., no subcategories) as GACT because about 90 percent of the existing facilities are subject to and achieve this level of control, and the technology used by these facilities is generally available. We requested comment on an alternative based on a subcategory for older facilities and an alternative standard of six percent opacity except for 20 percent opacity during charging and tapping (72 FR 53826). We also requested supporting documentation in sufficient detail to allow characterization and representativeness of the data.

The commenters claimed that there are meaningful differences between plants that are subject to the NSPS and those that are not subject to it, although they correctly acknowledged that age can only be a proxy for some process difference (i.e., age in and of itself is not a basis for subcategorization). However, we are not convinced that there is any basis for subcategorization because the non-NSPS plants have no physical differences that are impediments to the installation of the necessary and widely-demonstrated capture and control systems for fugitive emissions. Moreover, as we discuss in detail below, even if (against our view) it is appropriate to subcategorize, GACT would be the same for NSPS plants and non-NSPS plants.

We stated at proposal that GACT for fugitive emissions from the melt shop includes hoods to capture the fugitive emissions escaping during charging, melting, and tapping, and ducting the emissions to a baghouse. All EAF facilities have capture and control systems for emissions from charging, melting, and tapping, and this technology has been applied to many other industries (e.g., iron and steel foundries, integrated iron and steel plants). However, most EAF steelmaking facilities have better capture systems for charging and tapping emissions than do some of the affected non-NSPS plants. We have identified no technical reason that the capture and control systems demonstrated by plants subject to the NSPS to achieve an opacity limit of six percent cannot be applied industry wide. The technology for upgrading the capture and control of emissions from charging and tapping is generally available and includes new or redesigned capture hoods, higher evacuation rates, and in some cases, additional baghouse capacity, all of which have been accounted for in our cost estimates.

Not only is this type of technology routinely utilized, but there is no technical impediment to its applicability in this source category. The commenters stated that "buildings are not fully closed and the furnace design and emission capture systems are such that modifications are required to achieve the NSPS standards", but this merely indicates that some type of upgrade would be required for plants to meet the standards, not that these older plants cannot be physically enclosed so that they were able to achieve the NSPS opacity limit. Moreover, these sources' fugitive emissions consist of the same HAP in the same concentration as all of the NSPS plants. (See the HAP concentration data presented in "Electric Arc Furnace Impacts Analysis", Docket Item 0074 in Docket Number EPA–HQ–OAR–2004–0083.) In addition, a number of pre-NSPS EAFs have in fact upgraded to meet a 6 percent opacity limit. Not only are these

sources' fugitive emissions comparable to those of the remaining non-upgraded facilities, but their costs are comparable as well, as are the cost effectiveness of the emission reductions. (See the results of the cost survey of plants that have previously upgraded as discussed in "Electric Arc Furnace Impacts Analysis", Docket Item 0074 in Docket Number EPA–HQ–OAR–2004–0083.)

EPA therefore does not believe that the remaining non-NSPS plants are of a different class or type than the universe of sources meeting the 6 percent opacity standard. They produce the same product by the same means, are capable of controlling opacity by the same means at the same effectiveness, appear to be identically situated to non-NSPS EAFs which meet the 6 percent standard, and (as discussed below) are capable of meeting that standard at reasonable cost and cost effectiveness.

Moreover, even if (against our views) subcategorization would be appropriate, EPA believes GACT for the subcategory would be the NSPS standard. The standard reflects readily available technology (as just discussed) at reasonable cost and cost effectiveness. EPA carefully reviewed the detailed cost information submitted by the commenters for upgrading non-NSPS plants to meet the proposed opacity limit. The cost estimates are higher than those we developed at proposal reflecting that there are certain unique or site-specific factors for several plants that would result in costs higher than those we generated that did not include site-specific cost elements. We have accordingly revised the cost analysis from proposal and used the commenters' estimates of capital cost for most of the non-NSPS plants (using the average for those cases where a range of costs were provided for a given plant). We have also incorporated the commenters' estimates on the increased operating costs when they provided such estimates (e.g., increased consumption of electricity and labor for operation and maintenance). When estimates of operating cost were not provided, we developed estimates of operating costs for electricity, labor for operation and maintenance, and dust disposal based on the size of the upgraded system.

We did not accept the commenters' full estimate of cost for one non-NSPS plant. The commenters provided a capital cost estimate of $30.5 million to replace the entire existing melt shop at this plant, including a new and larger EAF to replace two small ones, new EAF transformers, new cranes and other ancillary equipment, and other modifications. We disagree with this cost estimate because it is based on the cost for a new facility, including new process equipment, in addition to new capture and control equipment for emissions. For our revised impacts analysis, we estimated the cost for emission capture and control equipment only and used a capital cost of $16.3 million that the commenter attributed to a new baghouse and ancillary equipment associated with emission control; however, we note that it could be more economical to upgrade the existing baghouses, and the cost estimate of $16 million was based on an EAF steelmaking facility that was several times larger than this plant, making even this estimate highly conservative. (The estimated impacts, including the revised cost estimates, are documented in "Revised Analysis of Impacts" in the rulemaking docket.)

We also reviewed the available information on costs associated with lost production when the upgrades are installed. Prior to proposal, we sent a detailed cost survey to several plants that had made substantial upgrades to improve the capture and control of fugitive emissions. One plant stated that the installation was performed as much as possible over a 1 year period during normal operations, the final tie-in of the control system to the EAF was made during a regularly-scheduled production outage of two weeks, and sufficient inventory was maintained to supply customers. A second plant also said that most of the installation was completed during normal operations, final tie-in was during two different scheduled outages of two weeks, and sufficient inventory was maintained to supply customers. A third plant replied that they could not provide a reliable estimate of any costs that might have been due to lost production during the installation. Based on the actual experience of plants that have made upgrades, we believe that significant costs due to lost production can be avoided by installation as much as possible during normal operation, final tie-in during a regularly-scheduled outage for maintenance, and building sufficient inventory to supply customers during the short period of production shutdown.

The commenter identified one plant that could meet the opacity limit 99 percent of the time, but claimed that costs would be incurred to address trivial and infrequent excursions to ensure the facility could meet the limit 100 percent of the time. The commenter did not include any cost estimates for this plant in their estimates of total costs for meeting the opacity limit and only provided a qualitative discussion and capital cost estimates for the wholesale replacement of EAFs. The estimates provided by the commenter were for the capital cost of replacing EAFs, including in one case purchasing a used 20-ton EAF to replace existing furnaces with a capital cost of $4.2 million and in another case installing a new 40-ton furnace at a cost of over $70 million. We requested several times but did not receive any opacity data showing whether this plant could or could not meet the opacity limit, and we do not think it appropriate to assume a new and larger EAF would need to be installed at a cost of many millions of dollars to address trivial and infrequent excursions even if they had occurred. Excursions that occur one percent of the time or less could well be outliers and a result of an equipment failure that is not preventable (i.e., a malfunction). Moreover, a rare excursion could be caused by a preventable equipment failure or operating error, in which case the event might be considered a deviation. If the excursion occurs because of a particular sequence or overlapping of cycles since this facility has multiple small furnaces, then careful attention to scheduling of operations might be a solution. In any event, the commenter and facility did not provide sufficient information, a credible cost estimate, or any opacity data; consequently, we do not have sufficient information to conclude that the facility would incur significant costs for upgrading.

Our revised estimate of the cost for non-NSPS to meet the NSPS opacity limit is a capital cost of $69 million and a total annualized cost of $13 million per year. These costs average less than one percent of sales, will not affect the profit margin significantly, and will not cause plant closures. Consequently, the technology to meet the NSPS is economically feasible, which supports our view that the emission control technology is "generally available."

We also re-examined our estimates of the emission reductions attributable to revised standards (the key input, along with cost, to assessing cost effectiveness). The commenters stated that for three plants, the reductions should be based on improving capture efficiency from 90 percent to 95 percent rather than the improvement of 85 percent to 95 percent that was used in our impacts analysis. We have acknowledged there is a great deal of uncertainty in this estimate; consequently, we have developed estimates of HAP metal (and PM, their surrogate) emission reductions using both ranges for improved capture efficiency. For plants that provided

evacuation rates, we estimated the emission reductions from the design evacuation rate and a PM concentration of 0.01 gr/dscf in the captured emissions. The commenters stated that they believed this estimate is high because some of the dust that is captured by the upgraded system would have settled out in the melt shop and not be emitted as fugitive emissions. However, the estimate of 0.01 gr/dscf is an unbiased average estimate that we believe is roughly accurate within a factor of two. We had information from one plant that indicated the concentration of fugitive emissions before control was 0.02 gr/dscf (a factor of two higher than our estimate). The lower end is bounded by 0.005 gr/dscf (a factor of two lower) because at that concentration a baghouse would not be needed to meet the PM emission limit of 0.0052 gr/dscf. Consequently, we did not revise this aspect of our estimates of emission reductions.

After making the changes to the estimates of costs, emissions, and emission reductions described above, the cost effectiveness is $15,000/ton for PM and $250,000/ton for HAP metals. As we stated at proposal, we believe the cost effectiveness for PM is well within the range of acceptability and is in line with the cost effectiveness for PM for other rules (72 FR 53826). We further noted at proposal that the cost effectiveness for PM is within the range we have accepted previously for control of PM emitted by mobile sources, and we continue to believe that these mobile source rules provide a reasonable benchmark for PM cost effectiveness.

We also disagree with the commenters' assertions that the cost effectiveness for metal HAP is unacceptable. The final GACT standard for EAFs will provide reductions of 52 tons per year of compounds of chromium, lead, manganese, and nickel, which are all urban HAP for which this category was listed pursuant to sections 112(c)(3) and 112(k). EPA listed these metal compounds as urban HAP because of their significant adverse health effects. A large portion of the reductions of these urban HAP will occur in the urban areas that EPA identified in the Integrated Urban Air Toxics Strategy. See CAA 112(k)(3)(C).

The primary HAP emitted from melting iron and steel scrap are manganese and lead with smaller levels of chromium and nickel. These metals (especially manganese) are inherent components of the scrap that is melted, and at the high temperatures used in the EAFs, the HAP metals are unavoidably vaporized and emitted. These metal HAP are present in particulate matter emissions from the EAF, and because they are in particulate form, they can be captured and removed from the gas stream at high efficiency by control devices designed to capture particulate matter (such as baghouses). The nature of these emissions and the HAP composition are unique to iron and steel melting furnaces such as EAFs and are quite different from the emissions from other processes and operations that do not involve melting metal scrap at high temperatures.

There are adverse health effects associated with the metal HAP emitted from EAFs. Hexavalent chromium and certain forms of nickel are known human carcinogens. Lead is toxic at low concentrations, and children are particularly sensitive to the chronic effects of lead. Chronic exposure to manganese affects the central nervous system. Additional details on the health and environmental effects of these HAP can be found at *http://www.epa.gov/ttn/atw/hlthef/hapindex.html*. In addition, approximately 50 percent of the PM emissions are in the form of fine particulate matter, and EPA studies have found that fine particles continue to be a significant source of health risks in many urban areas.

Accordingly, even considered as a separate subcategory, EPA believes that GACT for these sources would be the current NSPS standard, due to technical feasibility at reasonable cost and cost effectiveness.

Furthermore, we have incorporated into this final rule certain provisions of the General Provisions (40 CFR part 63, subpart A) that afford sources additional flexibility. For example, existing sources can request an additional year to comply with the standard if they can demonstrate to the permitting authority that such additional time is needed to install controls. See 40 CFR 63.6(i)(4)(1)(A). In addition, EPA's regulations implementing CAA section 112(l) provide further flexibility. Specifically, 40 CFR part 63, subpart E provides that a State may seek approval of permit terms and conditions that differ from those specified in a section 112 rule, if the State can demonstrate that the terms and conditions of the permit are equivalent to the requirements of this rule. The procedures for seeking approval of such a permit are set forth in detail in 40 CFR 63.94.

Comment: One commenter noted the proposal requires that a capture system must collect "gases and fumes," while a capture system is defined as collecting "particulate matter." The commenter believes that neither of these terms is correct; the capture system should be described as capturing "emissions" generated from the EAF and other metallurgy operations.

Response: We agree and have made this revision.

Comment: One commenter noted that the proposed rule identifies opacity standards for melt shops exclusive to EAF or ladle metallurgy operations (LMO) and no other sources. The commenter requested that the term "melt shop" be defined so that the applicability of the opacity standard is accurately applied. The commenter further claimed that the current requirement restricting the opacity standard to the operation of an EAF or LMO is unenforceable. The commenter said that based on States' experiences, many different operations occur within a melt shop, and without having at least one other person positioned within the building viewing all operations within, it would be impossible to know whether emissions observed outside of a building were associated with all the activities of a melt shop or solely the EAF or LMO. The commenter suggested removing the exclusivity of the opacity standard to EAF and LMO.

Response: We disagree. The procedures for conducting opacity observations are the same as those in the NSPS, and these procedures have been used successfully for over 20 years to enforce the NSPS. In addition, our opacity data and GACT determination were based on the procedures for conducting opacity observations as required by the NSPS.

2. Ladle Metallurgy Operations

Comment: Two commenters stated that LMO should not be covered by the EAF area source rule because it would be inconsistent with the area source listing of EAF steelmaking facilities (which does not mention LMO). The area source listing reflects the fact that EAF emissions are the source of the vast majority of PM (and potential HAP) emissions at these facilities. The commenters stated that coverage of LMO will require additional controls at many facilities to address minimal HAP emissions. The commenters claimed that EPA has not collected information on LMO emissions or the cost of controlling them and also noted that LMO is not covered by the NSPS. The commenters claim that HAP metals have been removed from the steel in the EAF by the time it reaches the post processing stage of the LMO. The commenters indicated that there are 12 facilities with a separate LMO baghouse (i.e., not ducted to the baghouse associated with the EAF), seven with the LMO located in a separate building,

and six facilities that stated LMO fugitive emissions are separate from EAF melt shop emissions. The commenters stated that these facilities will need to take steps to ensure they can meet the NSPS limits. One commenter also stated that argon-oxygen decarburization (AOD) vessels should not be covered by the area source rule for the same reasons given above for LMO (except that AOD vessels are covered by the NSPS). The commenter provided no information similar to that provided for LMO on AOD vessels with separate baghouses or located in separate buildings.

Another commenter requested that EPA clarify that LMO is not covered by the standard or, if it is subject to the standard, which it complies if it is equipped with a side draft hood or close fitting hood even if there is no additional canopy collection.

Response: We agree with the commenters that the area source listing and 1990 emissions inventory for EAFs did not include LMO. The PM emissions from LMO are a small percentage of the emissions from EAF operations, and as the commenters note, the percent HAP in the PM from LMO is lower than that from EAFs because the more volatile HAP metals are removed during the EAF melting process. Consequently, we are clarifying that the area source rule applies only to EAFs and AOD vessels.

We disagree with the one commenter who suggested that AOD vessels also should not be covered by the area source standard for many of the same reasons that were applied to LMO. Although the use of LMO was not very widespread in 1990, AOD vessels have been used at specialty and stainless steel facilities for many years. In fact, AOD vessels were included in the 1983 NSPS, and we included AOD vessels in our GACT determination for EAF steelmaking facilities. Many AOD operations are vented to and controlled by the same baghouses that are used to control EAF emissions; consequently, the 1990 emissions inventory would have included AOD emissions even when the emission source was identified as the EAF. Thus when we listed the EAF steelmaking area source category under section 112(c)(3), we considered and included facilities with AOD emissions as part of the source category that we needed to meet the 90 percent requirement for emissions of the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel. The comments with respect to HAP metals are also not applicable to AOD vessels because AOD emissions contain high percentages of chromium and nickel, which are alloys used in making specialty and stainless steel.

We evaluated the impacts of including AOD vessels in the proposed area source standard. We identified only one plant that did not control AOD vessels with a baghouse, and we estimated the cost of replacing the wet scrubber with a baghouse. For this plant, both the EAF and AOD vessels are vented to a single wet scrubber; consequently, our cost estimate was based on a baghouse designed to control emissions from both operations. We evaluated the cost and cost effectiveness for this plant at proposal in our determination of GACT for small stainless steel producers (72 FR 53827). The commenter did not identify any additional plants that did not have a baghouse for the AOD vessel, and the commenter provided no data or other information showing that any other AOD vessels could not meet the proposed emission limits. Consequently, we believe that we have adequately evaluated the potential impacts of the proposed rule on AOD vessels and conclude that the NSPS limits for AOD vessels represent GACT for these vessels at carbon steel and large specialty steel facilities.

3. Small Stainless Steel Subcategory

Comment: One commenter submitted two comments on the subcategory for small stainless steel producers. The commenter asked if the 150,000 tons per year threshold applies to actual production or to potential facility production capacity. The commenter also asked that facilities in this subcategory be given the option of complying with the more stringent emission limit of 0.0052 gr/dscf that was proposed for other EAF facilities. The commenter stated that some facilities in the subcategory already have this limit in their permit and that they should not be required to demonstrate compliance with the 0.8 pounds per ton (lb/ton) limit as well. The commenter also claimed that without the option of complying with the 0.0052 gr/dscf limit, small facilities might be discouraged from upgrading pollution control equipment because the permitting authority could translate the lb/ton limit into a concentration limit more stringent than 0.0052 gr/dscf.

One commenter stated that the 0.8 lb/ton limit should not be applied to baghouses because a concentration limit in gr/dscf is more appropriate for baghouses. The commenter said that PM emissions from a baghouse are not linearly related to steel production rates. The commenter asks that EPA clarify that the lb/ton limit applies only to wet scrubbers.

Another commenter recommended that the PM limit for the small stainless steel subcategory be expressed in grain loading or similar fashion per industry practice instead of a lb/ton format. The commenter explained that it is not possible to demonstrate continuous compliance with the lb/ton format because not all particulate matter is released at the same time (i.e., the control device may continue to release PM after the end of a production run). The commenter stated that the testing provisions do not fully address this problem.

Response: The threshold for small stainless steel facilities is based on potential production as determined from the operating capacity of the EAF in tons per year multiplied by the maximum number of operating hours per year. We are clarifying that the potential production can be based on the maximum production or maximum number of permitted operating hours if specified in the facility's operating permit. Otherwise, the potential production would be based on the EAF production capacity and maximum operating hours.

We agree with the commenters that facilities in the small stainless steel subcategory that are equipped with baghouses should be allowed to demonstrate compliance exclusively with the more stringent PM of 0.0052 gr/dscf rather than 0.8 lb/ton as well for several reasons. There are existing plants equipped with baghouses that already must meet the more stringent PM limit of 0.0052 gr/dscf; consequently, requiring them to also demonstrate compliance with the less stringent limit is unnecessarily burdensome. We also agree that a concentration format is more appropriate for baghouses because baghouses are typically designed to meet an outlet concentration expressed in gr/dscf. On the other hand, wet scrubbers are typically designed to achieve a percent reduction in PM, and emissions are more relatable to steel production (i.e., higher steel production rates result in higher inlet loadings, which usually results in higher emissions at the outlet for wet scrubbers). The test procedures are clear for determining compliance with the lb/ton limit, and the plant with the wet scrubber has previously determined emissions in this format; consequently, we are not revising the testing provisions.

4. Particulate Matter Limit for EAFs

Comment: One commenter identified a plant that was not included in the analysis of impacts at proposal. The commenter stated that the facility could meet the opacity limit of six percent; however, compliance with the PM emission limit of 0.0052 gr/dscf will require upgrades to the baghouse, and other modifications will be required. The commenter estimated the capital cost for the upgrades as $1.9 million.

Response: We have evaluated the commenter's estimated cost for upgrades in our revised analysis of impacts. However, it is not clear that these costs should be attributed entirely to the area source standard. Our discussion with plant representatives prior to proposal indicated that a performance test showed that the baghouse achieved 0.0052 gr/dscf or less. In addition, bag replacement is a typical and recurring maintenance expense for baghouses, and bags would be replaced periodically even in the absence of the area source standard. Assuming the new bags and other modifications achieve a nominal reduction of only 0.001 gr/dscf, the improvements are cost effective and reasonable for reductions in PM emissions ($5,100/ton). Since this is the only plant in the subcategory that might be impacted by the PM emission limit, the estimate of cost effectiveness also represents the industry-wide estimate of cost effectiveness. (All estimates of impacts of the final standard are documented in the rulemaking docket.)

Comment: One commenter suggested that the PM limit should be based on the average performance of the best performing 12 percent of sources (i.e., the MACT floor).

Response: We discussed in detail in the proposal preamble (72 FR 53816) that the standard is based on GACT rather than MACT for Urban HAP other than mercury. The methodology suggested is the MACT methodology for establishing floors, which is neither required nor appropriate in determining what constitutes GACT.

D. Proposed GACT Standards for Scrap To Control HAP Other Than Mercury

Comment: One commenter objected to the definition of "free organic liquid" for turnings and borings because most turnings and borings contain significant quantities of oil. The commenter recommended that the prohibition on free organic liquids not include metal working fluids that contain less than one percent chlorinated compounds or less than 0.1 percent of a carcinogen. The commenter explained that this change would allow the majority of turning and borings to be recycled while avoiding possible emissions of chlorinated compounds.

Response: We disagree with the commenter because this provision is designed to prevent significant amounts of oil or other free organic liquids from entering the EAF with the scrap. These organic liquids contribute to the emissions of organic HAP such as benzene and polycyclic organic matter.

Comment: One commenter asks EPA to clarify the meaning of taking corrective action under § 63.10685(a)(1)(iii), which requires the facility to include in the scrap management plan procedures for "taking corrective actions with vendors whose shipments are not within specifications." The commenter asked to what extent a scrap provider has any recourse when corrective actions are deemed necessary.

Response: The procedures for taking corrective actions must be described by the EAF owner or operator in the site-specific pollution prevention plan and these procedures may vary depending on the type of scrap, scrap provider, and other factors, some of which may be unique to the facility. The concept is not a new one because EAF owners or operators have historically taken corrective actions when scrap does not meet their specifications. The area source rule places no direct requirements on the scrap provider; however, we expect that the scrap provider would work with customers (the EAF owners or operators) to resolve any questions of recourse with respect to corrective actions.

Comment: Several commenters believe the following proposed language creates a potential loophole for sources to charge otherwise unacceptable materials: "The requirements for a pollution prevention plan do not apply to the routine recycling of baghouse bags and other internal process or maintenance materials in the furnace." These commenters believe the language presents a loophole that renders the pollution prevention plan unenforceable and should be removed. One commenter suggests these exemptions not be allowed unless specifically identified in the pollution prevention plan and approved by the Administrator. Two commenters noted that under the proposed language, if an inspector found chlorinated plastics, lead or free organic liquids in an EAF's feedstock, the inspector would need to demonstrate that these wastes did not stem from "internal process materials or maintenance materials."

Response: The final rule, like the proposal, allows certain materials generated internally (e.g., baghouse bags) to be charged to the EAF. We agree that these materials should be identified and described in the facility's pollution prevention plan, and this is reflected in the final rule language. These materials are only those that are generated internally; consequently, they cannot be used as a loophole for incoming scrap. The inspector should be aware that the presence of chlorinated plastics, lead, or free organic liquids in these internal process materials or maintenance materials should be relatively rare, and if present, only exist in small quantities and only as described in the site-specific pollution prevention plan.

Comment: Two commenters stated that the metallic scrap restrictions are vague, difficult, and practically unenforceable. The commenter requests that EPA either define the terms "to the extent practicable" and "standard industry practice", set a particular standard, or make the requirements voluntary. Another commenter asked what the term "to the extent practicable" means in practice, and if there is no definition, how can the compliance provisions lead to corrective actions.

Response: We do not see the need to codify a definition of "practicable" but note here that our intent is that something is practicable if it is capable of being put into practice and is feasible. However, we believe that the term "standard industry practice" does not have a significantly clearer meaning, and in fact, may not result in as much removal. We are deleting the term in the final rule and continue to use the term "to the extent practicable" as it relates to the removal of lead-containing components such as batteries and wheel weights.

E. Miscellaneous Comments

1. General Provisions

Comment: One commenter objected to the requirement for SSM plans and reports because the burden of the recordkeeping and reporting requirements are not commensurate with the small quantity of pollutants covered by the rule. If SSM plans are required in the final rule, the commenter recommended that the plan requirements be limited to the operation of the EAF and LMO and associated control devices. The commenter was concerned that the SSM requirements could be read to apply to problems with the pollution prevention plans. The commenter recommended that Table 1

to Subpart YYYYY should indicate the limitation of the SSM requirements.

Response: We agree that the SSM requirements do not apply to the pollution prevention plans. Sources must comply with the pollution prevention plans at all times, including periods of SSM. Therefore, separate requirements governing SSM are not necessary.

Comment: One commenter stated that because the rule requires compliance with the compliance assurance monitoring (CAM) provisions, Table 1 to subpart YYYYY should indicate that the monitoring requirements in § 63.8(a) through (c) of the general provisions (40 CFR part 63, subpart A) apply only if a continuous opacity monitoring system or continuous emission monitoring system (CEMS) is used.

Response: We agree and will make this clarification.

2. Compliance Date

Comment: Two commenters requested that three years be allowed for non-NSPS facilities to install or modify controls to meet the opacity limit. The commenters stated that a series of events must occur to improve controls: Conceptual and detailed engineering studies must be conducted to determine what is needed to achieve compliance, a budget must be established and capital funding requests initiated and approved by company management, the project must be contracted out (after a competitive bidding process), necessary building permits obtained, and construction initiated. The commenters asked that EPA provide for the full three-year compliance period allowed under the CAA in order to avoid a proliferation of extension requests.

Response: We recognize that certain facilities will require extensive upgrades, including new capture systems, new baghouses, and site-specific modifications to improve control of fugitive emissions and meet the melt shop opacity limit. Consequently, we agree that it is appropriate to allow up to three years to achieve compliance for those facilities that demonstrate to the satisfaction of the permitting authority that additional time is needed to install or modify emission control equipment to meet the opacity limit.

3. Title V Permit

Comment: One commenter stated that the title V permit program is for major sources of criteria pollutants or HAP. The commenter stated that there was one small specialty steel EAF facility that was not a major source for any pollutant and that the facility has a State permit that caps emissions below major source thresholds. The commenter asked that the proposed rule be revised to require a title V permit only for those facilities that are major sources.

Response: Section 502(a) of the CAA requires sources subject to regulation under section 112 of the CAA to obtain a permit to operate. However, Section 502(a) authorizes the Administrator, in his discretion, to "promulgate regulations to exempt one or more source categories (in whole or in part) from the requirement of (title V) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories * * *." EPA promulgated a rule interpreting section 502(a) and therein stated that EPA may only exempt a category from Title V permitting if we find compliance to be "impracticable, infeasible, or unnecessarily burdensome," and we determine that exempting the category would not adversely affect public health, welfare, or the environment. (See 70 FR 75,320 and 75,323, December 19, 2005.) Nowhere in our rule did we establish a presumption in favor of exempting sources from title V permitting, and the statute leaves such determinations to the discretion of the Administrator.

The decision to exempt a source category from title V requirements is made on a case-by-case basis according to the facts of the particular source category. The commenter has identified one EAF steelmaking facility (in a population of over 90 facilities) that does not currently have a title V permit. The commenter does not explain, however, why an exemption from title V is appropriate for this source category, where, as here, 99 percent of the facilities in the source category have title V permits. We refer the commenter to the detailed justification underlying exemption of other area source categories from title V. (For example, see 72 FR 38871, July 16, 2007.) We continue to believe that title V permitting is necessary for this source category. The record in this case does not demonstrate that compliance with title V permitting would be impracticable, infeasible, or unnecessarily burdensome for the sources in this category.

Comment: One commenter stated that § 63.106890(d) should be revised because the language could have the unintended consequence of forcing facilities that already have a title V permit to obtain a new permit. The commenter provided suggested language to clarify the requirement.

Response: Although facilities with a title V permit do not have to obtain a new title V permit as a result of this area source rule, sources that already have a title V permit must include the requirements of this rule through a permit reopening or at renewal according to the requirements of 40 CFR part 70 and the title V permit program. See 40 CFR 70.7(f).

4. Performance Tests

Comment: One commenter recommended that the provision allowing use of a previous performance test to demonstrate compliance be revised to include a time frame for action by the permitting authority. The commenter expressed concern that the facility may be exposed to a compliance risk if the source submits a test and the permitting authority deems the prior test unacceptable. The commenter was concerned that the requirement to test within 180 days of the compliance date would not be adequate if permitting authority has delayed action on the source's notification of compliance status report. The commenter provided rule language that would require that the prior test be deemed approved if not deemed unacceptable within 60 days.

Response: We agree that in the rare event that a permitting authority takes months to deem that a prior test is unacceptable, there may not be sufficient time to arrange and conduct a performance test within 180 days of the compliance date. We are revising the provision in the rule to state that if a permitting authority determines a prior performance test is unacceptable to demonstrate compliance, a performance test must be performed with 180 days of the compliance date or within 90 days of receipt of the notification of disapproval of the prior test, whichever is later.

5. Funding for State and Local Agencies

Comment: One commenter stated that in order for these rules to be implemented properly, EPA should provide sufficient additional funds to State and local clean air agencies. The commenter said that in recent years, Federal grants for State and local air programs have amounted to only about one-third of what they should be, and budget requests for the last two years have called for additional cuts. According to the commenter, additional area source programs, which are not eligible for title V fees, will require significant increases in resources for State and local air agencies beyond what is currently provided. The commenter claims that without increased funding, some State and local air agencies may

not be able to adopt and enforce additional area source rules.

Response: State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, we do not believe that this issue can be addressed through today's rulemaking.

EPA today is promulgating standards for the EAF Steelmaking area source category that reflect what constitutes MACT for mercury emissions and GACT for the Urban HAP other than mercury for which the source category was listed. MACT and GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT or MACT. Moreover, we note that the rule for EAF steelmaking facilities requires all affected facilities to have a title V permit; consequently, the comment about loss of fees from title V permit exemptions is not pertinent for this rule.

Although the resource issue cannot be resolved through today's rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

6. Secondary Nonferrous Metal Production

Comment: One commenter asked that EPA clarify that the rule does not apply to EAFs that are used to produce nonferrous metals, where nonferrous metal means "any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent by percent in weight."

Response: We agree. The types of facilities identified by the commenter are covered under other source categories depending on the type of metal produced (e.g., secondary nonferrous metals, secondary aluminum, secondary copper, etc.)

V. Impacts of the Final Rule

We estimate that the final standards will reduce mercury emissions from EAF by an estimated 5 tons per year (tpy) and will reduce emissions of other metallic HAP (primarily manganese with some lead, nickel and chromium) by about 52 tpy. Emissions of PM will be reduced by 865 tpy.

The capital cost of the final standards is estimated as $69 million. The total annualized cost of the final rule is estimated at $13 million/yr, including the annualized cost of capital and the annual operating costs for emissions control systems. The additional cost of monitoring, reporting, and recordkeeping attributable to the final rule, including the preparation of scrap management plans and scrap specifications, is estimated as $122,000 per year. No adverse economic impacts are expected for large or small entities. Secondary impacts will include an increase in the generation of hazardous waste (865 tpy) and an increase in electricity usage (23,000 megawatt-hours per year) from additional fans and fan capacity associated with baghouse installations and upgrades to meet the opacity standard.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards, and the recordkeeping and reporting requirements in the part 64 CAM rule, which are based on the requirements in the operating permits rule (40 CFR parts 70 and 71). These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final rule requires all facilities to submit a one-time notification of applicability and notification of compliance status required by the NESHAP general provisions (40 CFR part 63, subpart A). The notification of compliance status must include compliance certifications for various rule requirements. The general provisions also require preparation of a test plan for performance tests and advance notification of the date the performance test is to be conducted.

The provisions for the control of contaminants from scrap require the owner or operator to prepare a pollution prevention plan to minimize the amount of chlorinated plastics, lead, and free organic liquids that are charged to the furnace and to submit the plan to the Administrator for approval. Facilities must keep the plan onsite and train certain employees in the plan's requirements. Alternatively, the facility must restrict the type of scrap charged to the furnace. For mercury, facilities must prepare a site-specific plan for removal of mercury switches, submit the plan to the Administrator for approval, and submit semiannual progress reports containing information on the mercury switches that have been removed would also be required. Alternatively, facilities must purchase motor vehicle scrap only from suppliers that participate in an approved program for the removal of mercury switches or recover only material for its specialty alloy content that does not contain mercury switches. Facilities are required to maintain records to demonstrate compliance with the selected option. Records of specific information are required for plants electing to comply with the site-specific plan for mercury; semiannual progress reports are also required.

All area source facilities are required to conduct performance tests to demonstrate initial compliance with the applicable PM and opacity limits. Existing facilities are allowed to certify initial compliance based on the results of a previous performance test that meets the rule requirements. All facilities must monitor capture systems and PM control devices for EAF and AOD vessels, maintain records, and submit reports according to the part 64 CAM requirements. These reports

include deviation reports, semiannual monitoring reports, and annual compliance certifications.

Consistent with § 63.6(e) of the general provisions, all plants are required to prepare and operate by a startup, shutdown, and malfunction plan, and make an immediate report if a startup, shutdown, or malfunction was not consistent with their plan. Plants also must keep records and make semiannual reports according to the requirements in § 63.10.

The annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of this ICR) is estimated to total 2,393 labor hours per year at a cost of $121,573. This includes 2.7 responses per year from each of 91 respondents for an average of about 9.7 hours per response. There are no additional capital/startup costs or operation and maintenance costs associated with the final rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (whose parent company has fewer than 1,000 employees for NAICS code 331111); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are approximately nine EAF steelmaking facilities owned by small businesses. We have determined that the requirements for these small business owned facilities consist of preparing a scrap selection plan or mercury switch removal plan and maintaining records to document compliance with these requirements. The requirements of the part 63 General Provisions include notifications, records, semiannual reports, and a startup, shutdown and malfunction plan. The information required in these information collection requirements is very similar to the information collection requirements in 40 CFR parts 64, 70, and 71. We have determined that the nine or fewer EAF steelmaking facilities (less than 10 percent of the total number of facilities) will experience an impact of about $3,500 per year per facility, which is less than one percent of total revenues.

Electric arc furnaces and AOD vessels at all EAF steelmaking facilities that are area sources are already equipped with capture systems and control devices. We have identified ten plants that may have to upgrade emission capture and control systems at a total capital cost of $69 million and a total annualized cost of $13 million per year. However, none of these plants are owned by small businesses.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and have included provisions such as the lb/ton limit for small facilities that address their concerns. We have also included a subcategory based partially on facility size that allows more individualized consideration of EAFs in the subcategory, which include small businesses.

D. Unfunded Mandates Reform Act

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 by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 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.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of

the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, the final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to the final rule.

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

Executive Order 13175 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." This final rule does not have tribal implications, as specified in Executive Order 13175. 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 Executive Order 13175. The final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by the additional pollution controls or other equipment that are required by this rule.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This final rule involves technical standards. EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A; EPA Method 9095B, "Paint Filter Liquids Test," (revision 2, November 2004) (incorporated by reference—see § 63.14); and ASTM D2216–05, "Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass" (incorporated by reference—see § 63.14).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9, 9095B, or ASTM D2216–05. The search and review results are in the docket for this final rule.

One VCS was identified as applicable to this final rule. The standard ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," is cited in this final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 12 other VCS. The EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emissions standards in this final rule were impractical alternatives to EPA test methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 12 methods are discussed in a memorandum included in the docket for this final rule.

For the methods required or referenced by this final rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or

environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule establishes national standards for the area source category.

K. Congressional Review Act

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 Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final 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 final 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 be effective on December 28, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended as follows:

■ a. By adding paragraph (b)(63);

■ b. By revising paragraph (i)(1); and

■ c. By adding paragraph (k)(1)(iv).

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(63) ASTM D2216–05, "Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass," IBR approved for the definition of "Free organic liquids" in § 63.10692.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.10686(d)(1(iii), 63.10702, 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), and Table 5 to subpart DDDDD of this part.

* * * * *

(k) * * *

(1) * * *

(iv) Method 9095B, "Paint Filter Liquids Test," revision 2, November 2004, IBR approved for the definition of "Free organic liquids" in § 63.10692.

* * * * *

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

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Sec.

Applicability and Compliance Dates

63.10680 Am I subject to this subpart?

63.10681 What are my compliance dates?

Standards and Compliance Requirements

63.10685 What are the requirements for the control of contaminants from scrap?

63.10686 What are the requirements for electric arc furnaces and argon-oxygen decarburization vessels?

Other Information and Requirements

63.10690 What parts of the General Provisions apply to me?

63.10691 Who implements and enforces this subpart?

63.10692 What definitions apply to this subpart?

Tables to Subpart YYYYY of Part 63

Table 1 to Subpart YYYYY of Part 63—Applicability of General Provisions to Subpart YYYYY

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Applicability and Compliance Dates

§ 63.10680 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an electric arc furnace (EAF) steelmaking facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each EAF steelmaking facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must have or obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.10681 What are my compliance dates?

(a) Except as provided in paragraph (b) of this section, if you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than June 30, 2008.

(b) If you own or operate an existing affected source, you must achieve compliance with opacity limit in § 63.10686(b)(2) or (c)(2) by no later than December 28, 2010 if you demonstrate to the satisfaction of the permitting authority that additional time is needed to install or modify emission control equipment.

(c) If you start up a new affected source on or before December 28, 2007, you must achieve compliance with the applicable provisions of this subpart by no later than December 28, 2007.

(d) If you start up a new affected source after December 28, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.10685 What are the requirements for the control of contaminants from scrap?

(a) *Chlorinated plastics, lead, and free organic liquids.* For metallic scrap utilized in the EAF at your facility, you must comply with the requirements in

either paragraph (a)(1) or (2) of this section. You may have certain scrap at your facility subject to paragraph (a)(1) of this section and other scrap subject to paragraph (a)(2) of this section provided the scrap remains segregated until charge make-up.

(1) *Pollution prevention plan.* For the production of steel other than leaded steel, you must prepare and implement a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead, and free organic liquids that is charged to the furnace. For the production of leaded steel, you must prepare and implement a pollution prevention plan for scrap selection and inspection to minimize the amount of chlorinated plastics and free organic liquids in the scrap that is charged to the furnace. You must submit the scrap pollution prevention plan to the permitting authority for approval. You must operate according to the plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. You may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority. You must keep a copy of the plan onsite, and you must provide training on the plan's requirements to all plant personnel with materials acquisition or inspection duties. Each plan must include the information in paragraphs (a)(1)(i) through (iii) of this section:

(i) Specifications that scrap materials must be depleted (to the extent practicable) of undrained used oil filters, chlorinated plastics, and free organic liquids at the time of charging to the furnace.

(ii) A requirement in your scrap specifications for removal (to the extent practicable) of lead-containing components (such as batteries, battery cables, and wheel weights) from the scrap, except for scrap used to produce leaded steel.

(iii) Procedures for determining if the requirements and specifications in paragraph (a)(1) of this section are met (such as visual inspection or periodic audits of scrap providers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

(iv) The requirements of paragraph (a)(1) of this section do not apply to the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace. These exempted materials must be identified in the pollution prevention plan.

(2) *Restricted metallic scrap.* For the production of steel other than leaded steel, you must not charge to a furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, lead-containing components, chlorinated plastics, or free organic liquids. For the production of leaded steel, you must not charge to the furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, chlorinated plastics, or free organic liquids. This restriction does not apply to any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed or cleaned to the extent practicable such that the materials do not include lead components, chlorinated plastics, or free organic liquids. This restriction does not apply to motor vehicle scrap that is charged to recover the chromium or nickel content if you meet the requirements in paragraph (b)(3) of this section.

(b) *Mercury requirements.* For scrap containing motor vehicle scrap, you must procure the scrap pursuant to one of the compliance options in paragraphs (b)(1), (2), or (3) of this section for each scrap provider, contract, or shipment. For scrap that does not contain motor vehicle scrap, you must procure the scrap pursuant to the requirements in paragraph (b)(4) of this section for each scrap provider, contract, or shipment. You may have one scrap provider, contract, or shipment subject to one compliance provision and others subject to another compliance provision.

(1) *Site-specific plan for mercury switches.* You must comply with the requirements in paragraphs (b)(1)(i) through (v) of this section.

(i) You must include a requirement in your scrap specifications for removal of mercury switches from vehicle bodies used to make the scrap.

(ii) You must prepare and operate according to a plan demonstrating how your facility will implement the scrap specification in paragraph (b)(1)(i) of this section for removal of mercury switches. You must submit the plan to the permitting authority for approval. You must operate according to this plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the permitting authority within 60 days following disapproval of a plan. You may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the permitting authority. The permitting authority may change the approval status of the plan upon 90-days written notice based upon the semiannual compliance report or other information. The plan must include:

(A) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper management of the mercury switches removed from that scrap as required under the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) (40 CFR parts 261 through 265 and 268). The plan must include documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols;

(B) Provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meet the scrap specification;

(C) Provisions for periodic inspections or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap and that the mercury switches removed are being properly managed, including the minimum frequency such means of corroboration will be implemented; and

(D) Provisions for taking corrective actions (i.e., actions resulting in scrap providers removing a higher percentage of mercury switches or other mercury-containing components) if needed, based on the results of procedures implemented in paragraph (b)(1)(ii)(C) of this section).

(iii) You must require each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to your facility during the previous year and the basis for the estimate. The permitting authority may request documentation or additional information at any time.

(iv) You must establish a goal for each scrap provider to remove at least 80 percent of the mercury switches.

Although a site-specific plan approved under paragraph (b)(1) of this section may require only the removal of convenience light switch mechanisms, the permitting authority will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal.

(v) For each scrap provider, you must submit semiannual progress reports to the permitting authority that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches removed, and certification that the removed mercury switches were recycled at RCRA-permitted facilities or otherwise properly managed pursuant to RCRA subtitle C regulations referenced in paragraph (b)(1)(ii)(A) of this section. This information can be submitted in aggregated form and does not have to be submitted for each scrap provider, contract, or shipment. The permitting authority may change the approval status of a site-specific plan following 90-days notice based on the progress reports or other information.

(2) *Option for approved mercury programs.* You must certify in your notification of compliance status that you participate in and purchase motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. If you purchase motor vehicle scrap from a broker, you must certify that all scrap received from that broker was obtained from other scrap providers who participate in a program for the removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. The National Vehicle Mercury Switch Recovery Program and the Vehicle Switch Recovery Program mandated by Maine State law are EPA-approved programs under paragraph (b)(2) of this section unless and until the Administrator disapproves the program (in part or in whole) under paragraph (b)(2)(iii) of this section.

(i) The program includes outreach that informs the dismantlers of the need for removal of mercury switches and provides training and guidance for removing mercury switches;

(ii) The program has a goal to remove at least 80 percent of mercury switches from the motor vehicle scrap the scrap provider processes. Although a program approved under paragraph (b)(2) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal; and

(iii) The program sponsor agrees to submit progress reports to the Administrator no less frequently than once every year that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at facilities with permits as required under the rules implementing subtitle C of RCRA (40 CFR parts 261 through 265 and 268). The progress reports must be based on a database that includes data for each program participant; however, data may be aggregated at the State level for progress reports that will be publicly available. The Administrator may change the approval status of a program or portion of a program (e.g., at the State level) following 90-days notice based on the progress reports or on other information.

(iv) You must develop and maintain onsite a plan demonstrating the manner through which your facility is participating in the EPA-approved program.

(A) The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.

(B) You must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.

(C) You must conduct periodic inspections or provide other means of corroboration to ensure that scrap providers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

(3) *Option for specialty metal scrap.* You must certify in your notification of compliance status that the only materials from motor vehicles in the scrap are materials recovered for their specialty alloy (including, but not limited to, chromium, nickel, molybdenum, or other alloys) content (such as certain exhaust systems) and, based on the nature of the scrap and purchase specifications, that the type of scrap is not reasonably expected to contain mercury switches.

(4) *Scrap that does not contain motor vehicle scrap.* For scrap not subject to the requirements in paragraphs (b)(1) through (3) of this section, you must certify in your notification of compliance status and maintain records of documentation that this scrap does not contain motor vehicle scrap.

(c) *Recordkeeping and reporting requirements.* In addition to the records required by § 63.10, you must keep records to demonstrate compliance with the requirements for your pollution prevention plan in paragraph (a)(1) of this section and/or for the use of only restricted scrap in paragraph (a)(2) of this section and for mercury in paragraphs (b)(1) through (3) of this section as applicable. You must keep records documenting compliance with paragraph (b)(4) of this section for scrap that does not contain motor vehicle scrap.

(1) If you are subject to the requirements for a site-specific plan for mercury under paragraph (b)(1) of this section, you must:

(i) Maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, and an estimate of the percent of mercury switches recovered; and

(ii) Submit semiannual reports of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and a certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include a certification that you have conducted inspections or taken other means of corroboration as required under paragraph (b)(1)(ii)(C) of this section. You may include this information in the semiannual compliance reports required under paragraph (c)(3) of this section.

(2) If you are subject to the option for approved mercury programs under paragraph (b)(2) of this section, you must maintain records identifying each

scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program. If you purchase motor vehicle scrap from a broker, you must maintain records identifying each broker and documentation that all scrap provided by the broker was obtained from other scrap providers who participate in an approved mercury switch removal program.

(3) You must submit semiannual compliance reports to the Administrator for the control of contaminants from scrap according to the requirements in § 63.10(e). The report must clearly identify any deviation from the requirements in paragraphs (a) and (b) of this section and the corrective action taken. You must identify which compliance option in paragraph (b) of this section applies to each scrap provider, contract, or shipment.

§ 63.10686 What are the requirements for electric arc furnaces and argon-oxygen decarburization vessels?

(a) You must install, operate, and maintain a capture system that collects the emissions from each EAF (including charging, melting, and tapping operations) and argon-oxygen decarburization (AOD) vessel and conveys the collected emissions to a control device for the removal of particulate matter (PM).

(b) Except as provided in paragraph (c) of this section, you must not discharge or cause the discharge into the atmosphere from an EAF or AOD vessel any gases which:

(1) Exit from a control device and contain in excess of 0.0052 grains of PM per dry standard cubic foot (gr/dscf); and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or AOD vessel(s), exhibit 6 percent opacity or greater.

(c) If you own or operate a new or existing affected source that has a production capacity of less than 150,000 tons per year (tpy) of stainless or specialty steel (as determined by the maximum production if specified in the source's operating permit or EAF capacity and maximum number of operating hours per year), you must not discharge or cause the discharge into the atmosphere from an EAF or AOD vessel any gases which:

(1) Exit from a control device and contain particulate matter (PM) in excess of 0.8 pounds per ton (lb/ton) of steel. Alternatively, the owner or operator may elect to comply with a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf); and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or AOD vessel(s), exhibit 6 percent opacity or greater.

(d) Except as provided in paragraph (d)(6) of this section, you must conduct performance tests to demonstrate initial compliance with the applicable emissions limit for each emissions source subject to an emissions limit in paragraph (b) or (c) of this section.

(1) You must conduct each PM performance test for an EAF or AOD vessel according to the procedures in § 63.7 and 40 CFR 60.275a using the following test methods in 40 CFR part 60, appendices A–1, A–2, A–3, and A–4:

(i) Method 1 or 1A of appendix A–1 of 40 CFR part 60 to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A–1 of 40 CFR part 60 to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B of appendix A–3 of 40 CFR part 60 to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 of appendix A–3 of 40 CFR part 60 to determine the moisture content of the stack gas.

(v) Method 5 or 5D of appendix A–3 of 40 CFR part 60 to determine the PM concentration. Three valid test runs are needed to comprise a PM performance test. For EAF, sample only when metal is being melted and refined. For AOD vessels, sample only when the operation(s) are being conducted.

(2) You must conduct each opacity test for a melt shop according to the procedures in § 63.6(h) and Method 9 of appendix A–4 of 40 CFR part 60. When emissions from any EAF or AOD vessel are combined with emissions from emission sources not subject to this subpart, you must demonstrate compliance with the melt shop opacity limit based on emissions from only the emission sources subject to this subpart.

(3) During any performance test, you must monitor and record the information specified in 40 CFR 60.274a(h) for all heats covered by the test.

(4) You must notify and receive approval from the Administrator for procedures that will be used to determine compliance for an EAF or AOD vessel when emissions are combined with those from facilities not subject to this subpart.

(5) To determine compliance with the PM emissions limit in paragraph (c) of this section for an EAF or AOD vessel in a lb/ton of steel format, compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of PM, lb/ton;
C = Concentration of PM or total metal HAP, gr/dscf;
Q = Volumetric flow rate of stack gas, dscf/hr;
T = Total time during a test run that a sample is withdrawn from the stack during steel production cycle, hr;
P = Total amount of metal produced during the test run, tons; and
K = Conversion factor, 7,000 grains per pound.

(6) If you own or operate an existing affected source that is subject to the emissions limits in paragraph (b) or (c) of this section, you may certify initial compliance with the applicable emission limit for one or more emissions sources based on the results of a previous performance test for that emissions source in lieu of the requirement for an initial performance test provided that the test(s) were conducted within 5 years of the compliance date using the methods and procedures specified in paragraph (d)(1) or (2) of this section; the test(s) were for the affected facility; and the test(s) were representative of current or anticipated operating processes and conditions. Should the permitting authority deem the prior test data unacceptable to demonstrate compliance with an applicable emissions limit, the owner or operator must conduct an initial performance test within 180 days of the compliance date or within 90 days of receipt of the notification of disapproval of the prior test, whichever is later.

(e) You must monitor the capture system and PM control device required by this subpart, maintain records, and submit reports according to the compliance assurance monitoring requirements in 40 CFR part 64. The exemption in 40 CFR 64.2(b)(1)(i) for emissions limitations or standards proposed after November 15, 1990 under section 111 or 112 of the CAA does not apply. In lieu of the deadlines for submittal in 40 CFR 64.5, you must submit the monitoring information required by 40 CFR 64.4 to the applicable permitting authority for

approval by no later than the compliance date for your affected source for this subpart and operate according to the approved plan by no later than 180 days after the date of approval by the permitting authority.

Other Information and Requirements

§ 63.10690 What parts of the General Provisions apply to this subpart?

(a) You must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as provided in Table 1 of this subpart.

(b) The notification of compliance status required by § 63.9(h) must include each applicable certification of compliance, signed by a responsible official, in paragraphs (b)(1) through (6) of this section.

(1) For the pollution prevention plan requirements in § 63.10685(a)(1): "This facility has submitted a pollution prevention plan for metallic scrap selection and inspection in accordance with § 63.10685(a)(1)";

(2) For the restrictions on metallic scrap in § 63.10685(a)(2): "This facility complies with the requirements for restricted metallic scrap in accordance with § 63.10685(a)(2)";

(3) For the mercury requirements in § 63.10685(b):

(i) "This facility has prepared a site-specific plan for mercury switches in accordance with § 63.10685(b)(1)";

(ii) "This facility participates in and purchases motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the EPA Administrator in accordance with § 63.10685(b)(2)" and has prepared a plan demonstrating how the facility participates in the EPA-approved program in accordance with § 63.10685(b)(2)(iv);

(iii) "The only materials from motor vehicles in the scrap charged to an electric arc furnace at this facility are materials recovered for their specialty alloy content in accordance with § 63.10685(b)(3) which are not reasonably expected to contain mercury switches"; or

(iv) "This facility complies with the requirements for scrap that does not contain motor vehicle scrap in accordance with § 63.10685(b)(4)."

(4) This certification of compliance for the capture system requirements in § 63.10686(a), signed by a responsible official: "This facility operates a capture system for each electric arc furnace and argon-oxygen decarburization vessel that conveys the collected emissions to a PM control device in accordance with § 63.10686(a)".

(5) If applicable, this certification of compliance for the performance test requirements in § 63.10686(d)(6): "This facility certifies initial compliance with the applicable emissions limit in § 63.10686(a) or (b) based on the results of a previous performance test in accordance with § 63.10686(d)(6)".

(6) This certification of compliance for the monitoring requirements in § 63.10686(e), signed by a responsible official: "This facility has developed and submitted proposed monitoring information in accordance with 40 CFR part 64".

§ 63.10691 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA or a delegated authority such as a State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (6) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in 40 CFR 63.90.

(4) Approval of major change to monitoring under 40 CFR 63.8(f). A "major change to monitoring" is defined in 40 CFR 63.90.

(5) Approval of a major change to recordkeeping/reporting under 40 CFR 63.10(f). A "major change to recordkeeping/reporting" is defined in 40 CFR 63.90.

(6) Approval of a program for the removal of mercury switches under § 63.10685(b)(2).

§ 63.10692 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Argon-oxygen decarburization (AOD) vessel means any closed-bottom, refractory-lined converter vessel with submerged tuyeres through which gaseous mixtures containing argon and oxygen or nitrogen may be blown into molten steel for further refining.

Capture system means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport emissions generated by an electric arc furnace or argon-oxygen decarburization vessel to the air pollution control device.

Chlorinated plastics means solid polymeric materials that contain chlorine in the polymer chain, such as polyvinyl chloride (PVC) and PVC copolymers.

Control device means the air pollution control equipment used to remove particulate matter from the effluent gas stream generated by an electric arc furnace or argon-oxygen decarburization vessel.

Deviation means any instance where an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace (EAF) means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. An electric arc furnace consists of the furnace shell, roof, and the transformer.

Electric arc furnace (EAF) steelmaking facility means a steel plant that produces carbon, alloy, or specialty steels using an EAF. This definition excludes EAF steelmaking facilities at steel foundries and EAF facilities used to produce nonferrous metals.

Free organic liquids means material that fails the paint filter test by EPA Method 9095B, (revision 2, dated November 1994) (incorporated by reference—see § 63.14) after accounting for water using a moisture determination test by ASTM Method D2216–05 (incorporated by reference—see § 63.14). If, after conducting a moisture determination test, if any portion of the material passes through and drops from the filter within the 5-

minute test period, the material contains *free organic liquids.*

Leaded steel means steel that must meet a minimum specification for lead content (typically 0.25 percent or more) and for which lead is a necessary alloy for that grade of steel.

Mercury switch means each mercury-containing capsule or switch assembly that is part of a convenience light switch mechanism installed in a vehicle.

Motor vehicle means an automotive vehicle not operated on rails and usually operated with rubber tires for use on highways.

Motor vehicle scrap means vehicle or automobile bodies, including automobile body hulks, that have been processed through a shredder. *Motor vehicle scrap* does not include automobile manufacturing bundles, or miscellaneous vehicle parts, such as wheels, bumpers or other components that do not contain mercury switches.

Nonferrous metals means any pure metal other than iron or any metal alloy for which an element other than iron is its major constituent by percent in weight.

Scrap provider means the person (including a broker) who contracts directly with a steel mill to provide scrap that contains motor vehicle scrap. Scrap processors such as shredder operators or vehicle dismantlers that do not sell scrap directly to a steel mill are not *scrap providers.*

Specialty steel means low carbon and high alloy steel other than stainless steel that is processed in an argon-oxygen decarburization vessel.

Stainless steel means low carbon steel that contains at least 10.5 percent chromium.

Tables to Subpart YYYYY of Part 63

As required in § 63.10691(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table.

TABLE 1 TO SUBPART YYYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYYY

Citation	Subject	Applies to subpart YYYYY?	Explanation
§ 63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
§ 63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities and Circumvention	Yes.	
§ 63.5	Preconstruction Review and Notification Requirements.	Yes.	
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(5)–(h)(9), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
§ 63.7	Applicability and Performance Test Dates.	Yes.	
§ 63.8(a)(1), (a)(2), (b), (c), (d), (e), (f)(1)–(5), (g).	Monitoring Requirements	Yes	Requirements apply if a COMS or CEMS is used.
§ 63.8(a)(3)	[Reserved]	No.	
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No.	
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	Yes	Requirements apply if a COMS or CEMS is used.
§ 63.8(f)(6)	RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
§ 63.9(b)(3), (h)(4)	Reserved	No.	
§ 63.9(b)(4)		No.	
§ 63.10(a), (b)(1), (b)(2)(i)–(v), (b)(2)(xiv), (b)(3), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(15), (d), (e)(1)–(e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply if a COMS or CEMS is used.
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
§ 63.11	Control Device Requirements	No.	
§ 63.12	State Authority and Delegations	Yes.	
§§ 63.13–63.16	Addresses, Incorporations by Reference, Availability of Information, Performance Track Provisions.	Yes.	

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EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	*	*	* *	*
Section 115.539	Counties and Compliance Schedules.	11/15/06	07/17/08 [Insert FR page number where document begins].	
* * *	*	*	* *	*

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[FR Doc. E8–15729 Filed 7–16–08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0138; FRL–8693–9]

RIN 2060–AO99

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial withdrawal of direct final rule; amendments.

SUMMARY: EPA published proposed and direct final rule amendments on April 23, 2008, of the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on February 3, 2004, and amended on July 28, 2006. Because adverse comments were received on two of the April 23, 2008, proposed and direct final rule amendments, EPA is withdrawing the two corresponding regulatory amendments in the direct final rule before they become effective on July 22, 2008. The other regulatory amendments discussed in the direct final rule, for which we did not receive any adverse comments, will become effective on July 22, 2008, as we stated in that notice. In addition, in this action EPA is promulgating final rule amendments regarding the provisions that were commented upon and withdrawn, and responds to the adverse comments we received. Additionally we are correcting typographical errors that we have identified in other sections of the rule text that were not addressed in the April 23, 2008, notices.

DATES: As of July 17, 2008, EPA withdraws the direct final rule revision for 40 CFR 63.2358(b)(1) and (c)(1), and Table 10 to Subpart EEEE of Part 63 entries 4. and 6., published on April 23, 2008 (79 FR 21825). The final rule amendments in this action are effective on July 17, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0138. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: *General and Technical Information:* Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), EPA, Research Triangle Park, NC 27711, *telephone:* (919) 541–5397, *facsimile number:* (919) 685–3195, *e-mail address: shedd.steve@epa.gov.* *Compliance Information:* Ms. Marcia Mia, Office of Compliance, Air Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *telephone:* (202) 564–7042, *facsimile number:* (202) 564–0050, *e-mail address: mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline: The information presented in this preamble is organized as follows:

I. General Information
II. Background
III. What action is EPA taking?
IV. Withdrawal of Two Direct Final Rule Amendments
V. Rationale for These Final Rule Amendments
A. Storage Tank Compliance Date
B. Monitoring of Storage Tank Pressure Relief Devices
C. Typographical Errors
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271	Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.

Category	NAICS* code	Examples of regulated entities
Federal Government	.....	Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.

*North American Industry Classification System/Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final rule is also available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of this final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 15, 2008. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the persons(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (OLD NESHAP) (40 CFR part 63, subpart EEEE) pursuant to section 112 of the CAA. In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United States Court of Appeals for the District of Columbia Circuit, and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments to subpart EEEE on November 14, 2005 (70 FR 69210). On July 28, 2006 (71 FR 42898), EPA promulgated amendments to subpart EEEE based on consideration of the comments received on the proposed amendments.

On April 23, 2008 (79 FR 21825 and 21889, respectively), we published a direct final rule and parallel proposed amendments to clarify combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, we corrected several rule text format, grammatical, and typographical errors.

III. What action is EPA taking?

In summary, under this action, we are withdrawing two of the amendments we proposed through direct final action on April 23, 2008. Also, under this action, we are promulgating final amendments to respond to the adverse comments we received regarding the regulatory provisions addressed by those comments. Additionally, we are correcting typographical errors found in the rule text, which were not discussed in the April 23, 2008, direct final rule and proposed amendments but have subsequently been identified.

IV. Withdrawal of Two Direct Final Rule Amendments

In the April 23, 2008, direct final rule we said that if we received adverse comments, we would publish a timely withdraw in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect. We also stated that the provisions that are not withdrawn would become effective on July 22, 2008, notwithstanding adverse comment on any other provision, unless we determined that it would not be appropriate to promulgate those provisions due to their possibly being affected by the adverse comments (73 FR at 21825–26). We have determined that the comments we received affect only the specific regulatory amendments that were addressed by those comments, and not the other provisions in the direct final amendments. Accordingly, we are withdrawing only the amendments on which we received adverse comments.

Before the comment period for the April 23, 2008, direct final rule and parallel proposal ended on June 9, 2008, we received one comment letter from industry objecting to how we presented the amended rule text for compliance dates for storage tanks in § 63.2358(b)(1) and (c)(1), and the pressure relief device compliance provisions in items 4. and 6. of Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards. Therefore, we are withdrawing those amendments. However, the amendments to regulatory provisions in the direct final rule for which we did not receive adverse comment will become effective on July 22, 2008. Also, as discussed below we are addressing the adverse comments received on the direct final rule and amending the corresponding provisions that were reflected in the direct final rule; these amendments are effective as of today. As stated in the parallel proposal, we will not institute a second comment period on this action.

V. Rationale for These Final Rule Amendments

A. Storage Tank Compliance Date

As discussed in the April 23, 2008, direct final rule, we had intended that existing source storage tanks with floating roofs must comply with the rim seal requirements at the next degassing and cleaning activity or within 10 years after February 3, 2004 (by February 3, 2014), whichever occurs first, instead of requiring compliance within 3 years, as was required for other sources of emissions. However, the rule text of § 63.2358(c)(1) for work practice standards in Table 4 incorrectly provided that all existing source storage tanks (floating and fixed roof) must comply no later than 10 years after February 3, 2004. Therefore, in the April 23, 2008, direct final rule and parallel proposal, we would have amended the rule to implement our intent that the allowance for "not later than 10 years after February 3, 2004" apply to floating roof storage tanks only. Additionally, in the April 23, 2008, direct final rule and parallel proposal we would have given fixed roof tanks 3 years (by April 25, 2011) to comply with the work practice standards since they need time to plan and install control equipment.

We received a comment in which the commenter agreed with EPA's intent to clarify the initial compliance date for existing source storage tanks; however, the commenter said that the proposed language in § 63.2358(b)(1) and (c)(1) does not clearly capture those requirements. The commenter also provided suggested rule text changes.

We have considered the commenter's suggested revisions and agree with the commenter that the revision to § 63.2358(b)(1) in the April 23, 2008, direct final rule did not adequately accomplish our intent in revising the rule. Therefore, with some modifications, we have incorporated the commenter's approach for clarifying the initial compliance demonstration dates. We also agree with the suggestion to clarify the rule by providing separate paragraphs (i) and (ii) under § 63.2358(c)(1) to address floating roof storage tanks separately from storage tanks without floating roofs.

In addition, we have decided that the requirements would be more clearly stated if we split the initial compliance dates for emission limits in Table 2, as specified in § 63.2358(b)(1), into two separate paragraphs. The commenter thought that the existing rule text was correct instead of the proposed text, but we believe neither the proposed nor existing rule text is correct. As currently worded, section (b)(1) requires the initial compliance demonstration for storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to be conducted within 180 days after February 5, 2007. We do not wish to change this initial compliance demonstration date for transfer racks or for storage tanks that are complying with the 95 percent emission reduction requirement of Table 2, item a.i. However, we are changing the initial compliance demonstration date for storage tanks that are complying with the other requirements of Table 2 that are cross-referenced to the work practice standards in Table 4. We are adding paragraph (b)(1)(i) to clearly specify that storage tanks with an existing internal or external floating roof, complying with the rim seal requirements (item 1.a.ii. in Table 2 and item 1.a. in Table 4) must conduct the initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014. We are adding paragraph (b)(1)(ii) to specify that storage tanks complying with the other work practice standards (item 1.a.ii. or 6.a.ii in Table 2 and items 1.b., 1.c., or 2. in Table 4) must comply within 180 days after April 25, 2011.

B. Monitoring of Storage Tank Pressure Relief Devices

In the April 23, 2008, direct final rule and parallel proposal, we intended to clarify how to monitor pressure relief devices for transfer racks and storage tanks under the vapor balancing and equipment leak provisions (§ 63.2346(a)(4)(v) and in Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards, respectively). We received a comment stating that in the April 23, 2008, amendments the revised Table 10, item 4.b.i. incorrectly specifies that transfer rack vapor balance systems use the pressure relief device specification in § 63.2346(a)(4)(v). The commenter stated that this quarterly pressure relief device specification only applies to pressure relief devices associated with storage tanks using the vapor balancing option and that adding this clarification for transfer racks to item 4.b.i. creates another requirement that was not initially specified.

As discussed in the preamble to the April 23, 2008, direct final rule, our intent in revising Table 10 was to respond to questions concerning the relationship between the vapor balance system monitoring requirements for pressure relief devices in the rule text (§ 63.2346(a)(4)(v)) and those in Table 10 (item 6.b.i.). Given that both Table 10 and the rule text of § 63.2346 contained requirements for the monitoring of vapor balance systems, we made parallel clarifications to the storage tank and loading rack provisions. The commenter correctly points out, however, that the pressure relief requirements of § 63.2346(a)(4)(v) apply only to storage tanks and not to transfer racks. Upon review of the existing cross-referenced requirement for transfer racks, we found that Table 10 (item 4.b.i.) already requires that the owner or operator implement monitoring requirements under either 40 CFR 63 subparts TT, UU, or H, similar to those already in this rule for storage tanks. Given the similar requirements, there is no need to add the transfer rack vapor balance provisions for pressure relief devices. Thus, in this final action we are not including amendments for monitoring pressure relief devices for transfer racks in item 4 of Table 10.

The commenter also pointed out that the last sentence added to the monitoring requirements for storage tank vapor balance systems (item 6.b.i. of Table 10) incorrectly includes requirements for loading of a transport vehicle and filling of a container, instead of a storage tank. We agree and have now reworded the sentence only to include storage tanks as follows: "If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required." Thus, with that modification, we are finalizing the amendments to pressure relief devices and monitoring of vapor balance systems for storage tanks (item 6.b.i. in Table 10) discussed in the direct final rule.

C. Typographical Errors

When analyzing the two adverse comments, we found a typographical error in § 63.2346(a)(4)(v) that incorrectly refers to § 63.2346(a)(4)(iv)(A) through (C), instead of § 63.2346(a)(4)(v)(A) through (C). Additionally, a state agency representative pointed out a second typographical error in § 63.2390(e)(2), (3), and (3)(ii) that incorrectly refers to § 63.2348(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B), respectively, instead of § 63.2346(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B). All the typographical errors were found in existing rule text that was not addressed in the notices published on April 23, 2008. We are making those corrections in this final rule.

These corrections to typographical errors do not affect the substance of the rule, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain technical errors in the references in the rule. Thus, it is proper to issue these

corrections to the rule without notice and comment. Section 553 of the Administrative Procedure Act (APA), 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. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in today's final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments clarify, but do not add requirements increasing the collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 63, subpart EEEE under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0539. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA 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 this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These final rule amendments will not impose any new requirements on small entities, since we are clarifying rule text.

D. Unfunded Mandates Reform Act

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 one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. These final rule amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA determined not to include a Federal mandate that may result in an estimated cost of $100 million or more (69 FR 5061, February 3, 2004). These clarifications do not change the level or cost of the standard. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These final rule amendments clarify certain provisions and correct typographical errors in the rule text, thus, should not affect small governments.

E. Executive Order 13132: Federalism

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" is 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."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The amendments provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The amendments 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. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These final rule amendments do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

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 the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments 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). These final rule amendments will be effective on July 17, 2008.

List of Subjects in 40 CFR Part 63

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

Dated: July 10, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart EEEE—[Amended]

■ 2. The amendments to § 63.2358(b)(1) and (c)(1), and to entries 4. and 6. of TABLE 10 TO SUBPART EEEE OF PART 63–CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS published on April 23, 2008 (79 FR 21825) are withdrawn as of July 17, 2008.

§ 63.2346 [Amended]

■ 3. Section 63.2346 is amended in paragraph (a)(4)(v) introductory text by removing the citation "(a)(4)(iv)(A) through (C)" and adding in its place the citation "(a)(4)(v)(A) through (C)".

■ 4. Section 63.2358 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart, you must demonstrate initial compliance with the emission limitations within 180 days after February 5, 2007, except as provided in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a.ii. in Table 2 to this subpart and item 1.a. in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For storage tanks complying with item 1.a.ii. or 6.a.ii in Table 2 of this subpart and item 1.b., 1.c., or 2. in Table 4 of this subpart, you must comply within 180 days after April 25, 2011.

* * * * *

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in Table 4 to this subpart, you must conduct your initial compliance demonstration as specified

in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a. in Table 4 of this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For other storage tanks not specified in paragraph (c)(1)(i) of this section, you must comply within 180 days after April 25, 2011.

* * * * *

§ 63.2390 [Amended]

■ 5. Section 63.2390 is amended as follows:

■ a. In paragraph (e)(2) by removing the citation "§ 63.2348(a)(4)(v)" and adding in its place the citation "§ 63.2346(a)(4)(v)".

■ b. In paragraph (e)(3) by removing the citation "§ 63.2348(a)(4)(vi)(B)" and adding in its place the citation "§ 63.2346(a)(4)(vi)(B)".

■ c. In paragraph (e)(3)(ii) by removing the citation "§ 63.2348(a)(4)(vi)(B)" and adding in its place the citation "§ 63.2346(a)(4)(vi)(B)".

■ 6. Table 10 to Subpart EEEE of Part 63 is amended by revising entry 6. to read as follows:

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

* * * * * * *

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
* *	* * *	* *
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).
	b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required.

[FR Doc. E8–16320 Filed 7–16–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1008

Office of Inspector General; Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: OIG is adopting in final form, without change, an interim final rule published on March 26, 2008 (73 FR 15937). We received no comments to the interim final rule. The interim final rule revised the process for advisory opinion requestors to submit payments for advisory opinion costs.

DATES: *Effective Date:* This final rule is effective as of July 17, 2008.

FOR FURTHER INFORMATION CONTACT: Meredith Melmed, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–101, specifically required the Department of Health and Human Services (Department) to provide a formal guidance process to requesting individuals and entities regarding the application of the anti-kickback statute, the safe harbor provisions, and other OIG health care fraud and abuse sanctions. OIG published an interim final rule (62 FR 7350; February 19, 1997) establishing a new part 1008 in 42 CFR chapter V addressing various procedural issues and aspects of the advisory opinion process. In response to public comments received on the interim final regulations, we published a final rule (63 FR 38311; July 16, 1998) revising and clarifying various aspects of the earlier rulemaking. The rulemaking established procedures for requesting an advisory opinion. Specifically, the rule provided information to the public regarding costs associated with preparing an opinion and procedures for submitting an initial deposit and final payment to OIG for such costs.

II. Interim Final Rule With Comment Period and Final Rule

On March 26, 2008, OIG published an interim final rule amending 42 CFR chapter V, subchapter B (73 FR 15937). The comment period ended on April 25, 2008 and no comments were received. Accordingly, OIG is adopting the interim final rule as a final rule with no modifications.

hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective for the Festival of Sail-Parade of Ships from 11:59 a.m. through 4 p.m. on July 23, 2008; for the mock cannon battle location "alpha" from 2 p.m. through 4:30 p.m. on July 25, 2008, and July 26, 2008; and for the mock cannon battle location "bravo" from 2 p.m. through 4:30 p.m. on July 24, 2008, and July 27, 2008.

Dated: July 9, 2008.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. E8–16674 Filed 7–22–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0086, FRL–8695–9]

RIN 2060–AN80

National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing amendments to the national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing. These amendments establish a new maximum achievable control technology floor level of control for existing and new combined hazardous air pollutants process vent streams containing inorganic and organic hazardous air pollutants and clarify the emission requirements for process vents by adding definitions for organic, inorganic, and combined hazardous air pollutant process vent streams that contain both organic and inorganic hazardous air pollutant.

DATES: This final rule is effective on July 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0086. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–0296; *fax number:* (919) 541–3207; *e-mail address: Schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document?
- C. Judicial Review

II. Background Information
III. Summary of the Final Amendments
IV. Summary of Comments and Responses
V. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final amendments include:

Category	NAICS code [1]	Examples of regulated entities
Industry	334413	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.7181 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 22, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was

raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information

On May 22, 2003, we promulgated the NESHAP for semiconductor manufacturing, under section 112(d) of the CAA. (68 FR 27913); 40 CFR part 63, subpart BBBBB). The NESHAP requires all semiconductor manufacturing facilities that are major sources of hazardous air pollutants (HAP) to meet standards reflecting application of the maximum achievable control technology (MACT). The NESHAP establishes emissions limitations for the control of HAP from semiconductor manufacturing operations. The compliance date for the NESHAP requirements was May 22, 2006.

After promulgation, it was brought to our attention that while the NESHAP established separate emission standards for organic and inorganic HAP from process vents, one plant had a different process vent system. Specifically, we learned that this plant combined inorganic and organic vent streams into a single atmospheric process vent. At the time we developed the MACT standard, however, we had determined that since at least 1980 industry practice has been to strictly separate process vent emissions into streams containing either organic or inorganic HAP (71 FR 61701). This was because we were not aware of any sources that combined their inorganic and organic vent streams, and, therefore, had no data on such sources. Therefore, the NESHAP failed to account for the existence of combined organic and inorganic HAP process vents.

On October 19, 2006, in order to address these combined process vent streams, we proposed amending the NESHAP by establishing emission standards for existing and new combined process vent streams (71 FR 61701). We proposed no control for the limited number of existing combined process vents. Additionally, for new and reconstructed combined HAP process vents, we proposed the requirement for inorganic HAP process vents to be the same as the requirement that currently apply to inorganic HAP process vents and the requirement for organic HAP process vents to be the same as the requirement that currently apply to organic HAP process vents (71 FR 61703). Further, we proposed new definitions that clarified the applicability of the NESHAP to inorganic, organic and combined HAP process vents.

Subsequently, the DC Circuit in *Sierra Club* v. *EPA*, 479 F.3d 875 (DC Circuit 2007), found that our decision to set no control emission floors for source categories where the best performing sources did not use emission control technology was in direct contravention of CAA section 112(d)(3). In response to this decision, we issued a supplemental proposal on April 2, 2008 that proposed an emission limitation for existing and new combined HAP process vents. Specifically, we proposed that new and existing combined HAP process vents achieve a control level of 14.22 parts per million by volume (ppmv) (73 FR 17942). We also proposed no beyond the floor control options because we determined as prohibitive the costs associated with the one control option we evaluated.

III. Summary of the Final Amendments

In today's rule we are taking final action on both our October 2006 (71 FR 61703), and April 2008 proposals (73 FR 17940). Therefore, we are finalizing, as proposed in October 2006, definitions that clarify the applicability of the NESHAP to inorganic, organic and combined HAP process vents. We are also promulgating, as proposed in April 2008, an emission limitation of 14.22 ppmv for new and existing combined HAP process vents.

IV. Summary of Comments and Responses

We received 3 comments on our October 2006 and April 2008 proposals. The commenters were generally supportive of both proposals. A summary of the significant issues raised in the comments are included below.

Comment: One commenter expressed support for the development of a separate MACT floor level of control for combined HAP process vents contained in the April 2, 2008, proposal. The commenter stated, "This action appropriately recognizes that a limited number of process vents at older, existing facilities have unique emission characteristics that warrant distinction from the process vents used to establish the original MACT floor." The commenter gave a description of the typical construction of a modern semiconductor facility indicating that clean rooms are situated on a single floor with semiconductor manufacturing tools arranged in cells of similar tools (*e.g.*, web benches, furnaces, etc. are grouped together). The commenter stated that these features and other features in a modern semiconductor facility make the segregation and treatment of concentrated organic and inorganic HAP emission streams feasible. However, segregating emission streams into their organic and inorganic constituents was near infeasible for some older facilities, such as the one described by the commenter, where tools are located on three separate floors, and are not grouped together in cells according to tool function and type. Due to these reasons the commenter indicated strong support for EPA's development of a separate MACT floor for combined HAP process vents.

Response: We agree with the commenter that the proposed changes to the standard are necessary to account for the limited number of older facilities that do not segregate their emissions due to facility design limitations. Today's rule reflects our conclusion that a separate MACT floor for these facilities is appropriate. Therefore, as stated earlier we are promulgating definitions that clarify the applicability of the existing NESHAP and an emissions limitation of 14.22 ppmv for new and existing combined HAP process vents.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These amendments clarify applicability of the final rule. Therefore, the Information Collection Request (ICR) has not been revised.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 63, subpart BBBBB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0519. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 employees for NAICS codes 331511, 331512, and 331513); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities since we do not create any new requirements or burdens that were not already included in the economic impact assessment for the existing rule.

D. Unfunded Mandates Reform Act

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one 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.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The final amendments are expected to result in an overall reduction in expenditures for the private sector and are not expected to impact State, local, or tribal governments. Thus, the final amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final amendments do not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175 (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." This final rule does not have tribal implications, as specified in Executive Order 13175. These final amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–114, 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. These final amendments do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing these final amendments 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 final amendments 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 rule will be effective on July 22, 2008.

List of Subjects in 40 CFR Part 63

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

Dated: July 15, 2008.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

■ 2. Section 63.7184 is amended by revising paragraphs (b) and (c) and adding paragraph (f) to read as follows:

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

* * * * *

(b) *Process vents—organic HAP emissions.* For each organic HAP process vent, other than process vents from storage tanks, you must limit organic HAP emissions to the level specified in paragraph (b)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of organic HAP from the process vent stream by 98 percent by weight.

(2) Reduce or maintain the concentration of emitted organic HAP from the process vent to less than or equal to 20 parts per million by volume (ppmv).

(c) *Process vents—inorganic HAP emissions.* For each inorganic HAP process vent, other than process vents from storage tanks, you must limit inorganic HAP emissions to the level specified in paragraph (c)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and § 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from the process vent stream by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

* * * * *

(f) *Process vents—combined HAP emissions.* For each combined HAP process vent, other than process vents from storage tanks, you must reduce or maintain the concentration of emitted HAP from the process vent to less than or equal to 14.22 ppmv. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

■ 3. Section 63.7195 is amended by adding definitions in alphabetical order for "Combined HAP process vent", "Organic HAP process vent", and "Inorganic HAP process vent" to read as follows:

§ 63.7195 What definitions apply to this subpart?

* * * * *

Combined HAP process vent means a *process vent* that emits both inorganic and organic HAP to the atmosphere.

* * * * *

Inorganic HAP process vent means a *process vent* that emits only inorganic HAP to the atmosphere.

Organic HAP process vent means a *process vent* that emits only organic HAP to the atmosphere.

* * * * *

[FR Doc. E8–16746 Filed 7–21–08; 8:45 am]

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Federal Register

Tuesday,
October 28, 2008

Part III

Environmental Protection Agency

40 CFR Part 63

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors: Reconsideration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8733–1]

RIN 2050–AG35

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; reconsideration.

SUMMARY: On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at hazardous waste combustion facilities (the final rule). Subsequently, the Administrator received four petitions for reconsideration of the final rule. On March 23, 2006 and September 6, 2006, EPA granted reconsideration with respect to eight issues raised by the petitions. After evaluating public comments submitted in response to these reconsideration notices, we are taking final action regarding the eight issues raised in the petitions for reconsideration. EPA also re-opened the rule to consider comments relating to a post-promulgation decision of the United States Court of Appeals for the District of Columbia Circuit, and is responding in this proceeding to the comments received on that notice, published on September 27, 2007. As a result of this reconsideration process, we are revising the new source standard for particulate matter for cement kilns and for incinerators that burn hazardous waste. We are also making amendments to the particulate matter detection system provisions and revisions to the health-based compliance alternative for total chlorine of the final rule. Finally, we are also issuing several corrections and clarifications to the final rule.

DATES: The final rule is effective on October 28, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0022. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this final rule, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Outline. The **SUPPLEMENTARY INFORMATION** in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background
A. What Is the Source of Authority for the Reconsideration Action?
B. What Is the Background on the NESHAP for Hazardous Waste Combustors?
III. Final Action on Issues for Which EPA Granted Reconsideration
A. Subcategorization of Liquid Fuel Boilers by Heating Value
B. Correcting Total Chlorine (TCl) Data to 20 ppmv
C. Use of PS–11 and Procedure 2 as Guidance for Extrapolating the Alarm Set-Point of a Particulate Matter Detection System (PMDS)
D. Tie-Breaking Procedure for New Source Standards
E. New Source Particulate Matter Standard for New Cement Kilns
F. Beyond-the-Floor Analyses To Consider Multiple HAP That Are Similarly Controlled
G. Dioxin/Furan Standard for Incinerators With Dry Air Pollution Control Devices
H. Provisions of the Health-Based Compliance Alternative
IV. Response to Comments to the September 27, 2007 Notice
A. Standards for Particulate Matter
B. Standards for Semivolatile Metals and Low Volatile Metals
C. Standards for Total Chlorine
D. Standards for Dioxins/Furans
E. Standards for Non-Dioxin/Furan Organic HAP
F. Standards for Mercury
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V. What Other Rule Provisions Are Being Amended or Clarified?
A. What corrections are we making?
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G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review

I. General Information

A. Does this action apply to me?

The regulated categories and entities affected by this final action include:

Category	NAICS code[a]	Potentially affected entities
Petroleum and coal products manufacturing	324	Any entity that combusts hazardous waste as defined in the final rule.
Chemical manufacturing	325	
Cement and concrete product manufacturing	3273	
Other nonmetallic mineral product manufacturing	3279	
Waste treatment and disposal	5622	

Category	NAICS code[a]	Potentially affected entities
Remediation and other waste management services	5629	

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. To determine whether your facility is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200, "Who is subject to these regulations?". If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in § 63.13 of the General Provisions to part 63 (40 CFR part 63, subpart A).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control. This action is also available at the following address: *http://www.epa.gov/hwcmact*.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 29, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background

A. What Is the Source of Authority for the Reconsideration Action?

EPA is reconsidering several aspects of its final rule for hazardous waste combustors under sections 112(d) and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(d) and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What Is the Background on the NESHAP for Hazardous Waste Combustors?

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP. For major sources, the CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable.[1] This level of control is commonly referred to as MACT (for Maximum Achievable Control Technology). See CAA section 112(d)(2).

The minimum control level for major sources is defined under section 112(d)(3) of the CAA, and is referred to, informally, as "the MACT floor." The MACT floor ensures that the standards are set at a level that assures that all major sources perform at the level of control at least as stringent as that already achieved by the best-performing sources in each source category or subcategory. Specifically, for new major sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing major sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory; floors for existing sources in categories or subcategories with fewer than 30 sources are to be based on the average emission limitation achieved by the best performing five sources).

EPA also must consider more stringent "beyond-the-floor" control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and non-air quality health environmental impacts. See CAA section 112(d)(2).

We proposed NESHAP for hazardous waste combustors on April 20, 2004 (69 FR 21198), and we published the final rule on October 12, 2005 (70 FR 59402). The hazardous waste combustor NESHAP is codified in subpart EEE of 40 CFR part 63. Following promulgation of the hazardous waste combustor final rule, the Administrator received four petitions for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, from Ash Grove Cement Company, the Cement Kiln Recycling Coalition (CKRC), the Coalition for Responsible Waste Incineration (CRWI), and the Sierra Club.[2] Under this section of the

[1] Section 112(d)(4) gives the Administrator the authority to establish health-based emission standards in lieu of the MACT standards for HAP for which a health threshold has been established. In the final rule promulgated on October 12, 2005, EPA established health-based compliance alternatives for total chlorine as an alternative to the MACT technology-based emission standards, which alternative standards are applicable to all hazardous waste combustors, with the exception of hydrochloric acid production furnaces. 70 FR at 59478–486.

[2] These petitions are included in the docket for this rule. See items EPA–HQ–OAR–2004–0022–

Continued

CAA, the Administrator must initiate reconsideration proceedings with respect to provisions that are of central relevance to the rule at issue if the petitioner shows that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period but within the period for filing petitions for judicial review.

Of the twenty or so issues raised in the four petitions for reconsideration, we decided to grant immediate reconsideration of one of the issues included in the petitions of Ash Grove Cement Company and CKRC. On March 23, 2006, EPA published a proposed rule granting reconsideration of the particulate matter standard for new cement kilns. 71 FR 14665. Also on March 23, 2006, EPA granted a three-month administrative stay while the particulate matter standard was under reconsideration. 71 FR 14655. The administrative stay was issued pursuant to section 307(d)(7)(B) of the CAA and was in effect from March 23, 2006 to June 23, 2006. Approximately a dozen public comment letters were submitted in response to the March 2006 proposed rule, including a request to extend the comment period by two weeks that EPA granted in a subsequent notice on April 13, 2006. 71 FR 19155. On October 25, 2006, EPA issued a final rule amending the effective date of the particulate matter standard for new cement kilns. 71 FR 62388. That amendment suspended the obligation of new cement kilns to comply with the particulate matter standard set forth in § 63.1220(b)(7)(i) until we take final action on the March 2006 proposal to revise the standard. Today's rule announces our final action regarding Ash Grove Cement Company and CKRC's petitions for reconsideration of the particulate matter standard for new cement kilns that was first proposed on March 23, 2006.

On August 22, 2006, EPA issued letters to the Ash Grove Cement Company, the CKRC, and the Sierra Club explaining our rationale to deny reconsideration on several issues.[3] On September 6, 2006, we announced our reconsideration of and requested public comment on seven issues raised in the petitions of the Ash Grove Cement Company, the CKRC, and the Sierra Club. 71 FR 52624. In addition to requesting comment on the reconsideration issues, we also sought comment on several other proposed amendments to various compliance and monitoring provisions in the hazardous waste combustor NESHAP. Eleven commenters submitted responses to this reconsideration notice. In addition to addressing the PM standard for new cement kilns, today's rule announces our final decision regarding the seven petition for reconsideration issues and the other compliance and monitoring amendments included in the September 2006 proposed rule.

On September 27, 2007, EPA issued a **Federal Register** notice discussing each of the standards in the rule in light of the DC Circuit's decision in *Sierra Club v. EPA*, 479 F. 3d 875 (2007) ("Brick MACT"). The specific focus of this analysis was whether the MACT floors for each standard were consistent with the requirements of section 112(d)(2) and (d)(3) of the Act. EPA also sought comment on amending the record to make clear that it was no longer relying on certain rationales which appeared inconsistent with the *Brick MACT* opinion. EPA solicited and received comment on this analysis and is responding to those comments in this notice.

III. Final Action on Issues for Which EPA Granted Reconsideration

EPA granted reconsideration of eight issues raised in the petitions of the Ash Grove Cement Company, the Cement Kiln Recycling Coalition, the Coalition for Responsible Waste Incineration, and the Sierra Club. Accordingly, we requested comment on the eight issues in two notices published on March 23, 2006 (71 FR 14665) and September 6, 2006 (71 FR 52624). We discuss below our final action regarding the eight issues raised in the four petitions for reconsideration and include our response to the major comments received on these issues.

A. Subcategorization of Liquid Fuel Boilers by Heating Value

In the October 12, 2005 final rule, we divided the liquid fuel boiler subcategory into two separate boiler subcategories based on the heating value of the hazardous waste they burn for purposes of establishing emission standards for metals and total chlorine (TCl): Those that burn waste with a heating value below 10,000 Btu/lb, and those that burn hazardous waste with a heating value of 10,000 Btu/lb or greater. See 70 FR at 59422. Sources would shift from one subcategory to the other depending on the heating value of the hazardous waste burned at the time. *Id.* at 59476.

Sierra Club petitioned for reconsideration stating that EPA developed this subcategorization approach after the period for public comment and, thus, did not provide notice and opportunity for public comment.[4] We subsequently granted reconsideration of this provision. See 71 FR at 52627–28 (September 6, 2006). Although we granted reconsideration, we did not propose to change the approach.

This issue has now become moot because EPA has determined that the standard for the high heating value subcategory requires revision because it only applied to HAP in hazardous waste, not to all HAP input to the boiler (for example, HAP that may be present in fossil fuels or other non-waste inputs), which is contrary to the DC Circuit's decisions in *Brick MACT*, 479 F. 3d at 882–83. (MACT standards must apply to all HAP regardless of source of input). Moreover, once the high heating value subcategory is eliminated, there is no basis for a low heating value subcategory since the whole basis for differentiation no longer exists. Accordingly, EPA now agrees with the petitioner that the subcategorization scheme it adopted for liquid fuel boilers is not appropriate, and EPA intends to amend these standards. See also preamble sections IV.B and IV.F below (responding to comments on EPA's September 27, 2007 notice).

B. Correcting Total Chlorine (TCl) Data to 20 ppmv

In the October 12, 2005 final rule, we corrected all the total chlorine (TCl) measurements in the data base that were below 20 ppmv to account for potential systemic negative biases in the Method 0050 data. See 70 FR at 59427–29.[5] Sierra Club petitioned for reconsideration stating that EPA corrected the TCl measurements in response to comments on the proposed rule—after the period for public comment—and used the corrected data to revise the TCl emission standards.[6]

0516 thru 0519. EPA also received petitions from Ash Grove Cement Company and the CKRC, Continental Cement Company, and Giant Cement Holding, Inc. requesting that we stay the effective date of the particulate matter standard for new cement kilns. See items EPA–HQ–OAR–2004–0022–0521 and 0523.

[3] A copy of each letter is included in the docket to this rulemaking. See docket items EPA–HQ–OAR–2004–0022–0558 through 0560. A summary of the issues for which we denied reconsideration can also be found in the September 6, 2006 proposed rule. 71 FR at 52627.

[4] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section II, docket item EPA–HQ–OAR–2004–0022–0517.

[5] See also USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Section 5.5, September 2005.

[6] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section IV, docket item EPA–HQ–OAR–2004–0022–0517.

We granted reconsideration of our approach to account for these method biases to assess the true performance of the best performing sources. Reconsideration was appropriate because, as Sierra Club stated, we decided to correct the TCl data after the period for public comment on the proposed rule, and correcting the data significantly impacted the development of the TCl emission standards.

To account for the bias in the analytic method, we corrected all TCl emissions data that were below 20 ppmv to 20 ppmv. We accounted for within-test condition emissions variability for the corrected data by imputing a standard deviation that is based on a regression analysis of run-to-run standard deviation versus emission concentration for all data above 20 ppmv. This approach of using a regression analysis to impute a standard deviation is similar to the approach we used to account for total variability (i.e., test-to-test and within-test variability) of particulate matter emissions for sources that use fabric filters.

1. Summary of the Final Action

The comments to the reconsideration notice did not provide a basis for us to conclude that it was inappropriate to correct all TCl emissions data that were below 20 ppmv to 20 ppmv to account for potential systemic negative biases in the Method 0050 data. Therefore, we reaffirm our approach of correcting the TCl measurements at promulgation and are making no changes to the October 12, 2005 final rule.

2. What Are the Responses to Major Comments?

Comment: Sierra Club (represented by Earthjustice) states that: (1) Establishing floor emission levels based on measurements below 20 ppmv that are corrected to 20 ppmv is impermissible because, even assuming bias in the analytic method, the corrected measurements do not reflect the performance of the best performing sources; (2) projecting the variability of emissions for the average of the best performing sources considering the variability of emissions for sources that are not best performing sources is inappropriate; (3) the "statistical imputation" methodology used to calculate emissions variability is inappropriate because EPA admits it overestimates variability; and (4) to the extent EPA relied on achievability as a reason to change the TCl standard, the Agency acted unlawfully.

Response: We respond to each issue in turn:

a. *Corrected Measurements Do Not Reflect Performance of the Best Performing Sources.* The best performing sources are those with measurements below 20 ppmv. We determined, however, and Sierra Club does not dispute, that those measurements are likely to be affected by a systemic negative bias in Method 0050 which collected these data so that the measured level of performance is biased low and therefore cannot credibly be deemed to reflect these sources' actual level of performance. 71 FR at 52629–30. Because measurements below 20 ppmv may not (indeed, likely do not) represent the performance of a source, we corrected the measurements to 20 ppmv, the only value of which there is any reasonable certainty. The corrected data thus are our best projection of the performance (not considering emissions variability) of those sources with the lowest measured TCl emissions, accounting for the bias in measurement.

We note that the Clean Air Act requires EPA "to make a reasonable estimate of the performance of the top 12 percent of units." *CKRC* v. *EPA*, 255 F.3d 855, 862 (D.C. Cir. 2001), *citing Sierra Club* v. *EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) (interpreting 42 U.S.C. 7429(a)(2), which requires that "emissions standards for existing units in a category * * * shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category"). The court has made clear that EPA has authority to devise the means of deriving this estimate, provided the method the Agency selects "allow[s] a reasonable inference as to the performance of the top 12 percent of units." *Id.* Most importantly, though, EPA must show not only that it believes its methodology provides an accurate picture of the relevant sources' actual performance, but also why its methodology yields the required estimate. *Id.* We have explained the basis for the negative bias in the analytic method, the existence of which is not in dispute. The issue then becomes how best to estimate the performance of the best performing sources given that their measured performance reflects the bias of the analytic method. We believe that correcting potentially biased measurements to 20 ppmv is appropriate because Method 0050 itself states that the method is not acceptable for demonstrating compliance with HCl emission standards less than 20 ppm.[7,8] TCl emission levels greater than 20 ppmv would be reported by Method 0050 without significant bias (and therefore are reliable measurements), while measurements reported to be below 20 ppmv may actually have been as high as 20 ppmv and cannot be reliably assessed below that number.

Sierra Club does not suggest alternative approaches to correct the potentially biased measurements to project the performance of those sources, but rather implies that the uncorrected measurements should be used to establish the floor emission level. This would be arbitrary and inappropriate because those data almost certainly (no absolute certainty is possible) do not represent the performance of those sources due to analytic bias, and moreover, fail to account for emissions variability of the best performers.

b. *Projecting Emissions Variability Considering Sources Other Than the Best Performing Sources.* We explained that, after correcting measurements below 20 ppmv to 20 ppmv, the corrected emission levels for the best performing sources naturally reflected little variability—corrected data for the best performing sources were generally the same values, on the order of 20 ppmv. 71 FR 52630/2. This had the effect of understating the variability associated with these data—i.e., these sources' performance. These sources' performance over time thus would not be assessed correctly, so some different type of estimate must be made. To address this problem, we performed a linear regression on the data base—including both best performing sources and other sources—charting standard deviation against emissions, and extrapolated the regression downward to the emission level for each best performing source to impute a standard deviation.

Sierra Club states that it is inappropriate to use emissions variability for sources that are not best performing sources to project emissions variability for the best performing sources. We disagree here because we believe this is the best means of estimating the best performing sources' variability and hence their actual performance. See *Sierra Club* v. *EPA*, 479 F.3d 875, 882 (D.C. Cir. 2007) (EPA may consider variability of performers other than best if there is "a demonstrated relationship between the two"). First, Sierra Club is not correct

[7] See Method 0050, Section 1.2. Also, see equivalent Method 26A, Section 13.1.

[8] As further evidence of the Method 0050 bias, the updated, equivalent method to Method 0050—Method 26A—states that that method has a possible measurable negative bias below 20 ppm HCl.

that EPA is using variability of non-best performers as a proxy for the variability of the best performers. As just stated, EPA imputed the regression curve downward after examining all data and it is reasonable to do so because the relative standard deviation (i.e., variability of performance normalized for emission concentration) [9] of the test condition runs of the better performing sources (i.e., sources with lower emissions) here was not significantly different from the relative standard deviation of the test condition runs of the worse performing sources.[10] EPA reasonably assumed that this same relationship (i.e., the shape of the regression curve) would be the same at lower levels. The actual level of variability of the best performing sources resulting from this imputed regression curve shape is less for the best performing sources than for non-best sources. See generally, memorandum from Lucky Benedict, EERGC, to Bob Holloway, USEPA, entitled "Analysis of Total Chlorine Data above 20 ppmv," dated March 21, 2007.

We have (uncorrected) variability results for several sources that performed close to the best performing sources—four sources emitted between 21 ppmv and 25 ppmv, and seven sources emitted between 21 ppmv and 28 ppmv. We considered using the variability of these sources as a surrogate for the variability for the best performers (i.e., those at 20 ppmv) but were concerned that this may overstate best performers' variability and hence result in a standard which is too high (i.e., insufficiently stringent).[11] Rather, we used variability results for all sources, irrespective of emission level, to develop a variability/emissions regression curve. This curve regressed variability [12] versus emissions through the low emitting sources that performed close to the best performers (e.g., including sources with emissions of 21 ppmv and 24 ppmv, only slightly higher than the 20 ppmv for the best performers). We then extrapolated the curve down to the 20 ppmv emission level to impute a standard deviation for the best performers.[13] As noted above, we determined that there is no significant difference in relative standard deviation for low emitting sources (e.g., sources emitting 21 ppmv to 38 ppmv) compared to high emitting sources (e.g., sources emitting 130 ppmv to 920 ppmv), and hence that it is reasonable to use all of the available data to derive a best fit shape of the regression curve.[14] This similarity confirms that data on all sources' variability can reasonably be considered—by means of imputing the shape of the regression curve at the low end—in estimating the variability of the best performing sources.

This approach does not substitute variability from non-best performers for variability of best performers. Rather, it uses all of the data to estimate how variability may change as performance improves to derive a best estimate of the variability of the best performers.[15]

c. *Statistical Imputation Is Inappropriate Because It Overstates Variability.* Sierra Club mistakenly believes that we used statistical imputation to project variability of the corrected data. As just discussed in section B.2.b., we used a linear regression analysis specifically because an alternative approach that we used to project variability of data sets containing nondetects—statistical imputation—would overstate variability of the corrected data. 71 FR at 52630. We explained that the statistical imputation approach for correcting data below 20 ppmv without dampening variability would involve imputing a value between the reported value and 20 ppmv because the "true" value of the biased data would lie in this interval. This approach would be problematic, however, given that many of the reported values (based on the biased analytic method) were much lower than 20 ppmv; the statistical imputation approach would tend to overestimate the run-to-run variability (leading to a standard higher than the one we are adopting) and hence we rejected its use in this context.

d. *Achievability of a Floor Emission Level.* Sierra Club states that it is unlawful to consider whether a floor emission level is achievable. But the issue here is assessing sources' performance over time. If a best performing source on whose performance a MACT floor is based cannot itself comply with that floor standard, then that source's performance over time has been improperly assessed. Put another way, that source's variability (i.e., performance over time) has not been adequately accounted for. *Mossville Environmental Action Now* v. *EPA*, 370 F. 3d 1232, 1241–42 (D.C. Cir. 2004). Since the standard must be met "every day and under all operating conditions," it is imperative that the emission data used to represent the performance of the best performing sources truly represent the performance of those sources over time by, notably, accounting for emissions variability. *Id.* at 1242.

C. Use of PS–11 and Procedure 2 as Guidance for Extrapolating the Alarm Set-Point of a Particulate Matter Detection System (PMDS)

In its reconsideration petition, CKRC asked that EPA reconsider its references to Performance Specification 11 (PS–11) and Procedure 2 in the particulate matter detection system (PMDS) provisions of the October 12, 2005 final rule. We granted reconsideration because we developed the procedures for extrapolating the alarm set-point for PMDS that included references to PS–11 and Procedure 2, in response to comments on the proposed rule and after the period for public comment. 71 FR at 52630–31.

CKRC also stated that the reference to PS–11 for particulate matter Continuous Emissions Monitoring Systems (40 CFR Part 60, Appendix B) and Procedure 2 (Appendix F, Part 60) for use as guidance to implement provisions to extrapolate the alarm set-point of a PMDS may effectively prevent its members from utilizing this option due to significant technical difficulties and excessive costs.[16] CKRC further stated that PS–11 and Procedure 2 contain a number of problems as they would apply to cement kilns, and that it has

[9] Relative standard deviation is calculated as the standard deviation times 100 divided by the average, and is expressed as a percentage.

[10] As should be apparent from the following discussion, EPA is not using information on emission levels of worse performing sources to estimate the best performers' emission levels (the fact pattern of the *Cement Kiln Recycling Coalition* case and *Brick MACT* cases; see 255 F.3d at 865 and *Brick MACT*, 479 F.3d at 881–82).

[11] For example, the variability (i.e., standard deviation) of test condition runs generally increases as emission concentrations increase.

[12] We repeat that variability is measured as standard deviation.

[13] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 8–1.

[14] See memorandum from Lucky Benedict, EERGC, to Bob Holloway, USEPA, entitled "Analysis of Total Chlorine Data above 20 ppmv," dated March 21, 2007.

[15] As it happens, if EPA were erroneously including information on variability of higher emitting sources in this analysis, it would result in a more stringent standard because the shape of the regression slope would be steeper and would cross the 20 ppmv point at a lower point (because less variability would be imputed at lower emission concentrations). See Figure 1 in the memorandum cited in the preceding footnote. In fact, because (as explained in the text above) relative standard deviations of higher emitting sources do not increase as emissions increase, EPA does not believe it committed this type of error.

[16] See letter from David P. Novello to Stephen L. Johnson regarding "Petition for Reconsideration of Certain Provisions of Hazardous Waste Combustor MACT Replacement Standards Rule," dated December 9, 2005, p. 9, docket item EPA–HQ–OAR–2004–0022–0520.

filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final rule adopting PS–11 and Procedure 2, which case is being held in abeyance.

Finally, CKRC stated that use of a regression analysis approach to extrapolate the alarm set-point is not justified or necessary to establish an approximate correlation between the particulate matter detector system response and particulate matter concentrations. CKRC suggested that an alternative approach would be based on a linear relationship passing through zero and the mean of the PM comprehensive performance test results.

When we reviewed the procedures in the final rule for establishing the set-point in light of CKRC's concerns regarding use of a regression analysis to extrapolate the set-point and use of PS–11 and Procedure 2 as guidance, we identified several shortcomings of the final rule. Consequently, we proposed to revise the provisions for establishing the alarm set-point by extrapolation by: (1) Adding procedures to establish the alarm set-point for operations under the Documentation of Compliance; (2) revising procedures to extrapolate the alarm set-point for operations under the Notification of Compliance; and (3) providing specific rather than generic references to PS–11 and Procedure 2 provisions that must be followed to extrapolate the alarm set-point. 71 FR at 52631–33.

We also determined that the final rule was silent on what operators must do when the PMDS (or bag leak detection system (BLDS)) is malfunctioning (e.g., when it is out of control or inoperable). We explained in the reconsideration proposal that it is reasonable to require that operations when the PMDS or BLDS is unavailable be considered the same as operations that exceed the alarm set-point given that there would be no information to conclude otherwise. Thus, we proposed to require sources to correct the malfunction or minimize emissions, and require that the duration of the malfunction be added to the time when the PMDS or BLDS exceeds the alarm set-point. If the time of PMDS or BLDS malfunction and exceedance of the alarm set-point exceeds 5 percent of the time during any 6-month block time period, the source would have to submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and PMDS or BLDS malfunctions and the revisions to the design, operation, or maintenance of the combustor, air pollution control equipment, or PMDS (or BLDS) it is taking to minimize exceedances.

1. Summary of the Final Action

We are today promulgating: (1) Revised procedures to extrapolate the PMDS alarm set-point which are less prescriptive than those we proposed in the reconsideration notice; (2) with respect to the excessive exceedance notification for the PMDS if the set-point is exceeded for more than five percent of the time during any 6-month block time period, a requirement, as proposed in the reconsideration notice, to also include the time the PMDS malfunctions (while the combustor is operating), as well as the time the PMDS set-point is exceeded; and (3) revised PMDS general requirements to clarify that, if the alarm set-point is exceeded or if the PMDS malfunctions, the source must take the corrective measures it specifies in its operating and maintenance plan required under § 63.1206(c)(7).

We discuss below the revised procedures to extrapolate the PMDS alarm set point. We discuss the other provisions—PMDS and BLDS malfunctions and clarification of general PMDS requirements—in the response to major comments below. Please note that the revised provisions are effective immediately, and today's final rule does not change the October 14, 2008 compliance date for existing sources established by the October 12, 2005 final rule. Sources can readily comply with the revised provisions promulgated today on the compliance time line established by the October 12, 2005 final rule.

The revised procedures to extrapolate the PMDS alarm set point address four aspects: (1) Establishing the set-point for operations under the Documentation of Compliance; (2) establishing the set-point for operations under the initial Notification of Compliance; (3) PMDS quality assurance procedures; and (4) revising the set-point subsequent to periodic comprehensive performance testing and other testing, such as for quality assurance. See § 63.1206(c)(9)(ii) through (v). In addition, please note that the final rule no longer references PS–11 or Procedure 2. We have concluded that the Relative Response Audit provisions of Procedure 2, and applying the correlation curve statistical parameters in PS–11, may not be appropriate in some situations. Accordingly, the final rule requires sources to recommend for approval site-specific procedures for PMDS quality assurance and to determine, as additional data pairs become available, when and how to evaluate correlation models that may better represent the relationship between reference method measurements and PMDS responses than a linear model.

a. *Documentation of Compliance Set-Point.* To establish the set-point for the Documentation of Compliance (DOC), the source must obtain a minimum of three reference method and PMDS data pairs, as proposed. 71 FR at 52631/3. As proposed, a source: (1) May use existing data obtained within 60 months of the DOC; (2) must approximate the correlation of the reference method data to the PMDS data; (3) may assume a linear correlation; and (4) may use a zero-point. A source must request approval from the regulatory authority (in the continuous monitoring system test plan) of their determination whether multiple correlation curves will be necessary considering the design and operation of its combustor and PMDS (e.g., cement kilns equipped with an in-line raw mill and that use a light-scattering detector may need to establish separate correlation curves with the mill on and mill off).[17] We are including this provision in the final rule in light of comments indicating that multiple correlation curves may be needed to appropriately correlate reference method and PMDS responses in some situations.[18] As proposed, a source must establish the alarm set-point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The PM emission concentration used to extrapolate the alarm set-point must not exceed the PM emission standard, however.

b. *Initial Notification of Compliance Set-Point.* To establish the set-point for operations under the initial Notification of Compliance, a source must request approval from the regulatory authority (in the continuous monitoring system test plan) of procedures they will use to establish an approximate correlation curve considering the three pairs of Method 5 or 5I data, the PMDS response data from the comprehensive performance test, and any additional data pairs, as warranted (e.g., data pairs during as-found operations; data pairs used for the Documentation of Compliance correlation curve). As

[17] USEPA, "Current Knowledge of Particulate Matter (PM) Continuous Emissions Monitoring," September 8, 2000, p. 7–3.

[18] See letter from David P. Novello to Stephen L. Johnson regarding "Petition for Reconsideration of Certain Provisions of Hazardous Waste Combustor MACT Replacement Standards Rule," dated December 9, 2005, p. 20, docket item EPA–HQ–OAR–2004–0022–0520.

proposed, the final rule: (1) Requires sources to use a least-squares regression methodology to correlate PM concentrations to PMDS responses for data pairs; (2) allows sources to assume that a linear regression model approximates the relationship between PM concentrations and PMDS responses; and (3) requires sources to establish the alarm set-point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The emission concentration used to extrapolate the PMDS response must not exceed the PM emission standard. 71 FR at 52632–33.

In addition, a source must request approval from the regulatory authority (in the continuous monitoring system test plan) of their determination whether multiple correlation curves are needed, considering the design and operation of the combustor and PMDS for reasons discussed above. If multiple correlation curves are needed, a source must request approval of the number of data pairs needed to establish those correlation curves and explain how the data will be obtained.

We are not promulgating the proposed requirement to obtain three data pairs under as-found operations in addition to the performance test data pairs because the additional data may not significantly improve the assumed linear correlation model in all cases.[19] Having three as-found data pairs would still result in too few data pairs to perform statistical analyses to identify the most appropriate correlation curve.[20] Additional as-found data pairs may be warranted, however, in situations such as those where the extrapolated alarm set-point correlates to a PM concentration close to the PM emission standard, or where a single correlation curve may be reasonable even though multiple curves may better represent the correlation. We conclude that it is more appropriate to make these determinations on a site-specific basis rather than mandate universal testing that may not be particularly useful.

c. *PMDS Quality Assurance.* For PMDS quality assurance, a source must request approval from the regulatory authority (in the continuous monitoring system test plan) of the quality assurance procedures that will reasonably ensure that PMDS response values below the alarm set-point do not correspond to PM emission concentrations higher than the value that correlated to the alarm set-point.[21]

Today's final rule requires a source to establish site-specific quality assurance measures rather than comply with the Relative Response Audit (RRA) provisions of Procedure 2 that apply to PM CEMS, which was required under the October 12, 2005 final rule and contemplated in the reconsideration proposal.[22] For PM CEMS, a RRA is comprised of three pairs of reference method and PM CEMS responses at as-found operating conditions. For PMDS, the RRA would involve obtaining three pairs of reference method and PMDS responses. We now conclude, however, that all of the quality assurance provisions established for PM CEMS may not be appropriate for PMDS given that PMDS responses will only be approximately correlated to PM concentrations rather than direct measures of such; therefore PMDS correlations will not be subjected to the statistical criteria applicable to PM CEMS under section 13.2 of PS–11.

For example, one criterion under Procedure 2 for passing the RRA, section 10.4(6)(iii), as we considered adopting it for PMDS, would require that at least two of the three sets of PMDS and reference method measurements must fall within a specified area on a graph of the correlation regression line. The specified area on the graph of the correlation regression line is defined by two lines parallel to the correlation regression line, offset at a distance of ±25 percent of the numerical emission limit value from the correlation regression line. In retrospect, and in light of comments on the reconsideration notice, we have determined that this criterion would be inappropriate for a PMDS. The correlation regression line for a PMDS would generally comprise six data pairs when the alarm set-point is established in the initial Notification of Compliance, while the correlation regression line for a PM CEMS would comprise 15 data pairs initially, and if a Reference Correlation Audit, which requires 12 data pairs, had been performed, a total of 27 data pairs. Consequently, the PMDS correlation curve would not be as well defined as the PM CEMS correlation curve—6 data pairs versus 15 to 27 data pairs—and, thus, the RRA criterion for PM CEMS under section 10.4(6)(iii) would not be appropriate.

Please note that a less precise correlation is appropriate for PMDS because they will be used for compliance assurance (i.e., as an indicator for reasonable assurance that an emission standard is not exceeded) rather than compliance monitoring (i.e., as an indicator of continuous compliance with an emission standard). As such, exceedance of a PMDS response that appears to correlate to a PM emission level exceeding the PM standard is not evidence of a violation of the emission standard. 70 FR at 59490–91.

In the interim until more definitive guidance is available, we recommend that sources consider whether some of the RRA provisions of Procedure 2 may be appropriate for PMDS.

d. *Revising the Initial Notification of Compliance Set-Point.* To revise the set-point subsequent to periodic comprehensive performance testing and other testing, such as for quality assurance, a source must propose to the regulatory authority for approval (in the continuous monitoring system test plan) an approach for how it will periodically revise the alarm set-point, considering the additional data pairs.

We are promulgating a site-specific approach to revise the set-point rather than the prescriptive approach proposed in the reconsideration notice (i.e., using the statistical parameters applicable to PM CEMS to identify the most appropriate correlation model). 71 FR at 52633/2. At proposal, we assumed that a minimum of 13 data pairs would be available for applying the PM CEMS statistical parameters, and that the parameters could be applied to as few as 13 data pairs. Under today's final rule, there could be as few as six data pairs[23] (plus perhaps a zero-point)

[19] For example, additional as-found data pairs would not likely improve compliance assurance for sources that extrapolate the alarm set-point to a response that correlates to only 50% of the PM emission standard.

[20] Even with three as-found data pairs, there would be only nine data pairs available to establish the correlation curve—three data pairs from the DOC, three data pairs from the comprehensive performance test, and the three as-found data pairs. (There would be 10 data pairs if a zero—point were used.) Procedure 2 for PM CEMS (Appendix F, Part 60) requires a minimum of 12 data pairs for a relative correlation audit. See Section 10.3(8).

[21] Please note that the rule also requires quality assurance procedures for sources that elect to establish the alarm set-point without extrapolation. In that situation, a source must request approval from the regulatory authority of the quality assurance procedures that reasonably ensure that PMDS response values below the alarm set-point do not correspond to PM emission concentrations higher than those demonstrated during the comprehensive performance test.

[22] Section 10.3(6) explains how a RRA is performed for a PM CEMS, Section 10.4(6) establishes the criteria for passing a RRA for a PM CEMS, and Section 10.5 establishes procedures for PM CEMS that fail the RRA.

[23] A minimum of three data pairs are needed for the Documentation of Compliance, and an

available prior to any quality assurance testing that may be approved or required by the regulatory authority. Consequently, it would be appropriate to continue to apply the new data pairs obtained from quality assurance testing and periodic comprehensive performance testing to the linear correlation model until enough data pairs are available to warrant applying statistical parameters to determine if there is a more appropriate correlation model (e.g., logarithmic, exponential). In addition, the number of data pairs needed for meaningful statistical analysis will depend on factors including the range of the data. For example, if much of the data are representative of the high end of the range of normal operations (or only two modes of operation—normal within a narrow range and high-end), statistical analysis may not help identify the most appropriate correlation model. Thus, we conclude that these determinations should be made on a site-specific basis.

We note that sources can consider adding newly obtained data pairs to the pool of existing data pairs and continue to apply a linear correlation model to extrapolate the alarm-set-point until it obtains enough data representative of a range of PM concentrations that would warrant statistical analysis to identify the most appropriate correlation model. After a source obtains enough of these data pairs (e.g., 12 to 15), the statistical parameters that they should consider to identify the best correlation model include: The confidence interval half range percentage, the tolerance interval half range percentage, and the correlation coefficient. PS–11 provides definitions of these statistical parameters and other information that may be useful when evaluating correlation models.

2. What Are the Responses to Major Comments?

Comment: CKRC states that eliminating general references to PS–11 and Procedure 2 while including references to specific provisions of those procedures does not address their fundamental problem—PS–11 and Procedure 2 are problematic in a number of ways for cement kilns. CKRC believes it is unnecessary to include or even refer to specific procedures to be used when extrapolating the set-point. Instead, the facility and regulatory authority can and should be encouraged to develop appropriate procedures on a case-by-case basis. CKRC states that other extrapolation procedures may become available, and should not be excluded or precluded.

Response: This is not the appropriate forum for addressing CKRC's challenges to PS–11 and Procedure 2. In response to comments received, however, the final rule no longer references PS–11 or Procedure 2. As discussed above, we have concluded that the RRA provisions of Procedure 2, and applying the correlation curve statistical parameters in PS–11, may not be appropriate in some situations. Accordingly, the final rule requires sources to recommend for approval site-specific procedures for PMDS quality assurance and to determine, as additional data pairs become available, when and how to evaluate correlation models that may better represent the relationship between reference method measurements and PMDS responses than a linear model.

Comment: CKRC states that it is inappropriate to sum times when the alarm set-point is exceeded and times that the PMDS is malfunctioning (and the source continues to operate). If the sum of these times exceeds 5 percent of the operating time in a 6-month block time period, the source would be required to submit an excess exceedance report to the regulatory authority. This would create unnecessary burdens and imply incorrectly that PM emissions may be excessive.

Response: We explained in the reconsideration notice that it is reasonable to require that operations when the PMDS is unavailable be considered the same as operations that exceed the alarm set-point given that there would be no information to conclude otherwise. We maintain this view, and the commenter did not provide a basis for us to conclude that this requirement is inappropriate. In filing the excess exceedance report, however, the source is free to identify the portion of the exceedance time that was due to the PMDS malfunctioning.

Comment: CKRC states that it is possible to improperly interpret § 63.1206(c)(9)(ii)(C) in the October 12, 2005 final rule to require compliance with the alarm set-point, implying that an exceedance of the alarm set-point is a violation of the operating requirements.

Response: We agree, and have revised the requirement to clarify that, if the alarm set-point is exceeded, the corrective measures specified in the operation and maintenance plan must be followed. See revised § 63.1206(c)(9)(i)(G) through (I) and 63.1206(c)(9)(vii).

D. Tie-Breaking Procedure for New Source Standards

The petition of the Coalition for Responsible Waste Incineration (CRWI) sought reconsideration of the tie-breaking procedure used to identify the single best performing source in cases where the MACT floor methodology identified multiple sources with the same single best System Removal Efficiency (SRE)/Feed aggregated scores.[24] In the rare instances when a tie occurred, we selected the source with the lowest emissions (of the tied sources) as the criterion to break the tie. See 70 FR at 59447 and 71 FR at 52634. As noted in CRWI's petition, this occurred for the mercury and low volatile metals new source standards for incinerators. Noting that EPA did not discuss the concept of selecting the source with the lowest emissions as the criterion to break ties (because this unusual situation did not occur at proposal), the CRWI argued in its petition that EPA had provided no opportunity to comment on the tie-breaking procedure. Pursuant to section 307(d)(7)(B) of the CAA, we granted the CRWI's petition for reconsideration.

As stated in the September 6, 2006 notice announcing reconsideration of this issue, the arguments the CRWI presented in its petition for reconsideration did not initially persuade us that our tie-breaking procedure—selecting the source (of the tied sources) with the lowest emissions as the single best performing source—was erroneous or inappropriate. 71 FR at 52634. However, because we did not discuss the concept of selecting the source with the lowest emissions as the criterion to break ties in the proposed rule, we decided to grant reconsideration on this issue and provide an opportunity for public comment on the tie-breaking procedure for new sources.

In the notice of reconsideration, we requested comment on our decision to select the source (of all tied sources) with the lowest emissions as the single best performing source for purposes of new source floor determinations. We also specifically requested comment on alternative tie-breaking criteria including (1) using the single source (of the tied sources) with the best SRE; (2) selecting the single source (of the tied sources) with worst SRE; and (3) using some other form of averaging (e.g., the

additional three data pairs are needed for the initial Notification of Compliance (i.e., obtained during the comprehensive performance test).

[24] System removal efficiency is a measure of the percentage of HAP that is removed prior to being emitted relative to the amount fed to the unit from all inputs (e.g., hazardous waste, raw materials). For additional discussion of the SRE/Feed methodology, see 70 FR at 59441–447.

99th percentile upper prediction limit) of the tied sources.

1. Summary of the Final Action

The comments to the reconsideration notice did not provide a basis for us to conclude that the tie-breaking procedure used in the final rule was incorrect, impermissible, or otherwise flawed. Therefore, we reaffirm the validity of the determination made at promulgation and are making no changes to the final rule. Because we are retaining the same tie-breaking procedure as promulgated in the October 12, 2005 rule, the new source incinerator emission standards promulgated for mercury and low volatile metals under § 63.1219(b)(2) and (b)(4) remain unchanged.

2. What Are the Responses to Major Comments?

In response to the notice of reconsideration, we received four comment letters on this issue. These comment letters are available in the official public docket.[25] A summary of major comments received on this reconsideration issue and EPA's responses to those comments are provided below.

Comment: Three commenters state that EPA misconstrues the language of section 112(d)(3) of the CAA, especially the phrase "best controlled similar source." These commenters argue that section 112(d)(3) does not preclude the possibility that more than one source could be considered "best." Moreover, EPA is not required to select the single best performing source in instances where EPA's floor methodology identifies more than one best performing source. Instead of applying a tie-breaking procedure, these commenters state that EPA should establish the floor at a level that all can meet (e.g., the highest emissions achieved among the tied sources).

Response: We disagree with the commenters' interpretation of section 112(d)(3). As we explained in the reconsideration notice, we believe that the tie-breaking procedure adopted in the final rule is a reasonable interpretation of section 112(d)(3)'s language (it is, at the least, reasonable to interpret section 112(d)(3) to base the new source floor on the performance of a single source, since the provision refers to "source" singular, not plural). 71 FR at 52634. The commenter cites legislative history in support of its interpretation. H. Rep. No. 101–490 at 328. That legislative history refers to "similar sources" after describing standards for new and existing sources, and the commenter views this language as supporting its view that the floor standard for new sources can be based on more than one best performing source. It is not clear that this passage is referring to new source standards, or whether instead that the plural reference is only meant to apply to existing sources. It is also not certain that the legislative history is even applicable, since it interprets a version of section 112(d)(3) not identical to the final version, and one which may have allowed consideration of costs at the floor level of control. See H. Rep. No. 101–490 at 328 ("In addition, EPA has to consider the above statutory factors, including costs, in determining stringency and similarity"). In any case, EPA is not aware of any compelling policy reason to adopt the commenter's interpretation. As explained in the reconsideration notice, basing the floor standard on the performance of a single source having the lowest emissions is an entirely reasonable means of selecting the best performing source among sources with best feedrate and system removal. 71 FR at 52634.

Comment: These same commenters state that EPA is inconsistent in its application of the tie-breaking procedure to other standards. Two new source standards are cited by commenters as instances where EPA did not select a single best performing source among MACT pool sources. Specifically, the commenters refer to the total chlorine standards for new incinerators and the total chlorine standards for new liquid fuel boilers (for the category of sources that burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb).

Response: Both standards cited by the commenters are cases where nearly all available total chlorine data reflect the revised data handling procedure to account for method bias for total chlorine measurements below 20 ppmv. (See related discussion in section III.B above on this issue.) In these instances, we corrected all total chlorine measurements that were below 20 ppmv to 20 ppmv to establish the total chlorine floors.[26] For incinerators, all 25 runs of total chlorine emissions data from the sources that comprise the MACT pool were corrected to 20 ppmv, and, in the case of liquid fuel boilers (low heating value subcategory), 17 of 18 runs were corrected to 20 ppmv. Given that both MACT pools of best performing sources (incinerators and liquid fuel boilers) comprised sources with the same level of performance from an emissions perspective (because nearly all of the best performing sources' emissions were adjusted to the same emissions level to account for bias in the analytic method), the case is not analogous to where performance among sources differ. The commenter's point also is without practical significance since an identical new source standard would have been promulgated regardless of source selected (given identical performance by the best performing sources).

Comment: Three commenters state that the tie-breaking procedure is not reasonable because it is based on a method that produces arbitrary results and is impermissible under the statute. The commenters argue that breaking the tie based on emissions levels (of the tied sources for the mercury and low volatile metals standards) is inappropriate because such standards would arbitrarily reflect HAP levels in raw materials and fossil fuels. In addition, the tie-breaking procedure is impermissible because it imposes what amounts to beyond-the-floor standards without consideration of the beyond-the-floor factors (e.g., the floors identified by EPA would require one or more of the tied source having to install upgraded air pollution control equipment to achieve the floor) including costs, energy, and non-air health and environmental impacts.

Response: We disagree with the commenters' statement that the mercury and low volatile metals standards represent *de facto* beyond-the-floor standards. In EPA's view, a purported floor standard which forces the best performer on whose performance the floor standard is based to change its practices is a *de facto* beyond-the-floor new source standard (or, put another way, has mis-assessed the source's performance). This is not the case for the mercury and low volatile metals standards for new incinerators. These standards reflect the performance of a combination of front end control (limiting the feedrate of mercury in the hazardous waste) and back end control (performance of a control technology such as particulate matter control). Sources have the ability to control emissions of mercury (and low volatile metals) by either of these control techniques as did the single best performing source as identified by our tie-breaking procedure (of the tied

[25] See comments 0565, 0567, 0569, and 0573 in the docket (EPA–HQ–OAR–2004–0022).

[26] In addition, to address run-to-run variability given that nearly all runs for these data sets were corrected to 20 ppmv, we imputed a run standard deviation based on a regression analysis of run standard deviation versus total chlorine concentration for sources with total chlorine measurements greater than 20 ppmv. Thus, emissions at the upper prediction limit at a 99th percentile confidence level from these sources are identical.

sources). Thus, we have not improperly estimated the performance of the best performing source since that source is capable of replicating its own performance.

E. New Source Particulate Matter Standard for New Cement Kilns

In the October 12, 2005 final rule, we based the particulate matter standard for new cement kilns on emissions data from the Ash Grove Cement Company kiln located in Chanute, Kansas (Ash Grove Chanute) and promulgated a standard of 0.0023 gr/dscf.[27] The petitions of the Ash Grove Cement Company and the Cement Kiln Recycling Coalition requested that EPA reconsider the 0.0023 gr/dscf standard for new cement kilns.[28] The petitioners stated that the 0.0023 gr/dscf standard was not properly noticed because we did not discuss using the emissions data from Ash Grove Chanute as part of the new source MACT cement kiln floor analysis in the April 20, 2004 proposed rule.[29] However, the particulate matter data from Ash Grove Chanute was considered (in fact, it was the single best performing source upon which the 0.0023 gr/dscf standard was based) in the particulate matter MACT floor analysis in the final rule. 70 FR at 59419.

Pursuant to section 307(d)(7)(B) of the CAA, we granted reconsideration of the new source particulate matter standard for new cement kilns. 71 FR 14665. Reconsideration of the standard was appropriate because we adopted the calculation using particulate matter emissions data from the Ash Grove Chanute plant after the period for public comment on the proposed rule. In addition, the petitioners argued that the particulate matter standard of 0.0023 gr/dscf was derived using unrepresentative test data from Ash Grove Chanute, resulting in a standard that the source itself could not achieve. To support their position, petitioners provided additional particulate matter performance data from the Ash Grove Chanute plant.

In the notice of reconsideration, we stated that "it appears that the promulgated new source standard for particulate matter for cement kilns is overly stringent in that it does not fully reflect the variability of the best performing source over time (the "emission control that is achieved in practice," using the language of section 112(d)(3))." 71 FR at 14668. Incorporating the newly submitted particulate matter data from the Ash Grove Chanute plant into the MACT floor analysis, we proposed a revised particulate matter standard for new cement kilns of 0.0069 gr/dscf. 71 FR at 14669–70. We also proposed revisions to the particulate matter standards for new incinerators and liquid fuel boilers (*Id.*). As discussed in the reconsideration notice, the MACT floor methodology for particulate matter includes a "universal variability factor" to address long-term variability in particulate matter emissions of sources using fabric filters. 71 FR at 14668 and 70 FR at 59440.[30] When we included the newly submitted Ash Grove Chanute data in the universal variability factor analysis, the long-term variability relationship changed, which led to the proposed (small) changes to the incinerator and liquid fuel boiler new source particulate matter standards.

1. Summary of the Final Action

We are today promulgating revised new source standards for particulate matter for cement kilns and incinerators that burn hazardous waste. The revised particulate matter standards for new cement kilns and new incinerators are 0.0069 gr/dscf and 0.0016 gr/dscf, corrected to 7 percent oxygen, respectively. These amendments revise 40 CFR 63.1219(b)(7) and 63.1220(b)(7)(i).

We are not, however, revising the particulate matter standard for new liquid fuel boilers as proposed. In the March 23, 2006 reconsideration notice, we proposed to revise the particulate matter standard to 0.0088 gr/dscf (20 mg/dscm) from 0.0087 gr/dscf (20 mg/dscm) as a result of a minor change in the universal variability factor relationship. 71 FR at 14670. In a subsequent action, we decided to express all particulate matter standards in the same format used in the October 12, 2005 final rule. See 73 FR at 18973 (April 8, 2008). In the case of liquid fuel boilers, this would be in the units of mg/dscm. Since the standard promulgated in the October 2005 rule and the standard calculated in the reconsideration proceedings are identical—20 mg/dscm—no change in the standard is necessary.

As proposed, we are amending the compliance date requirements under 40 CFR 63.1206 to require that new cement kilns (i.e., sources that commenced construction or reconstruction after April 20, 2004, the date of the rule proposing the full set of MACT standards for cement kilns) comply with the revised particulate matter standard by the later of October 28, 2008 or the date the source starts operations. 71 FR at 14671. See amendments to 40 CFR 63.1206(a)(1)(ii)(B). In addition, we are not amending the compliance date requirements for new incinerators for reasons discussed in the proposed rule (*Id.*).

2. What Are the Responses to Major Comments?

We received fifteen comment letters in response to the notice of reconsideration. These comment letters are available in the official public docket. A summary of major comments received on this reconsideration issue and EPA's responses to those comments are provided below.

Comment: One commenter points out that EPA characterized the newly submitted data by Ash Grove Chanute as "normal" in the March 2006 reconsideration notice and states that it is arbitrary and capricious to include any emissions data characterized as other than "compliance test" (e.g., "normal" or "in-between" data) in the MACT floor analysis for particulate matter.[31] According to the commenter, EPA's established methodology for particulate matter only considers data characterized as "compliance test." As an example, the commenter cites the incinerator analysis included in the October 2005 rule as evidence that EPA inappropriately departed in the reconsideration notice from the established MACT floor methodology for particulate matter. In addition, the commenter states that it is inappropriate to include in the MACT floor analysis data rated as other than "compliance test" due to regulatory oversight and statistical variability considerations.

[27] See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix F, Table "APCD–CK–PM." The Ash Grove Chanute test data were from performance testing conducted in December 2001 and March 2002.

[28] The petitions for reconsideration for the Ash Grove Cement Company and the Cement Kiln Recycling Coalition are included in the docket (EPA–HQ–OAR–2004–0022). See docket items 0516 and 0520, respectively.

[29] In the 2004 proposed rule, we stated that it was not appropriate to use the Ash Grove Chanute data for the MACT floor analysis for existing sources. 69 FR at 21217 n. 35. While the proposed rule was thus clear that available particulate matter data from Ash Grove Chanute would not be used in the MACT floor analysis for existing sources, we did not state whether or not these data would be evaluated in the new source floor analysis. Thus, no revision of the standard is necessary.

[30] The universal variability factor relationship is not developed for each source category, but is based on relevant data from all hazardous waste combustor source categories. See "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 5.3 and 7.4.

[31] We classified emissions data of each test condition for each pollutant in one of four ways: "compliance test," "normal," "in between," and "not applicable." 69 FR at 21218–19.

Finally, the commenter states that other source categories should also be afforded the same opportunity to submit "normal" emissions data for inclusion in the floor analyses.

Response: While it is true that we do not consider "normal" emissions data for some MACT floors, we disagree with the commenter that the particulate matter standards are based solely on data rated as "compliance test." The MACT floor standards for particulate matter are identified using the Air Pollution Control Technology (APCD) methodology. See 70 FR at 59447; see also Section III.A of September 27, 2007 notice (72 FR at 54878). For reasons discussed in the technical support document, the APCD approach only considers "compliance test" emissions data for sources not equipped with fabric filters. However, for fabric filter equipped sources, all available valid emissions data, including those rated as "normal" (i.e., day-to-day, as opposed to compliance test data) are included in floor analysis for particulate matter.[32] [33] Given that Ash Grove Chanute uses a fabric filter to control emissions of particulate matter, it is appropriate to include in the MACT floor analysis available emissions data rated as "normal," which we did in the reconsideration notice. Therefore, we disagree with the commenter that we deviated from the established APCD approach methodology in the March 2006 reconsideration notice.

We also note that the commenter is incorrect in stating that the incinerator MACT floor standards for particulate matter are based only on "compliance test" data. Eleven fabric filter-equipped sources comprise the MACT pool for incinerators. When evaluating the floor for particulate matter, available emissions data from all sources but one (source no. 3000) included either "normal" or "in between" data in the analysis.[34]

Finally, we disagree that it is inappropriate to include "normal" and "in between" emissions data from fabric filter-equipped sources in the APCD approach analysis. As discussed in the October 12, 2005 rule, particulate matter emissions from fabric filter-equipped sources are more difficult to maximize (compared to other control equipment) during compliance testing because particulate matter emissions are relatively insensitive to fabric filter inlet loadings and operating conditions.[35] As a result, in addition to "compliance test" data, we also used "normal" and "in between" rated emissions data from fabric filter-equipped sources. We did this not only for cement kilns, but also for other source categories with best performing sources equipped with fabric filters. Given that the particulate matter floor analysis was applied equally to all source categories, the commenter's suggestion of revising the MACT floor standards for other source categories is without merit.

Comment: One commenter states that it is arbitrary for EPA to revise the particulate matter MACT floor standard based on the selective use of new data from one source (i.e., the data submitted by Ash Grove Chanute). According to the commenter, EPA must collect data from all cement kiln sources. The commenter also states that it was arbitrary and capricious for EPA to accept the newly submitted data (showing higher emissions of particulate matter) for the Ash Grove Chanute kiln while refusing to consider or collect other emissions data from other newly constructed cement kilns that may refute the claim that new baghouses inevitably deteriorate.

Response: First, the commenter's belief that the proposed revision was based entirely on "new" data—data for periods after EPA closed the data information record—is not correct. The most salient data indicating that the source's performance over time had been mischaracterized comes from 2003, within the period for which EPA accepted performance data. The data showed the Ash Grove Chanute test average over two tests to be 0.0062 gr/dscf (without any statistical adjustment for variability), higher than its predicted maximum performance of 0.0023 gr/dscf.[36] These data would have been presented to EPA and included in the data base for the promulgated rule had EPA provided proper notice, and would have necessarily changed the estimate of the performance of the Ash Grove Chanute kiln.

Second, the remaining information was presented to EPA in the context of reconsideration, and EPA had no choice but to consider it. Nor was EPA's consideration of the new information arbitrary. EPA did not selectively seek new information to alter a standard, nor did an industry group selectively present data to EPA which it could have presented during the rulemaking. Nor did EPA review only "cherry-picked" data on the performance of the relevant source. Rather, EPA has reasonably considered all of the information on the performance of the source characterized as "best controlled", which source's performance formed the sole basis for the new source standard at issue.

Comment: Two commenters state that the particulate matter standard of 0.0023 gr/dscf (the standard promulgated in the October 12, 2005 rule) is readily achievable by cement kilns and should not be revised. These commenters state that it is arbitrary and capricious for EPA to use the new Ash Grove Chanute data because the higher emission levels seen with the 2003–2005 data may be the result of other factors besides normal deterioration of a new baghouse after the initial break-in period. The commenters suggest other explanations for the higher emissions including: (1) Ash Grove Chanute had no regulatory incentive to optimize the kiln's performance in subsequent tests because the source was subject to an emission standard that is less stringent than 0.0023 gr/dscf; and (2) Ash Grove Chanute does not use a baghouse leak detection system with its baghouse that would have allowed it to detect and fix smaller leaks. Therefore, according to the commenters, the possibility that Ash Grove Chanute allowed the kiln's performance to deteriorate by failing to install testing equipment and conduct necessary maintenance is at least as plausible as normal degradation of a new baghouse after the initial break-in period.

[32] See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 7.4, and also Section 5.3. Valid emissions data includes those characterized as "compliance test," "normal," and "in between."

[33] We concluded in the October 12, 2005 rule that normal emissions data from fabric filter-equipped sources should also be included in the particulate matter floor analysis because particulate matter emissions are relatively insensitive to baghouse inlet loading and operating conditions. 70 FR at 59424.

[34] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix F, Table APCD–INC–PM. For example, the single best performing source was source no. 341, whose valid particulate matter performance data include both "compliance test" data (condition C10) and "in between" data (condition C12). Another best performing incinerator in the MACT pool was source 3010 that included a total of nine valid test conditions (one "compliance test," five "normal," and three "in between"). Individual test condition ratings can be found in the hazardous waste combustor database. See docket item EPA–HQ–OAR–2004–0022–0433.

[35] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3.

[36] Incidentally, these data are yet another instance where performance tests failed to accurately characterize a source's performance (despite the commenter's reiterated assertions that such tests account for all variability because they are conducted under so-called worst-case conditions). Indeed, in this instance, even the EPA-predicted level of 0.0023 gr/dscf (which is a value reflecting statistical adjustment to account for both short-term and long-term variability) did not adequately account for the source's long-term variability.

Response: We disagree with the comment that a particulate matter standard of 0.0023 gr/dscf represents the performance of the best performing source, considering performance variability, for new cement kilns, based on available data and information. The MACT floor standard is to be based on actual performance data (accounting for variability), not as the commenter would have it on what could be achieved by using other control methods not in use at the best performing source (e.g., a bag leak detection system at Ash Grove Chanute).[37] The question of what the best performer would do if it were equipped differently is legally irrelevant in establishing a floor for new sources since it does not relate to the best performing source's actual performance. The Ash Grove Chanute data from 2003–2005 show that the source we identified as the single best performer in the October 12, 2005 rule—Ash Grove Chanute—cannot achieve the 0.0023 gr/dscf standard promulgated in that rule when it operates under the operation and maintenance practices that were required and otherwise appropriate for the source.[38] In other words, the promulgated standard demonstrably did not account for the source's legitimate operating variability—its performance over time when operated and maintained properly.

We also disagree that Ash Grove Chanute allowed its kiln's performance to deteriorate during subsequent testing in 2003–2005 because there was no regulatory incentive to optimize the kiln's performance. The commenters speculate that because Ash Grove Chanute operated at particulate matter levels so far below allowable levels in 2001–2002, Ash Grove could have been less concerned with tuning, optimizing and maintaining the baghouse for the 2003–2005 testing. The applicable regulations require the kiln to be properly operated and designed. Thus, Ash Grove Chanute required to maintain good air pollution control practices for minimizing emissions during the 2003–2005 testing (e.g., see §§ 63.6(e)(1) and 63.1206(c)(7)).

The emission data themselves do not support the commenters' claim and support that the source was properly operated. First, the kiln's performance did not "deteriorate" over time. The kiln had lower emission levels when tested in 2005 (and 2004) than it did during the 2003 tests.[39] When the kiln was tested on successive days in 2005, the nine test runs conducted over a consecutive three day period show that average emissions of particulate matter decrease from the previous day: Day one emissions averaged 0.0060 gr/dscf, day two averaged 0.0035 gr/dscf, and emissions on day three averaged 0.0017 gr/dscf.[40] These test results showing "improved" performance combined with Ash Grove Chanute's statements that there were no changes in the maintenance of the air pollution control equipment during the three days of testing do not support the commenter's argument that Ash Grove Chanute's 2003–2005 data reflect an ineffective ongoing maintenance program. Indeed, the day three results are among the lowest emissions achieved by the source in our data base.[41] Thus, neither the claimed lack of a regulatory incentive to maintain levels achieved in 2001–2002 nor failure to maintain the air pollution control system would explain why particulate matter emissions "improved" over this three day period, or "improved" between 2003 and 2005. The obvious explanation is that these varying results illustrate the source's normal operating variability.

Comment: One commenter claims that Ash Grove Chanute's 2003–2005 emissions data resulted from tests that were not conducted under the same operating conditions as the initial tests in late 2001 and early 2002. According to the commenter, varying combustion gas flow rates and process conditions explain the higher particulate matter emissions in the 2003–2005 data.

Response: Hazardous waste combustor sources are subject to site-specific operating requirements that must be maintained in order to ensure continued compliance with the hazardous waste combustor MACT standards, including the particulate matter standard. These operating requirements are established during a compliance test when sources generally operate under conditions that are at the extreme high end of the range of normal operations. Sources do this to provide themselves operating flexibility for day-to-day operations while complying with the rule's standards and operating requirements. While operating conditions may vary among the available Ash Grove Chanute data, the 2003–2005 data were generated while operating within the limits established during the compliance test. Therefore, we reject the suggestion that the data are not reflective of Ash Grove Chanute's performance over time.

Comment: The same commenter states that EPA based the proposed standard of 0.0069 gr/dscf on a cement kiln source (Giant Cement Company, SC) that ceased operations in 2005. The commenter notes that this is inappropriate and inconsistent with the approach discussed in the October 12, 2005 final rule whereby EPA concluded that MACT floor standards should be based only on the performance of sources that actually are operating (i.e., burning hazardous waste). 70 FR at 59419.

Response: We agree with the commenter that this source ceased operations in 2005. While we continue to believe that the approach to exclude "no longer operating sources" from the MACT floor analysis is appropriate, we believe this situation is different given that the vast majority of standards are not at issue in these reconsideration proceedings. We also note that the MACT floor standard for new cement kilns would increase slightly (the commenter evidently assumed a decrease) to 0.0071 gr/dscf if we were to make the data base change the commenter suggests.

F. Beyond-the-Floor Analyses to Consider Multiple HAP That Are Similarly Controlled

The petition of the Sierra Club sought reconsideration of several beyond-the-floor determinations, including beyond-the-floor analyses to consider multiple HAP that are controlled by a single control mechanism. One of the concerns was whether EPA had adequately complied with public notice and comment requirements regarding the beyond-the-floor evaluations included in the October 12, 2005 final rule. Noting that EPA had included a new revised beyond-the-floor analysis (in response to the petitioner's comments to the April 20, 2004 proposed rule) in the final rule, the Sierra Club argued that EPA had provided no opportunity to comment on the revised beyond-the-floor analysis. Pursuant to section 307(d)(7)(B) of the CAA, we granted the Sierra Club's petition for reconsideration with respect to beyond-the-floor analyses to consider multiple

[37] In fact, and as acknowledged by the commenters, no cement kilns are currently using a bag leak detection system with their kiln baghouse.

[38] At the time of testing, the fabric filter performance was maintained by compliance with an opacity standard.

[39] The data were: One test condition conducted in December 2003 averaged 0.0062 gr/dscf; a second test condition conducted in September 2004 averaged 0.0015 gr/dscf, and three test conditions conducted in November 2005 averaged 0.0060, 0.0035, and 0.0017 gr/dscf, respectively. These are actual measurements, and do not include adjustments for run-to-run variability, or application of the Universal Variability Factor.

[40] We note that the day three particulate matter results are only slightly higher than levels achieved in 2002: 0.0017 gr/dscf vs. 0.0013 gr/dscf.

[41] See docket item EPA–HQ–OAR–2004–0022–0546.1, page 9.

HAP that are controlled by a single control mechanism.[42]

In the notice of reconsideration, we requested comment on a revised beyond-the-floor analysis whereby we evaluated the achievability, within the meaning of section 112(d)(2) of the CAA, of beyond-the-floor standards for all HAP for each source category or subcategory. 71 FR at 52635. We called this analysis the "comprehensive beyond-the-floor analysis" (or comprehensive analysis). *Id.* In general, the comprehensive analysis was an evaluation of beyond-the-floor control options that would achieve emission reductions of all HAP, based on what we consider reasonable assumptions of performance of each control method, from levels achieved at the MACT floor. Evaluated control methods included techniques such as activated carbon injection or carbon beds, improved or new particulate matter control equipment, and acid gas scrubbing devices.

Given that some control methods are capable of achieving reductions of multiple HAP, we apportioned the costs of a specific control method (e.g., an activated carbon injection system) among the HAP that it would control. Control method costs are apportioned on a source-by-source basis to those HAP requiring emission reductions to achieve the beyond-the-floor standard. We did this because some control methods are more achievable (within the meaning of section 112(d)(2)) than other methods. In addition, apportioning costs of control to each HAP allowed us to determine that beyond-the-floor standards are warranted for a subset of HAP for a given category or subcategory in cases where adopting beyond-the-floor standards for all HAP (the comprehensive analysis) was not justified. For example, based on the results of the comprehensive analysis at proposal for the existing source solid fuel boiler category, we tentatively rejected setting beyond-the-floor standards for all HAP because we judged the suite of standards as unachievable.[43] However, based on our proposed methodology to apportion control costs, we judged the beyond-the-floor standard for particulate matter as achievable.[44]

1. Summary of the Final Action

After careful consideration of the comments, we are reaffirming most of the beyond-the-floor determinations made at promulgation of the October 12, 2005 final rule and initially determined not to change in the subsequent reconsideration notice. That is, we continue to conclude that several beyond-the-floor standards are achievable, namely the beyond-the-floor standards for particulate matter for existing and new solid fuel boilers. However, because we have determined for independent reasons not to defend the dioxin/furan standards for liquid fuel boilers (see section IV.D below), that issue has become moot. These beyond-the-floor standards were promulgated in the October 12, 2005 final rule. In addition, we are concluding that beyond-the-floor standards for the remaining standards (of those EPA is defending) are not warranted.[45] Therefore, we are making no changes to the final rule as a result of reconsideration of the beyond-the-floor standards.

2. What Are the Responses to Major Comments?

In response to the notice of reconsideration, we received seven comment letters on this issue. These comment letters are available in the official public docket.[46] A summary of major comments received on this reconsideration issue and EPA's responses to those comments are provided below.

Comment: Regarding EPA's rejection of several beyond-the-floor analyses that included a cost-effectiveness evaluation of the beyond-the-floor standard, one commenter states that the CAA requires that EPA's standards must reflect the "maximum" degree of reduction that is achievable considering the "cost of achieving such emission reduction" and any non-air quality health and environmental impacts and energy requirements. According to the commenter, the only relevant factors regarding the cost measures are (1) whether it is too costly to be "achievable;" and (2) whether it would yield additional reductions, so that EPA's standard would not reflect the "maximum" achievable degree of reduction without it. The commenter further states that cost-effectiveness is not relevant to either of these questions and that cost-effectiveness is not a metric for cost.

Response: We disagree with the commenter's interpretation. We addressed a comment similar to this one in a recent final rule for the Portland Cement Manufacturing NESHAP. 71 FR at 76534 (December 20, 2006). For readers' convenience, our response is repeated below:

The statute requires that EPA consider "the cost of achieving such emission reduction"(section 112 (d)(2)) in determining the maximum emission reduction achievable. This language does not mandate a specific method of taking costs into account, as the commenter would have it, but rather leaves EPA with significant discretion as to how costs are to be considered. *See Husqvarna AB* v. *EPA*, 254 F.3d 195, 200 (D.C. Cir. 2001). In that case, the court interpreted the requirement in section 213(a)(3) of the CAA (which mirrors the language in section 112(d)(2)) that nonroad engines "achieve the greatest degree of emission reduction achievable through the application of [available] technology * * * giving appropriate consideration to the cost of applying such technology," and held that this language "does not mandate a specific method of cost analysis." The court therefore "f[ound] reasonable EPA's choice to consider costs on the per ton of emissions removed basis."

Moreover, where Congress intended that economic achievability be the means of assessing the reasonableness of costs of technology-based environmental standards, it says so explicitly. See Clean Water Act section 301(b)(2)(A) (direct dischargers of toxic pollutants to navigable waters must meet standards reflecting "best available technology economically achievable"). There is no such explicit directive in section 112(d)(2). EPA accordingly does not accept the commenter's interpretation.

Comment: The same commenter argues that the concept of cost-effectiveness is at odds with the mandate of section 112(d)(2) that

[42] In its petition for reconsideration, the Sierra Club also requested that EPA reconsider beyond-the-floor standards based on wet and dry scrubbing. We denied the Sierra Club's petition to reconsider these rule provisions for reasons discussed in a letter to Sierra Club. See docket item EPA–HQ–OAR–2004–0022–0558 (August 22, 2006).

[43] The aggregate total annualized cost of the comprehensive analysis was $8.8 million and would result in the following emission reductions: 0.3 g TEQ of dioxin/furans; 468 tpy of particulate matter; 0.03 tpy of mercury; 0.47 tpy of semivolatile metals; 0.52 tpy of low volatile metals; 794 tpy of total chlorine; and 0.97 tpy of non-dioxin/furan organic HAP. See July 2006 technical support document supporting the reconsideration notice (Appendix A, page 10 of 37 and Table 4–4, page 4–6).

[44] The beyond-the-floor analysis of particulate matter alone resulted in total annualized costs of $1.5 million and would result in a reduction of 468 tpy of particulate. These estimates equate to a cost-effectiveness of $2,569 per ton of particulate matter, which we proposed to be justified (Appendix A, page 3 of 37).

[45] USEPA, "Technical Support Document for HWC MACT Standards: Petitions for Reconsideration Support Document," February 2008, Section 4.

[46] See comments 0563, 0564, 0565, 0567, 0568, 0569, and 0573 in the docket (EPA–HQ–OAR–2004–0022).

requires beyond-the-floor standards to reflect the "maximum" achievable degree of reduction. According to the commenter, cost-effectiveness is an inherently subjective measure that compares "cost" with a benefit (the amount of pollution reduced). By asserting discretion to set a beyond-the-floor standard at a level yielding not the "maximum" degree of reduction that is "achievable" but, instead, the degree of reduction that EPA believes is cost-effective, the commenter argues that EPA alters the statutory mandate and defeats Congress's purpose.

Response: First, the commenter is simply not correct that section 112(d)(2) precludes EPA from considering cost-effectiveness as a means of evaluating costs. In addition to the authority cited in the previous response, see *Bluewater Network* v. *EPA*, 372 F.3d 404, 411, (D.C. Cir. 2004) a case interpreting the same statutory language described in the previous response (section 213(a)(3) of the Act), which is substantially identical to the language in section 112(d)(2). Rejecting an argument that EPA must require the greatest technically achievable reductions immediately, the court stated "the lesson from *Husqvarna* * * * is not that the EPA must adopt the most stringent standards based on the most advanced control technologies but that the EPA is to arrive at standards that reduce emissions to the greatest degree possible after considering the spectrum of available technologies and the costs and benefits associated with those technologies." Considering costs and benefits associated with control technologies is essentially synonymous with the cost per increment of HAP removed, viz. cost effectiveness.[47]

The comment also mischaracterizes the proposed beyond-the-floor methodology. The commenter essentially states that EPA's proposed beyond-the-floor analyses may not reflect the "maximum" degree of HAP reduction that is achievable by a given beyond-the-floor control technology or method. This is simply not the case. As proposed in the reconsideration notice, the beyond-the-floor control options are based on what we consider a reasonable assumption of a given control method's consistent performance given the levels achieved at the floor. Therefore, for each HAP, this performance estimate does indeed reflect the maximum degree of reduction that is achievable. Using total chlorine as an example, when evaluating beyond-the-floor standards based on duct injection dry scrubbing for lightweight aggregate kilns and solid fuel boilers, we assumed an incremental control level of 75% (from levels achieved at the floor).[48] We then evaluated the cost impacts per ton of total chlorine emission reduction, and the adverse energy and solid waste impacts, but only at the control level of 75%. That is, we did not evaluate the costs and corresponding emission reductions of a given control method—in this example duct injection dry scrubbing—for less stringent beyond-the-floor standards (e.g., less efficient control levels of 70%, 60%, 50%, etc. for duct injection dry scrubbing) and then select the most cost efficient of the various control levels evaluated. Thus, the beyond-the-floor analyses presented in the reconsideration proposed rule do correspond to a "maximum" degree of HAP reduction.

Comment: The same commenter states, contrary to EPA's claim, that *Husqvarna AB* v. *EPA*, 254 F.3d 195, 200 (D.C. Cir. 2001) does not support EPA's interpretation of section 112(d)(2). According to the commenter, although EPA apparently based its cost analysis on cost-effectiveness in *Husqvarna*, its decision to do so was neither challenged nor at issue in that case, and *Husqvarna* does not endorse it.

Response: The commenter's reading of *Husqvarna* is not correct. The case both holds that language substantially identical to that in section 112(d)(2) "does not mandate a specific method of cost analysis," and explicitly upholds the cost-effectiveness method for assessing costs used in the rule, since it upheld "the EPA's choice to consider costs on the per ton of emissions removed basis." 254 F.3d at 200. The court also rejected arguments that EPA was required to conduct incremental cost-effectiveness analyses (justifying each successive increment of control as cost effective), *Id.*, surely an unnecessary step if the Agency could not lawfully conduct any type of cost effectiveness analysis at all as a means of ascertaining if a standard is achievable considering costs.

Comment: The same commenter further states that EPA's proposed method for determining cost-effectiveness for multiple HAP that are controlled by a single control mechanism is arbitrary and unrelated to any relevant inquiry under the CAA. The commenter notes several deficiencies, including: (1) The proposed beyond-the-floor methodology is arbitrary because EPA did not explain how the cost of a single control device (e.g., an activated carbon injection system) is apportioned among the different HAP controlled by it in the comprehensive analysis; (2) EPA assigned inappropriately the entire cost of a single control mechanism to each different HAP controlled by it that yielded false information and a meaningless analysis; and (3) EPA failed to assess the cost of a control method against all of the HAP controlled by it.

Response: We disagree with all the points raised in the comment as explained below. With respect to the first point made by the commenter, the technical support document supporting the reconsideration notice explained how the cost of a single control device was apportioned among the HAP controlled by it in the comprehensive analysis. The data used in the beyond-the-floor cost calculations and the cost apportioning results were also included in the appendices of the technical support document. Simply stated, the costs of a beyond-the-floor control technology or technique is apportioned among the HAP that it would control according to the formula shown in the technical support document.[49]

For purposes of responding to the comment that EPA's proposed beyond-the-floor methodology requires beyond-the-floor controls to be purchased and installed more than once (thus overestimating total control costs), the following example illustrates why the methodology does not do what the commenter suggests. This example shows how the beyond-the-floor costs are apportioned using the detailed information presented at proposal in Appendix A of the technical support document.[50] Source no. 487 is an

[47] See also, *Bluewater Network* v. *EPA*, 370 F.3d 1, 20 (D.C. Cir. 2004) ("We agree that EPA may rely on cost and other statutory factors to set standards at a level less stringent than that reflected by across-the-fleet implementation of advanced technologies. This court noted in *Husqvarna* that 'the overriding goal of [section 213] is air quality and the other listed considerations, while significant, are subordinate to that goal.' 254 F.3d at 200. Nevertheless, as the court emphasized in reflecting on very similar language in section 202(*l*) of the CAA, the provision 'does not resolve how the Administrator should weigh all [the statutory] factors in the process of finding the greatest emission reduction achievable.' *Sierra Club* v. *EPA*, 355 U.S. App. D.C. 474, 325 F.3d 374, 378 (D.C. Cir. 2003)".

[48] See USEPA, "Draft Technical Support Document for HWC MACT Standards: Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 3, page 3–2.

[49] USEPA, "Draft Technical Support Document for HWC MACT Standards: Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 3.1.3. We note that the formula to apportion beyond-the-floor costs is shown in Section 3.1.3, paragraph (b), on pages 3–4 and 3–5.

[50] USEPA, "Draft Technical Support Document for HWC MACT Standards: Reconsideration of the Beyond-the-Floor Evaluations," July 2006. All page references related to this discussion are from this document.

incinerator that would need reductions in emissions of dioxin/furans, mercury, particulate matter, and semivolatile metals in order to achieve the suite of beyond-the-floor standards (page 13 of 37 in Appendix A) in the comprehensive analysis. Emission reductions of dioxin/furans and mercury would be achieved by a new activated carbon injection system and improvements to the existing fabric filter, while reductions in particulate matter and semivolatile metals would be achieved by the same improvements to the existing fabric filter (*Id.*). Thus, costs associated with the activated carbon system are apportioned between dioxin/furans and mercury, while the costs of the fabric filter improvements are allocated among all four HAP. We estimated the combined total annualized costs of one activated carbon injection system and the fabric filter improvements for source 487 to be approximately $396,000 (*Id.*). In the comprehensive beyond-the-floor analysis, the costs were allocated according to the discussion in section 3.1.3 of the technical support document. The results of the proposed analysis show that $178,000 was allocated each to dioxin/furan and mercury and the remaining $40,000 was allocated equally to particulate matter and semivolatile metals (page 27 of 37 in Appendix A). The sum of these allocated costs equals the total cost of the new activated carbon injection system and fabric filter improvements—$396,000 ($178,000 + $178,000 + $40,000). Thus, as this example shows, we disagree with the commenter that the comprehensive beyond-the-floor analysis inflates control costs by requiring beyond-the-floor costs to be purchased and installed more than once.[51]

We further disagree with the commenter that our approach to apportion control costs is inherently arbitrary and unrelated to any relevant inquiry under the CAA. Apportioning control costs in the context of the comprehensive analysis allows us to evaluate the costs in relation to the HAP controlled. This is particularly true in the hazardous waste combustor NESHAP because numerous emission standards are established, including standards for dioxin/furans, mercury, semivolatile and low volatile metals, particulate matter, hydrogen chloride and chlorine, hydrocarbons and carbon monoxide.[52] The allocation approach allows us to evaluate the costs associated with a specific HAP and compare it to costs that we have accepted (or rejected) in other EPA air programs. Otherwise, given the extensive use of standards for individual HAP, such comparisons are difficult. Moreover, we are willing to assume higher costs for particularly toxic HAP and apportioning control method costs among the similarly controlled HAP helps us identify such cases. For example, consider the following two theoretical beyond-the-floor situations for a control method that achieves a total combined reduction of 100 tons of total chlorine and mercury at a cost of $1,000,000. Assume under the first scenario that the emission reductions would be split at 99.99 tons of total chlorine and 0.01 tons of mercury. Under the second scenario, 100 tons of total chlorine and mercury would also be reduced, but assume the emissions split is 90 tons of total chlorine and 10 tons mercury. While the overall cost and total reduction in emissions are constant between the two scenarios and may not be warranted as a beyond-the-floor control option, we may find the reductions for mercury under the second scenario as justified, given the greater reductions achieved for mercury, and given that mercury is a persistent bioaccumulative toxic compound.[53]

Finally, the commenter states that EPA failed to assess the cost of a control method against all the HAP controlled by it. We disagree. The table below, summarizing information in the record at the time we issued the reconsideration notice, presents the comprehensive beyond-the-floor analysis for each source category.[54] The summary table below shows the total annualized control costs and associated emission reductions for the beyond-the-floor option for all HAP and HAP surrogates.[55]

TABLE 1—SUMMARY OF COMPREHENSIVE BEYOND-THE-FLOOR (BTF) ANALYSIS IN PROPOSED RULE

Source category	Total annualized cost of BTF option	Emission reductions of BTF option	
		Total all HAP and HAP surrogates	Reductions by HAP and HAP surrogate
Incinerators	$20,200,000	140 t	D/F: 0.8 g; PM: 46 t; Hg: 0.2 t; SVM: 0.4 t; LVM: 0.2 t; TCl: 91 t; organic HAP: 2.4 t.
Cement kilns	27,800,000	499 t	D/F: 1.4 g; PM: 322 t; Hg: 0.7 t; SVM: 1.3 t; LVM: 0.06 t; TCl: 141 t; organic HAP: 33 t.
Lightweight aggregate kilns	4,200,000	279 t	D/F: 1.1 g; PM: 9.1 t; Hg: 0.02 t; SVM: 0.02 t; LVM: 0.01 t; TCl: 270 t; organic HAP: 0.2 t.
Liquid fuel boilers	24,400,000	679 t	D/F: 0.4 g; PM: 437 t; Hg: 0.06 t; SVM: 0.1 t; LVM: 1.1 t; TCl: 241 t; organic HAP: 0.1 t.
Solid fuel boilers	8,800,000	1,264 t	D/F: 0.3 g; PM: 468 t; Hg: 0.03 t; SVM: 0.5 t; LVM: 0.5 t; TCl: 794 t; organic HAP: 1.0 t.

[51] This example remains valid as an illustration, although EPA has determined for independent reasons not to defend the standards for some of the HAP given in the example.

[52] For example, as explained in an earlier footnote, we rejected as unachievable the costs associated with adopting beyond-the-floor standards for all HAP for solid fuel boilers. However, our cost allocation procedure showed us that the particulate matter standard was achievable even though beyond-the-floor standards for the remaining HAP were not.

[53] See also 64 FR at 52882 and 52897 (September 30, 1999), where EPA accepted a higher cost-effectiveness for semivolatile metal reductions for cement and lightweight aggregate kilns to ensure that these sources are using the best controls for HAP introduced almost exclusively from the burning of hazardous waste.

[54] USEPA, "Draft Technical Support Document for HWC MACT Standards: Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 3.1.3, Table 4–4, and Appendix A. The examples in the text are to illustrate the reasonableness of the general methodology for making beyond-the-floor determinations. EPA has determined, for independent reasons, not to defend certain of the standards included in the above Table.

[55] The PM standard is used as a surrogate to control: (1) Emissions of nonenumerated metals (antimony, cobalt, manganese, nickel, and selenium) that are attributable to all feedstreams (both hazardous waste and remaining inputs); and (2) all nonmercury metal HAP emissions (both enumerated and nonenumerated metal HAP) from the nonhazardous waste process feeds at cement kilns, lightweight aggregate kilns, and liquid fuel boilers (e.g., emissions attributable to coal and raw material at a cement kiln, and emissions attributable to fuel oil for liquid fuel boilers).

TABLE 1—SUMMARY OF COMPREHENSIVE BEYOND-THE-FLOOR (BTF) ANALYSIS IN PROPOSED RULE—Continued

Source category	Total annualized cost of BTF option	Emission reductions of BTF option	
		Total all HAP and HAP surrogates	Reductions by HAP and HAP surrogate
Hydrochloric production furnaces	904,000	17 t	D/F: 0.1 g; TCl: 17 t; organic HAP: 0.01 t.

Comment: The same commenter states that EPA proposed a flawed beyond-the-floor analysis with respect to organic HAP (other than dioxin/furans) that would be controlled by activated carbon injection. According to the commenter, carbon monoxide and hydrocarbons are not valid surrogates for non-dioxin/furan organic HAP, in general, and are irrational as a basis for evaluating the cost-effectiveness of activated carbon injection for the organic HAP that it controls because EPA did not propose a cost-effectiveness of the control measure. As a result, the proposed beyond-the-floor analysis overstated costs and understated effectiveness.

Response: To the extent the commenter is suggesting that carbon monoxide and hydrocarbons are generally poor surrogates for organic HAP, we strongly disagree. We have fully explained in earlier rules our rationale of using these organic HAP surrogates when establishing MACT floor standards for hazardous waste combustors. 64 FR at 52847–52. Furthermore, the beyond-the-floor analysis of control methods for organic HAP that do not control other HAP regulated by this rule (e.g., use of an afterburner or use of better combustion practices to reduce organic HAP emissions) are not at issue in this proceeding.

As stated in the reconsideration notice, we indicated that it was inappropriate to identify numerical beyond-the-floor standards for carbon monoxide and hydrocarbons based on activated carbon injection. 71 FR at 52636. We continue to believe this decision is sound for the reasons discussed in the proposed rule. However, in response to comments, we have examined the activated carbon injection beyond-the-floor analysis discussed in the reconsideration notice. In the proposed rule we estimated total annualized costs and emission reductions of dioxin/furans, mercury, and organic HAP associated with activated carbon injection.[56] Aggregating the costs and emission reductions for the three HAP, the cost-effectiveness of the activated carbon injection option can be estimated for each source category. For each source category, the cost-effectiveness results were considered unreasonable, within the meaning of section 112(d)(2). For example, the cement kiln standards were found to be most cost-effective at approximately $560,000 per ton of organic HAP, mercury, and dioxin/furan removed. Given that 98% of the 34 tpy of HAP reduced under the activated carbon injection option are organic HAP, we find that this cost-effectiveness value exceeds estimates previously rejected by EPA for organic HAP control for non-hazardous waste cement kilns. 71 FR at 76531.

Comment: One commenter states that some of the emission standards promulgated in the October 12, 2005 final rule already represent beyond-the-floor standards because EPA has not shown that 12% of existing sources can achieve the standards without modification. Thus, the commenter states that the beyond-the-floor analyses are moot until EPA justifies the existing standards as beyond-the-floor standards.

Response: We disagree with the commenter. The MACT floor standards are based on the performance of actual sources within each source category. That is, we did not base MACT floors on theoretical sources. Given that the control methods needed to achieve the MACT floor standards are fully integrable and compatible, we are not obligated to establish a suite of floor standards that are simultaneously achievable by at least six percent of the sources because the standards are not technically interdependent. See *Chemical Manufacturers Ass'n,* 870 F. 2d at 239 (best performing sources can be determined on a pollutant-by-pollutant basis so that different plants can be best performers for different pollutants).

Comment: One commenter suggests that EPA better explain how costs were allocated among multiple HAP in the comprehensive analysis and why the chosen method is reasonable and appropriate.

Response: In finalizing the technical support document, we have expanded the discussion as suggested by the commenter. See "Technical Support Document for HWC MACT Standards: Petitions for Reconsideration Support Document," October 2008.

G. Dioxin/Furan Standard for Incinerators With Dry Air Pollution Control Devices

The petition of the Sierra Club sought reconsideration of the dioxin/furan standard for existing incinerators with either a dry air pollution control device or waste heat boiler.[57] In the October 12, 2005 final rule, we promulgated a dioxin/furan standard of 0.40 ng TEQ/dscm provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400 °F or below (see § 63.1219(a)(1)(i)). The final standard for this subcategory was less stringent than that proposed (0.28 ng TEQ/dscm) as a result of a data base change between proposal and promulgation. 71 FR at 52636–638. We made this data base change, which pertained to incinerator source 327 (specifically, test condition C10) in our data base, in response to public comments to the proposed rule. 70 FR at 59432. In its petition for reconsideration, the Sierra Club stated that the dioxin/furan floor standard increased as a result of EPA's post proposal decision to use different data to represent source 327 and that EPA had provided no opportunity for public comment on this data handling decision. Pursuant to section 307(d)(7)(B) of the CAA, we granted the Sierra Club's petition for reconsideration of the dioxin/furan standard for incinerators with either a dry air pollution control device or waste heat boiler.

As stated in the September 6, 2006 reconsideration notice, the arguments provided by the Sierra Club in its petition for reconsideration did not convince us that our decision on what emissions data to use to represent source 327 for the dioxin/furan MACT

[56] USEPA, "Draft Technical Support Document for HWC MACT Standards: Reconsideration of the Beyond-the-Floor Evaluations," July 2006, page 4–6, Appendix A, pages 2 and 4.

[57] The Sierra Club also petitioned EPA to reconsider the dioxin/furan standard for the subcategory of incinerators with wet or no air pollution control devices. As discussed in the September 6, 2006 notice, we denied this reconsideration request (71 FR at 52627). See also docket item EPA–HQ–OAR–2004–0022–0558.

floor analysis was erroneous or inappropriate. Therefore, in the reconsideration notice we solicited comment on the identical MACT floor analysis (for dioxin/furans for this incinerator subcategory) and underlying data handling decision regarding source 327 as promulgated in the October 12, 2005 final rule. 71 FR at 52636–38. That is, we proposed not to use the dioxin/furan test results where source 327 encountered operational problems with its carbon injection system. Instead, we proposed to use other valid emissions data in our emissions data base from this source in the MACT floor analysis. In response to the notice for reconsideration, we received five comment letters on this issue. These comment letters are available in the official public docket.[58]

1. Summary of the Final Action

The comments to the reconsideration notice provided limited new information regarding the dioxin/furan standard for incinerators with either a dry air pollution control device or waste heat boiler. No new technical information on the dioxin/furan test results that EPA excluded were received in comments. We received one comment letter that challenged whether we exercised appropriate judgment in excluding the one test result from source 327. After evaluation of the comments, we are deciding to retain the dioxin/furan standard as promulgated and are making no changes to the final rule. Because we are not revising the dioxin/furan standard for incinerators, the standard as promulgated under § 63.1219(a)(1) remains unchanged.

2. What Are the Responses to Major Comments?

We received five comment letters in support of and one comment letter objecting to our decision to replace the 2001 data for source no. 327 with other dioxin/furan emissions data in our data base. A summary of major comments received on this reconsideration issue and EPA's responses to those comments are provided below.

Comment: A comment was received stating that EPA did not explain why the MACT floor standard was based exclusively on compliance test data. The same commenter argues that the 2001 test results from source 327 (i.e., the test data during which operational problems with the carbon injection system occurred) were conducted under compliance test conditions and should be characterized as such in EPA's data base. Finally, the commenter states that whether or not the test results for source 327 were used to establish operating parameter limits is not relevant in determining whether they are compliance test data.

Response: We disagree with the comment. As explained in the September 6, 2006 reconsideration notice, we solicited comment on the identical MACT floor analysis and standard that was promulgated for this subcategory of incinerators. 71 FR at 52636–38. As explained in the proposed rule, EPA's data base is comprised of emissions data from tests conducted for various reasons. For MACT floor analysis purposes, all emissions data were characterized in one of four ways: "compliance test" data, "normal" data, "in-between" data, and "not applicable" data. See 69 FR at 21218–219 (April 20, 2004). After characterizing the data, we followed a general "data hierarchy" to identify the data to use for each emissions standard. 69 FR at 21229. For the subcategory of existing incinerators with either a dry air pollution control device or waste heat boiler, we tentatively concluded at proposal and confirmed in the 2005 final rule that it is appropriate to base the dioxin/furan standard on "compliance test" emissions data associated with the most recent test campaign. See 69 FR at 21240 (April 20, 2004) and page 10–4 of "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards" (September 2005). Therefore, the record clearly shows our consistent intent to use compliance test data to determine the MACT floor standard for this subcategory of incinerators, as the data most representative of the performance of sources in this subcategory.

In response to public comments to the April 20, 2004 proposed rule, the characterization of source 327's test data (i.e., test condition 327C10 in our data base) was changed from "compliance test" to "not applicable" because the carbon injection system malfunctioned during the test. As discussed in the technical support document, one of the reasons data may be characterized as "not applicable" is if problems were encountered during testing that "prevented the data from being used for regulatory compliance purposes." The operational troubles experienced during testing prevented source 327 from using the data in question to set operating parameter limits, a regulatory compliance purpose. See "Draft Technical Support Document for HWC MACT Standards, Volume II: HWC Data Base" (March 2004), pages 2–3 to 2–6, and "Technical Support Document for HWC MACT Standards, Volume II: HWC Data Base" (September 2005), pages 2–11 to 2–13. If the data are unsuitable for regulatory purposes (which is unquestioned here), then EPA can reasonably decline to use the data to characterize the source's performance for standard setting purposes.

Comment: One commenter states that our decision not to use the 2001 test data from source 327 and instead use dioxin/furan emissions data with higher levels from 1992 is arbitrary and capricious. This is because EPA had no reason to believe that source 327 would perform worse than the level it achieved despite operational problems.

Response: The 2001 test data in our data base for source 327 do not represent the source's performance over time because the source encountered operational problems during testing. As a result, we believe it is inappropriate to use such data when identifying MACT floor standards (or any other standards, for that matter). The fact remains that we have no valid data reflecting the performance and performance variability of this source when using a carbon injection system. While dioxin/furan emission results may be lower using the carbon injection system, we are not in possession of such data. It is also a fact that none of the available 1992 emissions data (i.e., the only compliance test data in our data base for this source) is low enough to be considered among the 12 percent of best performers. As a result, available valid emissions data for source 327 have no direct impact on the MACT floor analysis.

Comment: One commenter stated that the dioxin/furan standard is unlawful and arbitrary and capricious because the calculated MACT floor of 0.42 ng TEQ/dscm is less stringent than the current interim standard of 0.40 ng TEQ/dscm. Therefore, these results indicate that the MACT floor methodology does not yield floors reflecting the actual performance of the relevant best sources.

Response: We disagree with the comment for the same reasons discussed in Part Four, Section III.F of the October 12, 2005 final rule. 70 FR at 59458.

H. Provisions of the Health-Based Compliance Alternative

The October 12, 2005 final rule allowed sources to establish and comply with health-based compliance alternatives for total chlorine for hazardous waste combustors other than hydrochloric acid production furnaces in lieu of the MACT technology-based emission standards established under §§ 63.1216, 63.1217, 63.1219, 63.1220,

[58] See comments 0563, 0565, 0567, 0568, and 0569 in the docket (EPA–HQ–OAR–2004–0022).

and 63.1221. See 70 FR at 59413–19 and § 63.1215.

Sierra Club petitioned for reconsideration stating that EPA changed several provisions of the health-based compliance alternative after the period for public comment and therefore did not provide notice and opportunity for public comment.[59] In addition, Sierra Club stated that three new provisions are problematic: (1) It is unlawful to allow sources to comply with the health-based compliance alternative without prior approval from the permitting authority; (2) it is unlawful to allow a source to obtain an unlimited extension of the compliance date if their eligibility demonstration is disapproved and the source is unable to change the design or operation of the source to comply with the MACT emission standards by the compliance date; and (3) the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives.

We granted reconsideration of these provisions because we developed them in response to comments on the proposed rule, after the period for public comment as Sierra Club stated. Furthermore, to address Sierra Club's concerns, we proposed to revise the rule pertaining to these provisions as follows: (1) The rule would state that the operating requirements specified in the eligibility demonstration are "applicable requirements" as defined in 40 CFR 70.2 or 71.2 and therefore must be incorporated in the Title V permit; (2) a source may comply with the health-based compliance alternative without prior approval from the permitting authority provided that the source has made a good faith effort to provide complete and accurate information and to respond to any requests for additional information; and (3) the compliance date extension cannot exceed one year if the eligibility demonstration is disapproved and the source is unable to change the design or operation to comply with the MACT emission standards by the compliance date.

1. Summary of the Final Action

We are today promulgating revisions to the health-based compliance alternative as proposed in the reconsideration notice. The comments to the reconsideration notice did not provide a basis for us to conclude that the health-based compliance alternative, as we proposed to revise it, was inappropriate. Therefore, we reaffirm the health-based compliance alternative that we promulgated in the October 12, 2005 final rule, as revised today subsequent to the reconsideration notice.

Please note that the revised provisions are effective immediately, and today's final rule does not change the October 14, 2008 compliance date established by the October 12, 2005 final rule. Sources can readily comply with the revised provisions promulgated today on the compliance time line established by the October 12, 2005 final rule.

2. What Are the Responses to Major Comments?

Comment: Sierra Club states that the health-based compliance alternatives are implemented through Title V permits, and because Title V permits expire, this is evidence that the health-based alternatives are not emission standards within the meaning of CAA section 112(d)(4).

Response: In the reconsideration notice, we explained that, because the health-based compliance alternative requirements are clearly defined (e.g., HCl-equivalent emission limits, chlorine feedrate limits), and because any standards or requirements created under CAA section 112 are considered "applicable requirements" under 40 CFR part 70, the compliance alternatives would be incorporated into Title V permits.[60] 70 FR at 59481; 71 FR at 52639.

Nonetheless, in response to Sierra Club's reconsideration petition that the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives we proposed to revise the rule to add clarifying regulatory language stating that § 63.1215 requirements are applicable requirements under part 70 and therefore must be included in the Title V permit as would any other applicable requirement.

We are promulgating that requirement today (see § 63.1215(e)(3)) and disagree with the commenter's view that the health-based alternatives are implemented through the Title V permit rather than established as a national standard by rule. The rule itself establishes not only the standard's level of protection, which is uniform nationwide and assures that emissions of total chlorine from each source complying with the alternative standard will be less than the threshold level for total chlorine with an ample margin of safety,[61] but also establishes each and every step that sources must use to calculate that standard. The permit writer ascertains that the source has applied the rule properly (e.g., has not put incorrect factual inputs into the equations and formulae provided in the rule). Thus, the rule not only establishes the level of control (which is uniform nationally, as just stated) but the exclusive means of developing the emission limit which satisfies that level. Moreover, sources must establish a numerical limit (using the exclusive protocols set out in the rule) before permitting. This limit is immediately enforceable against the source. The permitting process determines if this limit was determined correctly (i.e. whether the source applied the protocols in the rule correctly). See § 63.1215(e) and (g).

The situation is analogous to the way parametric monitoring limits implementing numeric section 112(d)(2) standards are established: a national rule establishes a numerical standard and specifies which parameters are to be monitored; a source determines the actual levels of those parameters based on site-specific conditions and establishes enforceable parametric monitoring limits for itself; and a permit writer decides whether to ratify the source's determination and memorializes the quantified parametric monitoring limit in the source's permit. *Id.* There is no suggestion that this process violates the requirement that EPA establish national emission standards.

Comment: Sierra Club states that allowing sources to comply with the health-based compliance alternatives without prior approval from the permitting authority further confirms that the alternatives are not standards at all, and violates the CAA by allowing sources to operate without any assurance that HAP emissions are controlled.

Response: The comment is confusing, since MACT standards are implemented in advance of permitting (as are the alternative section 112(d)(4) standards), and are, of course, emission standards. Further, the health-based compliance alternative is a requirement established by EPA "which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis," and so is an "emission standard" under section 302(k) of the Act (which definition applies to section 112(d)).

[59] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section XII, docket item EPA–HQ–OAR–2004–0022–0517.

[60] Applicable requirements defined under § 70.2 must be included in Title V permit, as required under § 70.6(a)(1).

[61] Specifically, that exposure to the actual individual most exposed to the facility's emissions, considering off-site locations where people congregate for work, school, or recreation, is less than that level. See § 63.1215(c)(ii).

The section 112(d)(4) standard is an emission concentration limit (ppmv) for total chlorine that is demonstrated not to result in a Hazard Index[62] for hydrogen chloride and chlorine gas exceeding 1.0.

Comment: Sierra Club states that EPA's "individualized source-by-source loophole program" does not provide emission standards. The comment continues that since section 112(d) standards must be established on a category or subcategory basis, the most a section 112(d)(4) standard can lawfully do is require all sources to emit at the uniform limit which will not result in adverse effects to human health with an ample margin of safety. The commenter continues that to satisfy section 112(d)(4), that standard must moreover account for the individual circumstances of each emitting source (including receptor location).

Response: The standards adopted in the rule apply on a categorical basis and assure that each source in the category adopting this alternative emits total chlorine at a level which is protective of human health with an ample margin of safety. The level of protection afforded is identical in each instance the compliance alternative is satisfied: exposure to less than the hazard index for total chlorine (which hazard index reflects an ample margin of safety), and hence exposure to less than the threshold level of effect for total chlorine. Individual circumstances of each emitting source (such as dispersion characteristics and the location of most-exposed receptor) must be accounted for in demonstrating that the source is eligible for the alternative standard (just as actual parametric monitoring limits implementing numeric limits are established post-rule to account for individual circumstances). See § 63.1215(c)(2) which requires that the demonstration of eligibility show that emissions of total chlorine (measured as HCl equivalence) be shown to be less than the Hazard Index for chronic exposure "for the actual individual most exposed to the facility's emissions, considering off-site locations where people reside and where people congregate for work, school, or recreation"; see also § 63.1215(c)(3)(v) requiring the demonstration to account for emissions from all emitting hazardous waste combustors at a site. As explained in the previous response, this provision thus satisfies the statutory definition of "emission standard," as well as all applicable section 112(d) requirements.

Comment: Sierra Club states, without analysis, that the provision violates RCRA as well as the Clean Air Act, because the standards are insufficient to protect public health and the environment.

Response: EPA showed in promulgating the provision that emissions would be protective of human health and the environment (70 FR at 59479–80), and commenter has not provided information to the contrary.

Comment: The commenter cites legislative history to the 1990 amendments (1 Legislative History at 866) in which Congress rejected a provision which would have allowed individual sources to waive out of MACT requirements by demonstrating that their HAP emissions pose negligible risk to public health. The commenter views this history as supporting its argument since it regards the provision here as analogous.

Response: EPA does not believe the provision discussed in the legislative history is analogous. It would have allowed a demonstration of low risk for all toxics, not just threshold pollutants. Section 112(d)(4) is limited in scope to threshold pollutants where the Administrator has identified a level that protects public health with an ample margin of safety. EPA's rule here reasonably implements that authority.

Comment: Sierra Club states that it is impermissible and further indication that the health-based compliance alternatives are not emission standards to allow an automatic extension of the compliance date upon disapproval of an eligibility demonstration to allow the source time to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable the source to achieve compliance with the total chlorine MACT standards. Sources must comply with MACT standards within no more than three years, absent an individualized demonstration of a need for further time to install controls.

Response: We disagree with the characterization that the time extension is automatic. Section 63.1215(e)(2)(i)(B) states that the permitting authority may extend the compliance date by up to one year (as revised by today's rule) to allow the source to make changes to the design or operation of the combustor to achieve compliance with the MACT total chlorine standards. An individualized showing is required to support such an extension. In addition, an extension would be granted only for the time needed (but not exceeding one year) to make the changes required to achieve compliance with the emission standards. That is expressly the purpose of the time extension provision of CAA section 112(i)(3)(B), which allows extensions of a section 112(d) standard's effective date for up to one year where necessary for the installation of controls.

Comment: Sierra Club states that EPA lacks authority to grant source-by-source exemptions from Section 112 emission standards.

Response: We agree. The health-based compliance alternatives are section 112 emission standards, as we have explained in this preamble and in the October 12, 2005 final rule. See 70 FR at 59479. Thus, no sources are exempted from such standards.

IV. Response to Comments to the September 27, 2007 Notice

On September 27, 2007, EPA issued a notice for public comment which discussed the standards that EPA promulgated in October 2005, and specifically identified which standards EPA believes are consistent with the Act and caselaw, and which standards are not and need to be reexamined through a subsequent rulemaking. 72 FR 54875. With respect to those standards EPA announced it intended to defend, the notice indicated the portions of the rationale upon which EPA intended to rely, and which portions EPA would no longer rely upon as a justification for the standards. EPA sought public comment on this analysis and placed edited versions of various support documents in the public docket, edited to remove portions of the rationale on which EPA no longer planned to rely, and solicited public comment on these edits.

After receipt of public comment, EPA has further narrowed the number of standards it intends to defend. We respond here to the principal public comments with respect to those standards which EPA has announced its intention to defend. However, as an initial matter, one commenter argued that EPA may not amend portions of the record or revise rationales for the final rule without proposing to amend the rule, i.e., recommencing rulemaking procedures. EPA disagrees. The Clean Air Act provides that EPA may reconsider rules based on new information which arose after the period for public comment. CAA section 307(d)(7)(B). The *Brick MACT* opinion is such a type of new information. *Sierra Club* v. *EPA*, 479 F.3d 875 (2007) (*Brick MACT*). Also, EPA may decide itself to

[62] The Hazard Index is the sum of the Hazard Quotients for hydrogen chloride and chlorine gas. The Hazard Quotient (HQ) is the ratio of the predicted ambient air concentration of a pollutant to the air concentration at which no adverse effects are expected. For chronic inhalation exposures, the HQ is calculated as the air concentration divided by the reference concentration (RfC). For acute inhalation exposures, the HQ is calculated as the air concentration divided by the acute reference exposure level (aREL).

reconsider a rule based on existence of such new information (i.e., initiate reconsideration *sua sponte*). See 72 FR at 76553 (December 20, 2006). EPA essentially adopted that course here, providing notice and opportunity for public comment as required by section 307(d)(7)(B) (including a comment period ultimately extended to two months (see 72 FR 59067 (October 18, 2007). However, to make explicit that this action is part of a reconsideration process, EPA is including its responses to comment here as part of the reconsideration process already initiated for the Hazardous Waste Combustor MACT rule.[63] Final edited versions of the various support documents are also included in the public docket.

With one exception, all commenters to the September 2007 notice supported EPA's analysis of the standards and did not suggest any changes to that analysis. The one adverse commenter was Earthjustice (on behalf of Sierra Club), which submitted extensive comments raising various challenges. Earthjustice, however, did not contest EPA's main premise: sources which emit more hazardous air pollutant (HAP) over time than other sources (e.g., those with lower emissions in single tests) do not have to be regarded as best performing, and this holds true for those higher-emitting sources which may emit less HAP in a single snapshot test. 72 FR at 54877. EPA set out at length in the October 2005 rule and the September 2007 notice why it believes it identified as best performers sources emitting the lowest amount of HAP over time and reasonably estimated their levels of performance. Most of the responses below deal with the issue of the reasonableness of this analysis.

Before addressing these specifics, we first address certain general points. EPA demonstrated in both the preamble to the final rule and in the September notice that the commenter's preferred approach for the existing source floor of taking the average of the lowest emitting sources in single tests did not properly characterize these sources' performance because it ignored their short- and long-term variability and thus their performance over time. The commenter now maintains that even if this is true, it is irrelevant because EPA must still show that the sources the Agency identified as best are in fact best performers. Although EPA must of course provide a reasoned explanation justifying its selection of best performers and their level of performance, EPA believes it is clear on this record that one cannot presume that sources with lowest HAP emission in single tests are best performers, or presume that single snapshot performance test information is an adequate representation of sources' actual performance over either short or long time periods. A further consequence, as explained in the following paragraph, is that whatever methodology is utilized for identifying best performing sources necessarily involves some type of estimate as to sources' performance and that the starting point for such estimates need not be sources with lowest HAP emissions in single tests.

Earthjustice, however, seizes on EPA's conclusion that sources rejected by EPA as best performers "likely" perform worse over time, calling this unwarranted speculation, and suggests more data-gathering to develop a legally mandated quantum of proof (e.g., Earthjustice's Comments pp. 1, 2, 8; docket item EPA–HQ–OAR–2004–0022–0613). As the commenter is aware, however, no reliable quantification of performance over time is now possible (except for particulate matter emissions from sources equipped with fabric filters (see 72 FR at 54879)) because continuous emission monitors for HAP do not exist, or for HAP for which CEMS are just beginning to be implemented for HWCs, there are too few data to evaluate sources' performance. Long-term performance of sources for HAP therefore are necessarily estimates. EPA's conclusion that sources it selected as best performers "likely" emit less HAP over time is an accurate reflection that definitive proof (i.e., day-in, day-out quantified performance) is impossible in the absence of continuous emission monitoring results. More data collection would yield more snapshot results, so long-term performance would still have to be estimated.[64] However, the record demonstrates that EPA's conclusions are not mere speculations, but rather are supported by sound evidence and are consequently reasonable. *Mossville Environmental Action Now* v. *EPA* (*Mossville*), 370 F. 3d at 1240–41 (D.C. Cir. 2004) (summarizing case law that EPA may use estimates to assess performance of best-performing sources, and stating further that courts will accept these estimates if they have a reasoned basis).

Finally, Earthjustice repeats earlier comments that because sources maximize operating parameters when they conduct compliance tests in order to obtain an ample compliance margin, compliance tests already account for total operating variability. However, as explained in the rulemaking, compliance tests can only account for controllable operating variability, and there are numerous uncontrollable factors that result in short- and long-term variability not accounted for in compliance tests. 70 FR at 59439 (October 12, 2005). The record shows that in virtually every case when comparisons with other test conditions are possible, lowest emitters in one compliance test emitted more HAP in other tests.[65] Indeed, in most of the comparisons, the sources emitted more than their estimated performance including run-to-run variability (which we refer to as UPL99).[66] *Id.*[67] Another example, as discussed above, is the Ash Grove Chanute source, where the source in later tests emitted more particulate matter than projected by EPA even after adjusting the source's initial test results to account for run-to-run and test-to-test variability. This empirical demonstration shows that lowest emitting sources in single tests can emit more HAP over time, and that the amounts emitted routinely can exceed even their estimated short-term variability or total variability. Necessarily, the demonstration also shows that the single test condition measurements do not fully encompass these sources' actual variability. EPA thus correctly concluded that run-to-run and test-to-test variability—short-term and long-term variability over and beyond performance measured in a single stack test—are real and appreciable, and consequently an

[63] EPA also does not believe any commenters were prejudiced by the procedure EPA adopted, since all the commenters had notice of EPA's action, and had ample time to submit comments, of which they availed themselves. In addition, EPA provided notice to the general public by means of publication in the **Federal Register** so any interested person could respond.

[64] However, in this rule, EPA has carefully compiled and studied data from different tests from lowest emitting sources in single tests to best estimate these sources' long-term performance.

[65] See memorandum from Bob Holloway to docket entitled "Analysis of Available Performance Data from Best Performing Sources", September 8, 2008.

[66] The UPL99 means the 99th percentile upper prediction limit and is an estimate of the value that the source would achieve in 99 of 100 future tests if it could replicate the operating conditions of the compliance test. 70 FR at 59437 (October 12, 2005).

[67] The commenter challenged EPA's statements, maintaining that these data do not show which sources are the best performers. See, e.g. Earthjustice's comments p. 3. EPA developed these data to show that the commenter's argument that test conditions already account for all of sources' operating variability "and then some" (Earthjustice's comments p. 4) is demonstrably incorrect, and that an approach of averaging snap shot emission tests—even after adjusting results to account for run-to-run variability, still does not fully account for sources' full operating variability—i.e., their performance over time.

element of sources' performance. See Technical Support Document ("TSD") Vol. III, sections 16.3 to 16.6, 17.2 and 17.3.[68]

A. Standards for Particulate Matter

1. Standards for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, and Solid Fuel Boilers

EPA has carefully reviewed all of its data for particulate matter and concluded, with certain exceptions, that the current standards require some revision (in some cases due to record correction issues rather than to issues related to section 112(d)(3) and the *Brick MACT* opinion).[69] The exceptions are the new source particulate matter standards for incinerators, cement kilns (see also section III.E above), and lightweight aggregate kilns, and the particulate matter standards for existing and new solid fuel boilers. For these standards, EPA believes that it properly assessed which sources are best performing and reasonably estimated their level of performance. EPA also has previously indicated why more stringent, beyond-the-floor standards are or are not achievable for these source categories. See 71 FR at 14670; TSD Vol. III, sections 10.3.4, 12.3.4, 14.3.2 and 14.3.4.

2. Standards for Liquid Fuel Boilers

EPA believes that the particulate matter standard for existing and new liquid fuel boilers requires revision for the reasons discussed in the September 2007 notice. 72 FR at 54880.

B. Standards for Semivolatile Metals and Low Volatile Metals

1. Standards for Incinerators and Solid Fuel Boilers

EPA selected as best performers for semivolatile (lead and cadmium, or SVM) and low volatile (arsenic, beryllium and chromium, or LVM) HAP metals the sources with the best combination of hazardous waste feedrate control of the respective metals and best system removal efficiency (generally, most efficient emission controls). EPA continues to believe that these sources will emit the least SVM and LVM over time since they will have the least long-term variability. 72 FR 54880–881. Comparative test data support this conclusion. Sources with lower SVM and LVM emissions in single tests either have had emissions in historic tests that are higher than the emissions of the sources EPA identified as best performing, can reasonably be projected to emit more than the EPA-identified best performers based on their historic performance (historic system removal efficiency applied to amount fed in performance test would result in higher emissions than EPA-identified best performers),[70] or are simply unrepresentative.[71]

Earthjustice states that such comparisons are unwarranted because there is no reason to assume a source would operate with a worse efficiency than in their compliance test. Earthjustice Comments p. 9. Removal efficiency is, however, a key aspect of normal operating variability. Contrary to Earthjustice's suggestion, a source does not choose to operate with worse control efficiency. Control equipment simply does not operate uniformly day-in, day-out. That variation in performance affects emissions and is part of a source's operating performance. Moreover, EPA carefully examined whether the sources were properly designed and operated during the comparative test conditions and determined that they were. TSD Vol. III pp. 17–13 to 16. The commenter presents no information questioning that analysis.

Earthjustice also states repeatedly that EPA selected this floor methodology for SVM and LVM to assure that all sources could meet MACT floors, citing to 70 FR at 59442. E.g., Earthjustice's Comments p. 11. EPA never made such a statement, and the record does not support the commenter's assertion. For example, 60% (13 of 22) of incinerators had emissions in the relevant test conditions (those considered in establishing the standard) that were higher than the SVM floor, and over 70% (19 of 26) had higher LVM emissions in those test conditions. TSD Vol. III, App. E, Tables SF–INC–SVM and SF–INC–LVM.

2. Standards for Cement Kilns, Lightweight Aggregate Kilns, and Liquid Fuel Boilers (Low and High Heating Value Subcategories)

EPA has determined that these standards should be re-examined and not defended in litigation.

3. Alternative to the Particulate Matter Standard for Liquid Fuel Boilers

EPA promulgated alternatives to the particulate matter standard for each subcategory of liquid fuel boilers (i.e., high and low heating value subcategories) under § 63.1217(e). EPA believes that these alternatives require revision for the reasons discussed in the September 2007 notice. 72 FR at 54882.

4. Alternative Metal and Total Chlorine Standards for Cement Kilns and Lightweight Aggregate Kilns

EPA promulgated alternatives to the mercury, semivolatile volatile metals, low volatile metals, and total chlorine standards for cement and lightweight aggregate kilns. See alternatives under § 63.1206(b)(9), (b)(10), and (b)(15). EPA has determined that these alternatives should be re-examined and not defended in litigation. 72 FR at 54882–83.

C. Standards for Total Chlorine

1. Standards for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Liquid Fuel Boilers, and Solid Fuel Boilers

All comments on these source categories are already addressed either in the final agency action on reconsideration (issue of analytical bias with stack sampling method for total chlorine, see section III.B of this preamble above), or in earlier parts of this rulemaking. TSD Vol. III, Chapter 19. With respect to the standards for total chlorine for existing and new cement kilns and liquid fuel boilers (high heating value subcategory) and new lightweight aggregate kilns, EPA believes these standards require revision

[68] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards", (TSD Vol. III) September 2005. Unless otherwise specified, all TSD references in this section of the notice are to this document, which is available in the docket to the rule.

[69] With respect to standards for particulate matter for incinerators, for example, EPA is concerned that the database includes certain types of specialty chemical demilitarization operations where metals are not volatilized within the common pool of incinerators (see also n. 72 below with respect to high and low volatility metals emitted by incinerators). With respect to particulate matter emitted by cement kilns, further study of operating conditions of one of the sources classified as a best performer may require reassessment of that source's performance.

[70] For example, incinerator source 327, which in a single test condition had a UPL99 for SVM which is 25 times less than the highest-emitting of the best-performing sources in the MACT pool, would emit over three times more SVM than that highest-emitting best performer assuming it fed the same amount of metals as in its compliance test but removed them from its emissions at the efficiency demonstrated in other of its historic compliance tests. TSD Vol. III, Table 17.6 and App. E, Table SF–INC–SVM.

[71] Certain of the sources (incinerator sources 494 and 3011) are specialty operations feeding large chunks of metal contaminated with trace organics (e.g., inert materials, bulk explosives, metal waste). These metals generally are not emitted because of the large particle size of the feed—SVM are not volatilized and LVM are not entrained in the combustion gas. These operations are not representative of usual incineration, where metals are present in the feed as organometallic compounds or metal dispersed in an organic or aqueous liquid such that SVM is generally volatilized and LVM is generally entrained in the combustion gas. USEPA, "Technical Support Document for HWC MACT Standards, Volume II: HWC Data Base", (TSD Vol. II) September 2005, App. B in data sheet "inc-svm.xls", App. C in data sheets "494.xls" and "3011.xls".

for the reasons signaled in the September 2007 notice. 72 FR at 54883. Finally, with respect to the standards for total chlorine for liquid fuel boilers (low heating value subcategory), EPA has determined that these standards should also be re-examined and not defended in litigation for reasons discussed in section IV.F.3 below.

2. Hydrochloric Acid Production Furnaces

EPA adheres to the analysis set out in the September 2007 notice: The pool of best performing sources are those emitting the least total chlorine and EPA has discretion to express these sources' performance in terms of percent reduction. Sections 112(i)(5)(A) and 129(a)(4) of the Act support this conclusion (a point not addressed by Earthjustice in its comments). See 72 FR at 54884/2.

Earthjustice states that standards expressed in terms of control efficiency are not "emission standards" under the Act. This is incorrect. An "emission standard" includes "a requirement * * * which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." CAA section 302(k). Standards requiring HAP reduction of a given percent limit the emission quantity, rate, and (in any realistic scenario) concentration of the HAP and so falls squarely within the statutory definition.

Earthjustice stresses the following language from *Brick MACT*: "EPA cannot circumvent *Cement Kiln's* holding that section 7412(d)(3) requires floors based on the emission level actually achieved by the best performers (those with the lowest emission levels), not the emission level achievable by all sources * * *". EPA is not establishing a floor for these sources based on an emission level achievable by all sources (six of ten sources in the category had test conditions with higher (less efficient) performance than the MACT floor (see TSD Vol. III, App. E, Table SO–HCLPF–CL)), or otherwise looking to performance of sources other than the lowest emitting to establish this floor.

D. Standards for Dioxins/Furans

1. Standards for Incinerators

a. *Dry Air Pollution Control Device or Waste Heat Boiler Subcategory.* The commenter challenges establishing the floor at the level of the 2002 Interim Standard. EPA did so because the average of the performance of the top 12 percent of lowest emitting sources was slightly higher than that level, accounting for run-to-run (short-term) variability. TSD Vol. III, App. C, Table E–INCDWHB–DF. Under these circumstances, the Interim Standard is the best emissions information available to EPA as to the performance of the lowest emitting sources. As in *Mossville*, EPA may establish a MACT floor at a regulatory level when the best performing sources performance over time (i.e., accounting for variability) "barely satisfied" the regulatory limit. EPA thus disagrees with the commenter that the floor cannot be established at the level of the Interim Standard because the Interim Standard is a level sources are required to meet, not the lowest level achieved.

The commenter also continues to dispute that incinerators with dry air pollution control devices or waste heat boilers are a separate subcategory for purposes of a dioxin/furan standard. As explained at 69 FR 403 (January 5, 2004), subcategorization on the basis of air pollution control technology is not legally permissible. But in this case, dry air pollution control devices and waste heat boilers do not capture dioxins but form them, making this a different type of process for purposes of a dioxin/furan standard.

b. *Wet Air Pollution Control Device or No Air Pollution Control Device Subcategory.* EPA established the floor at the level of the Interim Standard because the lowest emitting sources in single test conditions had dioxin emissions in other tests much higher than the Interim Standard. EPA's analysis was strongly influenced by comparative test data from incinerator source 3016, which appeared to show multiple orders of magnitude operating variability. EPA has since re-reviewed all of the test data for this source and has found that the amount of variability from this source was overstated because results of one of the three test runs in test condition 2 were inadvertently omitted from the calculation. Remaining sources demonstrate operating variability, but not enough to justify retention of the Interim Standard as the MACT floor. EPA therefore does not intend to defend this standard in litigation, and will re-examine it.

2. Standards for Cement Kilns and Lightweight Aggregate Kilns

EPA believes it erred in the way in which it assessed the relative stringency of the calculated floors and the 2002 Interim Standards (i.e., the dioxin/furan standards promulgated under §§ 63.1204 and 63.1205) so that the promulgated standard is expressed incorrectly.

3. Standards for Liquid Fuel Boilers

For existing liquid fuel boilers-dry air pollution control subcategory, the commenter again challenges whether sources with dry air pollution control devices can be categorized separately from other boilers for purposes of assessing dioxin/furan performance. This point is addressed in section IV.D.1.a above. With respect to the remaining dioxin/furan standards (new source liquid fuel boilers-dry air pollution control subcategory and existing and new source liquid fuel boilers-wet or no air pollution control system subcategory), EPA believes that these standards require revision for reasons discussed in the September 2007 notice. 72 FR at 54886.

4. Standards for Solid Fuel Boilers and Hydrochloric Acid Production Furnaces

As discussed in the September 2007 notice, EPA believes that these dioxin/furan standards require revision. 72 FR at 54886.

E. Standards for Non-Dioxin/Furan Organic HAP

EPA has determined that these standards—carbon monoxide and hydrocarbons, as surrogates for control of non-dioxin/furan organic HAP—should be re-examined and not defended in litigation.

F. Standards for Mercury

1. Standards for Incinerators

The commenter challenges use of the 2002 Interim Standard as the standard for mercury for existing sources. EPA did so because the average of the mercury emissions from the best performing sources under any of the possible ranking methodologies was higher than the Interim Standard. 72 FR at 54887. The commenter states that this is impermissible (although any alternative would lead to a less stringent standard than the one EPA promulgated). The commenter further states that under *Mossville*, regulatory levels can constitute a floor if there is a factual showing that best performers emit at a level close to that regulatory level. Earthjustice's Comments p. 24. EPA agrees. That factual showing exists here: The best performers are emitting at a level even higher than the regulatory level (reflecting performance before the Interim Standard took effect). The regulatory level thus is a reasonable measure of best performance. *Mossville*, 370 F. 3d at 1240–41.

2. Standards for Cement Kilns and Lightweight Aggregate Kilns

As discussed in the September 2007 notice, EPA believes that the mercury standards for existing and new cement kilns require revision. 72 FR at 54887–88. With respect to the mercury standards for existing and new lightweight aggregate kilns, EPA has determined that these standards should be re-examined and not defended in litigation.

3. Standards for Liquid Fuel Boilers

In the promulgated rule, EPA had subcategorized liquid fuel boilers based on thermal content of hazardous waste burned and established separate standards for high heating value and low heating value boilers. EPA has determined not to defend the high heating value subcategory standards for the reasons stated at 72 FR at 54888. This decision also necessitates revision of the mercury standards for the low heating value subcategory because all sources' data will now be in a common pool—i.e., There will no longer be high and low heating value subcategories. See also preamble discussion at III.A above.

4. Standards for Solid Fuel Boilers

The commenter again raises the issue of consideration of and means of calculating run-to-run variability. EPA's response is at 70 FR 59438–40. EPA continues to believe that these standards are based on the average performance of the best performing sources and that EPA has reasonably ascertained that level of performance.

G. Normalization

Ordinarily, one cannot meaningfully compare performance of different entities without providing a common metric of comparison. Miles per gallon is an example, whereby meaningful comparison of fuel economy can be made for vehicles traveling different distances. Stating that two vehicles traveled 200 and 300 miles respectively says nothing about which has the better fuel economy performance. The commenter states nonetheless that normalization is impermissible under section 112(d)(3). EPA continues to disagree. Section 112(d)(3) does not address the issue of whether sources' performance can be expressed and compared in normalized units, so the commenter's argument that the approach is forbidden as a matter of law appears incorrect. See also 70 FR at 59451, 72 FR at 54888, and *National Lime II*, 233 F. 3d at 631, 632 (rejecting *Chevron I* argument that section 112(d)(3) requires EPA to establish MACT floors "at the lowest recorded emission level for which it has data" because "[s]ection [112's] additional phrase says nothing about what data the Agency should use to calculate emission standards"). EPA's interpretation is moreover reasonable, since normalizing emission results allows a meaningful way to determine which performers are better, the very purpose of section 112(d)(3).

V. What Other Rule Provisions Are Being Amended or Clarified?

We are making several corrections to 40 CFR part 63, Subpart EEE. In addition, we are clarifying the particulate matter standard for cement kilns.

A. What corrections are we making?

1. Revisions to § 63.1207(d)

The last sentences under § 63.1207(d)(4)(i) and (ii) refer to demonstrating compliance with "the replacement standards promulgated on or after October 12, 2005." This regulatory language is confusing. We are revising these paragraphs to clarify that the "replacement" standards are the standards under §§ 63.1219, 63.1220, and 63.1221. Accordingly, we are amending § 63.1207(d)(4).

2. Revisions to § 63.1207(m)

Section 63.1207(m) waives the performance test if the HAP metals or total chlorine feed rate (after conversion to an exhaust gas concentration using continuously monitored exhaust gas flow data) is less than the applicable emission rate, assuming that 100 percent of the constituent in the feed is emitted from the combustion unit. This provision applies to emission standards expressed either on a volumetric flow rate of exhaust gas basis (i.e., µg/dscm or ppmv) or on a hazardous waste thermal concentration basis (i.e., pounds of HAP emitted attributable to the hazardous waste per million Btu of heat input from the hazardous waste).

The performance test waiver provisions under § 63.1207(m)(1), which addresses emission standards expressed on a volumetric flow rate of exhaust gas basis, currently state that a source is "deemed to be in compliance with an emission standard * * * if the twelve-hour rolling average maximum theoretical emission concentration (MTEC) * * * does not exceed the emission standard." The twelve-hour rolling average requirement under § 63.1207(m)(1) was appropriate when this provision was codified in 1999 because all the metals and total chlorine feedrate limits were specified as twelve-hour rolling average limits. 64 FR at 52967, 53060–62 (September 30, 1999). However, when we finalized standards for liquid and solid fuel boilers in 2005, twelve-hour rolling average limits were not required for all standards. See, for example, the rolling average requirements under § 63.1209(n)(2)(v). Moreover, we also finalized in the 2005 rule a new provision that allows sources to use shorter averaging periods than those specified in the rule because shorter averaging periods result in more stringent control of the parameter. Section 63.1209(r).[72] EPA inadvertently failed to revise § 63.1207(m)(1) to remove the twelve-hour rolling average requirement in the October 2005 rule. Today, we are correcting that inadvertent error. Accordingly, we are revising § 63.1207(m)(1)(i).

3. Revisions to § 63.1220(a)(2) and (b)(2)

In an April 8, 2008 rule, we revised the mercury standards under § 63.1220(a)(2) and (b)(2) by clarifying that a source must comply with the maximum concentration of mercury in the hazardous waste limitation and either a hazardous waste maximum theoretical emission concentration feed limit or stack gas concentration limit. 73 FR at 18972 (April 8, 2008) and 71 FR at 52641 (September 6, 2006). However, the mercury standards issued on April 8 were not amended correctly, which resulted in the maximum theoretical emission concentration feed limit requirement being incorrectly repeated under § 63.1220(a)(2)(iii) and (b)(2)(iii). Today, we are removing § 63.1220(a)(2)(iii) and (b)(2)(iii), which paragraphs were correctly and previously incorporated under § 63.1220(a)(2)(ii) and (b)(2)(ii), respectively.

B. Clarification of the PM Standard for Cement Kilns

In their comments on the proposed rule, the Ash Grove Cement Company (Ash Grove) and Cement Kiln Recycling Coalition (CKRC) each sought clarification regarding the portion of the new source particulate matter (PM) standard specifying that the prescribed concentration limit be "corrected to 7% oxygen."[73] Ash Grove raised its point in the context of its plans to build a new cement kiln at its Foreman, Arkansas plant. The plant will be configured with an energy-saving design in which combustion gases from the kiln and

[72] USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards", September 2005, Section 2.2.6.

[73] See docket items EPA–HQ–OAR–2004–0022–0538 (p. 5) and –0541 (p. 2).

non-combustion gases from the clinker cooler would be combined prior to passing through the in-line raw mill, the PM control device, and the emission stack. The purpose of this configuration is to recover heat from the clinker cooler exhaust to aid in drying the raw feed in the in-line raw mill. CKRC endorsed Ash Grove's comments and sought the clarification more generically with respect to member companies' plans to employ similar energy-saving engineering configurations in new kiln designs.

Ash Grove and CKRC noted in their comments that, under their proposed design, the PM standard would be unattainable if the facility were required to correct the combined gas stream to 7 percent oxygen. The commenters acknowledged that the oxygen correction procedure is a necessary component of a concentration-based emission standard because it prevents a facility from meeting the standard by simply diluting the regulated, dust-laden gas stream with clean air. In this case, however, Ash Grove proposes to combine two regulated, dust-laden gas streams for legitimate energy recovery purposes. In their comments, Ash Grove and CKRC asked EPA to clarify that, in the Ash Grove design, the oxygen associated with the clinker cooler exhaust does not represent dilution air and should not be included in the oxygen correction calculation when determining compliance with the PM standard of the Subpart EEE MACT standard. That is, the oxygen contribution in the combined stream attributable to the clinker cooler gas should be "subtracted" when assessing compliance with the Subpart EEE standard.

The Agency acknowledges that combining the two regulated gas streams, as proposed in the Ash Grove design, is not impermissible dilution that the oxygen correction factor of Subpart EEE is meant to prevent.[74] We also recognize that applying the oxygen correction factor to the combined gas stream in this case would be tantamount to requiring a clinker cooler PM emission rate of zero, which is not physically possible.

Facilities which opt to combine their emissions streams, for heat recovery or other legitimate purposes, are referred to the Agency's long standing compliance policy. In the case where two (or more) separately-regulated streams are physically combined in common duct work prior to control, they are evaluated for compliance with the more stringent standard; or, in the case where two (or more) separately regulated streams are physically combined for a legitimate process purpose, they should be evaluated for compliance with the emission standard of the affected facility from which the gases are discharged.[75] These policies were developed specifically for application of the opacity standard, where once two (or more) gas streams are combined, it is not possible to evaluate them separately.

In the case of streams combined from the clinker cooler and the kiln, where separate PM emission standards apply, facilities may submit site-specific compliance procedures to eliminate the effect of the clinker cooler exhaust gas on the Subpart EEE oxygen correction calculation. Any method proposed must be evaluated against the standards forbidding circumvention at 40 CFR 63.4(b) and against the requirements to provide means for accurate sampling of applicable emission standards at 40 CFR 63.7(d). Any claims made under these provisions should be submitted to the appropriate delegated authority for site-specific implementation.

Two commenters raised procedural objections to the Ash Grove and CKRC requests for clarification on this oxygen correction issue.[76] These comments appear to be based on the premise that EPA legally would be required to publish a new notice of proposed rulemaking before clarifying the issue. We disagree that such a new notice is necessary in situations such as this, where it is merely responding to requests for clarification and the clarification is fully consistent with the plain text of the governing regulation (as explained above). EPA also provided actual notice to all commenters and invited reply comments on the issue, both a permissible means of giving notice and one which removes any possible prejudice to persons receiving such notice. See *Small Refiners lead Phase-Down Task Force* v. *EPA*, 705 F. 2d 506, 540, 549 (D.C. Cir. 1983).

VI. Summary of Environmental, Energy, and Economic Impacts

A. What facilities are affected by the final amendments?

A description of the affected source categories is discussed in the April 20, 2004 proposed rule. 69 FR at 21207–09. In the October 12, 2005 final rule, we estimated that there are a total of 267 sources subject to the rule requirements, including 116 boilers (104 liquid fuel boilers and 12 solid fuel boilers), 92 on-site incinerators, 25 cement kilns, 15 commercial incinerators, nine lightweight aggregate kilns, and ten hydrochloric acid production furnaces. 70 FR at 59530. While we are aware of several changes to the universe of operating hazardous waste combustors, these estimates remain a reasonable representation of existing operating sources.[77]

Today's action also revises the particulate matter standards for new cement kilns and new incinerators. Based on comments received in response to the March 23, 2006 proposed rule, EPA does not believe that there are any cement kiln or incinerator sources that are currently complying with the new source particulate matter standards. In addition, EPA estimates that the majority of, if not all, sources that will be subject to the revised new source standards over the next five years will not be greenfield sources, but sources that upgrade at existing facilities (e.g., a new state-of-the-art preheater/precalciner kiln to replace one or more existing wet process cement kilns).[78]

B. What are the air quality impacts?

For existing sources, we estimate that there will be no air emission impacts as the result of this rule. This is because today's rule is not revising any of the emission standards promulgated in the October 12, 2005 final rule. Furthermore, the final amendments to the compliance and monitoring provisions will not affect the current level of control at existing facilities subject to the rule.

[74] See also memorandum entitled "Potential Environmental Benefits of Combining Kiln Combustion and Clinker Cooler Gas," dated September 15, 2008, in the docket to the rule.

[75] See letter from Michael S. Alushin, USEPA, to Evelyn Rodriquez Cintron, Commonwealth of Puerto, entitled "Opacity Limit for Commingled Emission Streams," dated March 24, 2005; letter from Michael S. Alushin, USEPA, to Francis Torres, Torres and Garcia P.S.C., entitled "Opacity Limit for Commingled Emission Streams," dated March 24, 2005; memorandum from John B. Rasnic, USEPA, to USEPA Regional Directors and Regional Counsels, entitled "Opacity Limitation for In-line Portland Cement Plants," dated September 7, 1996; and memorandum from John B. Rasnic, USEPA, to USEPA Regional Directors and Regional Counsels, entitled "Opacity Limitations for the Portland Cement Plant New Source Performance Standards," dated April 6, 1995. These documents are available on the Agency's Applicability Determination Index Web site at *http://cfpub.epa.gov/adi/*.

[76] See docket items EPA–HQ–OAR–2004–0022–0548 and –0579.

[77] Given the small size of the lightweight aggregate kiln category, it is worth mentioning that the Solite Cascade plant in Virginia has ceased operations. Prior to closure, this plant operated four kiln sources. See also 70 FR at 59426.

[78] Examples of cement plants pursuing plant modernizations can be found in several docket items, including EPA–HQ–OAR–2004–0022–0383 (pg. 4), EPA–HQ–OAR–2004–0022–0521 (Attachments F, G, and H), and EPA–HQ–OAR–2004–0022–0604 (pg. 8).

For new sources, we are promulgating revised particulate matter standards for cement kilns and incinerators. The revised particulate matter standards for new cement kilns and new incinerators are 0.0069 gr/dscf (an increase from 0.0023 gr/dscf) and 0.0016 gr/dscf (an increase from 0.0015 gr/dscf), corrected to 7 percent oxygen, respectively. For a new preheater/precalciner cement kiln with an average gas flow rate of 250,000 dry standard cubic feet per minute (dscfm) emitting particulate matter at 0.0069 gr/dscf, we estimate emissions of particulate matter would be approximately 59 tons per year. A similarly designed new cement kiln emitting particulate matter at 0.0023 gr/dscf would emit approximately 20 tons per year. And for an incinerator with an average gas flow rate of 25,000 dscfm, we estimate that particulate matter emissions would increase by approximately 170 pounds per year per new incinerator if it were emitting particulate matter at 0.0016 gr/dscf as compared to 0.0015 gr/dscf. However, as discussed in section VI.A above, we do not believe that there are any cement kiln or incinerator sources that are currently in operation and complying with the particulate matter standards for new sources. Thus, we estimate that there will be no actual increases in particulate matter emissions at currently operating facilities as a result of today's action. Moreover, we believe that the majority of new cement kiln and incinerator sources over the next five years will be sources that upgrade at existing facilities (e.g., an older existing source replaced by a new source). See discussion in section VI.A above. For these facilities, particulate matter emissions will actually decrease from current levels because the new source standards finalized today are more stringent than the standards for existing sources. For example, the reduction in particulate matter emissions for a new preheater/precalciner cement kiln with an average gas flow rate of 250,000 dscfm emitting particulate matter at 0.028 gr/dscf (the existing source standard) as compared to 0.0069 gr/dscf (the new source standard) is approximately 180 tons per year.[79]

C. What are the water quality, solid waste, energy, cost and economic impacts?

This rule will result in negligible impacts to water quality, solid waste, and energy requirements from levels presented in the October 12, 2005 rule. 70 FR at 59529. We likewise estimate minimal cost and no economic impacts (as compared with the total costs and economic impacts that were calculated for the October 12, 2005 rule).[80]

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, this final rule is not considered to be an economically significant action because the social costs for this rule are significantly below the $100 million threshold established for economically significant actions. This is because this final rule does not have any significant new regulatory requirements as compared to the requirements discussed in the October 12, 2005 final rule, a rule with estimated total social costs of $22.6 million per year. See 70 FR at 59537.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's rule amendments consist of new compliance options, clarifications, and corrections to the existing rule that impose no new net information collection requirements on industry or EPA. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (see 40 CFR part 9) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0171, EPA ICR number 1773.08. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

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. As discussed in the October 12, 2005 final rule (of which today's final rule amends), we determined that hazardous waste combustion facilities are not owned by small governmental jurisdiction or nonprofit organizations. 70 FR at 59538. Therefore, in that rule only small businesses were analyzed for small entity impacts (a small entity was defined either by the number of employees or by the dollar amount of sales). We found that few—a total of eight out of 145 facilities—of the sources affected by the October 2005 rule were owned by small businesses. Finally, our analysis indicated that none of these facilities are likely to incur annualized compliance costs greater than one percent of gross annual corporate revenues. Cost impacts were found to range from less than 0.01 percent to 0.46 percent of annual gross corporate revenues. 70 FR at 59538.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We note that today's final rule does not alter the number or type of small businesses that were discussed in the October 12, 2005 final rule. In addition, this rule revises or clarifies several compliance provisions that increases flexibility and improves implementation.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

[79] USEPA, "Technical Support Document for HWC MACT Standards: Petitions for Reconsideration Support Document," October 2008, Section 2.3.3.

[80] USEPA, "Technical Support Document for HWC MACT Standards: Petitions for Reconsideration Support Document," October 2008, Section 7.

EPA is taking this action to make certain amendments, corrections, and clarifications to the October 12, 2005 final rule (70 FR 59402 and 59538). Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments, corrections, and clarifications made through this action contain no requirements that apply to such governments, impose no obligations upon them, and will not result in any expenditures by them or any disproportionate impacts on them. This rule is not subject to section 203 of UMRA.

E. Executive Order 13132: Federalism

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" is 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."

This final rule does not have federalism implications. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes certain amendments, corrections, and clarifications to the October 12, 2005 final rule (70 FR 59402 and 59538). These final amendments and clarifications do not impose requirements on State and local governments. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Today's rule amendments, corrections, and clarifications do not impose requirements on tribal governments. They also have no 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. Finally, tribal governments do not own or operate any sources subject to the Hazardous Waste Combustor MACT rule. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based solely on technology performance. Furthermore, this final rule is not considered "economically significant" as defined under EO 12866.

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

This rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by the amendments, corrections, and clarifications finalized by this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The amendments, corrections, and clarifications finalized today do not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low income populations because it does not affect the level of protection provided to human health or the environment. The corrections and clarifications in today's rule will not affect the current level of control at facilities subject to these rules. In addition, for reasons discussed in Section VI above, we estimate that the revised particulate matter emission standards for new cement kilns and new incinerators will not result in any adverse or disproportional health or safety effects on minority or low-income populations. As a result, we believe our findings regarding Executive Order 12898 published in the October 12, 2005 rule are not adversely impacted by today's action. 70 FR at 59539.

K. 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 action 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 action" as defined by 5 U.S.C. 804(2). This final rule will be effective on October 28, 2008.

List of Subjects in 40 CFR Part 63

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

Dated: October 16, 2008.

Stephen L. Johnson,

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 63.1206 is amended as follows:

■ a. By revising paragraph (a)(1)(ii)(B)(*3*).

■ b. By revising paragraphs (c)(8)(iii), (c)(8)(iv), and (c)(9).

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

(a) * * *

(1) * * *

(ii) * * *

(B) * * *

(*3*) If you commenced construction or reconstruction of a cement kiln after April 20, 2004, you must comply with the new source emission standard for particulate matter under § 63.1220(b)(7)(i) by the later of October 28, 2008 or the date the source starts operations.

* * * * *

(c) * * *

(8) * * *

(iii) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7) 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 or malfunction. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm or bag leak detection system malfunction in accordance with the requirements of paragraph (c)(8)(iii)(A) of this section as well as the corrective measures taken to correct the control device or bag leak detection system malfunction or to minimize emissions in accordance with the requirements of paragraph (c)(8)(iii)(B) of this section. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(A) You must initiate the procedures used to determine the cause of the alarm or bag leak detection system malfunction within 30 minutes of the time the alarm first sounds; and

(B) You must alleviate the cause of the alarm or bag leak detection system malfunction by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following:

(*1*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*2*) Sealing off defective bags or filter media;

(*3*) Replacing defective bags or filter media, or otherwise repairing the control device;

(*4*) Sealing off a defective baghouse compartment;

(*5*) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(*6*) Shutting down the combustor.

(iv) *Excessive exceedances notification.* If you operate the combustor when the detector response exceeds the alarm set-point or the bag leak detection system is malfunctioning more than 5 percent of the time during any 6-month block time period, you must submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and bag leak detection system malfunctions and the revisions to the design, operation, or maintenance of the combustor, baghouse, or bag leak detection system you are taking to minimize exceedances and bag leak detection system malfunctions. To document compliance with this requirement:

(A) You must keep records of the date, time, and duration of each alarm and bag leak detection system malfunction, the time corrective action was initiated and completed, and a brief description of the cause of the alarm or bag leak detection system malfunction and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds and the bag leak detection system malfunctions;

(C) If inspection of the fabric filter demonstrates that no corrective action is required, then no alarm time is counted; and

(D) If corrective action is required, each alarm shall be counted as a minimum of 1 hour. Each bag leak detection system malfunction shall also be counted as a minimum of 1 hour.

(9) *Particulate matter detection system requirements.* You must continuously operate a particulate matter detection system (PMDS) that meets the specifications and requirements of paragraphs (c)(9)(i) through (v) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(vii) and (viii) of this section if your combustor either: Is equipped with an electrostatic precipitator or ionizing wet scrubber and you do not establish site-specific control device operating parameter limits under § 63.1209(m)(1)(iv) that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, or is equipped with a baghouse (fabric filter) and you do not operate a bag leak detection system as provided by paragraph (c)(8)(i)(B) of this section.

(i) *PMDS requirements.*—(A) The PMDS 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, under § 63.1209(g)(1), that a higher detection limit would routinely detect particulate matter loadings during normal operations;

(B) The particulate matter detector shall provide output of relative or absolute particulate matter loadings;

(C) The PMDS shall be equipped with an alarm system that will sound an audible alarm when an increase in relative or absolute particulate loadings is detected over the set-point;

(D) You must install, operate, and maintain the PMDS in a manner consistent with the provisions of paragraph (c)(9) of this section and 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, maintenance and quality assurance of the system.

(1) *Set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that will reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below those demonstrated during the comprehensive performance test. Your recommended

quality assurance procedures may include periodic testing under as-found conditions (i.e., normal operations) to obtain additional PM concentration and PMDS response run pairs, as warranted.

(2) *Set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that will reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the value that correlates to the alarm set-point.

(E) You must include procedures for installation, operation, maintenance, and quality assurance of the PMDS in the site-specific continuous monitoring system test plan required under §§ 63.1207(e) and 63.8(e)(3);

(F) Where multiple detectors are required to monitor multiple control devices, the system's instrumentation and alarm system may be shared among the detectors.

(G) You must establish the alarm set-point as a 6-hour rolling average as provided by paragraphs (c)(9)(ii), (c)(9)(iii), and (c)(9)(iv) of this section;

(H) Your PMDS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must update the 6-hour rolling average of the detector response each hour with a one-hour block average that is the average of the detector responses over each 15-minute block; and

(I) If you exceed the alarm set-point (or if your PMDS malfunctions), you must comply with the corrective measures under paragraph (c)(9)(vii) of this section.

(ii) *Establishing the alarm set-point for operations under the Documentation of Compliance.* You must establish the alarm set-point for operations under the Documentation of Compliance (i.e., after the compliance date but prior to submitting a Notification of Compliance subsequent to conducting the initial comprehensive performance test) of an existing source as follows:

(A) You must obtain a minimum of three pairs of Method 5 or 5I data, provided in appendix A–3 to part 60 of this chapter, and PMDS data to establish an approximate correlation curve. Data obtained up to 60 months prior to the compliance date may be used provided that the design and operation of the combustor or PMDS has not changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

(B) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of your determination whether multiple correlation curves are needed considering the design and operation of your combustor and PMDS.

(C) You must approximate the correlation of the reference method data to the PMDS data.

(*1*) You may assume a linear correlation of the PMDS response to particulate matter emission concentrations;

(*2*) You may include a zero point correlation value. To establish a zero point, you must follow one or more of the following steps:

(*i*) Zero point data for in-situ instruments should be obtained, to the extent possible, by removing the instrument from the stack and monitoring ambient air on a test bench;

(*ii*) Zero point data for extractive instruments should be obtained by removing the extractive probe from the stack and drawing in clean ambient air;

(*iii*) Zero point data also can be obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (e.g., when your process is not operating, but the fans are operating or your source is combusting only natural gas); and

(*iv*) If none of the steps in paragraphs (c)(9)(ii)(B)(*2*)(*i*) through (*iii*) of this section are possible, you must estimate the monitor response when no PM is in the flue gas (e.g., 4 mA = 0 mg/acm).

(*3*) For reference method data that were obtained from runs during a test condition where controllable operating factors were held constant, you must average the test run averages of PM concentrations and PMDS responses to obtain a single pair of data for PM concentration and PMDS response. You may use this pair of data and the zero point to define a linear correlation model for the PMDS.

(D) You must establish the alarm set-point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. For reference method data that were obtained from runs during a test condition where controllable operating factors were held constant, you must use the average of the test run averages of PM concentrations for extrapolating the alarm set-point. The PM emission concentration used to extrapolate the alarm set-point must not exceed the PM emission standard, however.

(iii) *Establishing the initial alarm set-point for operations under the Notification of Compliance.* You must establish the initial alarm set-point for operations under the Notification of Compliance as provided by either paragraph (c)(9)(iii)(A) or paragraph (c)(9)(iii)(B) of this section. You must periodically revise the alarm set-point as provided by paragraph (c)(9)(iv) of this section.

(A) *Establishing the initial set-point without extrapolation.* (*1*) If you establish the initial alarm set-point without extrapolation, the alarm set-point is the average of the test run averages of the PMDS response during the runs of the comprehensive performance test that document compliance with the PM emission standard.

(*2*) During the comprehensive performance test, you may simulate PM emission concentrations at the upper end of the range of normal operations by means including feeding high levels of ash and detuning the emission control equipment.

(B) *Establishing the initial set-point by extrapolation.* You may extrapolate the particulate matter detector response to establish the alarm set-point under the following procedures:

(*1*) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of the procedures you will use to establish an approximate correlation curve using the three pairs of Method 5 or 5I data (see methods in appendix A–3 of part 60 of this chapter) and PMDS data from the comprehensive performance test, the data pairs used to establish the correlation curve for the Documentation of Compliance under paragraph (c)(9)(ii) of this section, and additional data pairs, as warranted.

(*2*) You must request approval from the regulatory authority, in the continuous monitoring system test plan, of your determination of whether multiple correlation curves are needed considering the design and operation of your combustor and PMDS. If so, you must recommend the number of data pairs needed to establish those correlation curves and how the data will be obtained.

(*3*) During the comprehensive performance test, you may simulate PM emission concentrations at the upper end of the range of normal operations by means including feeding high levels of ash and detuning the emission control equipment.

(*4*) Data obtained up to 60 months prior to the comprehensive performance

test may be used provided that the design and operation of the combustor or PMDS has not changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

(5) You may include a zero point correlation value. To establish a zero point, you must follow the procedures under paragraph (c)(9)(ii)(C)(2) of this section.

(6) You must use a least-squares regression model to correlate PM concentrations to PMDS responses for data pairs. You may assume a linear regression model approximates the relationship between PM concentrations and PMDS responses.

(7) You must establish the alarm set-point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The emission concentration used to extrapolate the PMDS response must not exceed the PM emission standard.

(iv) *Revising the Notification of Compliance alarm set-point.* (A) *Revising set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must establish a new alarm set-point in the Notification of Compliance following each comprehensive performance test as the average of the test run averages of the PMDS response during the runs of the comprehensive performance test that document compliance with the PM emission standard.

(B) *Revising set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the procedures for periodically revising the alarm set-point, considering the additional data pairs obtained during periodic comprehensive performance tests and data pairs obtained from other tests, such as for quality assurance.

(v) *Quality assurance.* (A) *Set-points established without extrapolation.* If you establish the alarm set-point without extrapolation under paragraph (c)(9)(iii)(A) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the average of the PM concentrations demonstrated during the comprehensive performance test. Your recommended quality assurance procedures may include periodic testing under as-found conditions (i.e., normal operations) to obtain additional PM concentration and PMDS response run pairs, as warranted.

(B) *Set-points established with extrapolation.* If you establish the alarm set-point by extrapolation under paragraph (c)(9)(iii)(B) of this section, you must request approval from the regulatory authority, in the continuous monitoring system test plan, of the quality assurance procedures that reasonably ensure that PMDS response values below the alarm set-point correspond to PM emission concentrations below the value that correlated to the alarm set-point.

(vi) *PMDS are used for compliance assurance only.* For a PMDS for which the alarm set-point is established by extrapolation using a correlation curve under paragraphs (c)(9)(ii), (c)(9)(iii)(B), and (c)(9)(iv)(B) of this section, an exceedance of the PMDS response that appears to correlate with a PM concentration that exceeds the PM emission standard is not by itself evidence that the standard has been exceeded.

(vii) *PMDS corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a PMDS alarm or malfunction. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm or PMDS malfunction as well as the corrective measures taken to correct the control device or PMDS 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.

(A) You must initiate the procedures used to determine the cause of the alarm or PMDS malfunction within 30 minutes of the time the alarm first sounds or the PMDS malfunctions; and

(B) You must alleviate the cause of the alarm or the PMDS malfunction by taking the necessary corrective measure(s) which may include shutting down the combustor.

(viii) *Excessive exceedances notification.* If you operate the combustor when the detector response exceeds the alarm set-point or when the PMDS is malfunctioning more than 5 percent of the time during any 6-month block time period, you must submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and the revisions to the design, operation, or maintenance of the combustor, emission control device, or PMDS you are taking to minimize exceedances. To document compliance with this requirement:

(A) You must keep records of the date, time, and duration of each alarm and PMDS malfunction, the time corrective action was initiated and completed, and a brief description of the cause of the alarm or PMDS malfunction and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds and the PMDS malfunctions;

(C) If inspection of the emission control device demonstrates that no corrective action is required, then no alarm time is counted; and

(D) If corrective action to the emission control device is required, each alarm shall be counted as a minimum of 1 hour. Each PMDS malfunction shall also be counted as a minimum of 1 hour.

■ 3. Section 63.1207 is amended by revising paragraphs (d)(4) and (m)(1)(i) introductory text to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(d) * * *

(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 (§§ 63.1203 through 63.1205); 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 apply only to tests used to demonstrate compliance with the standards under §§ 63.1219 through 63.1221.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (§§ 63.1203 through 63.1205). The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section apply only after you have demonstrated compliance with the standards under §§ 63.1219 through 63.1221.

* * * * *

(m) * * *

(1) * * * (i) You are deemed to be in compliance with an emission standard based on the volumetric flow rate of

exhaust gas (i.e., μg/dscm or ppmv) if the maximum theoretical emission concentration (MTEC) does not exceed the emission standard over the relevant averaging period specified under § 63.1209(l), (n), and (o) of this section for the standard:

* * * * *

■ 4. Section 63.1210 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 63.1210 What are the notification requirements?

(a) * * *

(1) * * *

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.
63.1206(c)(8)(iv)	Notification of excessive bag leak detection system exceedances.
63.1206(c)(9)(v)	Notification of excessive particulate matter detection system exceedances.
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)	Notification of intent to comply.
63.1210(d), 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).

* * * * *

■ 5. Section 63.1215 is amended as follows:

■ a. By revising paragraphs (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(i)(D).

■ b. By adding paragraph (e)(3).

§ 63.1215 What are health-based compliance alternatives for total chlorine?

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) Your permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or to achieve the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standards up to one year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT total chlorine standards.

(C) If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, however, the authority may notify you in writing by the compliance date that you have not met the conditions for complying with the health-based compliance alternative without prior approval. Such notice will explain the basis for concluding that you have not made a good faith effort to comply with the health-based compliance alternative by the compliance date.

(D) If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the compliance date, the authority will identify the basis for that notice and specify how much time you will have to submit additional information or to comply with the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. The permitting authority may extend the compliance date of the total chlorine standards up to one-year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT standards for total chlorine.

* * * * *

(3) The operating requirements in the eligibility demonstration are applicable requirements for purposes of parts 70 and 71 of this chapter and will be incorporated in the title V permit.

* * * * *

■ 6. Section 63.1219 is amended by revising paragraph (b)(7) to read as follows:

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

* * * * *

(b) * * *

(7) Except as provided by paragraph (e) of this section, particulate matter emissions in excess of 0.0016 gr/dscf corrected to 7 percent oxygen.

* * * * *

■ 7. Section 63.1220 is amended by removing paragraphs (a)(2)(iii) and (b)(2)(iii) and revising paragraph (b)(7) to read as follows.

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

* * * * *

(b) * * *

(7) For particulate matter, both:

(i) Emissions in excess of 0.0069 gr/dscf corrected to 7 percent oxygen; and

(ii) Opacity greater than 20 percent, unless your source is equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).

* * * * *

[FR Doc. E8–25166 Filed 10–27–08; 8:45 am]

BILLING CODE 6560–50–P

for Monitoring Data Used in Designations for the 2008 Ozone NAAQS" as a direct final rule on October 6, 2008, 73 FR 58042. The direct final rule revises the schedule for the flagging and submission of documentation of data impacted by exceptional events that may be used for designations under the 2008 ozone National Ambient Air Quality Standards (NAAQS). For a detailed description of the ozone NAAQS and the Exceptional Events Rule, please see the rulemaking actions which are available at EPA's Web sites at *http://www.epa.gov/groundlevelozone/actions.html* and *http://www.epa.gov/EPA-AIR/2008/October/Day-06/a23520.htm* and also in the **Federal Register** at 73 FR 16436 and 73 FR 58042.

We stated in the direct final rule amendments that if we received adverse comment by November 20, 2008, we would publish a timely notice of withdrawal in the **Federal Register**. We received an adverse comment on the direct final rule amendments on November 20, 2008. Because EPA received adverse comment, we are withdrawing the direct final rule amendments to "The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule): Revised Exceptional Event Data Flagging Submittal and Documentation Schedule to Support Initial Area Designations for the 2008 Ozone NAAQS" published in the **Federal Register** on October 6, 2008 (73 FR 58042), as of December 16, 2008. EPA will address adverse comments received in a subsequent final action based on the parallel proposal also published on October 6, 2008. As stated in the parallel proposal, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: December 10, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

PART 50—[AMENDED]

■ Accordingly, the amendments to the rule published in the **Federal Register** on October 6, 2008 (73 FR 58042) on pages 58042–58047 are withdrawn as of December 16, 2008.

[FR Doc. E8–29747 Filed 12–15–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2007–0211; FRL–8752–5]

RIN 2060–AO16

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (Acetal Resins Production and Hydrogen Fluoride Production) (Risk and Technology Review)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule responds to public comments received on the proposed rule and announces our decision not to revise four national emission standards for hazardous air pollutants that regulate eight industrial source categories evaluated in our risk and technology review. The four national emission standards and eight industrial source categories are: National Emissions Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, and Neoprene Rubber Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Acetal Resins Production and National Emission Standards for Hazardous Air Pollutants for Hydrogen Fluoride Production. The underlying national emission standards that were reviewed in this action limit and control hazardous air pollutants.

On December 12, 2007, we proposed not to revise the national emission standards based on our residual risk assessment and technology review. After conducting risk and technology reviews, and after considering public comments on the proposed rule, we conclude no additional control requirements are warranted under section 112(f)(2) or 112(d)(6) of the Clean Air Act at this time.

DATES: This final action is effective on December 16, 2008.

ADDRESSES: We have established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0211. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2007–0211, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Mary Tom Kissell, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–4516; *fax number:* (919) 685–3219; and *e-mail address: kissell.mary@epa.gov.* For specific information regarding the modeling methodology, contact Ms. Elaine Manning, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–5499; *fax number:* (919) 541–0840; and *e-mail address: manning.elaine@epa.gov.* For information about the applicability of these four national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR GROUP I POLYMERS AND RESINS, GROUP II POLYMERS AND RESINS, ACETAL RESINS PRODUCTION, AND HYDROGEN FLUORIDE PRODUCTION

NESHAP for:	OECA contact [1]	OAQPS contact [2]
Polymers and Resins, Group I	Scott Throwe (202) 564–7013 *throwe.scott@epa.gov*	David Markwordt (919) 541–0837 *markwordt.david@epa.gov.*
Polymers and Resins, Group II ...	Scott Throwe (202) 564–7013 *throwe.scott@epa.gov*	Randy McDonald (919) 541–5402 *Mcdonald.randy@epa.gov.*
Acetal Resins Production	Marcia Mia (202) 564–7042 *mia.marcia@epa.gov*	David Markwordt (919) 541–0837 *markwordt.david@epa.gov.*
Hydrogen Fluoride Production	Marcia Mia (202) 564–7042 *mia.marcia@epa.gov*	Bill Neuffer (919) 541–5435 *neuffer.bill@epa.gov.*

[1] OECA stands for the EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for EPA's Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The eight regulated industrial source categories that are the subject of this final action are listed in Table 2 to this preamble.

TABLE 2—EIGHT INDUSTRIAL SOURCE CATEGORIES

Category	NAICS [1] code	MACT [2] code
Butyl Rubber Production	325212	1307
Ethylene-Propylene Rubber Production	325212	1313
Polysulfide Rubber Production	325212	1332
Neoprene Production	325212	1320
Epoxy Resins Production	325211	1312
Non-nylon Polyamides Production	325211	1322
Acetal Resins Production	325211	1301
Hydrogen Fluoride Production	325120	1409

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any of these NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed and promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action in the **Federal Register**, *i.e.*, by February 17, 2009. Under section 307(b)(2) of the CAA, the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides that EPA shall convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the statutory authority for this action?
B. Overview of the Four NESHAP
C. What was the proposed action?
D. What are the conclusions of the residual risk assessment?
E. What are the conclusions of the technology review?
II. Summary of Comments and Responses
A. Emissions Data
B. Risk Assessment Methodology
III. Risk and Technology Review Final Decision
IV. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate NESHAP for those sources. "Major sources" are those that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year of a single HAP or 25 tons per year of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

EPA is then required to review these technology-based standards and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, under CAA section 112(d)(6). In this final rule, we are publishing the results of our 8-year technology review for the eight industrial source categories listed in Table 3, which we have collectively termed "Group 1."

The second stage in standard-setting focuses on reducing any remaining "residual" risk according to CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity of emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to certain CAA section 112(d) standards whether the emissions limitations provide an ample margin of safety to protect public health. If the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million," EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. In doing so, EPA may adopt standards equal to existing MACT standards (*NRDC* v. *EPA*, No. 07–1053, slip op. at 11, District of Columbia Circuit, decided June 6, 2008). EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety, and other relevant factors in doing so. Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of "ample margin of safety" developed in the National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989).

The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) directs us to use the interpretation set out in the Benzene NESHAP. See also, A Legislative History of the Clean Air Act Amendments of 1990, volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the Residual Risk Report to Congress that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [i.e., 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, "The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." The Agency went on to conclude that "estimated incidence would be weighed along with other health risk information in judging acceptability." As explained more fully in our Residual Risk Report to Congress, EPA does not define "rigid line[s] of acceptability," but considers rather broad objectives to be weighed with a

[1] "Adverse environmental effect" is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (Residual Risk Report to Congress, p. 178, quoting the *Vinyl Chloride* decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable." 54 FR at 38045. We discussed the maximum individual lifetime cancer risk (MIR) as being "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." Id. We explained that this measure of risk "is an estimate of the upperbound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." Id. We acknowledge that MIR "does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded." Id.

Understanding that there are both benefits and limitations to using MIR as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." Id. Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of MIR, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: "In establishing a presumption for MIR, rather than rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants." Id.

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by MIR alone.

As explained in the Benzene NESHAP, "[e]ven though the risks judged "acceptable" by EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further. In the second step, EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million. In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112." 54 FR 38046.

B. Overview of the Four NESHAP

The eight industrial source categories and four NESHAP that are the subject of this action are listed in Table 3 to this preamble. The NESHAP limit and control HAP that are known or suspected to cause cancer or have other serious human health or environmental effects. The NESHAP for these eight source categories generally required implementation of technologies such as steam strippers and incineration.

TABLE 3—LIST OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Title of NESHAP	Source categories affected by this final action	Promulgated rule reference and code of federal regulations citation	Compliance date	NESHAP as referred to in this preamble
NESHAP for Group I Polymers and Resins [1].	Polysulfide Rubber Production .... Ethylene Propylene Rubber Production. Butyl Rubber Production. Neoprene Production.	61 FR 46905 (09/05/1996) ..... 40 CFR part 63, subpart U	07/31/1997	Polymers and Resins I.
NESHAP for Epoxy Resins Production and Non-nylon Polyamides Production.	Epoxy Resins Production ..... Non-nylon Polyamides Production	60 FR 12670 (03/08/1995) ..... 40 CFR part 63, subpart SS	03/03/1998	Polymers and Resins II.
NESHAP for GMACT [2]	Acetal Resins Production ..... Hydrogen Fluoride Production	64 FR 34853 (06/29/1999) ..... 40 CFR part 63, subparts TT, UU, WW, and YY.	06/29/2002	GMACT.

[1] The Polymers and Resins I NESHAP regulates nine source categories. We performed the residual risk and technology review (RTR) for four of them for this action. We will address the remaining five source categories in a separate RTR rulemaking.
[2] The source categories subject to the standards in the generic maximum achievable control technology (GMACT) NESHAP are Acetal Resins Production and Hydrogen Fluoride Production.

1. Polymers and Resins I

The Polymers and Resins I NESHAP regulates HAP emissions from major sources in nine source categories. In this action, we address four of the Polymer and Resins I sources categories—Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, and Neoprene Production. The other five source categories are addressed in RTR Group 2A (73 FR 60432, October 10, 2008).

HAP emissions from these processes can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

a. *Polysulfide Rubber Production.* Polysulfide rubber is a synthetic rubber

produced by the reaction of sodium sulfide and p-dichlorobenzene (1,4-dichlorobenzene) at an elevated temperature in a polar solvent. Polysulfide rubber is resilient, resistant to solvents, and has low temperature flexibility, facilitating its use in seals, caulks, automotive parts, rubber molds for casting sculpture, and other products.

b. *Ethylene Propylene Rubber Production.* Ethylene propylene elastomer is an elastomer prepared from ethylene and propylene monomers. Common uses for these elastomers include radiator and heater hoses, weather stripping, door and window seals for cars, construction plastics blending, wire and cable insulation and jackets, and single-ply roofing membranes.

c. *Butyl Rubber Production.* Butyl rubber is comprised of copolymers of isobutylene and isoprene and is very impermeable to common gases and resists oxidation. A specialty group of butyl rubbers are halogenated butyl rubbers, which are produced commercially by dissolving butyl rubber in hydrocarbon solvent and contacting the solution with gaseous or liquid elemental halogens such as chlorine or bromine. Halogenated butyl rubber resists aging to a higher degree than the nonhalogenated type and is more compatible with other types of rubber. Uses for butyl rubber include tires, tubes, and tire products; automotive mechanical goods; adhesives, caulks, and sealants; and pharmaceutical uses.

d. *Neoprene Production.* Neoprene is a polymer of chloroprene. Neoprene was originally developed as an oil-resistant substitute for natural rubber, and its properties allow its use in a wide variety of applications, including wetsuits, gaskets and seals, hoses and tubing, plumbing fixtures, adhesives, and other products.

2. Polymers and Resins II

The Polymers and Resins II NESHAP regulates HAP emissions from major sources in two source categories—epoxy resins and non-nylon polyamides production. In this action, we address both of the Polymer and Resins II sources categories—Epoxy Resins Production and Non-nylon Polyamides Production. HAP emissions from these source categories can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

a. *Epoxy Resins Production.* The Epoxy Resins Production source category involves the manufacture of basic liquid epoxy resins used in the production of glues, adhesives, plastic parts, and surface coatings. This source category does not include specialty or modified epoxy resins.

b. *Non-Nylon Polyamides Production.* The Non-Nylon Polyamides Production source category involves the manufacture of epichlorohydrin cross-linked non-nylon polyamides used primarily by the paper industry as an additive to paper products. Natural polymers, such as those contained in paper products, have little cross-linking, which allows their fibers to change position or separate completely when in contact with water. The addition of epichlorohydrin cross-linked non-nylon polyamides to these polymers causes the formation of a stable polymeric web among the natural fibers. Because the polymeric web holds the fibers in place even in the presence of water, epichlorohydrin cross-linked non-nylon polyamides are also referred to as wet-strength resins.

3. GMACT—Acetal Resins Production

The GMACT set national emission standards for certain source categories consisting of five or fewer facilities. The basic purpose of the GMACT approach was to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in the MACT standards development.

Acetal resins are characterized by the use of formaldehyde in the polymerization process to manufacture homopolymers or copolymers of alternating oxymethylene units. Acetal resins, also known as polyoxymethylenes, polyacetals, or aldehyde resins, are a type of plastic possessing relatively high strength and rigidity without being brittle. They have good frictional properties and are resistant to moisture, heat, fatigue, and solvents. Acetal resins are used as parts in a variety of industrial applications, e.g., gears, bearings, bushings, and various other moving parts in appliances and machines, and in a range of consumer products, e.g., automotive door handles, seat belt components, plumbing fixtures, shaver cartridges, zippers, and gas tank caps.

4. GMACT—Hydrogen Fluoride Production

The Hydrogen Fluoride Production source category includes any facility engaged in the production and recovery of hydrogen fluoride by reacting calcium fluoride with sulfuric acid. Hydrogen fluoride is used in the production of other compounds, including pharmaceuticals and polymers. In aqueous solution hydrogen fluoride can be a strong acid.

C. What was the proposed action?

On December 12, 2007 [2], based on the findings from our RTR, we proposed no revisions to the four NESHAP regulating the eight source categories listed in Table 3 and requested public comment.

D. What are the conclusions of the residual risk assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment for each of the eight source categories addressed in this action to determine the residual risk posed after implementation of the respective NESHAP. To evaluate the residual risk for each source category, EPA conducted an inhalation risk assessment [3] that provided estimates of MIR, cancer risk distribution within the exposed populations, cancer incidence, hazard indices (HI) for chronic exposures to HAP with non-cancer health effects, and hazard quotients (HQ) for acute exposures to HAP with non-cancer health effects. The risk assessment consisted of six primary activities: (1) Establishing the nature and magnitude of emissions from the sources of interest, (2) identifying the emissions release characteristics (e.g., stack parameters), (3) conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (4) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, (5) estimating individual and population-level risks using the exposure estimates and quantitative dose-response information, and (6) characterizing risk. In general, the risk assessment followed a tiered, iterative approach, beginning with a conservative (worst case) screening-level analysis and, where the screening analysis indicated the potential for non-negligible risks, following that with more refined analyses.

[2] *See* 72 FR 70543.

[3] For more information on the risk assessment inputs and models, *see* "Residual Risk Assessment for Eight Source Categories," available in the docket.

The human health risks estimated for the eight source categories are summarized in Table 4.

TABLE 4—SUMMARY OF ESTIMATED INHALATION RISKS FOR THE EIGHT SOURCE CATEGORIES

Source category	Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2] (and HAP contributing most to estimate)	Estimated annual cancer incidence (and HAP contributing most to estimate)	Maximum chronic HI [3] (and HAP contributing most to estimate)	Maximum off-site acute HQ and HAP for which HQ was calculated [4]
Polysulfide Rubber Production.	1	0 [6]	0 [6]	<0.01 (MDI [5])	HQ_{ERPG-1}=0.0004 (MDI [4]).
Ethylene Propylene Rubber Production.	5	0 [6]	0 [6]	0.5 (hexane)	HQ_{REL}=0.3 (toluene).
Butyl Rubber Production	2	0 [6]	0 [6]	0.2 (methyl chloride)	HQ_{ERPG-2}=0.1 (methyl chloride [7]).
Neoprene Production	1	0 [6]	0 [6]	0.8 (chloroprene)	HQ_{REL}=0.4 (toluene).
Epoxy Resins Production.	3	0.1 (epichlorohydrin)	0.00002 (epichlorohydrin).	0.08 (epichlorohydrin)	HQ_{REL}=0.6 (epichlorohydrin).
Non-nylon Polyamides Production.	4	0.4 (epichlorohydrin)	0.00003 (epichlorohydrin).	0.3 (epichlorohydrin)	HQ_{REL}=0.2 (epichlorohydrin).
Acetal Resins Production.	3	0.3 (allyl chloride)	0.00004 (allyl chloride)	0.2 (chlorine)	HQ_{REL}=2 HQ_{AEGL-1}=0.1 (formaldehyde).
Hydrogen Fluoride Production.	2	0 [6]	0 [6]	<0.01 (hydrofluoric acid).	HQ_{REL}=0.3 (hydrofluoric acid).

[1] Number of facilities believed to be in the source category and used in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum hazard index (HI) is maximum respiratory HI for all except two source categories. Maximum HI for butyl rubber production is based on neurological effects. Maximum HI for hydrogen fluoride production is based on skeletal effects.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. These include reference exposure level (REL) and ERPG–1 and ERPG–2 values. The superscript indicates the value to which the acute exposure estimate was compared. The acute REL is defined by CalEPA as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration is termed the reference exposure level (REL). REL are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. REL are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact." The American Industrial Hygiene Association defines the ERPG–1 as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor", and the ERPG–2 as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action." The National Advisory Committee for Acute Exposure Guidelines defines AEGL–1 as "AEGL–1 is the airborne concentration (expressed as ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure."
[5] MDI is methylene diphenyl diisocyanate.
[6] No HAP that are known, probable, or possible human carcinogens are emitted from sources in the category.
[7] For methyl chloride, REL, and AEGL–1 were not available.

As shown in Table 4, we estimate that the HAP emissions from the eight source categories affected by this final action do not pose cancer risks equal to or greater than 1-in-1 million to the individual most exposed, do not result in meaningful rates of cancer incidence, and do not result in a concern regarding either chronic or acute noncancer health effects for the individual most exposed.

In addition, no chronic inhalation human health thresholds were exceeded at environmental receptors for any of the eight source categories. As we stated in the preamble to the proposal, we generally believe that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. Only hydrogen fluoride among those emitted by these facilities has a potential concern for adverse environmental effects, based on a consideration of studies in the literature. Accordingly, we posed the question in the preamble to the proposal whether hydrogen fluoride emissions impacted vegetation in the vicinity of the two facilities in the hydrogen fluoride category. No comments were received. We have concluded that for all facilities in categories addressed in this rulemaking, there is low potential for adverse environmental effects due to direct airborne exposures. We also believe that there is no potential for an adverse effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.13(a) because our screening analyses indicate no potential for any adverse ecological impacts.

Human health multipathway risks were determined not to be a concern for the eight source categories addressed in this action due to the absence of persistent and bioaccumulative (PB) [4] HAP emissions at all of these sources. The lack of PB HAP emissions also provides assurance that there will be no potential for adverse ecological effects due to indirect ecological exposures (*i.e.*, exposures resulting from the deposition of PB HAP from the atmosphere).

As a result of these findings, we proposed no additional controls under the residual risk review requirements of CAA section 112(f)(2). As EPA has not received evidence which would alter our proposed decision, we conclude in this rulemaking, as proposed, that no additional control is required because

[4] Persistent and bioaccumulative (PB) HAP are the list of 14 HAP that have the ability to persist in the environment for long periods of time and may also have the ability to build up in the food chain to levels that are harmful to human health and the environment.

the four NESHAP regulating the eight source categories addressed in this action provide an ample margin of safety to protect public health and to prevent an adverse environmental effect.

E. What are the conclusions of the technology review?

Section 112(d)(6) of the CAA requires EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emissions standards promulgated under CAA section 112 no less often than every 8 years. As we explained in our CAA section 112(d)(6) determination for the HON (71 FR 34437 and affirmed at 71 FR 76606),

> [a]lthough the language of section 112(d)(6) is nondiscretionary regarding periodic review, it grants EPA much discretion to revise the standards "as necessary." Thus, although the specifically enumerated factors that EPA should consider all relate to technology (*e.g.*, developments in practices, processes and control technologies), the instruction to revise "as necessary" indicates that EPA is to exercise its judgment in this regulatory decision, and is not precluded from considering additional relevant factors, such as costs and risk. EPA has substantial discretion in weighing all of the relevant factors in arriving at the best balance of costs and emissions reduction and determining what further controls, if any, are necessary. This interpretation is consistent with numerous rulings by the U.S. Court of Appeals for the DC Circuit regarding EPA's approach to weighing similar enumerated factors under statutory provisions directing the Agency to issue technology-based standards. See, *e.g.*, *Husqvarna AB* v. *EPA*, 254 F.3d 195 (DC Cir. 2001). For example, when a section 112(d)(2) MACT standard alone obtains protection of public health with an ample margin of safety and prevents adverse environmental effects, it is unlikely that it would be "necessary" to revise the standard further, regardless of possible developments in control options.[5] Thus, the section 112(d)(6) review would not need to entail a robust technology assessment.

We completed the CAA section 112(d)(6) review for the eight RTR Group 1 source categories, and, as in our proposal, we concluded that there have been no significant developments in practices, processes, or control technologies since promulgation of the MACT standards for the eight RTR Group 1 source categories. Thus, we proposed no additional controls were required under the technology review requirements of CAA section 112(d)(6).

We have not received information that controverts that conclusion. Therefore, we conclude, as we did in the proposed rule, that no revisions are required per the provisions of CAA section 112(d)(6).

II. Summary of Comments and Responses

In the proposed action, we requested public comment on our residual risk reviews and our technology reviews for the eight source categories listed in Table 3. We received comments from four commenters. The commenters included one state and local agency association, two industry trade associations, and representatives of one individual company. The comments are summarized and our responses to adverse comments are provided below.[6] After considering the public comments, we concluded it was unnecessary to change our risk or technology reviews or analyses or our determination that the existing MACT standards for these eight source categories are sufficient under sections 112(d)(6) and (f)(2) of the CAA.

A. Emissions Data

Comment: One commenter expressed concern over the emissions and emissions release characteristic data the Agency used in its analyses, noting that the proposal did not explain why state and local air agency data were not included for source categories where EPA primarily relied upon industry-supplied data. The commenter recommends that EPA consider expanding the data set to include state and local information. The other three commenters believe the data are representative for the RTR Group 1 source categories, although one of them suggested EPA should discount the value of emissions inventory data that have not undergone a quality assurance review.

Response: For the residual risk assessments, we use the best information available to perform our analyses. The EPA collects facility-specific emissions and emissions release characteristic information from state and local agencies periodically, which is then put into a database called the National Emissions Inventory (NEI). This information is reviewed by EPA engineers. The information contained in this database is often the best source of information available to us and it typically provides the essential parameters for our residual risk analyses. However, there are limitations to this database, in that the quality of the data submitted by state and local air agencies varies. Some parameters in the NEI are not provided by all state and local air agencies, which means that these parameters are sometimes blank or are filled in with default values. In addition, if process or other changes occur at facilities that do not affect their permits, state or local air agencies may not be aware of these changes, and subsequently do not submit changes or updates to the emissions for those facilities.

To analyze risk for these eight source categories, we were able to use emissions and emissions release characteristic data obtained directly from industry except for the hydrogen fluoride source category for which the data were obtained directly from industry and from the State of Louisiana. Based on our own technical review of these data, we believe these data are the most accurate data available, and where available, we used them for our analyses. All of the emissions and emissions release characteristic data were made available for public review at the time of the proposal. State and local air agencies, as well as other members of the public, were invited to provide comments on the data. We would have considered any substantive comments regarding the accuracy of the data before promulgating today's decision not to require new or additional standards; however, other than the data from Louisiana and one minor comment, addressed below, no such comments were received from any of the state or local air agencies, or from any other commenter. Therefore, no significant changes to the data have been made.

On June 6, 2008, the United States Court of Appeals for the District of Columbia (the Court) upheld as reasonable EPA's use of industry data, in that case, where EPA demonstrated that such data enabled the Agency to assess risk remaining after application of the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (HON)[7], and noted that "EPA has wide latitude in determining the extent of data-gathering necessary to solve a problem."[8]

Comment: One commenter recommended that EPA include emissions from startup/shutdown and

[5] Although EPA might still consider developments that could substantially reduce or eliminate risk in a cost-effective manner.

[6] *See* "Summary of Public Comments and Responses for RTR Group 1" for other comment summaries and responses.

[7] Proposed and final National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (HON) residual risk rules (71 FR 34421, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively).

[8] *See* page 17 of the Court Opinion. The Court's opinion was issued in response to petition received on the final HON RTR. The Court's opinion, the proposal and final HON RTR rules, and EPA's Brief for the Respondent are in the RTR Group 1 docket (Docket ID No. EPA–HQ–OAR–2007–0211).

malfunctions (SSM) in its analysis, as they are the cause of significant HAP emissions and not including them underestimates true risks.

Response: Emission releases from SSM events are typically infrequent and of short duration compared to annual emissions. Startup and shutdown events [9] usually coincide with routine equipment maintenance or upset conditions, or with an initial startup of a process. Malfunction events are sudden and infrequent and must be corrected as soon as practicable after their occurrence. 40 CFR 63.6(e), which generally applies to all MACT rules in part 63, requires the owner or operator of a facility to reduce emissions from the affected source during periods of SSM to the greatest extent which is consistent with safety and good air pollution control practices.

We believe SSM events do not contribute significantly to cancer or chronic noncancer risks for the RTR Group 1 source categories because SSM events are inherently short-term and infrequent relative to annual operations and emissions. The commenter did not supply data. In addition, cancer and chronic noncancer risk for the RTR Group 1 source categories are low. All the RTR Group 1 source categories have a MIR less than 1-in-1 million and an HI less than 1: emissions from SSM events would have to be greater than double the annual emission levels to result in MIR greater than 1-in-1 million or HI greater than 1, and this is improbable.

To better assess SSM emissions, we analyzed SSM emissions of HAP from all major industries (primarily petroleum refineries and chemical manufacturers) in five counties in southeast Texas.[10] Our analysis of these data indicates that multiplying the annual average hourly emission rate by a factor of 10 to estimate the worst-case hourly emission rate would account for 99 percent of the reported SSM emission rates. As a result, we apply this default factor of 10 to screen for potential acute impacts of concern for all RTR source categories. In this case, use of this factor screened out potential acute impacts from all RTR Group 1 source categories except for a few facilities from the Acetal Resins Production and Hydrogen Fluoride Production source categories.

For acetal resins production and hydrogen fluoride production, we applied a source category-specific factor of 2 times the average hourly rate for hydrogen fluoride production and 1.5 times the average hourly rate for acetal resins production to estimate the worst-case hourly emission rate. These factors are derived from industry data and one state that show the peak hourly emissions that have been recorded. Applying these multipliers to our screening scenario eliminated concern for the Hydrogen Fluoride Production source category and reduced the estimated maximum projected acute impact of 1-hour formaldehyde concentrations at any acetal resins production facility to approximately twice the reference exposure level (HQ_{REL}=2), and approximately one-tenth the Acute Exposure Guideline Level (HQ_{AEGL-1}=0.1). The REL is a "concentration level at or below which no adverse health effects are anticipated for a specified exposure duration," and "exceeding the REL does not automatically indicate an adverse health impact." Furthermore, we believe that the likelihood of worst-case meteorological conditions occurring at the same time as a significant upset event and at the location where human exposure is the greatest is improbable. Therefore, considering the value of the maximum HQ along with the improbability of the convergence of worst-case SSM emissions (which we believe to be infrequent events), worst-case meteorological conditions and worst-case human exposure, we determined that this outcome did not warrant cause for concern.

Comment: One commenter noted that they had provided minor updates to emissions and modeling parameters for three facilities on November 19, 2004, and again in the fall of 2007, but noticed that these updates were not included in the documentation. The commenter noted that the updates will have no effect on the cancer MIR modeling and only a minor impact on the HI, and requested that EPA use the updated information if it determines additional modeling runs are necessary.

Response: We regret this error and have incorporated these changes into the datasets for these source categories. As these changes were very minor, we did not re-model with the updated versions of the data, as a review of the updated data showed that the risk results would not be affected to any appreciable degree.

Comment: We received comment both in favor of and objecting to the use of reported "actual" emissions in our analyses. The commenters in favor of this approach felt actual emissions provide more realistic estimates of risk. In contrast, one commenter thought actual emissions and associated impacts could increase over time, and analyses based on these emissions underestimate residual risk and are inconsistent with the applicability sections of the MACT standards.

Response: We have discussed the use of both MACT allowable emissions and actual emissions in previous actions, including the final National Emission Standards for Coke Oven Batteries residual risk rule and the proposed and final HON residual risk rules.[11] In those previous actions, we noted that modeling the MACT allowable levels of emissions (i.e., the highest emission levels that could be emitted while still complying with the NESHAP requirements) is inherently reasonable since they reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. We recognize that facilities strive to achieve greater emissions reductions than required by MACT to allow for process variability and to prevent exceedances of standards due to emissions increases on individual days. Thus, failure to consider actual emissions estimates in

[9] All three terms are defined in 40 CFR 63.2. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. "Shutdown" means the cessation of operation of an affected source or portion of an affected source for any purpose. "Startup" means the setting in operation of an affected source or portion of an affected source for any purpose. And from the 2002 General Provisions for 40 CFR Part 63 BID for Promulgated Amendments [EPA–453/R–02–002], "shutdown" specifically means only the process of shutting off equipment or a process, and does not refer to the period of non-operation. Thus, during this period when a process is offline or between production runs, the source must meet the standard, including emission limits, as well as monitoring, recordkeeping, and reporting requirements.

[10] Our analysis of the SSM data on upset emissions (reported over an 11 month period in 2001) from the Houston, Texas area showed that SSM emissions for facilities in this area typically total significantly less than 15 percent of annual routine emissions, thereby minimizing their potential to increase chronic health risks to any significant degree. See Appendix 4 to "Residual Risk Assessment for Eight Source Categories: Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production, Epoxy Resins Production, Non-nylon Polyamides Production, Hydrogen Fluoride Production, Acetal Resins Production" (July 2008), which is available in the RTR Group 1 docket.

[11] *See* final National Emission Standards for Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and the proposed and final HON residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively.

risk assessments could unrealistically inflate estimated risk levels because actual emissions estimates represent the typical practices of a facility.

We followed this approach for our analysis for the eight source categories. As explained in the preamble to the proposed rule, we evaluated whether allowable emissions would significantly vary from actual emissions. We concluded that actual emissions approximated allowable levels for all eight source categories and, thus, were sufficient for our review. 72 FR 70549–50. We received no comments that suggested or provided data indicating that actual emissions do not approximate the allowable levels for these eight source categories.

B. Risk Assessment Methodology

Comment: Comments were received arguing that the Agency's proposed quantified risks are over-estimated due to the conservative approach used in predicting risks, which included the use of upper bound unit risk estimates (URE) for cancer and a 70-year exposure assumption.

Response: We acknowledge that the use of upper bound URE and 70-year exposure duration are sources of uncertainty in our analyses that tend to overestimate risk. In general, EPA considers the URE to be an upper bound estimate based on the method of extrapolation, meaning it represents a plausible upper limit to the true value. The true risk is, therefore, likely to be less, though it could be greater, and could be as low as zero. With regard to exposure duration, we acknowledge that we did not address long-term population mobility (residence time or exposure duration) in this assessment or population growth or decline over 70 years, instead basing our assessment on the assumption that each person's predicted exposure is constant over the course of a 70-year lifetime.

As explained in our risk assessment, three metrics are generally estimated in assessing cancer risk: the MIR, the population risk distribution, and the cancer incidence. Our failure to consider short- or long-term population mobility does not bias our estimate of the theoretical MIR. (Note that the Benzene NESHAP states that the MIR "does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded." [12]) Our estimates of cancer incidence also are not influenced by our population mobility assumptions, although both the length of time that modeled emissions sources at facilities actually operate (i.e., more or less than 70 years), and the domestic growth or decline of the modeled industry (i.e., the increase or decrease in the number or size of United States facilities), will influence the cancer incidence associated with a given source category.

Our population mobility (residence time or exposure duration) assumption does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby biasing the risk estimates high.

While the approach we use for our screening analysis is conservative, we note that where our screening analysis indicates a potential for risk, we then perform additional, more refined analyses that more closely approximate the true risk from sources that do not "screen-out."

Comment: We received comments both in favor of and objecting to the use of census block centroids in the analysis of chronic exposure and risk. One commenter argued that the use of the census block centroid dilutes the effect of sources' emissions, as the maximum point of impact can be far from the centroid and may be at or near a facility's property line, and suggested that the risks for a source category be based on concentrations at the fenceline and beyond and include risks to the maximally exposed individual. In contrast, other commenters felt the use of the census block centroids was appropriate for these source categories, and one commenter added that using the fenceline as a location to estimate risk is inappropriate in risk assessment because people do not generally live at the fenceline, and this approach would overstate risk.

Response: As we have noted in the development of previous residual risk rulemakings, such as the HON, EPA contends that, in a national-scale assessment of lifetime (chronic) inhalation exposures and health risks from facilities in a source category, it is appropriate to identify exposure locations where it may be reasonably expected that an individual will spend a majority of his or her lifetime, such as a census block centroid. Thus, EPA asserts that it is appropriate to use census block information where people actually reside rather than points on a fence-line, to estimate exposure and risk to individuals living near such facilities when assessing chronic risks. Census blocks are the finest resolution available in the nationwide population data (as developed by the United States Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In EPA risk assessments, the geographic centroid of each census block containing at least one person is used to represent the location where all the people in that census block live. The census block centroid with the highest estimated exposure then becomes the location of maximum exposure, and the entire population of that census block experiences the maximum individual risk. In some cases, because actual residence locations may be closer to or farther from facility emission points than is the census block centroid, this may result in an overestimate or underestimate of the actual annual exposure. Given the relatively small dimensions of census blocks in densely-populated areas, there is little uncertainty introduced by using the census block centroids. There is more uncertainty when census blocks are larger. Recently, EPA used aerial photographs of several facilities to examine the locations of census block centroids and actual residences, and to assess the impact on maximum individual risk of using the census block centroid.[13] In cases where census blocks were small, there was no significant difference in estimated risk. In cases where the census blocks were relatively large, the centroid generally was found to be nearer the facility than the residential locations. Consequently, the risks at the census block centroid typically were higher than the risks at any actual residence. In most of these cases, the census block contained a portion of the facility property, thereby almost necessitating that actual residences be more distant than the block centroid. This result indicates that, if anything, using census block centroids is more likely to overestimate actual maximum individual risks than to underestimate them, although the differences are generally small. EPA believes it is appropriate to estimate chronic exposures and risks based on census block centroids because: (1) Census blocks are the finest resolution available in the national census data, (2) facility fencelines do not typically

[12] National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38045, September 14, 1989).

[13] *See* "Sensitivity analysis of uncertainty in risk estimates resulting from estimating exposures at census block centroids near industrial facilities" in RTR Group 1 docket.

represent locations where chronic exposures are likely, and (3) any bias introduced by using census block centroids may overestimate maximum individual risks.

III. Risk and Technology Review Final Decision

This final rule responds to public comments received on the proposed rule and announces our final decision not to revise the standards of the four NESHAP as they apply to the eight RTR Group 1 source categories. We conclude that the NESHAP applicable to each of the eight source categories evaluated in RTR Group 1— Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production, Epoxy Resins Production, Non-Nylon Polyamides Production, Acetal Resins Production, and Hydrogen Fluoride Production— provides an ample margin of safety to protect public health and prevents adverse environmental effects. Therefore, we are re-adopting each of the four RTR Group 1 MACT standards for purposes of meeting the requirements of CAA section 112(f)(2). In addition, we conclude that there have been no developments in practices, processes, or control technologies that support revision of the four MACT standards pursuant to CAA section 112(d)(6) for the eight source categories.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes no changes to the existing regulations affecting the eight source categories included in this final action and will impose no additional information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 impact of this action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) regulations at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final decision does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, and tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action makes no changes to the existing regulations affecting the eight source categories included in this final action; and, therefore, contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132, Federalism

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" is 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."

This final decision does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect 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 Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Discussion of this action's health and risk assessments are contained in Section I of this preamble.

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

This final decision is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final decision is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No.

104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule would not relax the control measures on sources regulated by the rule and, therefore, would not cause emissions increases from these sources.

K. Congressional Review Act

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 these final rules and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rules 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 be effective on December 16, 2008.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–29789 Filed 12–15–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that

62–296.417 Volume Reduction, Mercury Recovery and Mercury Reclamation (Effective 3/2/99)
62–296.418 Bulk Gasoline Plants (Effective 5/9/07)
62–296.470 Implementation of Federal Clean Air Interstate Rule (Effective 4/1/07)
62–296.480 Implementation of Federal Clean Air Mercury Rule (Effective 9/6/06)
62–296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Emitting Facilities (Effective 1/1/96)
62–296.501 Can Coating (Effective 1/1/96)
62–296.502 Coil Coating (Effective 1/1/96)
62–296.503 Paper Coating (Effective 1/1/96)
62–296.504 Fabric and Vinyl Coating (Effective 1/1/96)
62–296.505 Metal Furniture Coating (Effective 1/1/96)
62–296.506 Surface Coating of Large Appliances (Effective 1/1/96)
62–296.507 Magnet Wire Coating (Effective 1/1/96)
62–296.508 Petroleum Liquid Storage (Effective 1/1/96)
62–296.510 Bulk Gasoline Terminals (Effective 1/1/96)
62–296.511 Solvent Metal Cleaning (Effective 10/7/96)
62–296.512 Cutback Asphalt (Effective 1/1/96)
62–296.513 Surface Coating of Miscellaneous Metal Parts and Products (Effective 1/1/96)
62–296.514 Surface Coating of Flat Wood Paneling (Effective 1/1/96)
62–296.515 Graphic Arts Systems (Effective 1/1/96)
62–296.516 Petroleum Liquid Storage Tanks with External Floating Roofs (Effective 1/1/96)
62–296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_x-Emitting Facilities (Effective 3/2/99)
62–296.600 Reasonably Available Control Technology (RACT) Lead (Effective 3/13/96)
62–296.601 Lead Processing Operations in General (Effective 1/1/96)
62–296.602 Primary Lead-Acid Battery Manufacturing Operations (Effective 3/13/96)
62–296.603 Secondary Lead Smelting Operations (Effective 1/1/96)
62–296.604 Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations. (Effective 1/1/96)
62–296.605 Lead Oxide Handling Operations (Effective 8/8/1994)
62–296.700 Reasonably Available Control Technology (RACT) Particulate Matter (Effective 1/1/96)
62–296.701 Portland Cement Plants (Effective 1/1/96)
62–296.702 Fossil Fuel Steam Generators (Effective 1/1/96)
62–296.703 Carbonaceous Fuel Burners (Effective 1/1/96)
62–296.704 Asphalt Concrete Plants (Effective 1/1/96)
62–296.705 Phosphate Processing Operations (Effective 1/1/96)
62–296.706 Glass Manufacturing Process (Effective 1/1/96)
62–296.707 Electric Arc Furnaces (Effective 1/1/96)
62–296.708 Sweat or Pot Furnaces (Effective 1/1/96)
62–296.709 Lime Kilns (Effective 1/1/96)
62–296.710 Smelt Dissolving Tanks (Effective 1/1/96)
62–296.711 Materials Handling, Sizing, Screening, Crushing and Grinding Operations (Effective 1/1/96)
62–296.712 Miscellaneous Manufacturing Process Operations (Effective 1/1/96)

CHAPTER 62–297 STATIONARY SOURCE EMISSIONS MONITORING

62–297.100 Purpose and Scope (Effective 3/13/96)
62–297.310 General Compliance Test Requirements (Effective 3/2/99)
62–297.320 Standards for Persons Engaged in Visible Emissions Observations (Effective 2/12/04)
62–297.401 Compliance Test Methods (Effective 3/2/99)
62–297.440 Supplementary Test Procedures (Effective 10/22/02)
62–297.450 EPA VOC Capture Efficiency Test Procedures (Effective 3/2/99)
62–297.520 EPA Continuous Monitor Performance Specifications (Effective 3/2/99)
62–297.620 Exceptions and Approval of Alternate Procedures and Requirements (Effective 11/23/94)

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[FR Doc. E8–30126 Filed 12–19–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, and 65

[EPA–HQ–OAR–2003–0199; FRL–8754–5]
RIN 2060–AL98

Alternative Work Practice To Detect Leaks From Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Numerous EPA air emissions standards require specific work practices for equipment leak detection and repair. On April 6, 2006, we proposed a voluntary alternative work practice for leak detection and repair using a newly developed technology, optical gas imaging. The alternative work practice is an alternative to the current leak detection and repair work practice, which is not being revised. The proposed alternative has been amended in this final rule to add a requirement to perform monitoring once per year using the current Method 21 leak detection instrument. This action revises the General Provisions to incorporate the final alternative work practice.

DATES: This final action is effective on December 22, 2008.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0199. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is located in the EPA Headquarters Library, Room Number 3334, and is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. David Markwordt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–0837, facsimile (919) 541–0246, e-mail *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by this final rule amendment include, but are not limited to the following North American Industry Classification System (NAICS) code categories:

Category	NAICS Code	Examples of potentially regulated entities
Industry	325 324	Chemical manufacturers. Petroleum refineries and manufacturers of coal products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility is affected by the national emission standards, you should examine the applicability criteria in 40 CFR parts 60, 61, 63, and 65, including, but not limited to: Part 60, subparts A, Kb, VV, XX, DDD, GGG, KKK, QQQ, and WWW; part 61, subparts A, F, L, V, BB, and FF; part 63, subparts A, G, H, I, R, S, U, Y, CC, DD, EE, GG, HH, OO, PP, QQ, SS, TT, UU, VV, YY, GGG, HHH, III, JJJ, MMM, OOO, VVV, FFFF, and GGGGG; and part 65, subparts A, F, and G.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule amendment is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this final rule amendment will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information in this preamble is organized as follows:

I. Background Information
A. What is the statutory basis for this action?
B. What did we propose?
II. Summary of Changes to the Proposed Rule
A. Removal of the Minimum Detection Sensitivity Level Defaults
B. Annual EPA Method 21 Monitoring while Complying with the AWP
C. Re-screening Repaired Equipment
D. Recordkeeping for AWP Compliance
III. Response to Significant Comments
A. Basis of Standard
B. Applicability
C. Rule Location
D. Alternative Work Practice Procedures and Equipment Specifications
E. Recordkeeping and Reporting
F. Other Comments
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
K. Congressional Review Act

I. Background Information

A. What Is the Statutory Basis for This Action?

Current leak detection and repair (LDAR) requirements are primarily applicable to sources through EPA work practice standards promulgated under Clean Air Act (CAA) section 111 (New Source Performance Standards (NSPS)) and section 112 (National Emission Standards for Hazardous Air Pollutants (NESHAP)). These sections authorize EPA to promulgate work practice standards in lieu of numerical emission standards when "it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard" because the regulated pollutants "cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant * * * or [because] the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." 42 U.S.C. 7412(h)(1), (2); see also 42 U.S.C. 7411(h)(1), (2).

In promulgating such standards, we are not required to mandate a single work practice applicable to all sources in a source category but may instead provide several alternative work practice (AWP) options. Indeed, the United States Court of Appeals for the District of Columbia Circuit has indicated that EPA may provide sources with multiple work practice compliance options if EPA demonstrates that at least one of these options is cost effective and "expressly provides for the alternative in the standard." Arteva Specialties S.R.R.L., d/b/a *KoSa* v. *EPA*, 323 F.3d 1088, 1092 (DC Cir. 2003).

Once promulgated, EPA retains the authority to provide additional work practice alternatives. Such authority exists under EPA's general authority to review and amend its regulations as appropriate, *e.g.*, 42 U.S.C. 7411(b)(1)(B), 42 U.S.C. 7412(d)(6).

B. What Did We Propose?

The proposed AWP allows owners or operators to identify leaking equipment using an optical gas imaging instrument instead of a leak monitor prescribed in 40 CFR part 60, Appendix A–7 *i.e.*, a Method 21 instrument. The new work practice requirements are identical to the existing work practice requirements except for those requirements which are directly or indirectly associated with the instrument used to detect the leaks; for example, owners or operators are still subject to the existing "difficult to monitor," "unsafe to monitor," repair, recordkeeping, and reporting requirements. If a leak is identified using the optical gas imaging instrument, then the leak must be re-screened after repair using the imaging instrument.

Owners or operators are required to use an optical gas imaging instrument capable of imaging compounds in the streams that are regulated by the applicable rule. The imaging instrument must provide the operator with an image of the leak and the leak source.

Prior to using the optical gas imaging instrument, owners and operators are required to determine the mass flow rate that the imaging instrument will be required to image. The optical gas imaging instrument is required to either meet a minimum detection sensitivity mass flow rate (provided in the proposed AWP) or owners or operators can calculate the mass flow rate for their process by prorating a standard detection sensitivity emission rate (provided in the proposed AWP) using equations provided in the amendatory language. If the owner or operator chooses to prorate the standard detection sensitivity, they are required to conduct an engineering analysis to identify the stream containing the lowest mass fraction of chemicals that have to be identified as detectable.

Owners or operators are required to conduct a daily instrument check to confirm that the optical gas imaging instrument is able to detect leaks at the emission rate specified in the amendatory language (or calculated by the owner or operator). The instrument check consists of using the optical gas imaging instrument to view the mass flow rate required to be met exiting a gas cylinder.

Owners or operators using the AWP are required to keep records of the detection sensitivity level used for the optical gas imaging instrument; the analysis to determine the stream containing the lowest mass fraction of detectable chemicals; the basis of the mass fraction emission rate calculation; documentation of the daily instrument check (either with the video recording device, electronically, or written in a log book); and the video record of the leak survey.

II. Summary of Changes to the Proposed Rule

A. Removal of the Minimum Detection Sensitivity Level Defaults

The proposed rule contained equations that could be used by facilities to adjust the detection sensitivity level (*i.e.*, 60 g/hr) based on the composition of the compounds in the process lines. EPA also provided facilities the option of meeting a minimum detection sensitivity level in lieu of adjusting the detection sensitivity level.

In the final rule, we removed the minimum detection sensitivity level. This change was made after reviewing concerns expressed by commenters that the minimum detection sensitivity level would allow an emissions loophole for high purity systems. (See Section III.A for rationale.)

B. Annual EPA Method 21 Monitoring While Complying With the AWP

In the final rule, we are requiring owners or operators choosing to use the AWP to screen equipment using EPA Method 21 (*i.e.*, Method 21) instead of the optical gas imaging instrument in one screening period a year. Owners or operators conducting the Method 21 screening must meet the requirements in the applicable subpart and keep records of all screened equipment. (See Section III.A of this preamble for rationale.) Records of the annual Method 21 screening are to be submitted to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

C. Re-Screening Repaired Equipment

In the final rule, we are allowing owners or operators to re-screen equipment after being repaired using either the current work practice or the AWP if the leaks were detected using the AWP. Leaks detected by the current work practice must be re-screened using the current work practice. (See Section III.B of this preamble for rationale.)

D. Recordkeeping for AWP Compliance

In the final rule, we are requiring that owners or operators keep records of the equipment, process units, or facilities that are to be included in the AWP to document that a facility has chosen to comply with the AWP. This documentation must be kept for as long as the AWP is used and the Administrator may request to review it. We are also requiring that owners or operators keep video records of the daily instrument check and the leak survey results. The video records must be kept for at least 5 years. (See Section III.E of this preamble for rationale.)

III. Response to Significant Comments

The proposal provided a 60-day comment period ending, June 5, 2006. We received comments from 23 commenters. Commenters included State agencies, industry, industry trade groups, environmental groups and individuals. We have summarized the significant comments below. A complete summary of comments is provided in the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199.

A. Basis of Standard

Comment: One commenter suggested that the basis of EPA's assessment of optical gas imaging is from data for sources never regulated for leaking equipment and is significantly outdated compared to current LDAR implementation.

Response: As discussed in the proposal preamble (71 FR 17403), the most reasonable approach to determine if the AWP is equivalent to the original work practice (based on Method 21) is to model the emission reductions that would occur if you were to apply both programs on an uncontrolled facility. This allows for a direct comparison between the effectiveness of the two approaches. As explained in the proposal, the original uncontrolled baseline Method 21 data used to develop the existing work practice would have been appropriate to make the comparison. Unfortunately, this 25-year-old database is no longer available. The only uncontrolled data available is from natural gas processing plants, which are used in the modeled comparison. These plants were screened with Method 21 instruments in the early 1990s as part of an EPA/industry effort to develop emission factors for the refinery and gas processing industry.

Comment: Several commenters opposed immediate and complete phase-out of Method 21 because equivalency has not been proven and the optical gas imaging instruments have questionable ability to image materials emitted at the detection sensitivity level (*i.e.*, threshold leak rates). Several commenters explained that the studies referenced by EPA do not take into account the fact that a single leak's emission rate will vary over time and depend on process conditions (such as chemical activity, temperature, and pressure), and the type and size of the equipment. One commenter suggested that EPA has presented no evidence to support the presumption that leaking equipment below the sensitivity of the optical gas imaging instrument will proceed to leak at a higher rate over time and be discovered due to increased frequency of monitoring. One commenter stated that if smaller leaks will not be detected with the gas imaging instrument, then a site may end up with many undetected small fugitive equipment leaks and could result in higher emissions rates.

Another commenter asserts that optical gas imaging is not currently technically equivalent to Method 21 because the camera cannot detect small leaks of less than 60 grams/hour (g/hr). The commenter also stated that the side-by-side comparison of Method 21 and the optical gas imaging technology shows there are significant differences in the detection rate. The commenter questioned whether the increased frequency of monitoring to detect larger leaks will actually compensate for the camera's inability to detect small leaks. The commenter added that high risk leaks of carcinogens will continue to leak until they become large enough to be detected by the camera.

Response: When using any imaging instrument, leak detection requires two primary factors for its use: (1) The leak definition and (2) the monitoring frequency. Together, these factors form the foundation of an LDAR program for identifying fugitive emissions from leaking equipment. The current work practice uses various leak definitions based on parts per million (ppm) and corresponding monitoring frequencies (monthly, quarterly, or annually) for identifying leaking equipment. Emissions reductions occur when leaking equipment is identified and repaired. In developing the AWP, EPA sought to design a program for using the optical gas imaging instrument that would provide for emissions reductions of leaking equipment at least as equivalent as the current work practice. To do so, we used the Monte Carlo model for determining what leak rate definition and what monitoring frequency were necessary for the AWP. The following provides a brief explanation of how we used that model to obtain the 60 g/hr leak rate threshold and a bi-monthly monitoring frequency. For a more detailed explanation of the

methodology used to develop the AWP, refer to the preamble for the proposed AWP (71 FR 17401).

Based on a 1993 petroleum industry study, EPA developed a statistical relationship between measured (bagged) mass emissions and the associated measured Method 21 screening values. This statistical relationship established the probability of registering a Method 21 screening value for a given range of mass emissions. The statistical relationship was then used to simulate detection of leaks by the Method 21 work practice in the computer model. The modeling program compares the screening value of Method 21 to various leak definitions to determine if a leak would be detected. Similarly, the model assigns a mass rate detection limit to the AWP. For each piece of equipment with a leak at or above the assigned mass detection limit, the program specifies detection by the AWP. Modeling results showed a work practice repeated bimonthly with a detection limit of 60 g/hr range was equivalent to the existing work practice. The model generated different detection limits for the 500 and 10,000 ppm thresholds in existing rules. The final rule reflects the mass detection limit for 500 ppm, *i.e.*, the most stringent limit in the Federal LDAR rules, thus, providing equivalency for both leak definitions.

The final AWP is not phasing out the existing Method 21-based LDAR work practice standards. Rather, the final rule allows owners/operators to choose to use the AWP in place of the current work practice wherever applicable. When used, the AWP provides equivalent control and appears to be less burdensome to implement. Additionally, industry has purchased many optical gas imagers and has had the opportunity to become proficient with their use. For these reasons, we expect the AWP to quickly come into widespread use. We see no reason why this is not a good outcome, especially given, as discussed below, that the final AWP includes an annual Method 21 monitoring requirement.

We disagree with the commenter's assertion that optical gas imaging cannot detect leaks at or less than 60 g/hr. The tests conducted using various optical imaging devices have shown that many gas imaging instruments detect emissions significantly below the 60 g/hr limit (Docket ID No. EPA–HQ–OAR–2003–0199–0027). Moreover, equivalence has been shown at a 60 g/hr leak rate, so it is not necessary that the optical gas imager detect leaks smaller than this level.

We also disagree that the side-by-side comparison of Method 21 and the AWP shows significant differences in mass of emissions detected. Available test data that we have reviewed shows that most of the mass emissions were detected by both Method 21 and the AWP (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). The commenter did not provide data to support their assertion otherwise.

However, we recognize that modeling cannot address all of the uncertainties associated with equipment leaks because we lack sufficient information necessary to address all of the potential issues such as leak rates varying with time or with different operating scenarios. While commenters suggest these factors could affect the modeled equivalency determination, we are not aware of any specific data that shows this affect is real or that would allow us to include it in the equivalence modeling. As an example, one question not addressed by the modeling effort is the possibility that leak rates of the emitters below the imaging threshold of 60 g/hr will increase with time but stay below 60 g/hr and, therefore, not be imaged by the AWP. If the leak rate for the equipment currently leaking below the detectable threshold of the AWP gradually increases but stays below the detectable threshold, some situations may arise where cumulative emissions could exceed those emitted under the current program. We do not have evidence to support this scenario; however, we believe it prudent to protect against this scenario. Therefore, the final AWP requirements provide a transition to the new imaging technology. We have added an annual Method 21 screening to the AWP to address the concern of small leaks growing but not large enough to be detected with optical imaging. This requirement would take the place of one of the optical imaging screening surveys. The Method 21 screening must be conducted using the leak detection and repair requirements in the applicable subpart to which the equipment is subject and must be conducted for all equipment that are included in the AWP. Records of the annual Method 21 screening results must be kept. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts. We recognize that including an annual Method 21 screening survey in the AWP will decrease the cost savings that may have occurred under the proposed requirement; however, we fully expect that the costs of the final AWP will be substantially less than those of the current work practice, so we hope that the added costs will not deter facilities from adopting the final AWP.

As industry adopts the AWP and reports to us their records of the results of the annual Method 21 monitoring, we will review this data to assess the extent to which small leaks go undetected and become larger while remaining undetected. We will consider these results, along with other relevant information, in any future revisions to the AWP.

Comment: One commenter requested EPA explain the relationship between the 60 g/hr threshold and the 500, 1,000, 2,000, and 10,000 ppm concentration cutoffs in the existing LDAR regulations. The commenter suggested that EPA set up different leak definitions to recognize that some equipment inherently leak less material than others and thus only need to be repaired after reaching the specified leak level. The commenter also indicated that the increased leak definition for auto-polymerizing compounds were included in most LDAR regulations to recognize that these materials are less likely to leak into the atmosphere. The commenter concluded that the 60 g/hr leak threshold does not recognize any of the specific situations that have caused EPA to promulgate these provisions.

Two commenters suggested that the equivalency analysis does not show that the gas imaging leak threshold of 60 g/hr is equivalent to a Method 21 measurement of 500 ppm, especially when connectors and other equipment are considered. Another commenter added that another study showed that an equivalent leak threshold for flanges is 24 g/hr instead of 60 g/hr. The commenter requested that EPA justify applying the same leak threshold to virtually all types of equipment. The commenter also stated that another study showed the equivalent leak threshold for valves was 36 g/hr, and suggested using this stricter standard.

Response: The explanation of the relationship between the 60 g/hr leak threshold and various leak definitions is provided in EPA's discussion of the Monte Carlo analysis (Docket ID No. EPA–HQ–OAR–2003–0199–0005). Additionally, as explained in the response above, the equivalency determination was based on comparing the current work practice leak definition and monitoring frequency requirements with various leak rates and monitoring frequencies generated by the Monte Carlo model. We modeled the most stringent leak definition (500 ppm) to

determine the leak threshold for the AWP under the assumption that if a source could meet the most stringent leak threshold, it could meet less stringent leak definitions in any of the Federal equipment leak standards.

The 60 g/hr leak threshold, when monitored bi-monthly, is the modeled equivalent for the vast majority of LDAR programs. Other equipment subject to LDAR rules is monitored at a higher leak definition (*i.e.*, 1,000 ppm, 2,000 ppm, 10,000 ppm) and monitored less frequently (*i.e.*, quarterly or annually). Thus, facilities using the AWP to monitor these other pieces of equipment should see results at least as stringent as using the current work practice. We lacked sufficient bagging data on other equipment to develop correlations using the model. However, the bagging data for those other pieces of equipment could be, and was, used to validate the results from the Monte Carlo analysis.

One commenter referred to an industry study showing that if a different dataset consisting of information from southern California refineries were used in the Monte Carlo analysis, the equivalent leak threshold for valves would be 36 g/hr and flanges would be 24 g/hr. There are several reasons why the California data is not appropriate for the analysis. First we would note that the dataset from the California refineries was from refineries where equipment leak standards were already in place and leak thresholds would be lower. Such a dataset from controlled facilities would not be appropriate for the equivalency analysis. As discussed in the proposal preamble and in previous responses, a technically defensible equivalency determination of any AWP requires modeling of an uncontrolled facility. Second, the equipment leak work practice requirements in the California rules, which the refineries would be subject to, are not identical to those in EPA regulations with Method 21. There were significant differences between Method 21 requirements and the requirements for equipment leaks in California such that screening results from the two are not equivalent. To make a comparison with EPA's Monte Carlo analysis, the California data was modified to approximate the requirements of Method 21. However, this modification is only an approximation and does not exactly replicate Method 21 results. Third, we also note that the leak threshold of 24 g/hr for flanges was calculated assuming quarterly monitoring. However, the EPA requirements for flanges only require monitoring about every 2 years. To conduct a proper model for flanges, the analysis would need to be run on a 2-year basis. As stated in the report (Docket ID No. EPA–HQ–OAR–2003–0199–0032), "the equivalent AWP (leak threshold) increases as the AWP monitoring frequency increases." This trend implies an equivalent leak threshold based on the existing 2-year monitoring requirement would be much higher than the 24 g/hr number and likely above 60 g/hr.

Regarding auto-polymerizing compounds, we lack sufficient information to equate mass leak rates to concentration levels for them. The commenter did not provide any additional information that would allow us to do so. Therefore, we are not providing leak thresholds specific to auto-polymerizing compounds. We acknowledge the AWP may result in more stringent control than the current work practice required in equipment leak standards for polymers and resins because the model analysis used to develop the AWP was conducted at a leak definition of 500 ppm, the most stringent leak definition in Federal rules, and using data from natural gas processing plants. If the owner or operator considers the AWP not to be appropriate for their facility they can continue to use the current work practice to identify leaking equipment.

Comment: One commenter suggested that using the optical gas imaging instrument may miss intermittent leaks, which may add significantly to fugitive emissions. The commenter added that the AWP needs to account for how at certain times potentially large leaks can be disguised as small leaks.

Response: Previous EPA studies have shown that most emissions are from equipment with the larger leaks. (Docket ID No. EPA–HQ–OAR–2003–0199–0044) Prior to leak detection and repair programs, 95 percent of the mass emissions were emitted from 5 percent of the equipment, *i.e.*, equipment leaking at greater than 10,000 ppm. Additionally, tests conducted to ascertain the performance of optical gas imaging cameras show that the cameras identified all leaks greater than 60 g/hr (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). These results show that the AWP will achieve EPA's goals of detecting leaking equipment from which the majority of emissions arise. As a point of comparison, we would also note that the current work practice can erroneously register low ppm readings below the leak threshold for large emitters, *i.e.*, the current work practice can show a broad range of readings for the same mass emission. Therefore, the current work practice also would not identify all leaking equipment. Also, neither the current work practice nor the AWP will identify intermittent leaks because these leaks occur when equipment is not monitored.

The final rule also requires that any leak, no matter how small, viewed by the optical gas imaging instrument is considered a leak and must be repaired. The performance tests show that the camera can in practice "see" leaks as low as 10 g/hr, which is below the 60 g/hr leak threshold determined to be equivalent to the current work practice. As a result, the cameras will identify equipment leaking below the 60 g/hr leak threshold and those leaks are required to be repaired. Thus, a large leak that could be "disguised" as a smaller leak under the current work practice would not be misidentified and avoid repair.

Comment: One commenter suggested that a loophole in the AWP allows inspectors to bypass proper adjustments for high purity systems containing undetectable chemicals. The commenter explained that the optical gas imaging instrument can only detect volatile organic compounds (VOC) that absorb or emit infrared light. In the synthetic organic chemicals manufacturing industry, high purity systems are common, and leaks can go undetected if the dominant chemical does not register with optical gas imaging technology. The commenter added that the proposal contains a loophole that gives the inspector the option of using a minimum mass flow rate threshold of either 10 g/hr for pumps or 6 g/hr for all other equipment instead of adjusting the threshold to accommodate the instrument's detection limits. The commenter questioned EPA's assumption that all leaks encountered during an inspection contain at least 10 percent detectable chemicals. The commenter recommended that EPA remove this loophole by eliminating section 60.18(i)(2)(i)(B) from the rules. The commenter also recommended that Method 21 be used for high purity situations where chemicals have not been verified as adequately detectable using the optical gas imaging technology. The commenter concluded that if EPA chooses to keep the loophole, it should address whether the technology fails to detect a high number of leaks that are smaller than 6 g/hr.

Response: After further review of the commenter's concerns, we have determined that the commenter is correct regarding the minimum detection sensitivity level provided in the tables. The potential exists for high

purity systems to have leaks not identified if the minimum detection sensitivity level is used instead of being calculated. Consequently, the final rule requires that the detection sensitivity level be calculated using the equation in section 60.18(i)(2)(i). The minimum detection sensitivity level concept has been removed from the final rule. We also note that the optical gas imaging instrument is allowed to be used only where it will respond to the equipment leaking. Therefore, if the instrument does not respond to high purity streams, it cannot be used to detect leaks. The current work practice using Method 21 must be used instead.

B. Applicability

Comment: One commenter requested that EPA clarify that a facility is not required to monitor equipment using Method 21 and the AWP.

Response: The standard is an alternative to the existing work practice and may be used in place of the existing work practice where feasible and whenever the owner or operator chooses to do so. We are not requiring that both be used at the same time. We are requiring that each facility choosing to use the AWP monitor the same regulated equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor once per year.

Comment: Several commenters suggested that leaks identified using the gas imaging instrument should be verified using traditional Method 21. Another commenter opposed allowing Method 21 to be used to check for leaks found with optical imaging. The commenter suggested that the methods could give contradictory results and would serve no purpose. The commenter added that because EPA states in the proposal that the AWP provides equivalent or better emissions control than Method 21, there is no justification for requiring both methods to be applied to the same equipment.

Two commenters also requested that EPA consider allowing facilities the option to use Method 21 or the Gas imaging AWP for post repair monitoring requirements. The commenters opposed the required approach of being limited to the same method for repair monitoring.

Response: We do not believe that leaks identified in the initial screening using the AWP need to be screened using the current work practice to verify the leak. By definition in the AWP, a leak is any emissions imaged by the optical gas imaging instrument. Requiring the facility to use a Method 21 monitor to verify what the optical gas imaging instrument has already detected would be an unnecessary duplication of effort and resources.

On the other hand, we have decided that it would be appropriate to allow either the current work practice or the AWP to be used for repair purposes when the AWP is used for the initial screening. Test information has demonstrated that a Method 21 instrument will detect leaks that the gas imaging instrument will detect (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). Therefore, it is appropriate to allow its use when optical gas imaging instruments are used to find leaks. If a Method 21 instrument is used for repair monitoring, the leak definition in the applicable subpart to which the equipment is subject must be used to determine if the repair is successful. However, the AWP instrument will not be allowed to verify the repair has been made after the Method 21 instrument is used for the once-a-year monitoring.

Comment: Several commenters suggested that an owner or operator should be able to selectively apply the proposed AWP to a part of the facility, part of a process unit, or even individual equipment. The commenters added that selective application of the AWP is appropriate because optical gas imaging technology is new and few facilities have experience with it, differences within a facility suggest the use of Method 21, or the AWP to various parts of the plant, and it would encourage the development of the technology.

Response: We agree with the commenters' suggestion. The AWP may be used for the entire facility, a process unit, or a group of equipment. The decision is up to the owner or operator how broadly the AWP will be used. The owner or operator is required to keep records of where the AWP will be used as part of the documentation of the detection sensitivity level value.

Comment: Two commenters suggested that EPA should allow flexible use of the AWP by allowing facilities to move from traditional monitoring to optical imaging and vice versa without being subject to a permitting approval process. The commenters added that a facility cannot switch from one technology to another without assuring that monitoring frequencies and protocols are fully addressed upon switching.

Response: The flexibility that the commenters are requesting is beyond the scope of this action. The issues need to be raised in the context of the title V program and the specifics of individual facility permits.

Comment: Several commenters supported using the AWP for monitoring closed vent systems. Another commenter suggested that most pressure relief vents (PRV) are installed in closed vents routed to control devices. Therefore, optical sensing methods cannot evaluate emissions inside a closed vent conveyance. The commenter concluded that the AWP must allow mixed monitoring methods for closed vents. One commenter asserted that the AWP has to be applicable for a 500 ppm leak and any change to the standard for monitoring closed vent systems would be outside the scope of the AWP. One commenter recommended that the owner or operator be given the option of using either Method 21 or an optical imaging camera to monitor PRV after the pressure releases.

One commenter supported the lower leak rates for closed vent systems (*e.g.*, 3 g/hr) but noted that the leak rate would be for mass flow for a bi-monthly inspection schedule. The commenter added that closed vent systems are typically inspected on an annual basis and the equivalent leak rate, using the Monte Carlo analysis, for annual inspection would be 0.013 g/hr, which is below the range that the technology can reliably find leaks. The commenter added that to allow use of the optical gas imaging technology to monitor closed vent systems, EPA must create a revised inspection schedule which balances frequency with limitations of the optical technology. The commenter also added that if the optical imaging technology cannot reliably measure emissions at low leak rates, Method 21 should be used. The commenter stated that supplementing the optical gas imaging technology with Method 21 would catch more small leaks characteristic of closed vent systems.

Response: In the preamble to the proposed rule, we took comment on whether the AWP was appropriate for closed vent systems but did not include language to permit such use. We have evaluated the commenters' concerns and have decided that the AWP is not appropriate for monitoring closed vent systems, leakless equipment, or equipment designated as non-leaking. While the AWP will identify leaks with larger mass emission rates, tests conducted with both the AWP and the current work practice indicate the AWP, at this time, does not identify very small leaks and may not be able to identify if non-leaking/leakless equipment are truly nonleaking because the detection sensitivity of the optical gas imaging instrument is not sufficient. Therefore, in the final rule, as in the proposed rule,

we have decided not to allow the AWP to be used for closed vent systems, leakless equipment, or equipment designated as non-leaking.

Comment: Several commenters supported using the optical imaging technology to find, review, and fix non-regulated and previously non-detectable leaks without additional regulatory burden and fear of reprisal from enforcement actions. One commenter suggested that the camera be used as a form of enhanced visual inspection to quickly identify whether a group of equipment has passed or failed and that result be stored in a database. Then, the camera and recorded video could be used to target only the leaking equipment. Another commenter supported using the optical imaging device as a screening tool for leaks so that annual Method 21 leak checks could be targeted to equipment suspected of leaking.

Other commenters asserted that the AWP should require that all leaks detected with optical gas imaging be corrected according to the existing leak correction time requirements, regardless of whether or not the equipment would have been required to be monitored using Method 21. One commenter added that if the operator monitors leaks outside of the EPA requirement, the AWP should require the company maintain records. The commenter stated this would prevent operators from repairing leaks just prior to an official inspection and reporting artificially low levels. One commenter requested that the AWP also apply to inaccessible and unsafe to monitor equipment. The commenter also suggested that expanding the inventory would reduce the number of large leakers, and reduce the cost to the plant by enabling the plant to repair large leakers rather than an inventory of equipment which they are mandated to monitor and repair.

Response: The AWP requirements are intended to provide an alternative to the current work practices using Method 21. Requirements in the existing subpart that are specific to Method 21 do not apply to the AWP. All other requirements in the applicable subpart that are not specifically addressed in the AWP apply, such as schedule for repairs, designation of difficult to monitor equipment and unsafe to monitor equipment. Therefore, the schedule for repairing leaks is the same for both work practices. The final rule changes were not intended to expand the applicability of the existing rules. The Agency has promulgated the AWP to facilitate the use of emerging technology as quickly as appropriate. Once the regulated community and EPA have more experience with the AWP, we may consider expanding the applicability of the existing rules.

Comment: Several commenters provided input on definitions for "difficult to access" or "unsafe to access" or "unsafe to repair" or "difficult to repair." Several commenters requested EPA include the concept of "difficult to access" in the AWP because access is still required to make repairs and in some cases this may not be possible. One commenter suggested replacing the term "difficult to access" with "unsafe to access." One commenter also suggested adding a definition for "unsafe to access" equipment because the AWP would allow more frequent monitoring of these equipment due to the nature of the technology, but does not address the repair requirements for such equipment. One commenter suggested for equipment designated as "difficult to access" repair be required as soon as practical but no later than 90 days. Equipment identified as "unsafe to access" should be required to be repaired when it is safe to do so. One commenter requested EPA to describe how facilities switching to the AWP would manage their "difficult to monitor" lists.

Response: The interpretations of the terms "difficult to monitor," "difficult to repair," or "unsafe to monitor" are driven by work practice in use and therefore are not addressed in this section. We expect the population of equipment so designated under the existing work practice will change to accommodate the differing capabilities of the AWP instrument. Therefore, we are not addressing "difficult to monitor," "difficult to repair" or "unsafe to monitor."

C. Rule Location

Comment: Several commenters supported locating the AWP in the General Provisions. However, many of the commenters requested that the AWP be located in the General Provisions to each applicable Part rather than only in Part 60. Other commenters preferred that Method 21 be revised to include the AWP rather than include language in the General Provisions.

Several commenters supported including the amendatory language in each applicable subpart and opposed having it in only one Part. The commenters suggested that the proposed method would result in numerous inconsistencies with the subparts and would be confusing.

Two commenters suggested that the proposed language in the 40 CFR part 60 General Provisions was legally insufficient. One of the commenters asserted that EPA must incorporate the AWP into all subparts where it will be readily apparent to the affected industry groups, regulators, and the public.

Response: We believe there is no simple way to incorporate the AWP into the numerous subparts. The General Provisions appear to be the most efficient way to accommodate the desired amendments, so in response to the comments received, we have decided to incorporate the AWP into the General Provisions of parts 60, 63, and 65. The AWP is also applicable to those subparts in part 61 that reference the General Provisions in part 60. Additionally, where specific subparts require modification (such as tables in Part 63 subparts that reference General Provisions sections), we have made the appropriate revisions. The suggestion to incorporate the AWP into Method 21 is both inappropriate and awkward because Method 21 contains a test method only and should not contain recordkeeping, reporting, and monitoring requirements.

D. Alternative Work Practice Procedures and Equipment Specifications

Comment: One commenter requested that use of the optical imaging technology be complemented with Method 21 as necessary to compensate for shortcomings in the camera design. The commenter noted the differences between active and passive cameras and their vulnerabilities, as well as interferences from carbon dioxide and steam/water, use outdoors, and the color of the background. The commenter recommended that the AWP should fully address the limitations of each technology and require that inspectors identify and make records of equipment types that are poor candidates for either kind of optical gas imaging technology.

Response: The AWP can only be used to detect leaks when the gas imaging instrument is shown to work (i.e., streams that contain compounds that can be detected by the gas imaging instrument). Therefore, if a specific type of gas imaging device does not work on a stream, operators will continue to use the Method 21-based work practice for these equipment. Although this commenter did not provide any data supporting the need to augment the AWP with the Method 21 instrument, as explained earlier, we are requiring annual monitoring with the Method 21 instrument. (See section III.A of this preamble for a discussion of this requirement.)

Comment: One commenter requested EPA to explain how a facility would identify which analytical methods

should be used for which compounds, especially when potentially incompatible compounds may be included in a mixture within a group of emission equipment. The commenter added that it would be unfair to penalize a facility by prohibiting the use of the AWP because the AWP cannot detect all VOC in a specific process unit.

Another commenter requested clarification that the requirement in 40 CFR 60.18(i)(1) that imaging the compounds in the streams does not mean or imply that every compound in the stream must be detected.

Response: The AWP does not require that every compound in the stream be detected. Only one compound needs to be able to be viewed. However, the 60 g/hr leak rate threshold must be adjusted, *i.e.*, scaled down, to account for compounds that are not seen. The language in the final rule was modified to clarify this point.

Comment: One commenter requested that petroleum refineries be exempt from the stream speciation and variability of process stream requirements because petroleum refineries were used in the development of the standard and because the mixed hydrocarbons contained in the streams have been demonstrated to meet all the monitoring criteria. The commenter specifically opposed requiring an engineering analysis. The commenter suggested adding language that allows the determination to be based on the process knowledge that an image from the camera is not a leak if that image is determined to be steam or other unregulated material.

Response: In the proposed rule, we provided a definition for "engineering analysis" that described the requirements for determining the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable. In the final rule, we have decided to put the requirements for the analysis directly in the rule rather than have a separate definition.

In the final rule, we are requiring owners or operators to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable. It is up to the owner or operator to provide sufficient information to meet this requirement. This information may include process knowledge, previous studies, or analyses conducted for the AWP. The documentation of the analysis is required to be kept as a record for as long as the AWP is used and must be updated to incorporate any changes that may affect the analysis. The Administrator may request to review the documentation. Because this requirement is now in the rule, it is not necessary to include it in the term "engineering analysis." Therefore, in the final rule, the term "engineering analysis" has been removed.

We also disagree that petroleum refineries should be exempted from the stream speciation and variability of process stream requirements. The commenter's reasoning is not a sufficient justification for such an exemption because, although some refinery streams were used to develop the method, there are a wide variety of refineries with varying streams and without site specific analysis we have no assurance that the required leak rate can be imaged.

E. Recordkeeping and Reporting

Comment: One commenter requested the owner or operator of an affected source be required to submit notice to the Administrator that they have elected to use the AWP and state the duration the AWP will be used.

Response: For the final rule, we have required a memorandum to the owner's or operator's file identifying the equipment, process units, or facilities that are to be included in the AWP to document that a facility has chosen to comply with the AWP. This documentation must be kept for as long as the AWP is used and the Administrator may request to review it. It is not necessary to submit notification to the Administrator that the AWP will be used. Owners or operators are still required to meet the requirements in the subpart except where they are superseded by the AWP. Therefore, the same reports and records kept for the current work practice will be required for the AWP.

Comment: Several commenters requested that EPA allow owners/operators the option of keeping video records to provide flexibility; others opposed requiring keeping video records. Several commenters added that recordkeeping for the AWP should not be more burdensome than the applicable subparts. The commenters noted that the AWP will add significant burden to facilities and regulators. One commenter stated that facilities will incur burden from additional storage of electronic files. The commenter provided estimates of the amount of electronic storage space that would be necessary, indicating as much as 50 gigabytes would need to be stored per inspection. The commenter added that EPA should consider the time needed to transfer large files between field data collection devices and the plant's computer in the time necessary to use the AWP. One commenter expressed concern about maintaining videos of every leak survey, especially if the AWP requires that each piece of equipment be imaged separately. The commenter noted that the battery life of the camera and recorder are limited, storage of the videos will be burdensome, and data retrieval will require searching the videos and will be cumbersome.

Other commenters suggested that video records of the daily instrument check should be required. One commenter recommended EPA maintain the documentation requirements for monitoring of all equipment. The commenter asserted that video documentation is an important enforcement tool and is a safeguard against fraud. The commenter disputed industry assertions of the cost of keeping video records and suggested that computer storage represents only a fraction of the costs of the LDAR program.

Response: The final rule requires that if the owner or operator chooses to use the AWP, video records of all viewed regulated equipment and video records of the daily instrument check must be kept for 5 years. We recognize that data files for video records may be large. However, to ensure that the AWP is being complied with, we believe it is necessary to require video records of each piece of equipment that is viewed. We would also like to reiterate that the standard is an AWP. If owners or operators believe that the video recordkeeping requirements are too burdensome, they may continue to comply with the existing requirements as written. We also note that the AWP is not superceding the recordkeeping and reporting requirements that are in the existing equipment leak standards. The owner or operator must still keep those records. However, in the final rule a video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record.

F. Other Comments

Comment: One commenter asked EPA to clarify whether a requirement that the instrument be intrinsically safe will be incorporated into the AWP. One commenter suggested that a significant burden will be incurred by requiring instruments that are intrinsically safe. The commenter added that EPA is requiring that personnel take into hazardous areas data storage devices that are not intended for that purpose.

Response: We are not requiring that gas imaging instruments be intrinsically safe. It is incumbent upon the

manufacturer to develop instruments that are designed to meet the requirements of the chemical facility or refinery. Facilities may or may not require equipment be intrinsically safe. The owner or operator is not being required to use the AWP. If such instruments are not available, and the operator requires intrinsically safe instruments, then the owner or operator does not have to choose to use the AWP.

Comment: Several commenters requested that EPA provide guidance on how a facility would calculate emission rates for emission inventories if the AWP is in use. One commenter specifically asked how a facility would manage default zero equipment for emission estimation purposes. Several commenters added that if guidance is not provided, EPA should revise the AWP to include quantification procedures consistent with EPA's preferred methodology. One commenter asserted that optical gas imaging is limited by its inability to quantify leak concentration, which are converted to emission rates using the correlation equations. The commenter added that facilities must be required to use Method 21 or an equivalent emissions estimation technique to quantify leaks detected with optical gas imaging. Another commenter suggested that gas imaging technology has the ability to quantify emissions; therefore, quantification should be required in the AWP.

Response: The Agency recognizes the need for new approaches to estimate emissions from facilities that implement the AWP. We will work with stakeholders to develop the necessary tools for quantification. In the final rule, we are also requiring each facility complying with the AWP also monitor the same regulated equipment with a Method 21 monitor once per year. The data gathered from this requirement will help us address the issue of emissions quantification.

Comment: One commenter considered that public notification of the rulemaking was incomplete and inadequate because the title and summary of the proposed rule only addressed 40 CFR part 60 but the proposal would amend 40 CFR parts 61, 63, and 65 as well. The commenter added that before EPA promulgates the AWP, it needs to propose the AWP for parts 61, 63, and 65.

Response: We believe that sufficient notification was provided that the AWP would apply to subparts other than in 40 CFR part 60. The proposed rule specifies in 40 CFR 60.18(a)(2) that the AWP is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor. The rule clearly states that the AWP applies to 40 CFR parts 60, 61, 63, and 65. Similarly, the preamble to the proposed rule states that it applies to 40 CFR parts 60, 61, 63, and 65.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

This final rule provides plant operators with an alternative method for identifying equipment leaks, but does not change the basic recordkeeping and reporting requirements in the various subparts of 40 CFR parts 60, 61, 63, and 65. However, EPA anticipates that this final rule will change the burden estimates developed and approved for the existing national emission standards by reducing the labor hours necessary to identify equipment leaks.

An ICR document (EPA ICR No. 2210.02) was prepared for this final rule to estimate the costs associated with reading and understanding the alternatives, purchasing an optical imaging instrument, and initial training of plant personnel. The ICR has been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The annual public burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 3,027 labor hours per year and a total annual cost of $2,260,189. EPA has established a public docket for this action (Docket EPA–HQ–OAR–2003–0199) which can be found at *http://www.regulations.gov*. The ICR for this final rule is included in the public docket. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 the final rule on small entities, small entity is defined as follows: (1) A small business whose parent company has fewer than 100 to 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

After considering the economic impact of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have concluded that this final rule imposes no additional burden on

facilities impacted by existing EPA regulations. This final rule allows plant operators to voluntarily use an AWP. In fact, EPA expects the AWP will relieve regulatory burden for all affected entities by reducing the labor hours necessary to identify equipment leaks.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one 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 EPA 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, EPA 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. 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 Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA does not use available and applicable VCS.

This final rule does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final action will not have disproportionately high and adverse health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any

population, including any minority or low-income population. This final action would not relax the control measure on sources regulated by the rule and, therefore, would not cause emissions increases from these sources.

K. Congressional Review Act.

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 final rule and other required information to the United States Senate, the United States 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 be effective December 22, 2008.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, reporting and recordkeeping.

40 CFR Part 65

Administrative practice and procedure, Air pollution control.

Dated: December 15, 2008.

Stephen L. Johnson,

Administrator.

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

PART 60—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 60.18 is amended:

■ a. By revising the section heading;

■ b. By revising paragraph (a); and

■ c. By adding paragraphs (g), (h), and (i) to read as follows:

§ 60.18 General control device and work practice requirements.

(a) *Introduction.* (1) This section contains requirements for control devices used to comply with applicable subparts of 40 CFR parts 60 and 61. The requirements are placed here for administrative convenience and apply only to facilities covered by subparts referring to this section.

(2) This section also contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(g) *Alternative work practice for monitoring equipment for leaks.* Paragraphs (g), (h), and (i) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (g), (h), and (i) of this section apply to this standard. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (g)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (g), (h), and (i) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, or 65 that requires monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(h) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (i) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (i)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 1 to subpart A of this part in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (h)(1)(i) of this section must also be monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(i) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (i)(1) through (i)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements in (i)(1)(i) and (i)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (i)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily Instrument Check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (i)(2)(i) of this section in accordance with the procedure specified in paragraphs (i)(2)(ii) through (i)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (i)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (i)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 1 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (i)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i = Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (i)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 1 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate specified in paragraph (i)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (i)(2)(ii) through (i)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 60.13(i).

(3) Leak Survey Procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. You must keep the records described in paragraphs (i)(4)(i) through (i)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 1 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (i)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (i)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (i)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (i)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be

identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (h)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (h)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subpart.

(5) Reporting. Submit the reports required in the applicable subpart. Submit the records of the annual Method 21 screening required in paragraph (h)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV*.

3. Subpart A is amended by adding Table 1 to subpart A to read as follows:

TABLE 1 TO SUBPART A TO PART 60—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring frequency per subpart[a]	Detection sensitivity level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 5. Section 63.11 is amended:
■ a. By revising the section heading;
■ b. By revising paragraph (a); and
■ c. By adding paragraphs (c), (d), and (e) to read as follows:

§ 63.11 Control device and work practice requirements.

(a) *Applicability.* (1) The applicability of this section is set out in § 63.1(a)(4).

(2) This section contains requirements for control devices used to comply with applicable subparts of this part. The requirements are placed here for administrative convenience and apply only to facilities covered by subparts referring to this section.

(3) This section also contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(c) *Alternative Work Practice for Monitoring Equipment for Leaks.* Paragraphs (c), (d), and (e) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (c), (d), and (e) of this section continue to apply. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (c)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (c), (d), and (e) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, and 65 that requires monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(d) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to 40 CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (e) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (e)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subparts to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 1 to subpart A of this part in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment, the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (d)(1)(i) of this section must also be

monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(e) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (e)(1) through (e)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (e)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily Instrument Check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (e)(2)(i) of this section in accordance with the procedure specified in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (e)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (e)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 1 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (e)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i = Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (e)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 1 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate calculated in paragraph (e)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 63.177 or § 63.178, whichever is applicable.

(3) Leak Survey Procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. Keep the records described in paragraphs (e)(4)(i) through (e)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 1 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (e)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (e)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (e)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (e)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (h)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (h)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts.

(5) Reporting. Submit the reports required in the applicable subpart.

Submit the records of the annual Method 21 screening required in paragraph (h)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

■ 6. Subpart A is amended by adding Table 1 to subpart A to read as follows:

TABLE 1 TO SUBPART A OF PART 63—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring frequency per subpart[a]	Detection sensitivity level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table, in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

Subpart G—[Amended]

■ 7. Table 1A to subpart G is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 1A TO SUBPART G OF PART 63—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart A, provisions applicable to subpart G							
*	*	*	*	*	*	*	
§ 63.11 (c), (d), and (e)							
*	*	*	*	*	*	*	

Subpart H—[Amended]

■ 8. Table 4 to subpart H is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 4 TO SUBPART H OF PART 63—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart H, provisions applicable to subpart H							
*	*	*	*	*	*	*	
§ 63.11 (c), (d), and (e)							
*	*	*	*	*	*	*	

Subpart R—[Amended]

■ 9. Table 1 to subpart R is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 1 TO SUBPART R OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference					Applies to subpart R	Comment
*	*	*	*	*	*	*
§ 63.11 (c), (d), and (e)					Yes.	
*	*	*	*	*	*	*

Subpart U—[Amended]

■ 10. Table 1 to subpart U is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
*	*	*
§ 63.11	Yes	§ 63.11(b) specifies requirements for flares used to comply with provisions of this subpart. § 63.504(c) contains the requirements to conduct compliance demonstrations for flares subject to this subpart. § 63.11(c), (d), and (e) specifies requirements for an alternative work practice for equipment leaks.
*	*	*

Subpart HH—[Amended]

■ 11. Table 2 to subpart HH is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
*	*	*
§ 63.11(c), (d), and (e)	Yes.	
*	*	*

Subpart GGG—[Amended]

■ 12. Table 1 to subpart GGG is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
*	*	*	*
§ 63.11	Control device and equipment leak work practice requirements.	Yes.	
*	*	*	*

Subpart HHH—[Amended]

■ 13. Table 2 to the appendix to subpart HHH is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

APPENDIX: TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
*	*	*
§ 63.11(c), (d), and (e)	Yes.	
*	*	*

Subpart JJJ—[Amended]

■ 14. Table 1 to subpart JJJ is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to Subpart JJJ	Explanation
*	*	*
§ 63.11	Yes	§ 63.11(b) specifies requirements for flares used to comply with provisions of this subpart. § 63.1333(e) contains the requirements to conduct compliance demonstrations for flares subject to this subpart. § 63.11(c), (d), and (e) specifies requirements for an alternative work practice for equipment leaks.
*	*	*

Subpart VVV—[Amended]

■ 15. Table 1 to subpart VVV is amended by adding a new entry in numerical order for "63.11 (c), (d), and (e)", and by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
*	*	*
§ 63.11	Yes	Control device and equipment leak work practice requirements.
*	*	*
§ 63.11(c), (d) and (e)	Yes	Alternative work practice for equipment leaks.
*	*	*

Subpart EEEE—[Amended]

■ 16. Table 12 to subpart EEEE is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63–APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.11(c), (d), and (e)	Control and work practice requirements.	Alternative work practice for equipment leaks.	Yes.
*	*	*	*

Subpart FFFF—[Amended]

■ 17. Table 12 to subpart FFFF is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 12 TO SUBPART FFFF OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

* * * * * * *

Citation	Subject	Explanation
* * * * * * *		
§ 63.11	Control device requirements for flares and work practice requirements for equipment leaks.	Yes.
* * * * * * *		

Subpart UUUU—[Amended]

■ 18. Table 10 to subpart UUUU is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 10 TO SUBPART UUUU OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU

* * * * * * *

Citation	Subject	Brief description	Applies to Subpart UUUU
* * * * * * *			
§ 63.11	Control and work practice requirements.	Requirements for flares and alternative work practice for equipment leaks.	Yes.
* * * * * * *			

Subpart GGGGG—[Amended]

■ 19. Table 3 to subpart GGGGG is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 3 TO SUBPART GGGGG OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

* * * * * * *

Citation	Subject	Brief description	Applies to subpart GGGGG
* * * * * * *			
§ 63.11	Control and work practice requirements.	Requirements for flares and alternative work practice for equipment leaks.	Yes
* * * * * * *			

Subpart HHHHH—[Amended]

■ 20. Table 10 to subpart HHHHH is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH

Citation	Subject	Explanation
* * * * * * *		
§ 63.11	Control and work practice requirements	Yes
* * * * * * *		

PART 65—[Amended]

■ 21. The authority citation for part 65 continues to read as follows:

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

Subpart A—[Amended]

■ 22. Section 65.7 is amended:
■ a. By revising the section heading;
■ b. By adding a new sentence to the end of paragraph (b); and
■ c. By adding paragraphs (e), (f), and (g) to read as follows:

§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives, and alternative work practice for equipment leaks.

* * * * *

(b) * * * Owners and operators are also provided the option of complying with an alternative work practice for monitoring leaking equipment in § 65.7 (e), (f), and (g) rather than monitoring equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(e) *Alternative work practice for monitoring equipment for leaks.* This section contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor. Paragraphs (e), (f), and (g) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (e), (f), and (g) of this section continue to apply. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (e)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (e), (f), and (g) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, and 65 that requires monitoring of each piece of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(f) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to 40 CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (g) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (g)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subparts to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 3 to subpart A of this part, in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment, the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (f)(1)(i) of this section must also be monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific

monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(g) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (g)(1) through (g)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (g)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily instrument check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (g)(2)(i) of this section in accordance with the procedure specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (g)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 3 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (g)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i = Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 3 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate calculated in paragraph (g)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 65.7(b).

(3) Leak survey procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. Keep the records described in paragraphs (g)(4)(i) through (g)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 3 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (g)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (g)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (g)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (g)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (f)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (f)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts.

(5) Reporting. Submit the reports required in the applicable subpart. Submit the records of the annual Method 21 screening required in paragraph (f)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV*.

■ 23. Subpart A is amended by adding Table 3 to subpart A of Part 65 to read as follows:

TABLE 3 TO SUBPART A OF PART 65—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring Frequency per Subpart[a]	Detection Sensitivity Level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table, in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

[FR Doc. E8–30196 Filed 12–19–08; 8:45 am]
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EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * *	* * *		* *	*
Reynolds Consumer Products Company.	Registration No. 50534	10/1/08	03/25/09 ..... [Insert page number where the document begins].	52.2420(d)(12)

* * * * *

[FR Doc. E9–6663 Filed 3–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2003–0074; FRL–8785–4]

RIN 2060–AG21

Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to promulgate Performance Specification (PS) 16 for predictive emissions monitoring systems (PEMS). Performance Specification 16 provides testing requirements for assessing the acceptability of PEMS when they are initially installed. Currently, there are no Federal rules requiring the use of PEMS; however, some sources have obtained Administrator approval to use PEMS as alternatives to continuous emissions monitoring systems (CEMS). Other sources may desire to use PEMS in cases where initial and operational costs are less than CEMS and process optimization for emissions control may be desirable. Performance Specification 16 will apply to any PEMS required in future rules in 40 CFR Parts 60, 61, or 63, and in cases where a source petitions the Administrator and receives approval to use a PEMS in lieu of another emissions monitoring system required under the regulation. We are also finalizing minor technical amendments.

DATES: This final rule is effective on April 24, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0074. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Performance Specification 16 for Predictive Emission Monitoring Systems Docket, Docket ID No. EPA–OAR–2003–0074, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–1063; fax number (919) 541–0516; e-mail address: *curtis.foston@epa.gov.*

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I. Does This Action Apply to Me?

Predictive emission monitoring systems are not currently required in any Federal rule. However, they may be used under certain New Source Performance Standards (NSPS) to predict nitrogen oxides emissions from small industrial, commercial, and institutional steam generating units. In some cases, PEMS have been approved as alternatives to CEMS for the initial 30-day compliance test at these facilities. Various State and Local regulations are incorporating PEMS as an emissions monitoring tool. The major entities that are potentially affected by Performance Specification 16 and the amendments to the subparts are included in the following tables. Performance Specification 16 will neither apply to existing PEMS nor those covered under Subpart E of 40 CFR part 75.

Regulated Entities. Categories and entities potentially affected include the following:

TABLE 1—MAJOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION: PERFORMANCE SPECIFICATION 16

Category	NAICS[a]	Examples of regulated entities
Industry	333611	Stationary Gas Turbines.
Industry	332410	Industrial, Commercial, Institutional Steam Generating Units.

[a] North American Industry classification system.

TABLE 2—MAJOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION: AMENDMENTS TO PERFORMANCE SPECIFICATION 11 AND PROCEDURES 1 AND 2, APPENDIX F, PART 60

Category	NAICS[a]	Examples of regulated entities
Industry	333298	Portland Cement Manufacturing.
Industry	562211	Hazardous Waste Incinerators.

[a] North American Industry Classsification System.

TABLE 3—MAJOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION: AMENDMENTS TO METHOD 24, APPENDIX A, PART 60

Category	NAICS[a]	Examples of regulated entities
Industry	326211	Rubber Tire Manufacturing.
Industry	323111	Flexible Vinyl and Urethane Coating and Printing.
Industry	334613	Magnetic Tape Coating Facilities.
Industry	326199	Surface Coating of Plastic Parts for Business Machines.
Industry	332812	Polymeric Coating of Supporting Substrates Facilities.
Industry	337124	Surface Coating of Metal Furniture.
Industry	336111	Automobile and Light Duty Truck Surface Coating.
Industry	323111	Graphic Arts Industry: Publication Rotogravure Printing.
Industry	322222	Pressure Sensitive Tape and Label Surface Coating Operations.
Industry	421620	Industrial Surface Coating: Large Appliances.
Industry	335931	Metal Coil Surface Coating.
Industry	332812	Beverage Can Surface Coating.
Industry	33641	Aerospace.
Industry	.....	Boat and Ship Manufacturing and Repair Surface Coating.
Industry	.....	Fabric Printing, Coating, and Dyeing.
Industry	.....	Leather Finishing.
Industry	.....	Miscellaneous Coating Manufacturing.
Industry	.....	Miscellaneous Metal Parts and Products.
Industry	.....	Paper and Other Web Surface Coating.
Industry	.....	Plastic Parts Surface Coating.
Industry	.....	Printing and Publishing Surface Coating.
Industry	.....	Wood Building Products.
Industry	.....	Wood Furniture.

[a] North American Industry classificatiion System.

TABLE 4—MAJOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION: AMENDMENT TO METHOD 303, APPENDIX A, PART 63

Category	NAICS[a]	Examples of regulated entities
Industry	33111111	Coke Ovens.

[a] North American Industry classsification System.

These tables are not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by these actions. These tables list examples of the types of entities EPA is now aware could potentially be affected by these final actions. Other types of entities not listed could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Where Can I Obtain a Copy of This Action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web (www) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

III. Background

Performance Specification 16 and the amendments to PS–11, Procedures 1 and 2, Method 24, and Method 303 were proposed in the **Federal Register** on August 8, 2005 with a public comment period that ended October 7, 2005. A public commenter asked that the comment period be reopened to allow for additional time to prepare their response since they were a leading vendor of PEMS and were significantly impacted by the rule. We reopened the comment period for two weeks, from November 2–16, 2005. A total of 42 comment letters were received on the proposed rule. Most comment letters pertained to PS–16 and contained multiple comments. We have compiled and responded to the public comments and made appropriate changes to the rule based on the comments.

IV. This Action

A. PS–16

This action finalizes PS–16 for PEMS. This performance specification was originally proposed by EPA on August 8, 2005 (70 FR 45608). Performance Specification 16 establishes procedures that must be used to determine whether a PEMS is acceptable for use in demonstrating compliance with applicable requirements. Predictive emission monitoring systems predict source emissions indirectly using process parameters instead of measuring them directly.

Additionally, the following amendments are made to the noted testing and monitoring provisions.

B. Method 24 of Appendix A–7 of Part 60

Method 24, part 60, Appendix A–7 is used to determine the contents and properties of surface coatings under NSPS applications. Method 24 currently references ASTM D2369 as the method for determining volatiles content. The American Society for Testing and Materials has recommended that ASTM D6419 be allowed as an alternative to D2369 in this case. We have amended Method 24 to cite this optional method.

C. Performance Specification 11 of Appendix B of Part 60

The publication on January 12, 2004 of PS–11 for Appendix B and Procedure 2 for part 60, Appendix F contained technical and typographical errors and unclear instructions. We have revised the definition of confidence interval half range to clarify the language, replacing the word "pairs" with "sets" to avoid possible confusion regarding the use of paired sampling trains, corrected errors in Equations 11–22, 11–27, and 11–37, corrected the procedures in paragraphs (4) and (5) of section 12.3 for determining confidence and tolerance interval half ranges for the exponential and power correlation models, and added a note following paragraph (5)(v) concerning the application of correlation equations to calculate particulate matter (PM) concentrations using the response data from an operating PM CEMS. We have also renumbered some equations and references for clarification, consistency, and accuracy.

D. Procedures 1 and 2 of Appendix F of Part 60

In Procedure 1 of Appendix F of part 60, we revised obsolete language that describes the standard reference material that is required, and in Procedure 2, we added a needed equation for calculating an absolute correlation audit based on the applicable standard.

E. Method 303 of Appendix A of Part 63

In Method 303 of Appendix A to part 63, a statement on varying the time of day runs are taken that was deleted by mistake in a recent amendment of the method has been added.

V. Public Comments on the Proposed Rule

A more detailed summary of the public comments and our responses can be found in the Summary of Public Comments and Responses document, which is available from several sources (see **ADDRESSES** section). The major public comments are summarized by subject as follows:

A. Parameter Operating Level Terminology

Several commenters suggested we revise the key parameter operating level used for the relative accuracy (RA) test from "normal" to "mid." It was noted that some units normally operate in the high or low levels and that a revised listing of mid level would ensure that the intended three levels would be evaluated. We agree with the commenters and changed the reference from "normal" to "mid."

B. PS–16 Applicability to Market-Based Programs

Several commenters objected to applying PS–16 to PEMS that are used in a market-based program. They noted that market-based PEMS are already covered in Subpart E of 40 CFR part 75 and those requirements are different from proposed PS–16. This was deemed confusing from an applicability standpoint, especially for those PEMS that have already been approved under part 75. Other commenters stated that they did not understand why performance specifications for market-based monitoring were being added to 40 CFR part 60 since part 60 does not address marketing regulations. Some commenters asked whether PS–16 would apply to PEMS already in use.

We have dropped the proposed applicability of PS–16 to market-based PEMS and agree that part 75 is the better place to address market-based PEMS. Requirements for PEMS used in the part 75 market-based program are already addressed in Subpart E of part 75, and we do not believe the more stringent requirements given there for market-based PEMS are warranted for compliance monitoring under 40 CFR parts 60, 61, and 63. We note in the final rule that PS–16 applies only to PEMS that are installed after the effective date of today's action and to those used to comply with requirements in 40 CFR parts 60, 61, or 63.

C. PS–16 and the Older Draft Performance Specifications on the EPA Web Site

A number of commenters asked that the draft "Example Specifications and Test Procedures for Predictive Emission Monitoring Systems" on the EPA Web site be adopted as PS–16 instead of the proposed provisions. They note that these specifications have been used in the past to approve prospective PEMS and felt the same guidelines should be used in the future. One commenter thought a departure from the draft requirements would result in a demise in PEMS use due to the increased costs of initial certification and ongoing maintenance.

The "Example Specifications and Test Procedures for Predictive Emission Monitoring Systems" was a guidance document to give PEMS users and regulators a general idea of what could be expected of PEMS in light of the limited performance data available at

that time. It was primarily based on the existing requirements in PS–2 for CEMS and not on extensive research. The document was offered on the EMC Web site until the Agency could develop and finalize PS–16. Since then, we have acquired relative accuracy test audit (RATA) data from a number of PEMS over time, and our understanding of their capabilities has increased. This data is presented in the docket and gives a better indication of PEMS performance than what is reflected in the guidance document (*see* EPA–OAR–2003–0074–0002, 0003, and 0004 docket entries). This data confirms that the performance levels set in PS–16 are achievable by the vast majority of PEMS in the data pool and are more reflective of the technology's capabilities. We disagree with the commenter that the new requirements in PS–16 will result in the demise of PEMS due to increased cost for initial certification and ongoing maintenance.

D. PEMS Relative Accuracy Stringency vs. CEMS Stringency

Some commenters objected to the 10 percent relative accuracy limit for PEMS in PS–16 considering that the corresponding performance specifications for CEMS that are used for the same purposes have a 20 percent relative accuracy limit. They note that previous approvals of PEMS were based on the 20 percent criterion in the draft Web site performance specifications. They also argued that the added stringency of having to certify at a level twice as accurate as a CEMS under the same compliance conditions was not warranted.

The 20 percent relative accuracy limit was set for CEMS in the 1970's and reflects the performance capabilities of systems at that time. State-of-the-art CEMS are capable of much better performance as can be seen by their success under the tighter part 75 rules where a 10 percent relative accuracy is required. We have obtained performance data on a number of installed PEMS currently in use (*see* EPA–HQ–OAR–2003–0074–0002, 0003, and 0004 docket entries), and the data show an overwhelming majority of the PEMS are capable of meeting a 10 percent criterion on a repeated basis. We believe the quality of emissions data should parallel the increased capabilities of newer technologies, not the capabilities of older, outdated systems. Therefore, the 10 percent relative accuracy limit for PEMS is retained in this final rule.

E. Alternative Limits for Low Emitters

Several commenters asked that alternative relative accuracy limits be allowed for low-emitting sources. They were concerned that the 10 percent relative accuracy limit would be problematic for low-emitters because the error in the reference method measurement plays a significant part in the accuracy determination at low concentrations. One commenter noted that many permits set emission limits just above the typical emission level of the source. This results in low-emitting sources running in the 75–95 percent of the emission standard range. The proposed alternative limits would only be of use when the unit is operating either below 25 or below 10 percent of the emission standard. They thought it would be more practical to base alternative criteria on the measured concentration ranges instead of the emission standard. Two commenters suggested scaling the relative accuracy requirement such that 10 percent would be the limit for measurements over 100 ppm, 20 percent for measurements between 10 and 100 ppm, and within 2 ppm for measurements under 10 ppm.

We understand the commenters' concerns and think their suggestion for alternative criteria for low emitters is a practical idea. We have added the suggested alternative criteria for concentrations between 10 and 100 ppm (20 percent RA) and below 10 ppm (± 2 ppm difference between PEMS and reference method).

F. Statistical Tests

One commenter thought the relative accuracy requirements are, in some cases, too severe and would prevent (1) even most CEMS from certifying using standard reference method testing and (2) all but the most sophisticated PEMS from passing certification. Two commenters proposed using daily zero and span calibration checks and quarterly linearity checks as alternatives to the statistical tests and quarterly relative accuracy audits (RAA). Others recommended longer sampling times to obtain the needed data for the relative accuracy statistical tests similar to the 40 CFR part 75, Subpart E requirements. Several commenters stated that they anticipated difficulty in meeting the 0.8 r-correlation requirement in tests where process variations are small. One commenter recommended the proposed waiver of the correlation test be made permanent if the data are determined to be either auto-correlated or if the signal-to-noise ratio of the data is less than 4.

We do not believe the relative accuracy requirements are so severe as to prevent most CEMS or PEMS from certifying using standard reference method testing. Most PEMS are not amenable to daily zero and span checks or quarterly linearity checks of their sensors. The suggested long-term relative accuracy evaluation of PEMS similar to the requirements of Subpart E of part 75 would render PEMS use economically impractical under parts 60, 61, and 63. Evaluation times similar to those currently required of CEMS should be sufficient. We have taken the recommendation that the correlation test be permanently waived in cases where the data are auto-correlated or have a signal-to-noise ratio less than 4 and have made this change in PS–16.

G. Use of Portable Analyzers for the Relative Accuracy Audit

Several commenters opposed the use of portable analyzers for the quarterly relative accuracy audits. They felt the analyzers lacked sufficient accuracy to evaluate PEMS. Two commenters cited the report *"Evaluation of Portable Analyzers for Use in Quality Assuring Predictive Emission Monitoring Systems for NO_X"* (a report prepared for EPA's Clean Air Markets Division, Washington, DC, September 8, 2004) as proof of this inadequacy. They note that in the report the only analyzer that achieved accuracy better than 10 percent was the more sophisticated analyzer using the reference method methodology. Additionally, a commenter suggested that sampling problems related to sampling point location, sample conditioning, high-moisture and volume, particulate, and high temperatures would render portable analyzers ineffective. Another commenter thought that portable analyzers, which were believed to be accurate to within 20 percent, would not be able to show that PEMS are accurate to within 10 percent.

Three commenters asked that the quarterly audit requirements be removed altogether. One commenter stated that he/she did not see any added value in the audits because PEMS were thought to be inherently reliable, and two commenters urged a return to the Web site performance specification requirement to conduct biannual relative accuracy test audits instead of quarterly relative accuracy audits.

We are not aware of and commenters did not present any data that supports the idea that PEMS are inherently accurate such that their performance is guaranteed over long periods of time. The performance of PEMS, like CEMS, depends on a number of criteria that are subject to change over time. The summary and findings of the noted

report on portable analyzers state that "The portable analyzers produced results that were comparable to those of the CEMS and Method 7E for the two natural gas-fired combustion sources and low concentrations tested." Portable analyzers are offered as a cheaper testing option to add flexibility to the relative accuracy audits. However, reference methods may also be used in place of portable analyzers for the relative accuracy audit. A relative accuracy audit for a validated PEMS would not be valueless but would confirm that such a PEMS is still functioning properly. Therefore, quarterly relative accuracy audits are retained and may be performed using a portable analyzer or a reference method.

H. Potential Overlap Between PS–16 and PS–17

Three commenters asked that we specifically state that PS–16 will not apply to parametric monitoring systems. We were asked to clarify that PS–16 would not cover parametric systems that are already covered under PS–17.

Performance Specification 17 applies to parametric monitoring systems (*i.e.*, those that have associated parametric limits). Performance Specification 16 applies to predictive emission monitoring systems (*i.e.*, those that have associated emission limits). This difference has been noted in PS–16.

I. Reduced Relative Accuracy Audit Frequency for Good Performance

One commenter proposed that quarterly relative accuracy audit tests be required for the first year after initial certification. If all tests are passed through the second year relative accuracy test audit (without tuning or additional training), the second year of relative accuracy audits would be waived. In cases of failed relative accuracy audit or relative accuracy test audit attempts during the year or any PEMS retraining that triggers recertification would nullify this option until the subsequent year. The commenter felt this waiver option was important to the viability of PEMS use at remote sites.

We believe the commenter's suggestion has merit but think that at least a semiannual test at a time approximately one-half year from the previous RATA is needed to prevent extended malfunctions. We have therefore revised PS–16 to allow a single RAA or RATA midway the second year if three prior quarters of RAA and a second annual RATA are passed without PEMS training or tuning.

VI. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 26, 2009. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This final rule does not add information collection requirements beyond those currently required under the applicable regulations. This final rule adds performance requirements and amends testing and monitoring requirements as necessary.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 this rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments of the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action adds procedures that apply when applicable parties choose to use a different monitoring tool than what is currently required. Other amendments are made to correct various errors in testing provisions.

E. Executive Order 13132: Federalism

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" is 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."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will benefit State and local governments by

providing performance specifications they can use to evaluate PEMS. Other amendments being made will correct PS–11, Procedures 1 and 2, Method 24, and Method 303. No added responsibilities or increase in implementation efforts or costs for State and local governments are being added by this action. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action adds an optional monitoring tool to the monitoring provisions that have already been mandated. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule does not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

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 rule will be effective April 24, 2009.

List of Subjects

40 CFR Part 60

Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

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

Dated: March 16, 2009.

Lisa Jackson,

Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 6.7 is added to Method 24 of Appendix A–7 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 through 25E

* * * * *

Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

6.7 ASTM D 6419–00, Test Method for Volatile Content of Sheet-Fed and Coldset Web Offset Printing Inks.

* * * * *

■ 3. Performance Specification 11 of Appendix B is amended as follows:

■ a. By revising Section 3.4.

■ b. By revising Section 8.6, introductory text.

■ c. By revising paragraphs (1)(ii), (1)(iii), (2), (4), and (5) of Section 12.3

■ d. By revising paragraph (3)(ii) of Section 12.4.

■ e. By revising paragraphs (2) and (3) of Section 13.2.

■ f. By adding Sections 16.8 and 16.9.

■ g. By revising Table 1 of Section 17.0 to read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

3.4 "Confidence Interval Half Range (CI)" is a statistical term and means one-half of the width of the 95 percent confidence interval around the predicted mean PM concentration (y value) calculated at the PM CEMS response value (x value) where the confidence interval is narrowest. Procedures for calculating CI are specified in section 12.3. The CI as a percent of the emission limit value (CI%) is calculated at the appropriate PM CEMS response value and

must satisfy the criteria specified in Section 13.2 (2).

* * * * *

8.6 How do I conduct my PM CEMS correlation test? You must conduct the correlation test according to the procedure given in paragraphs (1) through (5) of this section. If you need multiple correlations, you must conduct testing and collect at least 15 sets of reference method and PM CEMS data for calculating each separate correlation.

* * * * *

12.3 How do I determine my PM CEMS correlation?

* * *

(1) * * *

(ii) Calculate the half range of the 95 percent confidence interval (CI) for the predicted PM concentration ($\hat{y}$) at the mean value of x, using Equation 11–8:

$$CI = t_{df,1-a/2} \cdot S_L \sqrt{\frac{1}{n}} \qquad \text{(Eq. 11-8)}$$

Where:

CI = the half range of the 95 percent confidence interval for the predicted PM concentration at the mean x value,

$t_{df,1-a/2}$ = the value for the t statistic provided in Table 1 for df = (n - 2), and

S_L = the scatter or deviation of $\hat{y}$ values about the correlation curve, which is determined using Equation 11–9:

$$S_L = \sqrt{\frac{1}{n-2}\sum_{i=1}^{n}(\hat{y}_i - y_i)^2} \qquad \text{(Eq. 11-9)}$$

Calculate the confidence interval half range for the predicted PM concentration ($\hat{y}$) at the mean x value as a percentage of the emission limit (CI%) using Equation 11–10:

$$CI\% = \frac{CI}{EL} \cdot 100\% \qquad \text{(Eq. 11-10)}$$

Where:

CI = the half range of the 95 percent confidence interval for the predicted PM concentration at the mean x value, and

EL = PM emission limit, as described in section 13.2.

(iii) Calculate the half range of the tolerance interval (TI) for the predicted PM concentration ($\hat{y}$) at the mean x value using Equation 11–11:

$$TI = k_T \cdot S_L \qquad \text{(Eq. 11-11)}$$

Where:

TI = the half range of the tolerance interval for the predicted PM concentration ($\hat{y}$) at the mean x value,

k_T = as calculated using Equation 11–12, and

S_L = as calculated using Equation 11–9:

$$k_T = u_{n'} \cdot v_{df} \qquad \text{(Eq. 11-12)}$$

Where:

n' = the number of test runs (n),

$u_{n'}$ = the tolerance factor for 75 percent coverage at 95 percent confidence provided in Table 1 for df = (n − 2), and

v_{df} = the value from Table 1 for df = (n − 2).

Calculate the half range of the tolerance interval for the predicted PM concentration ($\hat{y}$) at the mean x value as a percentage of the emission limit (TI%) using Equation 11–13:

$$TI\% = \frac{TI}{EL} \cdot 100\% \qquad \text{(Eq. 11-13)}$$

Where:

TI = the half range of the tolerance interval for the predicted PM concentration ($\hat{y}$) at the mean x value, and

EL = PM emission limit, as described in section 13.2.

* * * * *

(2) How do I evaluate a polynomial correlation for my correlation test data? To evaluate a polynomial correlation, follow the procedures described in paragraphs (2)(i) through (iv) of this section.

(i) Calculate the polynomial correlation equation, which is indicated by Equation 11–16, using Equations 11–17 through 11–22:

$$\hat{y} = b_0 + b_1 x + b_2 x^2 \qquad \text{(Eq. 11-16)}$$

Where:

$\hat{y}$ = the PM CEMS concentration predicted by the polynomial correlation equation, and

b_0, b_1, b_2 = the coefficients determined from the solution to the matrix equation Ab=B

Where:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix}, \qquad b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix}, \qquad B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix}.$$

$$S_1 = \sum_{i=1}^{n}(x_i), S_2 = \sum_{i=1}^{n}(x_i^2), S_3 = \sum_{i=1}^{n}(x_i^3), S_4 = \sum_{i=1}^{n}(x_i^4) \qquad \text{(Eq. 11-17)}$$

$$S_5 = \sum_{i=1}^{n}(y_i), S_6 = \sum_{i=1}^{n}(x_i y_i), S_7 = \sum_{i=1}^{n}(x_i^2 y_i). \qquad \text{(Eq. 11-18)}$$

Where:

X_i = the PM CEMS response for run i,

Y_i = the reference method PM concentration for run i, and

n = the number of test runs.

Calculate the polynomial correlation curve coefficients (b_0, b_1, and b_2) using Equations 11–19 through 11–21, respectively:

$$b_0 = \frac{(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1)}{\det A} \qquad \text{(Eq. 11-19)}$$

$$b_1 = \frac{(n \cdot S_6 \cdot S_4 + S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5)}{\det A} \qquad \text{(Eq. 11-20)}$$

$$b_2 = \frac{(n \cdot S_2 \cdot S_7 + S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1)}{\det A} \qquad \text{(Eq. 11-21)}$$

Where:

$$\det A = n \cdot S_2 \cdot S_4 - S_2 \cdot S_2 \cdot S_2 + S_1 \cdot S_3 \cdot S_2 - S_3 \cdot S_3 \cdot n + S_2 \cdot S_1 \cdot S_3 - S_4 \cdot S_1 \cdot S_1 \qquad \text{(Eq. 11-22)}$$

(ii) Calculate the 95 percent confidence interval half range (CI) by first calculating the C coefficients (C_o to C_5) using Equations 11–23 and 11–24:

$$C_0 = \frac{\left(S_2 \cdot S_4 - S_3^2\right)}{D}, \quad C_1 = \frac{\left(S_3 \cdot S_2 - S_1 \cdot S_4\right)}{D}, \quad C_2 = \frac{\left(S_1 \cdot S_3 - S_2^2\right)}{D},$$

$$C_3 = \frac{\left(nS_4 - S_2^2\right)}{D}, \quad C_4 = \frac{\left(S_1 \cdot S_2 - nS_3\right)}{D}, \quad C_5 = \frac{\left(nS_2 - S_1^2\right)}{D} \qquad \text{(Eq. 11-23)}$$

Where:

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right) \qquad \text{(Eq. 11-24)}$$

Calculate Δ using Equation 11–25 for each x value:

$$\Delta = C_0 + 2C_1x + \left(2C_2 + C_3\right)x^2 + 2C_4x^3 + C_5x^4 \qquad \text{(Eq. 11-25)}$$

Determine the x value that corresponds to the minimum value of Δ (Δ_{min}). Determine the scatter or deviation of $\hat{y}$ values about the polynomial correlation curve (S_P) using Equation 11–26:

$$S_P = \sqrt{\frac{1}{n-3}\sum_{i=1}^{n}\left(\hat{y}_i - y_i\right)^2} \qquad \text{(Eq. 11-26)}$$

Calculate the half range of the 95 percent confidence interval (CI) for the predicted PM concentration ($\hat{y}$) at the x value that corresponds to Δ_{min} using Equation 11–27:

$$CI = t_{df} \cdot S_p \sqrt{\Delta_{min}} \qquad \text{(Eq. 11-27)}$$

Where:

df = (n–3), and

tdf = as listed in Table 1 (see section 17).

Calculate the half range of the 95 percent confidence interval for the predicted PM concentration at the x value that corresponds to Δ_{min} as a percentage of the emission limit (CI%) using Equation 11–28:

$$CI\% = \frac{CI}{EL} \cdot 100\% \qquad \text{(Eq. 11-28)}$$

Where:

CI = the half range of the 95 percent confidence interval for the predicted PM concentration at the x value that corresponds to Δ_{min}, and

EL = PM emission limit, as described in section 13.2.

(iii) Calculate the tolerance interval half range (TI) for the predicted PM concentration at the x value that corresponds to Δ_{min}, as indicated in Equation 11–29 for the polynomial correlation, using Equations 11–30 and 11–31:

$$TI = k_T \cdot S_P \qquad \text{(Eq. 11-29)}$$

Where:

$$k_T = u_{n'} \cdot v_{df} \qquad \text{(Eq. 11-30)}$$

$$n' = \frac{1}{\Delta} \qquad \text{(Eq. 11-31)}$$

$u_{n'}$ = the value indicated in Table 1 for df = (n'–3), and

vdf = the value indicated in Table 1 for df = (n'—3).

Calculate the tolerance interval half range for the predicted PM concentration at the x value that corresponds to Δ_{min} as a percentage of the emission limit (TI%) using Equation 11–32:

$$TI\% = \frac{TI}{EL} \cdot 100 \qquad \text{(Eq. 11-32)}$$

Where:

TI = the tolerance interval half range for the predicted PM concentration at the x value that corresponds to Δ_{min}, and

EL = PM emission limit, as described in section 13.2.

(iv) Calculate the polynomial correlation coefficient (r) using Equation 11–33:

$$r = \sqrt{1 - \frac{S_P^2}{S_y^2}} \qquad \text{(Eq. 11-33)}$$

Where:

S_P = as calculated using Equation 11–26, and

S_y = as calculated using Equation 11–15.

* * * * *

(4) How do I evaluate an exponential correlation for my correlation test data? To evaluate an exponential correlation, which has the form indicated by Equation 11–37, follow the procedures described in paragraphs (4)(i) through (v) of this section:

$$\hat{y} = b_0 e^{b_1 x} \quad \text{(Eq. 11-37)}$$

(i) Perform a logarithmic transformation of each PM concentration measurement (y values) using Equation 11–38:

$$y_i' = \text{Ln}(y_i) \quad \text{(Eq. 11-38)}$$

Where:

y'_i = is the transformed value of y_i, and
$\text{Ln}(y_i)$ = the natural logarithm of the PM concentration measurement for run i.

(ii) Using the values for y'_i in place of the values for y_i, perform the same procedures used to develop the linear correlation equation described in paragraph (1)(i) of this section. The resulting equation will have the form indicated by Equation 11–39.

$$\hat{Y}' = b_0' + b_1 x \quad \text{(Eq. 11-39)}$$

Where:

$\hat{y}'$ = the predicted log PM concentration value,
b'_0 = the natural logarithm of b_0, and the variables b_0, b_1, and x are as defined in paragraph (1)(i) of this section.

(iii) Using the values for y'_i in place of the values for y_i, calculate the half range of the 95 percent confidence interval (CI′), as described in paragraph (1)(ii) of this section for CI. Note that CI′ is on the log scale. Next, calculate the upper and lower 95 percent confidence limits for the mean value $\underline{y}'$ using Equations 11–40 and 11–41:

$$LCL' = \underline{y}' - CI' \quad \text{(Eq. 11-40)}$$

$$UCL' = \underline{y}' + CI' \quad \text{(Eq. 11-41)}$$

Where:

LCL′ = the lower 95 percent confidence limit for the mean value $\underline{y}'$,
UCL′ = the upper 95 percent confidence limit for the mean value $\underline{y}'$,
$\underline{y}'$ = the mean value of the log-transformed PM concentrations, and
CI′ = the half range of the 95 percent confidence interval for the predicted PM concentration ($\hat{y}'$), as calculated in Equation 11–8.

Calculate the half range of the 95 percent confidence interval (CI) on the original PM concentration scale using Equation 11–42:

$$CI = \frac{e^{UCL'} - e^{LCL'}}{2} \quad \text{(Eq. 11-42)}$$

Where:

CI = the half range of the 95 percent confidence interval on the original PM concentration scale, and UCL′ and LCL′ are as defined previously.

Calculate the half range of the 95 percent confidence interval for the predicted PM concentration corresponding to the mean value of x as a percentage of the emission limit (CI%) using Equation 11–10.

(iv) Using the values for y'_i in place of the values for y_i, calculate the half range tolerance interval (TI′), as described in paragraph (1)(iii) of this section for TI. Note that TI′ is on the log scale. Next, calculate the half range tolerance limits for the mean value $\underline{y}'$ using Equations 11–43 and 11–44:

$$LTL' = \underline{y}' - TI' \quad \text{(Eq. 11-43)}$$

$$UTL' = \underline{y}' + TI' \quad \text{(Eq. 11-44)}$$

Where:

LTL′ = the lower 95 percent tolerance limit for the mean value $\underline{y}'$,
UTL′ = the upper 95 percent tolerance limit for the mean value $\underline{y}'$,
$\underline{y}'$, = the mean value of the log-transformed PM concentrations, and
TI′ = the half range of the 95 percent tolerance interval for the predicted PM concentration ($\hat{y}'$), as calculated in Equation 11–11.

Calculate the half range tolerance interval (TI) on the original PM concentration scale using Equation 11–45:

$$TI = \frac{e^{UTL'} - e^{LTL'}}{2} \quad \text{(Eq. 11-45)}$$

TI = the half range of the 95 percent tolerance interval on the original PM scale, and UTL′ and LTL′ are as defined previously.

Calculate the tolerance interval half range for the predicted PM concentration corresponding to the mean value of x as a percentage of the emission limit (TI%) using Equation 11–13.

(v) Using the values for y'_i in place of the values for y_i, calculate the correlation coefficient (r) using the procedure described in paragraph (1)(iv) of this section.

(5) How do I evaluate a power correlation for my correlation test data? To evaluate a power correlation, which has the form indicated by Equation 11–46, follow the procedures described in paragraphs (5)(i) through (v) of this section.

$$\hat{y} = b_0 x^{b_1} \quad \text{(Eq. 11-46)}$$

(i) Perform logarithmic transformations of each PM CEMS response (x values) and each PM concentration measurement (y values) using Equations 11–35 and 11–38, respectively.

(ii) Using the values for x'_i in place of the values for x_i, and the values for y'_i in place of the values for y_i, perform the same procedures used to develop the linear correlation equation described in paragraph (1)(i) of this section. The resulting equation will have the form indicated by Equation 11–47:

$$\hat{Y}' = b_0' + b_1 x' \quad \text{(Eq. 11-47)}$$

Where:

$\hat{y}'$ = the predicted log PM concentration value, and
x′ = the natural logarithm of the PM CEMS response values,
b'_0 = the natural logarithm of b_0, and the variables b_0, b_1, and x are as defined in paragraph (1)(i) of this section.

(iii) Using the same procedure described for exponential models in paragraph (4)(iii) of this section, calculate the half range of the 95 percent confidence interval for the predicted PM concentration corresponding to the mean value of x′ as a percentage of the emission limit.

(iv) Using the same procedure described for exponential models in paragraph (4)(iv) of this section, calculate the tolerance interval half range for the predicted PM concentration corresponding to the mean value of x′ as a percentage of the emission limit.

(v) Using the values for y'_i in place of the values for y_i, calculate the correlation coefficient (r) using the procedure described in paragraph (1)(iv) of this section.

Note: PS–11 does not address the application of correlation equations to calculate PM emission concentrations using PM CEMS response data during normal operations of a PM CEMS. However, we will provide guidance on the use of specific correlation models (i.e., logarithmic, exponential, and power models) to calculate PM concentrations in an operating PM CEMS in situations when the PM CEMS response values are equal to or less than zero, and the correlation model is undefined.

12.4 What correlation model should I use?

* * * * *

(3) * * *

(ii) Calculate the minimum value using Equation 11–48.

$$\min \text{ or } \max = -\frac{b_1}{2b_2} \quad \text{(Eq. 11-48)}$$

* * * * *

13.2 What performance criteria must my PM CEMS correlation satisfy?

* * * * *

(2) The confidence interval half range must satisfy the applicable criterion specified in paragraph (2)(i), (ii), or (iii) of this section, based on the type of correlation model.

(i) For linear or logarithmic correlations, the 95 percent confidence interval half range at the mean PM CEMS response value from the correlation test must be within 10 percent of the PM emission limit value specified in the applicable regulation. Therefore, the CI% calculated using Equation 11–10 must be less than or equal to 10 percent.

(ii) For polynomial correlations, the 95 percent confidence interval half range at the PM CEMS response value from the correlation test that corresponds to the minimum value for Δ must be within 10 percent of the PM emission limit value specified in the applicable regulation. Therefore, the CI% calculated using Equation 11–28 must be less than or equal to 10 percent.

(iii) For exponential or power correlations, the 95 percent confidence interval half range at the mean of the logarithm of the PM CEMS response values from the correlation test must be within 10 percent of the PM emission limit value specified in the applicable regulation. Therefore, the CI% calculated using Equation 11–10 must be less than or equal to 10 percent.

(3) The tolerance interval half range must satisfy the applicable criterion specified in

paragraph (3)(i), (ii), or (iii) of this section, based on the type of correlation model.

(i) For linear or logarithmic correlations, the half range tolerance interval with 95 percent confidence and 75 percent coverage at the mean PM CEMS response value from the correlation test must be within 25 percent of the PM emission limit value specified in the applicable regulation. Therefore, the TI% calculated using Equation 11–13 must be less than or equal to 25 percent.

(ii) For polynomial correlations, the half range tolerance interval with 95 percent confidence and 75 percent coverage at the PM CEMS response value from the correlation test that corresponds to the minimum value for Δ must be within 25 percent of the PM emission limit value specified in the applicable regulation. Therefore, the TI% calculated using Equation 11–32 must be less than or equal to 25 percent.

(iii) For exponential or power correlations, the half range tolerance interval with 95 percent confidence and 75 percent coverage at the mean of the logarithm of the PM CEMS response values from the correlation test must be within 25 percent of the PM emission limit value specified in the applicable regulation. Therefore, the TI% calculated using Equation 11–13 must be less than or equal to 25 percent.

* * * * *

16.0 Which references are relevant to this performance specification?

* * * * *

16.8 Snedecor, George W. and Cochran, William G. (1989), Statistical Methods, Eighth Edition, Iowa State University Press.

16.9 Wallis, W. A. (1951) "Tolerance Intervals for Linear Regression," in Second Berkeley Symposium on Mathematical Statistics and Probability, ed. J. Neyman, Berkeley: University of California Press, pp. 43–51.

17.0 * * *

TABLE 1—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVAL HALF RANGES

df	Student's t, t_{df}	Tolerance interval with 75% coverage and 95% confidence level		
		v_{df} (95%)	$u_{n'}$ (75%)	k_T
3	3.182	2.920	1.266	3.697
4	2.776	2.372	1.247	2.958
5	2.571	2.089	1.233	2.576
6	2.447	1.915	1.223	2.342
7	2.365	1.797	1.214	2.183
8	2.306	1.711	1.208	2.067
9	2.262	1.645	1.203	1.979
10	2.228	1.593	1.198	1.909
11	2.201	1.551	1.195	1.853
12	2.179	1.515	1.192	1.806
13	2.160	1.485	1.189	1.766
14	2.145	1.460	1.186	1.732
15	2.131	1.437	1.184	1.702
16	2.120	1.418	1.182	1.676
17	2.110	1.400	1.181	1.653
18	2.101	1.384	1.179	1.633
19	2.093	1.370	1.178	1.614
20	2.086	1.358	1.177	1.597
21	2.080	1.346	1.175	1.582
22	2.074	1.335	1.174	1.568
23	2.069	1.326	1.173	1.555
24	2.064	1.316	1.172	1.544
25	2.060	1.308	1.172	1.533
26	2.056	1.300	1.171	1.522
27	2.052	1.293	1.170	1.513
28	2.048	1.286	1.170	1.504
29	2.045	1.280	1.169	1.496
30	2.042	1.274	1.168	1.488
31	2.040	1.268	1.168	1.481
32	2.037	1.263	1.167	1.474
33	2.035	1.258	1.167	1.467
34	2.032	1.253	1.166	1.461
35	2.030	1.248	1.166	1.455
36	2.028	1.244	1.165	1.450
37	2.026	1.240	1.165	1.444
38	2.024	1.236	1.165	1.439
39	2.023	1.232	1.164	1.435
40	2.021	1.228	1.164	1.430
41	2.020	1.225	1.164	1.425
42	2.018	1.222	1.163	1.421
43	2.017	1.218	1.163	1.417
44	2.015	1.215	1.163	1.413
45	2.014	1.212	1.163	1.410
46	2.013	1.210	1.162	1.406
47	2.012	1.207	1.162	1.403
48	2.011	1.204	1.162	1.399
49	2.010	1.202	1.162	1.396
50	2.009	1.199	1.161	1.393
51	2.008	1.197	1.161	1.390
52	2.007	1.195	1.161	1.387
53	2.006	1.192	1.161	1.384
54	2.005	1.190	1.161	1.381

TABLE 1—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVAL HALF RANGES—Continued

df	Student's t, t_{df}	Tolerance interval with 75% coverage and 95% confidence level		
		v_{df} (95%)	$u_{n'}$ (75%)	k_T
55	2.004	1.188	1.160	1.379
56	2.003	1.186	1.160	1.376
57	2.002	1.184	1.160	1.374
58	2.002	1.182	1.160	1.371
59	2.001	1.180	1.160	1.369
60	2.000	1.179	1.160	1.367

References 16.8 (t values) and 16.9 (v_{df} and $u_{n'}$ values).

■ 4. In Appendix B, Performance Specification 16 is added to read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

PERFORMANCE SPECIFICATION 16—SPECIFICATIONS AND TEST PROCEDURES FOR PREDICTIVE EMISSION MONITORING SYSTEMS IN STATIONARY SOURCES

1.0 Scope and Application

1.1 *Does this performance specification apply to me?* If you, the source owner or operator, intend to use (with any necessary approvals) a predictive emission monitoring system (PEMS) to show compliance with your emission limitation under 40 CFR 60, 61, or 63, you must use the procedures in this performance specification (PS) to determine whether your PEMS is acceptable for use in demonstrating compliance with applicable requirements. Use these procedures to certify your PEMS after initial installation and periodically thereafter to ensure the PEMS is operating properly. If your PEMS contains a diluent (O_2 or CO_2) measuring component and your emissions limitation is in units that require a diluent measurement (*e.g.* lbs/mm Btu), the diluent component must be tested as well. These specifications apply to PEMS that are installed under 40 CFR 60, 61, and 63 after the effective date of this performance specification. These specifications do not apply to parametric monitoring systems, these are covered under PS–17.

1.1.1 *How do I certify my PEMS after it is installed?* PEMS must pass a relative accuracy (RA) test and accompanying statistical tests in the initial certification test to be acceptable for use in demonstrating compliance with applicable requirements. Ongoing quality assurance tests also must be conducted to ensure the PEMS is operating properly. An ongoing sensor evaluation procedure must be in place before the PEMS certification is complete. The amount of testing and data validation that is required depends upon the regulatory needs, *i.e.*, whether precise quantification of emissions will be needed or whether indication of exceedances of some regulatory threshold will suffice. Performance criteria are more rigorous for PEMS used in determining continual compliance with an emission limit than those used to measure excess emissions. You must perform the initial certification test on your PEMS before reporting any PEMS data as quality-assured.

1.1.2 *Is other testing required after certification?* After you initially certify your PEMS, you must pass additional periodic performance checks to ensure the long-term quality of data. These periodic checks are listed in the table in Section 9. You are always responsible for properly maintaining and operating your PEMS.

2.0 Summary of Performance Specification

The following performance tests are required in addition to other equipment and measurement location requirements.

2.1 Initial PEMS Certification.

2.1.1 Excess Emissions PEMS. For a PEMS that is used for excess emission reporting, the owner or operator must perform a minimum 9-run, 3-level (3 runs at each level) RA test (see Section 8.2).

2.1.2 Compliance PEMS. For a PEMS that is used for continual compliance standards, the owner or operator must perform a minimum 27-run, 3-level (9 runs at each level) RA test (see Section 8.2). Additionally, the data must be evaluated for bias and by F-test and correlation analysis.

2.2 Periodic Quality Assurance (QA) Assessments. Owners and operators of all PEMS are required to conduct quarterly relative accuracy audits (RAA) and yearly relative accuracy test audits (RATA) to assess ongoing PEMS operation. The frequency of these periodic assessments may be shortened by successful operation during a prior year.

3.0 Definitions

The following definitions apply:

3.1 *Centroidal Area* means that area in the center of the stack (or duct) comprising no more than 1 percent of the stack cross-sectional area and having the same geometric shape as the stack.

3.2 *Data Recorder* means the equipment that provides a permanent record of the PEMS output. The data recorder may include automatic data reduction capabilities and may include electronic data records, paper records, or a combination of electronic data and paper records.

3.3 *Defective sensor* means a sensor that is responsible for PEMS malfunction or that operates outside the approved operating envelope. A defective sensor may be functioning properly, but because it is operating outside the approved operating envelope, the resulting predicted emission is not validated.

3.4 *Diluent PEMS* means the total equipment required to predict a diluent gas concentration or emission rate.

3.5 *Operating envelope* means the defined range of a parameter input that is established during PEMS development. Emission data generated from parameter inputs that are beyond the operating envelope are not considered quality assured and are therefore unacceptable.

3.6 *PEMS* means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than 3 variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have *parametric* limits but do not predict emissions to comply with an *emissions* limit are not included in this definition.

3.7 *PEMS training* means the process of developing or confirming the operation of the PEMS against a reference method under specified conditions.

3.8 *Quarter* means a quarter of a calendar year in which there are at least 168 unit operating hours.

3.9 *Reconciled Process Data* means substitute data that are generated by a sensor evaluation system to replace that of a failed sensor. Reconciled process data may not be used without approval from the Administrator.

3.10 *Relative Accuracy* means the accuracy of the PEMS when compared to a reference method (RM) at the source. The RA is the average difference between the pollutant PEMS and RM data for a specified number of comparison runs plus a 2.5 percent confidence coefficient, divided by the average of the RM tests. For a diluent PEMS, the RA may be expressed as a percentage of absolute difference between the PEMS and RM. Alternative specifications are given for units that have very low emissions.

3.11 *Relative Accuracy Audit* means a quarterly audit of the PEMS against a

portable analyzer meeting the requirements of ASTM D6522–00 or a RM for a specified number of runs. A RM may be used in place of the portable analyzer for the RAA.

3.12 *Relative Accuracy Test Audit* means a RA test that is performed at least once every four calendar quarters after the initial certification test while the PEMS is operating at the normal operating level.

3.13 *Reference Value* means a PEMS baseline value that may be established by RM testing under conditions when all sensors are functioning properly. This reference value may then be used in the sensor evaluation system or in adjusting new sensors.

3.14 *Sensor Evaluation System* means the equipment or procedure used to periodically assess the quality of sensor input data. This system may be a sub-model that periodically cross-checks sensor inputs among themselves or any other procedure that checks sensor integrity at least daily (when operated for more than one hour in any calendar day).

3.15 *Sensors and Sensor Interface* means the equipment that measures the process input signals and transports them to the emission prediction system.

4.0 Interferences [Reserved]

5.0 Safety [Reserved]

6.0 Equipment and Supplies

6.1 PEMS Design. You must detail the design of your PEMS and make this available in reports and for on-site inspection. You must also establish the following, as applicable:

6.1.1 Number of Input Parameters. An acceptable PEMS will normally use three or more input parameters. You must obtain the Administrator's permission on a case-by-case basis if you desire to use a PEMS having fewer than three input parameters.

6.1.2 Parameter Operating Envelopes. Before you evaluate your PEMS through the certification test, you must specify the input parameters your PEMS uses, define their range of minimum and maximum values (operating envelope), and demonstrate the integrity of the parameter operating envelope using graphs and data from the PEMS development process, vendor information, or engineering calculations, as appropriate. If you operate the PEMS beyond these envelopes at any time after the certification test, the data generated during this condition will not be acceptable for use in demonstrating compliance with applicable requirements. If these parameter operating envelopes are not clearly defined and supported by development data, the PEMS operation will be limited to the range of parameter inputs encountered during the certification test until the PEMS has a new operating envelope established.

6.1.3 Source-Specific Operating Conditions. Identify any source-specific operating conditions, such as fuel type, that affect the output of your PEMS. You may only use the PEMS under the source-specific operating conditions it was certified for.

6.1.4 Ambient Conditions. You must explain whether and how ambient conditions and seasonal changes affect your PEMS. Some parameters such as absolute ambient humidity cannot be manipulated during a test. The effect of ambient conditions such as humidity on the pollutant concentration must be determined and this effect extrapolated to include future anticipated conditions. Seasonal changes and their effects on the PEMS must be evaluated unless you can show that such effects are negligible.

6.1.5 PEMS Principle of Operation. If your PEMS is developed on the basis of known physical principles, you must identify the specific physical assumptions or mathematical manipulations that support its operation. If your PEMS is developed on the basis of linear or nonlinear regression analysis, you must make available the paired data (preferably in graphic form) used to develop or train the model.

6.1.6 Data Recorder Scale. If you are not using a digital recorder, you must choose a recorder scale that accurately captures the desired range of potential emissions. The lower limit of your data recorder's range must be no eater than 20 percent of the applicable emission standard (if subject to an emission standard). The upper limit of your data recorder's range must be determined using the following table. If you obtain approval first, you may use other lower and upper recorder limits.

If PEMS is measuring. . .	And if. . .	Then your upper limit. . .
Uncontrolled emissions, such as NO_X at the stack of a natural gas-fired boiler.	No other regulation sets an upper limit for the data recorder's range.	Must be 1.25 to 2 times the average potential emission level
Uncontrolled emissions, such as NO_X at the stack of a natural gas-fired boiler.	Another regulation sets an upper limit for the data recorder's range.	Must follow the other regulation
Controlled emissions		Must be 1.5 to 2.0 times concentration of the emission standard that applies to your emission unit
Continual compliance emissions for an applicable regulation.		Must be 1.1 to 1.5 times the concentration of the emission standard that applies to your emission unit

6.1.7 Sensor Location and Repair. We recommend you install sensors in an accessible location in order to perform repairs and replacements. Permanently installed platforms or ladders may not be needed. If you install sensors in an area that is not accessible, you may be required to shut down the emissions unit to repair or replace a sensor. Conduct a new RATA after replacing a sensor. All sensors must be calibrated as often as needed but at least as often as recommended by the manufacturers.

6.1.8 Sensor Evaluation System. Your PEMS must be designed to perform automatic or manual determination of defective sensors on at least a daily basis. This sensor evaluation system may consist of a sensor validation sub-model, a comparison of redundant sensors, a spot check of sensor input readings at a reference value, operation, or emission level, or other procedure that detects faulty or failed sensors. Some sensor evaluation systems generate substitute values (reconciled data) that are used when a sensor is perceived to have failed. You must obtain prior approval before using reconciled data.

6.1.9 Parameter Envelope Exceedances. Your PEMS must include a plan to detect and notify the operator of parameter envelope exceedances. Emission data collected outside the ranges of the sensor envelopes will not be considered quality assured.

6.2 Recordkeeping. All valid data recorded by the PEMS must be used to calculate the emission value.

7.0 Reagents and Standards [Reserved]

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Initial Certification. Use the following procedure to certify your PEMS. Complete all PEMS training before the certification begins.

8.2 Relative Accuracy Test.

8.2.1 Reference Methods. Unless otherwise specified in the applicable regulations, you must use the test methods in Appendix A of this part for the RM test. Conduct the RM tests at three operating levels of the key parameter that most affects emissions (*e.g.*, load level). Conduct the specified number of RM tests at the low (minimum to 50 percent of maximum), mid (an intermediary level between the low and high levels), and high (80 percent to maximum) key parameter operating levels, as practicable. If these levels are not practicable, vary the key parameter range as much as possible over three levels.

8.2.2 Number of RM Tests for Excess Emission PEMS. For PEMS used for excess emission reporting, conduct at least the following number of RM tests at the following key parameter operating levels:

(1) Three at a low level.

(2) Three at a mid level.

(3) Three at a high level.

You may choose to perform more than nine total RM tests. If you perform more than nine tests, you may reject a maximum of three tests as long as the total number of test results used to determine the RA is nine or greater and each operating level has at least three tests. You must report all data, including the rejected data.

8.2.3 Number of RM Tests for Continual Compliance PEMS. For PEMS used to determine compliance, conduct at least the following number of RM tests at the following key parameter operating levels:

(1) Nine at a low level.

(2) Nine at a mid level.

(3) Nine at a high level.

You may choose to perform more than 9 RM runs at each operating level. If you perform more than 9 runs, you may reject a maximum of three runs per level as long as the total number of runs used to determine the RA at each operating level is 9 or greater.

8.2.4 Reference Method Measurement Location. Select an accessible measurement point for the RM that will ensure you measure emissions representatively. Ensure the location is at least two equivalent stack diameters downstream and half an equivalent diameter upstream from the nearest flow disturbance such as the control device, point of pollutant generation, or other place where the pollutant concentration or emission rate can change. You may use a half diameter downstream instead of the two diameters if you meet both of the following conditions:

(1) Changes in the pollutant concentration are caused solely by diluent leakage, such as leaks from air heaters.

(2) You measure pollutants and diluents simultaneously at the same locations.

8.2.5 Traverse Points. Select traverse points that ensure representative samples. Conduct all RM tests within 3 cm of each selected traverse point but no closer than 3 cm to the stack or duct wall. The minimum requirement for traverse points are as follows:

(1) Establish a measurement line across the stack that passes through the center and in the direction of any expected stratification.

(2) Locate a minimum of three traverse points on the line at 16.7, 50.0, and 83.3 percent of the stack inside diameter.

(3) Alternatively, if the stack inside diameter is greater than 2.4 meters, you may locate the three traverse points on the line at 0.4, 1.2, and 2.0 meters from the stack or duct wall. You may not use this alternative option after wet scrubbers or at points where two streams with different pollutant concentrations are combined. You may select different traverse points if you demonstrate and provide verification that it provides a representative sample. You may also use the traverse point specifications given the RM.

8.2.6 Relative Accuracy Procedure. Perform the number of RA tests at the levels required in Sections 8.2.2 and 8.2.3. For integrated samples (*e.g.*, Method 3A or 7E), make a sample traverse of at least 21 minutes, sampling for 7 minutes at each traverse point. For grab samples (*e.g.*, Method 3 or 7), take one sample at each traverse point, scheduling the grab samples so that they are taken simultaneously (within a 3-minute period) or at an equal interval of time apart over a 21-minute period. A test run for grab samples must be made up of at least three separate measurements. Where multiple fuels are used in the monitored unit and the fuel type affects the predicted emissions, determine a RA for each fuel unless the effects of the alternative fuel on predicted emissions or diluent were addressed in the model training process. The unit may only use fuels that have been evaluated this way.

8.2.7 Correlation of RM and PEMS Data. Mark the beginning and end of each RM test run (including the exact time of day) on the permanent record of PEMS output. Correlate the PEMS and the RM test data by the time and duration using the following steps:

A. Determine the integrated pollutant concentration for the PEMS for each corresponding RM test period.

B. Consider system response time, if important, and confirm that the pair of results is on a consistent moisture, temperature, and diluent concentration basis.

C. Compare each average PEMS value to the corresponding average RM value. Use the following guidelines to make these comparisons.

If . . .	Then . . .	And then . . .
The RM has an instrumental or integrated non-instrumental sampling technique.	Directly compare RM and PEMS results.	
The RM has a grab sampling technique	Average the results from all grab samples taken during the test run. The test run must include ≥3 separate grab measurements.	Compare this average RM result with the PEMS result obtained during the run.

Use the paired PEMS and RM data and the equations in Section 12.2 to calculate the RA in the units of the applicable emission standard. For this 3-level RA test, calculate the RA at each operation level.

8.3 Statistical Tests for PEMS that are Used for Continual Compliance. In addition to the RA determination, evaluate the paired RA and PEMS data using the following statistical tests.

8.3.1 Bias Test. From the RA data taken at the mid-level, determine if a bias exists between the RM and PEMS. Use the equations in Section 12.3.1.

8.3.2 F-test. Perform a separate F-test for the RA paired data from each operating level to determine if the RM and PEMS variances differ by more than might be expected from chance. Use the equations in Section 12.3.2.

8.3.3 Correlation Analysis. Perform a correlation analysis using the RA paired data from all operating levels combined to determine how well the RM and PEMS correlate. Use the equations in Section 12.3.3. The correlation is waived if the process cannot be varied to produce a concentration change sufficient for a successful correlation test because of its technical design. In such cases, should a subsequent RATA identify a variation in the RM measured values by more than 30 percent, the waiver will not apply, and a correlation analysis test must be performed at the next RATA.

8.4 Reporting. Summarize in tabular form the results of the RA and statistical tests. Include all data sheets, calculations, and charts (records of PEMS responses) necessary to verify that your PEMS meets the performance specifications. Include in the report the documentation used to establish your PEMS parameter envelopes.

8.5 Reevaluating Your PEMS After a Failed Test, Change in Operations, or Change in Critical PEMS Parameter. After initial certification, if your PEMS fails to pass a quarterly RAA or yearly RATA, or if changes occur or are made that could result in a significant change in the emission rate (*e.g.*, turbine aging, process modification, new process operating modes, or changes to emission controls), your PEMS must be recertified using the tests and procedures in Section 8.1. For example, if you initially developed your PEMS for the emissions unit operating at 80–100 percent of its range, you would have performed the initial test under these conditions. Later, if you wanted to operate the emission unit at 50–100 percent of its range, you must conduct another RA test and statistical tests, as applicable, to verify that the new conditions of 50–100 percent of range are functional. These tests must demonstrate that your PEMS provides acceptable data when operating in the new range or with the new critical PEMS parameter(s). The requirements of Section 8.1 must be completed by the earlier of 60 unit operating days or 180 calendar days after the failed RATA or after the change that caused a significant change in emission rate.

9.0 Quality Control

You must incorporate a QA plan beyond the initial PEMS certification test to verify that your system is generating quality-assured data. The QA plan must include the components of this section.

9.1 QA/QC Summary. Conduct the applicable ongoing tests listed below.

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation	All	.....	Daily

ONGOING QUALITY ASSURANCE TESTS—Continued

Test	PEMS regulatory purpose	Acceptability	Frequency
RAA	Compliance	3-test average ≤10% of simultaneous PEMS average.	Each quarter except quarter when RATA performed
RATA	All	Same as for RA in Sec. 13.1	Yearly in quarter when RAA not performed
Bias Correction	All	If $d_{avg} \leq |cc|$	Bias test passed (no correction factor needed)
PEMS Training	All	If $F_{critical} \geq F$ r ≥0.8	Optional after initial and subsequent RATAs
Sensor Evaluation Alert Test (optional)	All	See Section 6.1.8	After each PEMS training

9.2 Daily Sensor Evaluation Check. Your sensor evaluation system must check the integrity of each PEMS input at least daily.

9.3 Quarterly Relative Accuracy Audits. In the first year of operation after the initial certification, perform a RAA consisting of at least three 30-minute portable analyzer or RM determinations each quarter a RATA is not performed. The average of the 3 portable analyzer or RM determinations must not differ from the simultaneous PEMS average value by more than 10 percent of the analyzer or RM value or the test is failed. If a PEMS passes all quarterly RAAs in the first year and also passes the subsequent yearly RATA in the second year, you may elect to perform a single mid-year RAA in the second year in place of the quarterly RAAs. This option may be repeated, but only until the PEMS fails either a mid-year RAA or a yearly RATA. When such a failure occurs, you must resume quarterly RAAs in the quarter following the failure and continue conducting quarterly RAAs until the PEMS successfully passes both a year of quarterly RAAs and a subsequent RATA.

9.4 Yearly Relative Accuracy Test Audit. Perform a minimum 9-run RATA at the normal operating level on a yearly basis in the quarter that the RAA is not performed.

10.0 Calibration and Standardization [Reserved]

11.0 Analytical Procedure [Reserved]

12.0 Calculations and Data Analysis

12.1 Nomenclature

B = PEMS bias adjustment factor.
cc = Confidence coefficient.
d_i = Difference between each RM and PEMS run.
d = Arithmetic mean of differences for all runs.
e_i = Individual measurement provided by the PEMS or RM at a particular level.
e_m = Mean of the PEMS or RM measurements at a particular level.
e_p = Individual measurement provided by the PEMS.
e_v = Individual measurement provided by the RM.
F = Calculated F-value.
n = Number of RM runs.
$PEMS_i$ = Individual measurement provided by the PEMS.
$PEMS_{iAdjusted}$ = Individual measurement provided by the PEMS adjusted for bias.
PEMS = Mean of the values provided by the PEMS at the normal operating range during the bias test.
r = Coefficient of correlation.
RA = Relative accuracy.
RAA = Relative accuracy audit.
RM = Average RM value (or in the case of the RAA, the average portable analyzer value). In cases where the average emissions for the test are less than 50 percent of the applicable standard, substitute the emission standard value here in place of the average RM value.
S_d = Standard deviation of differences.
S^2 = Variance of your PEMS or RM.
$t_{0.025}$ = t-value for a one-sided, 97.5 percent confidence interval (see Table 16–1).

12.2 Relative Accuracy Calculations. Calculate the mean of the RM values. Calculate the differences between the pairs of observations for the RM and the PEMS output sets. Finally, calculate the mean of the differences, standard deviation, confidence coefficient, and PEMS RA, using Equations 16–1, 16–2, 16–3, and 16–4, respectively. For compliance PEMS, calculate the RA at each test level. The PEMS must pass the RA criterion at each test level.

12.2.1 Arithmetic Mean. Calculate the arithmetic mean of the differences between paired RM and PEMS observations using Equation 16–1.

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad Eq.\ 16\text{-}1$$

12.2.2 Standard Deviation. Calculate the standard deviation of the differences using Equation 16–2 (positive square root).

$$s_d = \sqrt{\frac{\sum_{i=1}^{n} d_i^2 - \frac{\left(\sum_{i=1}^{n} d_i\right)^2}{n}}{n-1}} \qquad Eq.\ 16\text{-}2$$

12.2.3 Confidence Coefficient. Calculate the confidence coefficient using Equation 16–3 and Table 16–1.

$$cc = t_{0.025}\frac{S_d}{\sqrt{n}} \qquad Eq.\ 16\text{-}3$$

12.2.4 Relative Accuracy. Calculate the RA of your data using Equation 16–4.

$$RA = \frac{|\bar{d}| + |cc|}{\overline{RM}} \times 100 \qquad Eq.\ 16\text{-}4$$

12.3 Compliance PEMS Statistical Tests. If your PEMS will be used for continual compliance purposes, conduct the following tests using the information obtained during the RA tests. For the pollutant measurements at any one test level, if the mean value of the RM is less than either 10 ppm or 5 percent of the emission standard, all statistical tests are waived at that specific test level. For diluent measurements at any one test level, if the mean value of the RM is less than 3 percent of span, all statistical tests are waived for that specific test level.

12.3.1 Bias Test. Conduct a bias test to determine if your PEMS is biased relative to the RM. Determine the PEMS bias by comparing the confidence coefficient obtained from Equation 16–3 to the

arithmetic mean of the differences determined in Equation 16–1. If the arithmetic mean of the differences ($\bar{d}$) is greater than the absolute value of the confidence coefficient (cc), your PEMS must incorporate a bias factor to adjust future PEMS values as in Equation 16–5.

$$PEMS_{Adjusted} = PEMS_i \times B \qquad \text{Eq. 16-5}$$

Where:

$$B = 1 + \frac{|\bar{d}|}{PEMS} \qquad \text{Eq. 16-6a}$$

12.3.2 F-test. Conduct an F-test for each of the three RA data sets collected at different test levels. Calculate the variances of the PEMS and the RM using Equation 16–6.

$$S^2 = \frac{\sum_{i=1}^{n}(e_i - e_m)^2}{n-1} \qquad \text{Eq. 16-6}$$

Determine if the variance of the PEMS data is significantly different from that of the RM data at each level by calculating the F-value using Equation 16–7.

$$F = \frac{S^2\ PEMS}{S^2 RM} \qquad \text{Eq. 16-7}$$

Compare the calculated F-value with the critical value of F at the 95 percent confidence level with n–1 degrees of freedom. The critical value is obtained from Table 16–2 or a similar table for F-distribution. If the calculated F-value is greater than the critical value at any level, your proposed PEMS is unacceptable. For pollutant PEMS measurements, if the standard deviation of the RM is less than either 3 percent of the span or 5 ppm, use a RM standard deviation of either 5 ppm or 3 percent of span. For diluent PEMS measurements, if the standard deviation of the reference method is less than 3 percent of span, use a RM standard deviation of 3 percent of span.

12.3.3 Correlation Analysis. Calculate the correlation coefficient either manually using Eq. 16–8, on a graph, or by computer using all of the paired data points from all operating levels. Your PEMS correlation must be 0.8 or greater to be acceptable. If during the initial certification test, your PEMS data are determined to be auto-correlated according to the procedures in 40 CFR 75.41(b)(2), or if the signal-to-noise ratio of the data is less than 4, then the correlation analysis is permanently waived.

$$r = \frac{\sum epev - (\sum ep)(\sum ev)/n}{\sqrt{\left[\left(\sum ep^2 - (\sum ep)^2/n\right)\left(\sum ev^2 - (\sum ev)^2/n\right)\right]}} \qquad \text{Eq. 16-8}$$

12.4 Relative Accuracy Audit. Calculate the quarterly RAA using Equation 16–4.

$$RAA = \frac{\overline{PEMS} - \overline{RM}}{\overline{RM}} \times 100 \qquad \text{Eq. 16-9}$$

13.0 Method Performance

13.1 PEMS Relative Accuracy. The RA must not exceed 10 percent if the PEMS measurements are greater than 100 ppm or 0.2 lbs/mm Btu. The RA must not exceed 20 percent if the PEMS measurements are between 100 ppm (or 0.2 lb/mm Btu) and 10 ppm (or 0.05 lb/mm Btu). For measurements below 10 ppm, the absolute mean difference between the PEMS measurements and the RM measurements must not exceed 2 pppm. For diluent PEMS, an alternative criterion of ± 1 percent absolute difference between the PEMS and RM may be used if less stringent.

13.2 PEMS Bias. Your PEMS data is considered biased and must be adjusted if the arithmetic mean (d) is greater than the absolute value of the confidence coefficient (cc) in Equations 16.1 and 16.3. In such cases, a bias factor must be used to correct your PEMS data.

13.3 PEMS Variance. Your calculated F-value must not be greater than the critical F-value at the 95-percent confidence level for your PEMS to be acceptable.

13.4 PEMS Correlation. Your calculated r-value must be greater than or equal to 0.8 for your PEMS to be acceptable.

13.5 Relative Accuracy Audits. The average of the 3 portable analyzer or RM determinations must not differ from the simultaneous PEMS average value by more than 10 percent of the analyzer or RM value.

14.0 Pollution Prevention [Reserved]

15.070 Waste Management [Reserved]

16.0 References [Reserved]

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 16–1—T-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES*

n–1	$t_{0.025}$	n–1	$t_{0.025}$
2	12.706	16	2.131
3	4.303	17	2.120
4	3.182	18	2.110
5	2.776	19	2.101
6	2.571	20	2.093
7	2.447	21	2.086
8	2.365	22	2.080
9	2.306	23	2.074
10	2.262	24	2.069
11	2.228	25	2.064
12	2.201	26	2.060
13	2.179	27	2.056
14	2.160	28	2.052
15	2.145	> 29	t-Table

*Use n equal to the number of data points (n–1 equals the degrees of freedom).

TABLE 16–2. F-VALUES FOR CRITICAL VALUE OF F AT THE 95 PERCENT CONFIDENCE LEVEL

d.f. for S^2_{RM}	1	2	3	4	5	6	7	8	9	d.f. for S^2_{PEMS}		
										10	11	12
1	161.4	199.5	215.7	224.6	230.2	234.0	236.8	238.9	240.5	241.8	243.0	243.9
2	18.51	19.00	19.16	19.25	19.30	19.33	19.35	19.37	19.38	19.50	19.40	19.41
3	10.13	9.552	9.277	9.117	9.013	8.941	8.887	8.845	8.812	8.786	8.763	8.745
4	7.709	6.944	6.591	6.388	6.256	6.163	6.094	6.041	5.999	5.964	5.936	5.912
5	6.608	5.786	5.409	5.192	5.050	4.950	4.876	4.818	4.772	4.735	4.704	4.678
6	5.987	5.143	4.757	4.534	4.387	4.284	4.207	4.147	4.099	4.060	4.027	4.000
7	5.591	4.737	4.347	4.120	3.972	3.866	3.787	3.726	3.677	3.637	3.603	3.575
8	5.318	4.459	4.066	3.838	3.687	3.581	3.500	3.438	3.388	3.347	3.313	3.284
9	5.117	4.256	3.863	3.633	3.482	3.374	3.293	3.230	3.179	3.137	3.102	3.073
10	4.965	4.103	3.708	3.478	3.326	3.217	3.135	3.072	3.020	2.978	2.943	2.913
11	4.844	3.982	3.587	3.357	3.204	3.095	3.012	2.948	2.896	2.854	2.818	2.788
12	4.747	3.885	3.490	3.259	3.106	2.996	2.913	2.849	2.796	2.753	2.717	2.687

■ 5. In Procedure 1 of Appendix F, paragraph (3) of Section 5.1.2 and Section 8 is revised as follows:

Appendix F to Part 60—Quality Assurance Procedures

Procedure 1. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

5.1.2 Cylinder Gas Audit (CGA).

* * *

(3) Use Certified Reference Materials (CRM's) (See Citation 1) audit gases that have been certified by comparison to National Institute of Standards and Technology (NIST) or EPA Traceability Protocol Materials (ETPM's) following the most recent edition of EPA's Traceability Protocol No. 1 (See Citation 2). Procedures for preparation of CRM's are described in Citation 1. Procedures for preparation of ETPM's are described in Citation 2. As an alternative to CRM's or ETPM gases, Method 205 (See Citation 3) may be used. The difference between the actual concentration of the audit gas and the concentration indicated by the monitor is used to assess the accuracy of the CEMS.

* * * * *

8. Bibliography

1. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA–600/7–81–010, Revised 1989. Available from the U.S. Environmental Protection Agency. Quality Assurance Division (MD–77). Research Triangle Park, NC 27711.

2. "EPA Traceability Protocol For Assay And Certification Of Gaseous Calibration Standards." EPA–600/R–97/121, September 1997. Available from EPA's Emission Measurement Center at *http://www.epa.gov/ttn/emc.*

3. Method 205, "Verification of Gas Dilution Systems for Field Instrument Calibrations," 40 CFR 51, Appendix M.

* * * * *

■ 6. In Procedure 2 of Appendix F, Section 10.1, paragraph (3) of Section 10.4, and paragraph (2) of Section 12.0 are revised as follows:

Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

10.1 When should I use paired trains for reference method testing? Although not required, we recommend that you should use paired-train reference method testing to generate data used to develop your PM CEMS correlation and for RCA testing. Guidance on the use of paired sampling trains can be found in the PM CEMS Knowledge Document (see section 16.5 of PS–11).

* * * * *

10.4 What are my limits for excessive audit inaccuracy?

* * * * *

(3) What are the criteria for excessive ACA error? Your PM CEMS is out of control if the results of any ACA exceed ± 10 percent of the average audit value, as calculated using Equation 2–1a, or 7.5 percent of the applicable standard, as calculated using Equation 2–1b, whichever is greater.

* * * * *

12.0 What calculations and data analysis must I perform for my PM CEMS?

* * * * *

(2) How do I calculate ACA accuracy? You must use either Equation 2–1a or 2–1b to calculate ACA accuracy for each of the three audit points. However, when calculating ACA accuracy for the first audit point (0 to 20 percent of measurement range), you must use Equation 2–1b to calculate ACA accuracy if the reference standard value (R_v) equals zero.

$$\text{ACA Accuracy} = \frac{|R_{CEM} - R_V|}{R_V} \times 100\% \qquad \text{Eq. 2-1a}$$

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

R_{CEM} = Your PM CEMS response to the reference standard, and

R_V = The reference standard value.

$$\text{ACA Accuracy} = \frac{|C_{CEM} - C_{RV}|}{C_s} \times 100\% \quad \text{Eq. 2-1b}$$

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

C_{CEM} = The PM concentration that corresponds to your PM CEMS response to the reference standard, as calculated using the correlation equation for your PM CEMS,

C_{RV} = The PM concentration that corresponds to the reference standard value in units consistent with C_{CEM}, and

C_s = The PM concentration that corresponds to the applicable emission limit in units consistent with C_{CEM}.

* * * * *

Part 63—[Amended]

■ 7. The authority citation for Part 63 continues to read as follows:

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

■ 8. In Method 303 of Appendix A, add a sentence to the end of Section 1.1 to read as follows:

Appendix A to Part 63—Test Methods

Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries

1.1 Applicability. * * * In order for the test method results to be indicative of plant performance, the time of day of the run should vary.

[FR Doc. E9–6275 Filed 3–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2008–0759; FRL–8783–7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California; Amador County Air Pollution Control District, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants in California. Amador County Air Pollution Control District and San Diego County Air Pollution Control District requested delegation of these federal standards as they apply to non-major sources. Their delegation requests were approved by letter on September 4, 2008. The purpose of this action is to update the listing in the Code of Federal Regulations. EPA Region IX is also waiving the need for duplicate reporting after a California district is delegated these federal standards applicable to non-major sources.

DATES: This rule is effective on May 26, 2009 without further notice, unless EPA receives relevant adverse comments by April 24, 2009. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0759, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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A. Area Source Delegation Requests
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I. Background

A. Delegation of NESHAP

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in Title 40 of the Code of Federal Regulations (CFR), Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP). On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of State rules or programs under CAA 112(l) (*see* 58 FR 62262). The procedures of Subpart E were later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120(d) is amended by adding a new entry for "Transcontinental Gas Pipeline Corporation Station 140" to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED SOUTH CAROLINA SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Transcontinental Gas Pipeline Corporation Station 140.	2060–0179–CD	4/27/2004	4/23/2009 [Insert first page of publication].	This permit is incorporated in fulfillment of the NO_X SIP Call Phase II requirements for South Carolina.

* * * * *

[FR Doc. E9–9222 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2003–0074; FRL–8785–4]

RIN 2060–AG21

Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions

Correction

In final rule document E9–6275 beginning on page 12575 in the issue of Wednesday, March 25, 2009, make the following corrections:

Appendix B to Part 60 [Corrected]

1. On page 12582, in Appendix B to Part 60, Equation 11-23 should appear as follows:

$$C_0 = \frac{(S_2 \cdot S_4 - S_3^2)}{D}, \quad C_1 = \frac{(S_3 \cdot S_2 - S_1 \cdot S_4)}{D}, \quad C_2 = \frac{(S_1 \cdot S_3 - S_2^2)}{D},$$

$$C_3 = \frac{(nS_4 - S_2^2)}{D}, \quad C_4 = \frac{(S_1 \cdot S_2 - nS_3)}{D}, \quad C_5 = \frac{(nS_2 - S_1^2)}{D} \qquad \text{(Eq. 11-23)}$$

2. On the same page, in the same appendix, in the second column, in the third line after Equation 11-31, "vdf" should read "v_{df}".

3. On page 12585, in the same appendix, between Table 1–Factors for Calculation of Confidence and Tolerance Interval Half Ranges and amendatory instruction 4, insert a row of five stars as follows:

* * * * *

4. On page 12586, in the same appendix, in the third column, in paragraph 6.1.6, in the sixth line, "eater" should read "greater".

5. On page 12588, the table is corrected to read as set forth below:

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
* * *	* * *	* * *	
PEMS Training	All	If $F_{critical} \geq F$, $r \geq 0.8$	Optional after initial and subsequent RATAs
* * *	* * *	* * *	

6. On the same page, in the same appendix, in the first column, under heading 12.1 Nomenclature, the fourth definition is reprinted to read as follows:

"$\bar{d}$ = Arithmetic mean of differences for all runs".

7. On the same page, in the same appendix, in the second column, under the same heading, the eighth definition is reprinted to read as follows:

"$\overline{PEMS}$ = Mean of the values provided by the PEMS at the normal operating range during the bias test."

8. On the same page, in the same appendix, in the same column, under the same heading, the 12th definition is reprinted to read as follows:

"$\overline{RM}$ = Average RM value (or in the case of the RAA, the average portable analyzer value). In cases where the average emissions for the test are less than 50 percent of the applicable standard, substitute the emission standard value here in place of the average RM value".

9. On page 12589, in the same appendix, in the third column, section "*15.070*" should read "*15.0*".

10. On page 12589, in the same appendix, the table title "TABLE 16–1—T-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES*" should read " TABLE 16–1—t-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES*".

11. On page 12590, in the same appendix, Table 16–2 should appear as follows:

Table 16-2. F-Values for Critical Value of F at the 95 Percent Confidence Level

d.f. for S^2_{RM}	d.f. for S^2_{PEMS}											
	1	2	3	4	5	6	7	8	9	10	11	12
1	161.4	199.5	215.7	224.6	230.2	234.0	236.8	238.9	240.5	241.8	243.0	243.9
2	18.51	19.00	19.16	19.25	19.30	19.33	19.35	19.37	19.38	19.50	19.40	19.41
3	10.13	9.52	9.277	9.117	9.014	8.941	8.887	8.845	8.812	8.786	8.763	8.745
4	7.709	6.944	6.591	6.388	6.256	6.163	6.094	6.041	5.999	5.964	5.935	5.912
5	6.608	5.786	5.410	5.192	5.050	4.950	4.876	4.818	4.773	4.735	4.703	4.678
6	5.987	5.143	4.757	4.534	4.387	4.284	4.207	4.147	4.099	4.060	4.027	4.000
7	5.591	4.734	4.347	4.120	3.971	3.866	3.787	3.726	3.677	3.637	3.603	3.575
8	5.318	4.459	4.066	3.838	3.688	3.581	3.501	3.438	3.388	3.347	3.312	3.284
9	5.117	4.257	3.863	3.633	3.482	3.374	3.293	3.230	3.179	3.137	3.102	3.073
10	4.965	4.103	3.709	3.478	3.326	3.217	3.136	3.072	3.020	2.978	2.942	2.913
11	4.844	3.982	3.587	3.357	3.204	3.095	3.012	2.948	2.896	2.854	2.818	2.788
12	4.747	3.885	3.490	3.259	3.106	2.996	2.913	2.849	2.796	2.753	2.717	2.687

Appendix A to Part 63 [Corrected]

12. On page 12591 in Appendix A to Part 63–Test Method, in the first column, immediately following paragraph 1.1, insert a row of five stars as follows:

* * * * *

[FR Doc. Z9–6275 Filed 4–22–09; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–827; MB Docket No. 09–22; RM–11516]

Television Broadcasting Services; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by KDMI License, LLC, the permittee of post-transition station KDMI–DT, to substitute DTV channel 19 for post-transition DTV channel 31 at Des Moines, Iowa.

DATES: This rule is effective April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09–22, adopted April 14, 2009, and released April 15, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Iowa, is amended by adding DTV channel 19 and removing DTV channel 31 at Des Moines.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–9337 Filed 4–22–09; 8:45 am]
BILLING CODE 6712–01–P

BEFORE THE WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED 2010 RULES
45CSR34 - Emission Standards for
Hazardous Air Pollutants

TRANSCRIPT OF PROCEEDINGS had or testimony adduced in the above-entitled matter, on the on the 13th day of July, 2009, commencing at 6:21 p.m. and concluding at 6:22 p.m., at 601 57th Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES L. MASON, Technical Analyst
Division of Air Quality

ORIGINAL

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

MR. MASON: This public hearing will now come to order on this 13th day of July, 2009, at the West Virginia Department of Environmental Protection Headquarters. Comments and testimony will be accepted until the close of this hearing and will be made part of the rule-making record. Any question regarding revisions to the rules will be included with your comments, and any such question will be answered as part of the response to comments in the rule-making record.

The purpose of this public hearing is to satisfy state rule-making requirements by accepting comments on proposed revisions to rule 45CSR34 - *Emission Standards for Hazardous Air Pollutants.* This rule incorporates and adopts national emission standards for hazardous air pollutants and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to the federal Clean Air Act. Promulgation of this rule is necessary for the State to fulfill its responsibilities under the Clean Air Act and will enable the Department of Environmental Protection to continue to be the primary enforcement authority for such national emission standards promulgated by EPA. Revisions to the rule include updated exclusions to adoption of standards and annual incorporation of federal regulations as of June

1, 2009.

The floor is now open for comments.

(No response.)

MR. MASON: There being nothing further, this public hearing for proposed rule 45CSR34 is concluded.

(WHEREUPON, the hearing was concluded.)

BEFORE THE WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 17th day of July, 2009.

My commission expires November 26, 2010.

Certified Verbatim Reporter
Commissioner of West Virginia

dep

west virginia department of environmental protection

SIGN-IN SHEET

Public Hearing on the Division of Air Quality Rules:
45CSR8, 45CSR14, 45CSR16, 45CSR19, 45CSR25, 45CSR33 and 45CSR34
July 13, 2009, 6:00 p.m.

Name (please print)	Address	Organization	Phone	E-mail	Comment Y/N
Kristin Boggs	WV DEP Exec.				
Dan Garvin	PO Box 666 Buckhannon, WV 26201	WVEC	(304) 345-0078	DSGJr@aol.com	Y
Dave Yaussy	PO Box 1791 Charleston, WV 25326	Robinson & McElwee	347-8358	dly@ramlaw.com	N
Jim Mason	WV DEP DAQ OEA	DEP			
Pam Nixon	WV DEP	DEP	(304) 926-0499 ext. 1378	Pamela.Nixon@wv.gov	

Promoting a healthy environment.

SIERRA CLUB
WEST VIRGINIA CHAPTER
P. O. Box 4142
Morgantown, WV 26504

July 12, 2009

West Virginia Division of Air Quality
Department of Environmental Protection,
601 57th Street S.E.,
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-8. No comments. We support adoption of the proposed language.

2. 45-CSR-14. We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a "Plantwide Applicability Limitation" (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.

3. 45-CSR-16. No comments.

4. 45-CSR-19.

Comment 4.A. The use of the term "regulated NSR pollutant" (in 2.61, and throughout) is indistinguishable from "regulated pollutant", as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term "NSR" has any applicability, it could potentially limit the scope of DEP's authority. Since the actual definition is unchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. **We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word "regulated" from the term, since any NSR pollutant is a regulated pollutant by virtue of coming under New Source Review.** But the inclusion of both terms is redundant and will cause unnecessary confusion.

Comment 4.B. Section 2.26.b defines a replacement unit as an "existing emissions unit", and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of "Major Modification". Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capitol cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacements units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved boiler technology. Furthermore, such a replacement is allowed to generate "offsets" in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. **We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.(b) (1) (i.e., those whose cost exceeds 50 % of the capitol cost of a comparable new facility) be defined as "new emissions units" for which NSR requirements apply. The exemptions and provisions for "replacement units" should be limited to those whose cost is less than 50 % of the capitol cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements.**

Comment 4.C. Section 2.35.e.17 requires "fuel conversion plants" to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. **If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)**

Comment 4.D. The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21

Comment 4.E. It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not "surplus" and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. **We recommend retaining the existing language, and adding the word "surplus" after "federally enforceable".**

Comment 4.F. Section 17.4, insert the word "the" in the second line in front of the words "following specific provisions".

Comment 4.G. We support the elimination of the "Clean Unit Exemption" and the provisions for so-called "Pollution Control Projects" (sections 20-22). **We also recommend that the provisions for "Plant-wide Applicability Limits" also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities.** The minor changes proposed for PALs in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept.

45-CSR-25. No comments.

45-CSR-33. No comments.

45-CSR-34. No Comments.

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,

James Kotcon

James Kotcon, Chair
State Government Programs Committee

45CSR34

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

RESPONSE TO COMMENTS

On June 12, 2009, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 13, 2009 to accept oral comments on proposed revisions to legislative rule 45CSR34. Written comments were also accepted through 6:00 PM on Monday, July 13, 2009. No commenter submitted written comments regarding proposed revisions to rule 45CSR34, and no commenter provided verbal comments.