WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

AGENCY: West Virginia Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV 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 for Source Categories Pursuant to 40 CFR Part 63

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

WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION

Form #1

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2007 JUN -6 PM 4:26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY: WV 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 for Source Categories Pursuant to 40 CFR Part 63

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 9, 2007 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection
Dolly Sods Conference Room
601 57th Street, SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL [ ] WRITTEN [ ] BOTH [X]

DATE WRITTEN COMMENT PERIOD ENDS: July 9, 2007 TIME: 6:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:
Public Information Office
Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

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

Legislative Rule-Making Review Committee

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

JUN - 6 2007

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 25, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR34 - Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63

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 6, 2007

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

Published notice on June 8th in The Charleston Daily Mail and The Charleston Gazette. Posted on the Department of Environmental Protection's web site under "Calendar of Events".

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

July 9, 2007

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 25, 2007

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
Fax: 304 926-0488
e-mail: jbenedict@wvdep.org

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499
Fax: 304 926-0488
e-mail: tmowrer@wvdep.org

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)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200
Fax: 304 926-0479

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, 2007. 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.

This rule will repeal and replace 45CSR15 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61" filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2007: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Reinforced Plastic Composites Production; Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air

Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing, General Provisions; Printing and Publishing Industry; Source Categories; Integrated Iron and Steel Manufacturing Facilities; Dry Cleaning Facilities; Organic Liquids Distribution (Non-Gasoline); Miscellaneous Coating Manufacturing; Site Remediation; Portland Cement Manufacturing Industry; Synthetic Organic Chemical Manufacturing Industry; Surface Coating of Automobiles and Light-Duty Trucks; Oil and Natural Gas Production Facilities; Surface Coating of Plastic Parts and Products, and Halogenated Solvent Cleaning.

The following 40 CFR Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas Production; Polyvinyl Chloride and Copolymers Production; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals - Zinc, Cadmium, and Beryllium.

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 will enable the Department of Environmental Protection, Division of Air Quality to continue to be the primary enforcement authority for NESHAP promulgated under 40 CFR Parts 61 and 63 by U.S. EPA as of June 1, 2007. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA. Revisions to the rule include rule title, revision of scope, addition of repeal language for 45CSR15, definition of 'hazardous air pollutant', general annual updates and addition of incorporation by reference of 40 CFR Part 61, updated exclusions to adoption of standards to include Part 61 exclusions from 45CSR15, and general language clarification and correction.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 21, 2007, and May 30, 2007 meetings, 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

Monday – May 21, 2007
1:00 p.m. – 3:00 p.m.
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

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

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Lewis Halstead, DMR
Ken Politan, DMR
Charlie Sturey, DMR
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, Office of Oil & Gas
Carroll Cather, DWWM
Pam Nixon, Advocate
David L. Vande Linde, Blasting
Jim Mason, DAQ
Mike Zeto, DWWM – EE
Matt Sweeney, DWWM

VISITORS:

Ann Bradley, Spilman Thomas & Battle
Charlie Burd, IOGA
Don Garvin, WVEC
Dave Yaussy, Robinson & McElwee

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m.

Karen Price stated that the Council did not have enough time to review the rules, therefore was requesting to have another meeting to discuss further and the remaining of the Council agreed. The Council will meet May 30, 2007 at 10:00 a.m. – WVDEP – 601 57th Street, SE – Charleston, WV 25304 – West Virginia Room (3001).

Deputy Cabinet Secretary Huffman apologized for the short time period regarding the rules getting out to Council. Randy Huffman then introduced Karen Watson, Assistant General Counsel to discuss with the Council the DEP bills that had passed in the 2007 Regular Legislative Session:

- SB 337 – Establishing New Greenhouse Gas Inventory Program
  Approved by Governor – April 4, 2007

- SB 425 – Relating to Water Pollution Control Revolving Fund
  Approved by Governor – April 4, 2007

- SB 465 – Establishing Dam Safety Rehabilitation Revolving Fund
  Approved by Governor – March 27, 2007

- SB 490 – Relating to Underground Storage Tank Insurance Fund
  Approved by Governor – April 3, 2007

- SB 524 – Requiring Proof of Lawful Disposal of Solid Waste
  Approved by Governor – March 28, 2007

- SB 588 – Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel From Coal
  Approved by Governor – April 4, 2007

Karen Watson then gave a brief summary of each proposed rule for the 2008 legislative session:

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes 'statutory air pollution,' addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Mr. Harris: Why does it allow low-level radioactive waste?

DEP Response: To allow crematories to dispose of bodies with chemo drugs. Does not allow high-level radioactive compounds related to research.

Council wanted to know if the agency would accept comments in writing after the meeting (e-mail in comments)

DEP Response: Yes

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO_2 & PM NAAQS include correction of SO_2 annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour $PM_{2.5}$ standards, and addition of measurement methods for $PM_{2.5}$. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO_2 and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Mr. Harris: Are we sure we are protecting the public's health? We should not be lowering standards so that our energy being transmitted to other states doesn't pollute our air. Are we aware of EPA's Science Advisory Panel?

DEP Response: CAIR aims to lower emissions at power plants. Utility controls are helping us meet targets earlier. EPA's regional approach has generally been successful and we are seeing tremendous benefits. The agency is aware of the EPA's panel, and EPA is considering more stringent regulations but has not done so yet.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

Revisions to rule incorporate annual incorporation by reference updates and exclusions.

COMMENT

No questions.

45CSR18 – Control of Air Pollution from Combustion of Solid Waste

SUMMARY

CISWI Rule 18 combines and incorporates by reference all current federal Section 111/129 combustion regulation into one rule. Old Rule 24 will be repealed and replaced. New exemption section is consistent with revised Rules 6, 25 and 34. Revisions also include revised scope, extensive federal counterpart language updates, improved citing and consistency.

COMMENT

No questions.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

SUMMARY

Revisions to the proposed rule include general annual incorporation by reference and revisions required to maintain consistency with the DWWM's rule 33CSR20 and federal counterpart regulation. Addition of direct incorporation by reference of new provisions published in the Federal Register. Language for pathological waste incinerators is revised for clarity.

COMMENT

No questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

Rule 34 now combines all NESHAP regulations previously adopted under both Rules 15 & 34. Old Rule 15 will be repealed and replaced. Revisions to Rule 34 incorporate annual NESHAP updates under Parts 61 & 63. Some Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas; Polyvinyl Chloride and Copolymers; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals.

COMMENT

No questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

COMMENT

No questions.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

Annual CAIR SO_2 Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Mr. Raney: Is the exclusion still there for coal preparation activities?

DEP Response: Yes, section 3.2. (45CSR42)

Mr. Raney: How do we quantify sequestration?

DEP Response: Don't think we will get down to stationary source level. Agency will look at area

sources and biogenic activities. Once we get information, we will compile in an inventory.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Lisa Dooley: Public notice of permits – who bears the cost – there has to be a more efficient way of getting notices out than Class I legal ads. This is a suggestion for the future.

DEP Response: Applicant bears cost – DEP is trying other methods of getting the information out – but not everyone has access to e-mail.

400 people on DEP's mailing list to receive permits by e-mail and we have between 30-40 who receive permits by US mail.

33CSR20 – Hazardous Waste Management System

SUMMARY

This amendment will adopt by reference approximately two years of changes to federal regulations by adopting the federal regulations in effect as of June 1, 2007 consisting of changes that correct errors in previously enacted Dye and Pigment rule and Manifest rule, allow more hazardous waste, allow greater flexibility in SW-846 testing and monitoring, allow more mercury containing devices to be managed as universal waste, streamline permitting process through a standardized permit, allow additional headworks and de minimus waste exemptions, reference Clean Air Act standards for hazardous waste combustors, allow a series of paperwork burden reductions for hazardous waste management facilities, corrects errors in 40 CFR (federal regulations) and excludes cathode ray tubes from the definition of solid waste under certain conditions. Language corrections, updated references and a change as the result of an EPA comment regarding annual groundwater monitoring at corrective action sites are also included in the amended rule. The rule amendment is not projected to require additional operating expenses above current levels as the amendments are generally de-regulatory in nature.

COMMENT

No questions.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced thanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

No questions.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Mr. Raney: Would like to have the trout water list stay within the agency and be able to discuss the science on a case-by-base basis before the EQB, not the Legislature.

DEP Response: The DEP believes the scientific basis for the proposed trout streams is clear and does not need to be litigated before the EQB.

Mr. Harris: Commented on the changes in Appendix E and asked whether the formula change for copper and cadmium resulted in a more or less stringent standard.

DEP Response: The changes in Appendix E are recommended by EPA, updating MCL's, etc. The revised hardness formulas represent EPA's latest science.

47CSR10 – National Pollutant Discharge Elimination System (NPDES)

SUMMARY

The proposed revisions to the National Pollutant Discharge Elimination System Rule reflect updates/additions made to the various federal regulations that govern the NPDES program. The proposed changes also include specific language in section 14 of the rule relating to the Pretreatment Program to ensure that the rule is consistent with the most recent federal pretreatment regulations in 40 CFR Part 403.

COMMENT

No questions.

47CSR34 – Dam Safety

SUMMARY

The proposed revisions establish requirements governing the disbursement and use of moneys in the Dam Safety Rehabilitation Revolving Fund, authorized by SB 465 in the 2007 legislative session.

COMMENT

Ms. Hallinan: Any progress being made in reducing the number of deficient dams?

DEP Response: Not very much. The fund initiative is badly needed.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Mr. Harris: Suggested we file with 309 streams instead of 156 streams because Legislature will further reduce.

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday – May 30, 2007
10:00 a.m. – 12:00 p.m.
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Larry Harris - Teleconference
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
Pam Nixon, Advocate
Jim Mason, DAQ
Mike Zeto, DWWM – EE
John Morgan, DWWM
Scott Mandirola, DWWM
Greg Adolfson, PIO

VISITORS:

Dave Yaussy
Brittany Carns
Joe Gollehon
Gregory Hoyer
Jeff Mauzy
Amy Christy

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 10:00 a.m. Advisory Council Member Larry Harris joined the meeting via teleconference. Deputy Cabinet Secretary Huffman then turned the meeting over to Karen Watson, Assistant General Counsel for the West Virginia Department of Environmental Protection. Karen informed the Council that the agency had received comments from several Council members and those comments would be appended to the minutes. (see attached) She explained the agency

had representatives from each of the programs to answer questions for the rules identified in those comments. She also explained the agency had made several changes in the rules as a result of those comments.

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes 'statutory air pollution,' addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Larry Harris: Had raised the issue of "low-level radioactive waste" in the last meeting.

DEP Response: DEP has removed the chemotherapeutic waste and low-level radioactive waste provisions from the proposed rule. The proposed rule does not in any way affect current medical waste incineration rules now on the books.

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO_2 & PM NAAQS include correction of SO_2 annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour $PM_{2.5}$ standards, and addition of measurement methods for $PM_{2.5}$. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO_2 and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Karen Price: Section 4.2.c – $PM_{2.5}$ Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m^3. This should be 65 ug/m^3, pursuant to 40 CFR 50.7.

DEP Response: On October 17, 2006, the federal NAAQS regulation changed from 65 to 35.

Larry Harris: Restated his concern that the standards may not be stringent enough to protect public health. He also restated his question about the antidegradation language struck from the rule.

DEP Response: DEP cannot lower the NAAQS standards below that of federal levels unless the provisions for the stringency test in §22-1-3a are fully met. 45CSR14, in its entirety, has wholly replaced the intent of the relic anti-degradation language struck in proposed Rule 8.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

Annual CAIR SO_2 Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

Karen Price: Asked why the opt-in language was deleted from each of these rules.

DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NOx RACT for EGUs under the PM2.5 implementation rule.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Karen Price and Larry Harris: Both asked about the definitions of "anthropogenic" and "biogenic" in the rule and asked for examples of each.

DEP Response: An example of an anthropogenic source is the coal extraction process and an example of a biogenic source is the erosion of soil exposing a coal seam. The agency does not plan

to ask sources to report biogenic activities. In order to receive credit a source must report all of its emissions.

Karen Price: Can the reporting requirement in section 4.1 be made consistent with the emissions inventory requirements.

DEP Response: The date in the rule is March 31st and is the same as the emissions inventory date.

Karen Price: Does not believe fees should be required for greenhouse gas reporting.

DEP Response: The agency will consider the issue.

Karen Price: The last sentence in section 5.3 allowing the Secretary to request information is not authorized by statute.

DEP Response: It is authorized by the statute.

Karen Price: There should be a reasonable protocol for reporting emissions.

DEP Response: D AQ purposely wrote the rule in a manner flexible to the Secretary, as greenhouse gas reduction quantification protocols are still being developed at this time.

Karen Price: Is WV going to sign on to the climate registry or are we going to have our own?

DEP Response: In order to trade, we have to be consistent with other programs, but we do not want to be more specific in the rule.

Bill Raney: The exemption in section 3.2 includes language referring to sources covered by chapter 22-3 as well as sources required to report emissions. We are concerned this may take the exemption in the statute away.

DEP Response: While the agency did not want to require mining extraction to report emissions, thermal dryers associated with coal prep plants often have huge emissions of greenhouse gases. That is the reason the statute and rule only exempt sources permitted under chapter 22-3.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-

15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Larry Harris: DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits.

DEP Response: The requirements of section 7.3 were intended to be directed toward facilities that proposed to land apply filtrate as the beneficial use. It was intended to be applicable to both, if land application was the proposed method of reuse. Section 7.3 will be revised to more clearly reflect the applicability of the requirement for both long-term and short-term, if land application is the proposed beneficial reuse.

Rick Roberts and Larry Harris: Regarding the environmental effects of disposal of sludge are the values in Table 1 of the rule sufficient?

DEP Response: The Table 1 values are the same as the sewage sludge levels in DEP's other rules, and the agency believes they are supported by sound science.

Rick Roberts and Larry Harris: Mr. Harris expressed concern with the distinction between "beneficial reuse" and "disposal." Mr. Roberts believes that his concern is satisfied by the language in section 3.1.b.1.

Rick Roberts: The rule should include general permits as proposed.

Larry Harris: Only individual permits should be allowed under the rule.

DEP Response: There will be public notice in the general permit process.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced thanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

Karen Price: Section 6.1. states "....including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

DEP Response: This language will give the agency a better handle on transporters and middle-men involved in the process.

Karen Price: Section 7.3.a.1. states "....the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods.....".

1. The portion that states "..the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

DEP Response: Regarding dates, times and location of the training the agency will not require the information prior to the training. As far as the credentials of the instructor the agency needs this information as part of its curriculum review, in this case before the training.

Karen Price: Section 7.3.a.2 - This section states that a nonrefundable application fee of $280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process.

DEP Response: The agency agrees and believes the rule only requires a one-time fee.

Rick Roberts: Regarding the $5.00 per ton fee, how does a source measure the tonnage? Perhaps the agency should consider using a cubic-yard approach.

DEP Response: The agency will consider.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Larry Harris: Does the use removal in section 7.2.d follow the federal Clean Water Act requirements?

DEP Response: Yes, the agency followed all the requirements, federal and state, and required extensive information from the company. The agency also conducted two public meetings.
Bill Raney: Mr. Raney repeated his concern with the listing of trout waters in the rule and the fact that the list has to be approved by the Legislature. Karen Price agreed with this comment. Jackie Hallinan and Larry Harris did not agree with this comment.

Karen Price: Questioned the need for Appendix D, because the Category C use applies to all state waters.

DEP Response: Agency will consider.

Karen Price: Will the agency consider not making use removals go through the legislative process.

DEP Response: The agency decided not to include any language pertaining to this issue at this point in time, but will be subjecting this issue to the public participation process in the coming months.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Larry Harris: Scientific criteria should be used to add or delete streams from the Tier 2.5 list.

Rick Roberts: Can the SRF program give priority to facilities impacted by the Tier 2.5 list?

DEP Response: Agency will take this under advisement.

Larry Harris: Is the nomination process adequate?

DEP Response: The agency believes the process is generally adequate and workable. If, however a large number of streams are nominated at one time, the individual notification requirements may be difficult and costly.

At this point in the meeting, Bill Raney submitted written comments regarding several mining rules. (see attached)

60CSR8 - Environmental Excellence Program

Greg Adolfson summarized the rule revisions. He said the changes would provide more flexibility for the agency to approve or disapprove of incentives in the program, as well as other flexibilities.

SUMMARY

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

DEP Response: The section is not completed deleted, just the 1996 standards. This will allow the agency to use the most current standards.

Bill Raney: How many companies are participating in the program?

DEP Response: There are two in the National Program, Toyota and Dow.

Mr. Raney: Suggested we start with 39.

Mr. Harris: Asked about section 2.11 in the definitions regarding "trading" and if it includes cross-pollutant trading.

DEP Response: The definitions were unchanged from the ones the EQB first adopted in 2001. The agency does not think it allows cross-pollutant trading.

Division of Mining and Reclamation

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

§38-2-3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38-2-5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. The changes in §38-2-5.6 clarify what operations may be exempt from conducting a "Surface Water Runoff Analysis", monitoring requirements and removes phase-in compliance schedule that expired on June 19, 2006. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. New §38-2-11.8 titled "Bond Credit for Reclamation of Bond Forfeiture Site under a No Cost Reclamation Contract" encourages qualified operators to undertake reclamation of bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and ground waters and the contribution of sediment to adjacent areas, and restoring land to beneficial uses. Changes in §38-2-14.15.c.2 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in 14.15.e remove a phase-in compliance schedule that expired in 2004. The changes in §38-2-23 are being made to make the mining rule consistent with the proposed changes in the State's NPDES Mining Rules.

COMMENT

No questions.

47CSR5A – Individual State Certification of Activities Requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Mr. Harris: How do we determine the "ordinary high water mark" under section 4.2.f.4 and how is it determined on a small stream?

DEP Response: The US Army Corps of Engineers is responsible for determining "waters of the U.S." under the rule.

Mr. Harris: What are the differences between coal and non-coal impacts and how are they determined?

DEP Response: Rule has to be consistent with statute.

47CSR30 – WV/NPDES Rules for Coal Mining Facilities

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit. This rule clarifies provisions related to coal remining operations and provides a remining water quality standard variance for any parameter of concern.

COMMENT

No questions.

199CSR1 - Surface Mining Blasting Rule

SUMMARY

The proposed amendments change the following sections: 2.27. Adds the definition of "other structure" (structures built by the permittee); 2.38 Clarifies definition of "surface mine operation"; 3.2.C. Plan for blasting should include seismic monitoring when within 1000 ft of a structure, and performance specifications for blasting seismographs; 3.4. Areas of blasting that will be regulated for shaft and slope development; 3.6.c.3. Requiring field practice guidelines for blasting seismographs; 3.7a Request for alternate limits must have written consent of the owner; 3.9. Minimum qualifications and continuing education requirements for surveyor; 4.1.b. Allows the agency to consider blasting experience of applicants that was gained prior to the last three years; 4.5.d. Requires applicants who have been suspended or revoked in other states to show cause as to why should be issued a certification; 4.9.a.2 process for issuing a temporary suspension to a blaster and appeal rights; 4.13 Clarifies blasters responsibility of training the blasting crew; 5.2.a.3&4 Clarifies

the investigations process on a claim of blasting damage; 6.1 Requiring that any arbitrators that are removed from the list must be done with cause; and 7.3 Detonators and initiation systems are not considered for calculation of fees.

COMMENT

No questions.

Office of Oil and Gas

35CSR3 – Coalbed Methane Wells Rule

SUMMARY

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR3. Series 3 is a legislative rule in place to enforce the provisions in WV Code §22-21-1 et seq., Coalbed Methane Wells and Units, commonly referred to at the Coalbed Methane Act. The revisions will: Address the establishment of special field rules to promote the orderly development of coalbed methane fields; Protect the correlative rights of all owners located within the geographic area for which special field rules are established; Provide a process by which the Review Board may hold a hearing on an application for special field rules and issue such rules; Insert language (Section 17) which was inadvertently deleted from the rule during the 2006 legislative session. This language existed in the rule prior to the revisions in 2006.

COMMENT

Is this the same rule that went through last year?

DEP Response: Yes, except for two sections that had changes:

16.2.e – advertisement "15 days"

16.1.6.1 – "FOIA" issue that came out of the LRMRC.

Mr. Raney: Is this the product of the stakeholders group?

DEP Response: Yes.

Ms. Hallinan: What is a field rule?

DEP Response: Special spacing procedure for coalbed methane wells. It deals with pooling and royalty issues.

Division of Land Restoration

33CSR10 – Recycling Assistance Grant Program

SUMMARY
This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

COMMENT

No questions.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

This legislative rule establishes the eligibility, procedures, standards and legal documents required for voluntary and brownfield cleanups and updates risk protocol standards, including updates to the deminimis table. It also includes changes to the land use covenant section to incorporate the components of the Uniform Covenant Act.

COMMENT

Ms. Dooley: Are there grant dollars for brownfields?

DEP Response: Yes

The next scheduled Advisory Council Meeting will be on May 30, 2007 at 10:00 a.m. Mr. Huffman asked the Council members to notify the DEP of which rules they want to discuss so the right agency person can be at the meeting. He also asked them to submit comments prior to the meeting if possible.

DO, temperature, and fecal coliform. We feel that they can assess these parameters and should not treat them separately.

45CSR42 Greenhouse Gases

The fact that the DEP is beginning to deal with the process of greenhouse gases that lead to global warming is commendable. Some questions on the rule were raised by Dr. Kotcon:

The greenhouse gases emissions inventory rule (45-42-1) needs to be
>strengthened considerably. The sections on emissions inventory
>(section 5, pages 3-4) is so vague as to be meaningless, especially
>as it deals with sequestration for area sources and sinks. I do not
>see how any meaningful data can be generated with this language.
How would the carbon sequestration be estimated? Has there been studies estimating the biogenic incorporation of CO2 per acre of woodland, for example? The rule appears to be a vague in how it would be implemented.

Air Quality and Emission Rules (see below)

45CSR8 Ambient Air Quality Standards

Don Garvin pointed out that the the antidegradation language was removed from this rule, and it was explained that the agency feels these provisions are now covered in 45-CSR-14("Prevention of Significant Deterioration.") However, the language that was stricken does not appear in 45-CSR-14, and the stricken language is the ONLY statement in the rules of West Virginia's antidegradation policy for air quality. The environmental community still believes the stricken language should be restored.

Here is what should be reinstated:

§45-8-2. Anti-Degradation Policy.

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

45CSR41 Control of Annual SO2 emissions

45CSR6 Control of Air Pollution from Refuse Combustion

45CSR39 Nitrogen Oxides

I raised the general concern whether the standards for air quality were consistent with the EPA guidelines or not. Further, were any recognized health authorities consulted when these levels were determined? I also raised the issue that West Virginia is increasing supplying electricity to the population east of our mountains. New transmission lines are proposed that are to be connected with coal burning power plants. Billy Jack Gregg, Consumer Advocate for the WV PSC has pointed out that the states receiving our generated power will not permit generation plants in their region. They are concerned about air pollution and its various effects. But they need power, so they turn to West Virginia. This helps the coal industry and generation plants, but puts the health of West Virginians in jeopardy. I feel that our air quality and emission limits should be even more stringent than the EPA calls for in order to protect our citizens. This should be particularly true for power plants that export electricity.

Dr. Kotcon has raised the following issues:

45-CSR-8 Ambient Air Quality Standards

The standards for PM2.5 and Ozone are not adequately protective. I recommend that the standards be lowered from 15 ug/m^3 to 13 ug/m^3 in section 4.2.b., and from 0.08 ppm to 0.07 ppm in section 4.4.b.

The air standards (45-8-1) retains the standards for PM2.5 and ozone
>that the EPA Clean Air Scientific Advisory Council has already
>determined to be inadequate. Keeping these old standards will kill
>dozens or hundreds of West Virginians each year.

>The rule on refuse combustion (45-6-1) attempts to revise the
>definition of low-level radioactive waste and revives the
>Below-Regulatory_Concern (BRC) issue from some years ago. It also
>creates a large number of exemptions for "temporary" pollution
>sources. I am not yet sure if this re-opens old battles over
>medical waste incineration, but this was a really hot issue a few
>years back.

Comment submitted by Karen Price at Council meeting 5/30/07

Questions/Comments on DEP's 2007 Proposed Rules

- **45 CSR 8 Ambient Air Quality Standards**

Section 4.2.c – $PM_{2.5}$ Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m^3. This should be 65 ug/m^3, pursuant to 40 CFR 50.7.

- **45 CSR 39, 45 CSR 40, 45 CSR 41**

The opt-in unit language is deleted from each of these rules. What is the purpose for the deletion of these provisions?

- **33 CSR 30, Underground Storage Tank Rules**

Section 6.1. states "....including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank....." The portion that states "....accepts payment...." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

Section 7.3.a.1. states " ...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods....."

1. The portion that states " ..the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might

occur on short notice and for one individual. The burden of having to repor the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

Section 7.3.a.2 - This section states that a nonrefundable application fee of $280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process. The State should clarify or make provision for a company to submit one application for the training program that will be administered to all company UST facilities. This will make the $280 application fee reasonable and the application process less burdensome

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: tmowrer@wvdep.org

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	2008 Increase/Decrease (use "-")	2009 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, 2007 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: June 1, 2007

Signature of Agency Head or Authorized Representative

John A. Benedict, Director

RECEIVED

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
~~FOR SOURCE CATEGORIES PURSUANT TO 40 CFR PART 63~~

§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 ~~Part~~ 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. -- ~~April 28, 2006~~.

1.4. Effective Date. -- ~~June 1, 2006~~.

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 ~~Part~~ Parts 61 and 63, effective ~~June 1, 2005~~ June 1, 2007.

1.6. Repealed provisions. -- The repealed provisions of 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61" relating to federal standards for emissions of hazardous air pollutants are incorporated into this rule as of the effective date set forth in subsection 1.4.

~~1.6.~~ 1.7. Former Rules. -- This legislative rule amends 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63" which was filed ~~May 20, 2005~~ April 28, 2006, and which became effective ~~June 1, 2005~~ June 1, 2006.

§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 Part 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, ~~will~~ shall have the meaning ascribed to them in 40 CFR ~~Part~~ Parts 61

and 63. Words and phrases not defined therein ~~will~~ 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 ~~Part~~ Parts 61 and 63 which results or will result in a violation of this rule.

3.2. ~~After the effective date of the state permit program under Title V of the CAA, no~~ 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. ~~After the effective date of the state permit program under Title V of the CAA, the~~ The Secretary ~~will~~ 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 ~~must~~ 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 ~~Part~~ 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 ~~June 1, 2005~~ June 1, 2007, for the purposes of implementing a program for emission standards for hazardous air pollutants ~~for source categories~~, except as follows:

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

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 ~~will~~ 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. Subparts DDDDDD, EEEEEE, FFFFFF, and GGGGGG of 40 CFR Part 63 shall be excluded; and

4.1.e. 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 ~~will~~ 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 record-keeping 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 ~~must~~ shall be construed or inferred to mean that permit requirements in accordance with applicable rules ~~will~~ 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 ~~will~~ shall be resolved by the determination of the Secretary and the determination ~~will~~ shall be based upon the application of the more stringent provision, term, condition, method or rule.



Federal Register

Thursday,
May 3, 2007

Part III

Environmental Protection Agency

40 CFR Part 63

National Air Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0009; FRL–8303–6]

RIN 2060–AK22

National Air Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating revised standards to limit emissions of methylene chloride (MC), trichloroethylene (TCE) and perchloroethylene (PCE) from facilities engaged in halogenated solvent cleaning. On December 2, 1994, EPA promulgated technology-based emission standards to control HAP emissions of halogenated solvents from halogenated solvent cleaning. Pursuant to the Clean Air Act (CAA) section 112(f), EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is promulgating more stringent standards in order to provide an ample margin of safety to protect public health. These final standards will provide further reductions of MC, PCE, and TCE beyond the 1994 national emission standards for hazardous air pollutants (NESHAP), through application of a facility-wide total MC, PCE, and TCE emission standard. In addition, EPA has reviewed the standards as required by section 112(d)(6) of the CAA and has determined that, taking into account developments in practices, processes, and control technologies, no further action beyond what is required under CAA section 112(f) is necessary at this time.

EFFECTIVE DATE: This final rule is effective May 3, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0009. 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 (CBI) 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 *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2002–0009, EPA West Building, Room B–102, 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) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule amendments, contact Mr. H. Lynn Dail, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2363; fax number (919) 541–3470; e-mail address: *dail.lynn@epa.gov*. For questions on the residual risk analysis, contact Mr. Dennis Pagano, EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Research Triangle Park, NC 27711; telephone number (919) 541–0502; fax number (919) 541–0840; e-mail address: *pagano.dennis@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule include:

Category	NAICS [1] code	Examples of potentially regulated entities
Industry	Any of numerous industries using halogenated solvent cleaning, primary affected industries include those in NAICS Codes beginning with: 331 (primary metal man.), 332 (fabricated metal man.), 333 (machinery man.), 334 (computer and electronic product man.), 335 (electrical equipment, appliance, and component man.); 336 (transportation equipment man.); 337 (furniture and related products man.); and 339 (misc. man.).	Operations at sources that are engaged in solvent cleaning using MC, PCE, or TCE.
Federal, State, local, and tribal government.		Operations at sources that are engaged in solvent cleaning using MC, PCE, or TCE.

[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 the final rule. This final rule directs an owner or operator of a facility that is subject to the 1994 NESHAP for Halogenated Solvent Cleaning (40 CFR 63.460 of subpart T), to determine whether today's final standards require the facility additionally to operate under the certain specific emission limits. If you have any questions regarding the applicability of the final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning (40 CFR part 63, subpart T) is Docket ID No. EPA–HQ–OAR–2002–0009.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted on EPA's Technology Transfer Network (TTN) 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 2, 2007. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with

reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final action 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 a mechanism for EPA to convene a proceeding for reconsideration, "if the person raising the objection can demonstrate to the EPA that it was impracticable to raise such an 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 the EPA 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, Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Outline. The information presented in this Preamble is organized as follows:

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I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a comprehensive regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In accordance with CAA section 112(c), EPA identifies categories and subcategories of sources emitting one or more of the HAP listed in CAA section 112(b). CAA section 112(d) then requires us to promulgate national technology-based emission standards for each category of sources that emits or has the potential to emit any single HAP at a rate of ten tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as "major sources"), as well as for certain area sources emitting less than those amounts. For major sources, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. For area sources, CAA section 112(d)(5) provides that the standards may reflect generally available control technology or management practices in lieu of MACT, and are commonly referred to as generally available control technology (GACT) standards.

In what we refer to as the "technology review", CAA section 112(d)(6) then requires EPA to review the CAA section 112(d) standards and to revise them "as necessary, taking into account developments in practices, processes and control technologies," no less frequently than every 8 years.

The residual risk review is described in section 112(f) of the CAA. EPA prepared 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 to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report ("Residual Risk Report to Congress," EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report; thereby, triggering the second stage of the standard-setting process, the residual risk phase.

CAA section 112(f)(2) requires us to determine whether additional standards are "required in order to provide an ample margin of safety to protect public health." If the MACT standards for a 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-a-million," EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. EPA's framework for making ample margin of safety determinations under CAA section 112(f)(2) is provided in the Benzene NESHAP (54 FR 38044, September 14, 1989) which was codified by Congress in CAA section 112(f)(2)(B). The EPA also must promulgate more stringent standards to prevent an adverse environmental effect (defined in CAA section 112(a)(7) as "any significant and widespread adverse effect * * * 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."), but must consider costs, energy, safety, and other relevant factors in doing so.

B. What is halogenated solvent cleaning?

Halogenated solvent cleaning machines use the halogenated solvents methylene chloride (MC), perchloroethylene (PCE), trichloroethylene (TCE), or 1,1,1,-trichloroethane (TCA) and halogenated solvent blends or their vapors to remove soils such as grease, oils, waxes, carbon deposits, fluxes, and tars from metal, plastic, fiberglass, printed circuit boards, and other surfaces. Halogenated solvent cleaning is typically performed prior to processes such as painting, plating, inspection, repair, assembly, heat treatment, and machining. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines. Buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines.

Halogenated solvent cleaning does not constitute a distinct industrial category, but is an integral part of many major industries. The five 3-digit NAICS Codes that use the largest quantities of halogenated solvents for cleaning are NAICS 337 (furniture and related products manufacturing), NAICS 332 (fabricated metal manufacturing), NAICS 335 (electrical equipment, appliance, and component manufacturing), NAICS 336 (transportation equipment manufacturing), and NAICS 339 (miscellaneous manufacturing). Additional industries that use halogenated solvents for cleaning include NAICS 331 (primary metals), NAICS 333 (machinery), and NAICS 334 (electronic equipment manufacturing). Non-manufacturing industries such as railroad (NAICS 482), bus (NAICS 485), aircraft (NAICS 481), and truck (NAICS 484) maintenance facilities; automotive and electric tool repair shops (NAICS 811); and automobile dealers (NAICS 411) also use halogenated solvent cleaning machines. We estimated that there were approximately 16,400 batch vapor, 8,100 in-line, and perhaps as many as 100,000 batch cold cleaning machines in the U.S. prior to promulgation of the MACT standards. More recent information shows that the current number of cleaning machines is much lower than these pre-MACT estimates. We currently estimate the number of sources in this source category to be about 3,800 cleaning machines located at 1,900 facilities in the U.S. This estimate is based on information we collected in 1998 and reflects the decreases in HAP emissions and demand that were expected due to implementation of MACT control technologies and work practice standards. Information suggesting that further decreases in solvent usage and therefore, solvent emissions, have occurred in the post-MACT implementation years may reflect that either the number of sources in the source category have declined or that sources are implementing methods to recycle more solvent, resulting in reduced emissions and some cost savings.

"Solvent cleaning machine" is defined in the **Federal Register**, 40 Code of Federal Regulations (CFR) § 63.461. Solvent cleaning machine types such as batch cleaners and in-line cleaners are also described. Both cleaner types can be designed to use either solvent at room temperature (cold cleaners) or solvent vapor (vapor cleaners).

Continuous web cleaners are a subset of in-line cleaners that are used to clean products such as films, sheet metal, and wire in rolls or coils. The workload is uncoiled and conveyorized throughout the cleaning machine at speeds in excess of 11 feet per minute and recoiled or cut as it exits the machine. Emission points from continuous cleaners are similar to emission points from other inline cleaners. Continuous cleaners are semi-enclosed, with emission points where the workload enters and exits the machine. Squeegee rollers reduce carry out emissions by removing excess solvent from the exiting workload. Some continuous machines have exhaust systems similar to those used with some other in-line cleaners.

C. What are the health effects of halogenated solvent cleaning?

MC, PCE, TCA, and TCE are the primary halogenated solvents used for solvent cleaning. The health effects of these four solvents were described in the proposed rule of August 17, 2006 (71 FR 47680), which is available for review in docket EPA–HQ–OAR–2002–0009. All four produce acute and/or chronic non-cancer health effects at sufficient concentrations; three of the four have been classified as probable or possible human carcinogens by either EPA or other governmental or international agencies. Carbon tetrachloride and chloroform are no longer used as degreasing solvents; therefore, their health effects were not discussed in the proposed rule.

The Agency's Integrated Risk Information System's (IRIS) toxicological reviews of PCE, TCE and MC are currently being developed or revised. The current schedule indicates that the new or final IRIS toxicological reviews of the carcinogens PCE, TCE and MC are not expected until late 2008 for PCE, mid 2009 for MC, and late 2010 for TCE. A publicly available draft revised toxicological review of the non-carcinogenic HAP TCA, has been released for external peer review. A final revised IRIS toxicological review of TCA is not expected until late 2007. The National Research Council (NRC) released a report in 2006 that described their findings after a comprehensive review of the health effects of TCE, focusing on critical issues in developing an objective, realistic, and scientifically based health risk assessment for TCE. This report is available at *http://www.nas.edu/catalog/11707.html.* Toxicity or status information for the four HAPs may be obtained from the following Web sites: EPA's Toxicity database at *http://www.epa.gov/ttn/atw/toxsource/table1.pdf* shows the benchmarks for the four HAPs used in the risk assessment. Specific information underlying the values used may be found at the following locations: California EPA's Web site at *http://www.oehha.ca.gov/air/hot_spots/index.html* has the background information on PCE and TCE used to develop the cancer potency values.

The Agency for Toxic Substances and Disease Registry's Web site at *http://www.atsdr.cdc.gov/toxpro2.html* has the background information used to develop the non-cancer values for MC and PCE.

EPA's IRIS Web site at *http://www.epa.gov/iris/index.html* provides the information supporting the cancer potency value for MC.

Status reports for IRIS chemical reassessments, (*i.e.*, TCA) are available at *http://cfpub.epa.gov/iristrac/index.cfm.*

D. What does the 1994 halogenated solvent cleaning NESHAP require?

On December 2, 1994, we promulgated national emission standards for halogenated solvent cleaning (59 FR 61801, (December 2, 1994)) and required existing sources to comply with the national emission standards by December 2, 1996.

The promulgated standards in 40 CFR Subpart T include multiple alternatives to allow owners or operators maximum compliance flexibility. The final rules for the halogenated solvent cleaning source category are available in the docket, EPA–HA–OAR–2002–0009.

II. Summary of the Proposed Rule

The August 17, 2006 proposed rule would have required all owners and

operators of halogenated solvent cleaning machines that are subject to the 1994 NESHAP (40 CFR Part 63, subpart T), except for cold batch area source cleaning machines subject to GACT, to comply with a facility-wide solvent emission limit, summarized in Table 1 of this Preamble. As proposed, the standards would be in addition to the requirements of the 1994 NESHAP.

Specifically, we co-proposed two facility-wide emission limits for facilities that use multiple HAP solvents, 25,000 kg/yr and 40,000 kg/yr of MC equivalent emissions, and solicited comments on which of these two options would be the most appropriate. We developed a method for facilities using multiple HAP solvents to determine their emission limit by calculating their MC-equivalent emissions using the toxicity-weighting equation, which is shown as equation 1, below. We proposed that where more than one halogenated solvent is used at a facility, the owner or operator would be required to calculate the facility's weighted halogenated solvent cleaning emissions using equation 1 and to comply with the limit in the last row of Table 1 of this Preamble. For owners or operators of facilities that use a single halogenated solvent (MC, TCE or PCE), we proposed that the owner or operator of each affected facility would be required to ensure that its emissions of the single halogenated solvent would not exceed the single-solvent limits specified in Table 1 of this Preamble.

TABLE 1.—SUMMARY OF THE PROPOSED FACILITY-WIDE ANNUAL EMISSION LIMITS

Solvents emitted	Proposed facility-wide annual emission limits in kg/yr—option 1	Proposed facility-wide annual emission limits in kg/yr—option 2
PCE only	[a] 3,200 [b] (26,700)	[a] 2,000 [b] (16,700)
TCE only	10,000	6,250
MC only	40,000	25,000
Multiple solvents—Calculate the MC-weighted emissions using equation 1	40,000	25,000

[a] *PCE emission limit calculated using California EPA (CalEPA) Unit Risk Estimate (URE).*
[b] *PCE emission limit calculated using the EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) Unit Risk Estimate (URE).*

Equation 1:

(kgs/yr of PCE emissions × A)+(kgs/yr of TCE emissions × B) + (kgs/yr of MC emissions) = MC weighted emissions in kgs/yr

In equation 1, the facility emissions of PCE and TCE are weighted according to their carcinogenic potency relative to that of MC. Thus, "A" in the equation is the ratio of the cancer unit risk estimate (URE) for PCE to the URE for MC, and the "B" in the equation is the ratio of the URE for TCE to the URE for MC. Because the IRIS assessment for PCE is in process, we requested comment on the use of the CalEPA URE, the OPPTS URE, or other values in deriving the PCE emission limit for the final rule. See 71 FR 47680. As explained in our proposal, the value of "A" would be 1.5 or 12.5, depending on whether we used the OPPTS URE or the CalEPA URE value for PCE. The value for "B" is 4.25. At proposal, we stated that there may be other approaches for deriving emissions standards for facilities that use multiple HAP. We requested comment on other possible methods for establishing emission limits at facilities using more than one of the listed HAP solvents.

Further, at proposal we presented and discussed our evaluation of four other emission limits that would reduce residual risk. These emission limits are summarized below:

- 100,000 level—Sources would reduce MC-equivalent emissions to no more than 100,000 kg/yr (220,000 lbs/yr).
- 60,000 level— Sources would reduce MC-equivalent emissions to no more than 60,000 kg/yr (132,000 lbs/yr).
- 15,000 level— Sources would reduce MC-equivalent emissions to no more than 15,000 kg/yr (33,000 lbs/yr).
- 6,000 level—Sources would reduce MC-equivalent emissions to no more than 6,000kg/yr (13,200 lbs/yr).

See 71 FR 47680–81 for further discussion of these four emission levels.

We proposed a compliance deadline of two years after the effective date of the final rule for existing sources by resolving the seemingly conflicting provisions of section 112(f)(4)(A) and 112(i), and by determining that CAA section 112(i) was the controlling provision for compliance deadlines for existing sources with regard to standards promulgated under CAA section 112(f)(2). This proposal was based on our belief that the proposed compliance date was realistic for any affected facility that has to plan a control strategy, purchase and install the control device(s), and bring the control device(s) online.

See 71 FR 47683–84 for a complete discussion of the proposed facility-wide solvent emission limit, compliance options, and our rationale for proposing the facility-wide solvent emission limit.

A. Issuance of the Notice of Data Availability (NODA)

We received comments on the proposed rule from industry, states, solvent manufacturers, industry associations and district air associations. Industry's comments were primarily submitted by four specific sectors: Narrow tubing manufacturing facilities, facilities that manufacture specialized products requiring continuous web cleaning, aerospace manufacturing and maintenance facilities, and military depot maintenance facilities. Additional comments were submitted by facilities that use multiple halogenated solvent cleaning machines. Comments and data submitted by the four industry sectors focused on the unique nature and size of the halogenated solvent cleaning machines they use in their cleaning operations. These data and information were otherwise not available to EPA at proposal. The commenters expressed concern about their ability to comply with the proposed emission limits because of technical and economic difficulties. They also expressed an inability to meet the proposed compliance deadline. Based on these comments and our desire to reconcile these concerns, we issued a Notice of Data Availability (NODA) on December 14, 2006 (71 FR 75182). In addition, in order to have adequate time to address these concerns, we asked for and received an extension of our December 15, 2006 court-ordered promulgation deadline to April 16, 2007. The NODA was intended to gather more information, especially from these four industry sectors, on the availability of technology or methods to meet the proposed emission limits, the costs to achieve the proposed emission limits, and the time required to achieve the proposed emission limits.

As a result of the NODA, EPA received significant comments from responders associated with the above-noted industries, industry associations, and commenters that were not associated with the above-noted industries. They provided additional data and information that were directly relevant to the promulgation of the proposed facility-wide emission limits. These data and information were otherwise not available to EPA at proposal. A more complete description of the comments received may be found in section V of this Preamble and in the docket for this rule.

III. Summary of Final Rule

A. What does the final rule require?

Using the data from comments on the proposal and NODA, we re-evaluated the costs and technical feasibility of complying with the proposed emission limits. The re-analysis resulted in a final rule that changed from what we proposed, especially for four industry sectors: narrow tubing manufacturing facilities, facilities that manufacture specialized products requiring continuous web cleaning, aerospace manufacturing and maintenance facilities, and military depot maintenance facilities.

1. What are the requirements for Halogenated Solvent Cleaning Machines?

EPA is promulgating a facility-wide emission limit of 60,000 kg/yr MC equivalent, as shown in Table 2 of this Preamble, applicable to all existing halogenated solvent cleaning machines with the exception of halogenated solvent cleaning machines used by the following industries: Facilities that manufacture narrow tubing, facilities that manufacture specialized products requiring continuous web cleaning, aerospace manufacturing and maintenance facilities, and military depot maintenance facilities.

This final rule also requires owners or operators of halogenated solvent cleaning machines that use any one of the halogenated solvents covered by this rule (*i.e.*, MC, PCE or TCE), with the exception of the halogenated solvent cleaning machines used by the above-noted industries, to ensure that facility-wide solvent emissions from all halogenated solvent cleaning activities are less than or equal to the limit for the single halogenated solvent specified in Table 2 of this Preamble.

This final rule also requires halogenated solvent cleaning machines that are constructed or reconstructed after August 17, 2006, with the exception of halogenated solvent cleaning machines associated with the above-noted industries, to comply with the 60,000 kg/yr MC equivalent emission limit upon the effective date of this rule or upon startup, whichever occurs later. The revised requirements apply in addition to the 1994 NESHAP.

For area sources subject to the 1994 NESHAP and constructed or reconstructed after August 17, 2006, the final rule revisions add to the previous 1994 NESHAP by requiring implementation of the 60,000 kg/yr MC equivalent facility-wide emission limit upon the effective date of this rule or upon startup, whichever occurs later. This final rule also limits the use of any one of the halogenated solvents covered by this rule (*i.e.*, MC, PCE or TCE), at area sources, to the limits for the single halogenated solvent specified in Table 2 of this Preamble. The area sources in the halogenated solvent cleaning source category that are subject to GACT are not subject to these additional standards. These area sources are cold batch cleaning machines.

When a facility's total halogenated solvent emissions from its degreasing operations exceed the applicable emission limits, the facility must implement means to comply with these amended standards. In addition, under this final rule, the 1994 NESHAP requirements for all halogenated solvent cleaning machines remain applicable. Compliance with the 60,000 kg/yr MC equivalent emission limit is demonstrated by determining the annual PCE, TCE, and MC emissions for all cleaning machines at the facility, using Equation 1 as necessary, and comparing to the emission limits in Table 2.

There are no other additional equipment monitoring or work practice requirements associated with the facility-wide annual emissions limit. Annual emissions of PCE, TCE, and MC are determined based on records of the amounts and dates of the solvents added to cleaning machines during the year, the amounts and dates of solvents removed from cleaning machines during the year, and the amounts and dates of the solvents removed from cleaning machines in solid waste. Records of the calculation sheets showing how the annual emissions were determined must be maintained. A facility will determine compliance with the standards by comparing their annual MC-equivalent emissions to the limits specified in Table 2 of this final rule.

TABLE 2.—SUMMARY OF THE FACILITY-WIDE ANNUAL EMISSION LIMITS

Solvents emitted	Final general halogenated solvent cleaning facility-wide annual emission limits in kg/yr	Final military maintenance facility-wide annual emission limits in kg/yr
PCE only	4,800	8,000
TCE only	14,100	23,500
MC only	60,000	100,000
Multiple solvents—Calculate the MC-weighted emissions using equation 1	60,000	100,000

Equation 1:

(kgs/yr of PCE emissions × A)+(kgs/yr of TCE emissions × B) + (kgs/yr of MC emissions) = MC weighted Emissions in kgs/yr

In this equation, the facility emissions of PCE and TCE are weighted according to their carcinogenic potency relative to that of MC. Thus, "A" in the equation is the ratio of the URE for PCE to the URE for MC, and the "B" in the equation is the ratio of the URE for TCE to the URE for MC. The value of "A" is 12.5 (see section C below). The value for "B" is 4.25.

2. What are the requirements for halogenated solvent cleaning machines at military depot maintenance facilities?

For existing halogenated solvent cleaning machines in use at military depot maintenance facilities where multiple halogenated solvents are emitted, the final rule sets a facility-wide emission limit of 100,000 kg/yr of MC equivalent emissions as indicated in Table 2 of this Preamble. This final rule also limits the use of any one of the halogenated solvents covered by this rule (*i.e.*, MC, PCE or TCE), to the limits for the single halogenated solvent specified in Table 2 of this Preamble. In

addition, the 1994 NESHAP requirements remain applicable.

For halogenated solvent cleaning machines that are constructed or reconstructed after August 17, 2006 and that are used at military depot maintenance facilities, the final rule revisions add to the previous 1994 NESHAP by requiring implementation of the 100,000 kg/yr MC equivalent emission limit upon the effective date of this rule or upon startup, whichever occurs later.

Military Depot Maintenance Facilities are Government-owned industrial centers that operate solely for the purpose of repairing, modifying, converting and refitting worn and/or damaged military assets for redistribution to military units and are subject to the 1994 NESHAP. Depot level maintenance includes the repair, fabrication, manufacture, rebuilding, assembly overhaul, modification, refurbishment, test, analysis, repair-process design, in-service engineering, upgrade, painting and disposal of parts, assemblies, subassemblies, software, components, or end items that require industrial shop facilities, tooling, support equipment, and/or personnel of higher technical skills, or processes beyond the military installation's organizational level capability.

3. What are the requirements for continuous web cleaners and halogenated solvent cleaning machines at narrow tube manufacturing and aerospace facilities?

The requirements set forth in this final rule are not applicable to continuous web cleaning machines, halogenated solvent cleaning machines that are located at narrow tubing manufacturing facilities, and the aerospace manufacturing and maintenance industry and facilities. Narrow tube manufacturing facilities primarily engage in the production of small diameter (mechanical and hypodermic size) cold drawn metallic, seamless tubes from materials such as stainless steel, nickel alloys, titanium and its alloys, and alloys of zirconium with a portion of the outside diameters 1/4" or less (a subset of NAICS 331210), and are subject to the 1994 NESHAP. Aerospace manufacturing and maintenance facilities manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles, and are subject to the 1994 NESHAP. The 1994 NESHAP requirements remain applicable to all the continuous web and halogenated solvent cleaning machines associated with the above-noted facilities.

For the above-noted facilities, we are adopting no changes to the 1994 NESHAP under CAA Section 112(f) because the current level of control called for by the existing NESHAP reduces HAP emissions to levels that present an acceptable level of risk, protects public health with an ample margin of safety, and prevents any adverse environmental effects. The finding regarding an "ample margin of safety" is based on a consideration of the additional costs of further control as represented by compliance with emissions limits adapted for each industry sector, considering availability of technology, costs and time to comply with further controls (see Section III.B., below for a discussion of our rationale for this final rule).

B. What is the rationale for the final rule?

Based on comments and data received on both the proposal and the NODA, we re-evaluated the risk, the technical feasibility, the costs of the proposed options, and the compliance time needed to implement the proposed options. This re-analysis focused especially on the four industry sectors discussed above. Additionally, in response to public comments we updated the risk assessment for the entire source category using the 2002 National Emissions Inventory (NEI) database, which was not available for the proposal. The following rationale presents the results of our re-analysis of the data.

1. Revision of the Baseline Risk Estimate

Based on public comment, we used the 2002 NEI inventory to re-analyze the risk from this source category. The resulting re-analysis of risk at the baseline emission level (*i.e.*, the level of emissions allowed by the 1994 MACT) indicated that the maximum individual cancer risk (MIR) associated with this source category is 100-in-a-million with an annual cancer incidence of 0.55. This is as compared to the 200-in-a-million MIR and 0.40 annual cancer incidence level that we presented at proposal, which was based on the 1999 NEI database. We consider both MIR values to be acceptable levels of maximum individual risk considering the number of people exposed at these levels and the absence of other adverse human and environmental health effects. We note that the MIR of 100-in-a-million (calculated using the 2002 NEI data) is the same regardless of the URE for PCE chosen for the risk analysis (*i.e.*, the CalEPA value or the OPPTS value, which results were contrasted at proposal). This is because PCE is not the only driver of the MIR risk level for the highest risk facilities.

Given the uncertainties associated with the development of emission inventories, neither the 1999 nor the 2002 NEI inventory should be considered as correct in an absolute sense or as suggesting temporal trends in degreasing machine populations or emissions. Rather, we consider them to be "snapshots" of the true long-term inventory of emissions for this source category, each carrying its own degree of uncertainty. As such, the derived risk assessment results compared above should be regarded as ranges within which the true risk metrics are likely to fall.

The revised population risk distribution at baseline emission levels shows that about 25 people are exposed to the MIR risk level, about 22,000 people are at estimated risks of ≥ 10-in-a-million risk level, and about 4,000,000 people are at estimated risks of ≥ 1-in-a-million. This is compared to approximately 90 people exposed to risks at the MIR level (200-in-a-million), about 42,000 people at estimated risks of ≥ 10-in-a-million risk level, and about 6,000,000 people at estimated risks of ≥ 1-in-a-million that we presented at proposal. Similar to the MIR and annual cancer incidence metrics, these values may be an indication of the uncertainty presented by the databases because, as earlier explained, both inventories are "snapshots" of the industry rather than an absolute reflection of the "current" state of the industry.

We did not reassess the environmental risks using the 2002 NEI inventory but believe that no "adverse environmental effects," as defined in CAA section 112(a)(7), would occur given the similarities of the human health risk results between the 1999 NEI data and 2002 NEI data and the fact that we showed in the proposal that no adverse environmental effects would likely occur using the 1999 NEI inventory.

2. Rationale for the 60,000 kg/yr MC Equivalent Emission Limit

EPA is promulgating a facility-wide emission limit of 60,000 kg/yr (MC equivalent emissions) applicable to emissions from all new and existing halogenated solvent cleaning machines that are subject to the 1994 NESHAP, with the exception of halogenated solvent cleaning machines used by the following industry sectors: Narrow tubing manufacturing, facilities that manufacture specialized products requiring continuous web cleaning, aerospace manufacturing and maintenance, military depot

maintenance operations, and cold batch cleaning machines (which are subject to GACT). Area sources operating halogenated solvent cleaning machines that are subject to GACT also are not required to comply with the facility-wide emission limits. This final rule reflects our decision that the 60,000 kg/yr MC equivalent emission limit from the August 17, 2006 proposal provides an ample margin of safety to protect public health and prevents adverse environmental effects.

In response to public comments received on our proposal and subsequent NODA, we re-examined the data and assumptions used to estimate the risk and compliance costs presented in the Preamble to our proposed rule. We determined that certain significant data and assumptions that we used to develop our cost estimates at proposal were either no longer relevant, not reflective of more recent inventory data, or not valid. As a result, we re-evaluated risks using the more recent inventory data and modified our cost estimates in response to public comment. The most important change we made is that we re-analyzed the risk metrics and costs using the halogenated solvent cleaning facilities in the finalized 2002 NEI, but removing facilities in four specific industry sectors—aerospace manufacture and maintenance facilities, narrow tube manufacturing facilities, facilities using continuous web cleaning machines, and military equipment maintenance facilities—from the database for the purpose of estimating the risks and compliance costs associated with the remaining facilities (Sections III.A.3 and III.B.3 explain our rationale for removing the facilities in these industry sectors from this analysis).

Other changes we made to our cost estimates in response to public comment are as follows:

- We used the finalized 2002 NEI database containing facility and emissions data as the source of our baseline emissions estimates. We removed aerospace manufacture and maintenance facilities, narrow tube manufacturing facilities, facilities using continuous web cleaning machines, and military equipment maintenance facilities from the database for the purpose of estimating the compliance costs for the remaining facilities. (Sections III.A.3 and III.B.3 explain our rationale for removing these facilities from this analysis.)
- We changed our assumptions about the percent reductions in emissions that can be achieved by vacuum-to-vacuum machines from 97 percent to 95 percent.
- In the proposal, we assigned no operation and maintenance cost to vacuum-to-vacuum machines. Based on public comment, our cost estimates for this final rule incorporate annual operation and maintenance costs of $18,832 for each machine.
- We updated the cost per gallon of PCE and TCE based on information provided by commenters representing manufacturers of solvents and the narrow tube manufacturing industry.
- We added a carbon adsorption device (CAD) option that assumes a 30 percent control in emissions. We did not have this option in the cost assumptions we made at proposal. We received comments that this option may be available for some industries but that it is at least ten times more expensive than the retrofit options we costed for the proposal.
- We reduced the number of units for which solvent switching could be a compliance option from 30 percent, used in the proposal, to 15 percent. We also corrected our method for calculating the emission reduction impacts and solvent savings associated with solvent switching.

After re-assessing the risk and calculating revised cost estimates, we re-examined our decision as to what level of control is necessary to provide an ample margin of safety to protect human health and to prevent adverse environmental effects, as required by the second step of the residual risk process under CAA section 112(f)(2). We considered the re-assessed risk estimates and the other health information along with additional factors consistent with the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989), such as cost, technological feasibility, uncertainties and other relevant factors as discussed at proposal. We re-analyzed the risk metrics using the halogenated solvent cleaning facilities in the 2002 NEI, but removing aerospace manufacture and maintenance facilities, narrow tube manufacturing facilities, facilities using continuous web cleaning machines, and military depot maintenance facilities.

At proposal we had presented two options for emission limits that would apply to all facilities in the category subject to the 1994 MACT standards—25,000 kg/yr MC equivalent and 40,000 kg/yr MC equivalent. We estimated that the 25,000 kg/yr limit would result in an emissions reduction of 6,778 tons/year, thereby reducing the MIR to 10-in-a million and reducing cancer incidence by 0.14–0.27 cases annually (depending on which URE we use for PCE), at an annual cost savings of $4.9 million annually or a cost savings of $724/ton HAP reduced. Comments received included support for and against this level of emissions reduction. Similarly, at proposal we estimated that applying the 40,000 kg/yr limit to facilities in the entire source category would result in an emissions reduction of 5,911 tons/yr, reducing the MIR to 20-in-a million and reducing cancer incidence by 0.12–0.23 cases annually, at an annual cost savings of $5.9 million annually or a cost savings of $1,000/ton HAP reduced.[1]

In developing the final rule, we initially re-examined the 25,000 kg/yr and 40,000 kg/yr levels of control for the subset of the category that excludes the four specific industry sectors identified above, using costing assumptions revised based on public comment as described above. This re-analysis uses the 2002 NEI data rather than the 1999 NEI data used in the proposal. We observed that although the overall reductions in MIR and cancer incidence at these levels would be similar to those estimated at proposal for the entire category, the substantial cost savings estimated at proposal would change to a net cost for both emission limits. This is a result of both our use of certain cost assumptions at proposal that have been amended for analyzing the cost of the final rule and the fact that four industry sectors are now being considered separately in this final rule. Specifically, for the 25,000 kg/yr limit, our analysis of the subset of the category that excludes the four specific industry sectors shows the same reduction in MIR (to 10-in-a-million) and similar estimated reduction in cancer incidence, 0.24 cases annually, as we showed at proposal. In contrast, our cost analysis for this subset of the source category shows a total annualized cost (not savings) of about $1.2 million, or a cost of about $520 per ton HAP reduced (we estimate 2,351 tons HAP reduced at this level). Similarly, for the 40,000 kg/yr limit, our revised analysis shows the

[1] In considering these revised cost estimates, it should be noted that there may be inherent uncertainties or anomalies in the availability of information that underlie our costs for our options, regardless of whether the estimates be positive costs or net cost savings. There may also be other factors that are not reflected in these estimates, however. For example, these estimates are largely based on a 15-year equipment life for existing affected cleaners (20-year for new cleaners) and a discount rate of 7 percent. If industry determines that a shorter equipment life for the controls considered in this analysis is appropriate based on perceived uncertainty of future availability of these solvents, then the opportunity cost of capital will be higher and our estimates of net cost savings may be altered. If these controls are in operation longer than expected by industry, however, then a longer equipment life would be appropriate and our estimates of costs, which may be net costs or net savings, may also be altered.

same reduction in MIR (to 20-in-a-million), and a similar estimated reduction in cancer incidence, 0.21 cases annually, as we showed at proposal, but at an annualized cost (not savings) of $130,000, or a cost of about $74 per ton HAP reduced (we estimate 1,759 tons HAP reduced at this level). The incremental tons of HAP reduced is nearly 600 tons with the incremental cost of about $1,800 per ton HAP reduced.

Because we estimated that the cost of achieving the 25,000 kg/yr and 40,000 kg/yr emissions limits would be considerably greater than what we had projected for this rulemaking at proposal, we additionally evaluated the next less stringent emission limit that was considered and presented in the proposal, but not selected as one of our two proposed options for limiting emissions from the entire category—a 60,000 kg/yr MC equivalent facility-wide emission limit. For the subset of the category that excludes the four specific industry sectors, we estimated that the 60,000 kg/yr level reduces the MIR to between 20-in-a million and 50-in-a million and reduces cancer incidence by about 0.19 cases/yr. These risk reductions are estimated to be achieved at total annualized cost savings of just over $1.3 million, or a savings of $832/ton of HAP reduced (we estimate 1,594 tons HAP reduced at this level).

To more fully analyze the implications of the various emission limits, we calculated the overall and incremental annualized cost per cancer case avoided. In this case, we compared the proposed 40,000 kg/yr option and the next less-stringent alternative, the 60,000 kg/yr MC equivalent emission limit. Given the overall reduction in incidence from the baseline of 0.21 cancer cases/yr at the 40,000 kg/yr level and the total annualized cost of $130,000, the overall cost per cancer case avoided is about $620,000.[2] For the 60,000 kg/yr level, there is an estimated overall reduction in incidence of 0.19 cases/yr and a total annualized cost savings of just over $1.3 million, resulting in an overall savings of almost $7 million per cancer case avoided. While these cost estimates for the overall reductions from current levels of control appear to be modest (given the estimated cost savings of intermediate control levels), the incremental reduction in emissions and risk of going from the 60,000 kg/yr to the more stringent 40,000 kg/yr level are small and the corresponding cost-effectiveness estimates of these incremental reductions are unacceptably high. The incremental incidence avoided between the 40,000 kg/yr level and the 60,000 kg/yr level is 0.02 cases. The annualized incremental cost between the two levels is about $1.5 million, with resulting incremental cost per cancer case avoided of about $73 million. (Annual operation and maintenance and annualized capital costs of $1.9 million per year and an estimated costs savings for solvent recovery of $0.4 million per year.)

After considering revisions to the risk and cost estimates presented at proposal, we believe that the 60,000 kg/yr MC equivalent emission limit for those halogenated solvent cleaning machines not identified as being in use by one of the four sectors discussed in Section III.A.3., above, protects public health with an ample margin of safety and prevents adverse environmental effects. Specifically, the 60,000 kg/yr level reduces 90 percent of the HAP emissions reduced at the 40,000 kg/yr level. The 60,000 kg/year emission limit achieves reductions in MIR and cancer incidence that are similar to those expected at the 25,000 kg/yr and 40,000 kg/yr emission levels. The incremental reduction in emissions with a 40,000 kg/yr level instead of 60,000 kg/yr imposes an incremental cost of $1.5 million per year. The incremental cost per ton of this reduction is roughly $9,000/ton. Moreover, in comparing the 40,000 kg/yr and the 60,000 kg/yr emission limits, the incremental cost per cancer case avoided, $73 million/case, is substantial, supporting our conclusion that the $60,000 kg/yr emission limit provides an ample margin of safety consistent with the Benzene NESHAP.

3. Rationale for the Requirements for Halogenated Solvent Cleaning Machines at Military Depot Maintenance Facilities

For halogenated solvent cleaning machines in use at military depot maintenance facilities, the final rule sets a facility-wide emission limit of 100,000 kg/yr (MC equivalent emissions). In addition, the 1994 NESHAP requirements remain applicable.

For halogenated solvent cleaning machines at these facilities that are constructed or reconstructed after August 17, 2006, the final rule revisions add to the previous 1994 NESHAP by requiring implementation of the 100,000 kg/yr MC equivalent emission limit upon the effective date of this rule or upon startup, whichever occurs later.

We based this decision on comments received from one such facility that we considered representative of these types of military facilities that maintain and restore military weapons systems. They indicated an increase in maintenance and restoration levels due to current worldwide military activities and that they could not meet either of the proposed emission limits within the proposed two-year compliance period. In additional comments in response to the NODA, and in subsequent meetings with the Agency, they indicated that they could meet the 100,000 kg/yr emission limit within a three-year compliance timeframe. We then projected that implementation of the 100,000 kg/yr MC equivalent emission limit will reduce the MIR from halogenated solvent cleaning machines associated with a military depot maintenance facility from about six-in-a-million to about three-in-a-million with an estimated reduction in annual cancer incidence of 0.002 cancer cases per year. An analysis of the costs for only this facility which was based on information from the 2002 NEI shows that the annual cost effectiveness of complying with this limit results in a cost savings of about $625/ton with annualized cost savings of approximately $55,761. Therefore, we believe that a requirement for these facilities to meet a 100,000 kg/yr MC equivalent emission limit is technically feasible, provides an annual and long-term cost savings, provides an ample margin of safety to protect public health and prevents adverse environmental effects.

4. Rationale for Our Decisions Regarding Continuous Web Cleaners and Halogenated Solvent Cleaning Machines at Narrow Tube Manufacturing and Aerospace Facilities

The requirements set forth in this final rule are not applicable to continuous web cleaning machines, halogenated solvent cleaning machines that are associated with the narrow tubing manufacturing industry, and aerospace manufacturing and maintenance industry and facilities. The requirements of the 1994 NESHAP and its subsequent amendments (where relevant) remain applicable to all the continuous web and halogenated solvent cleaning machines associated with the above-noted facilities.

We received comments from these three sectors on the proposal, in response to the NODA, and in subsequent meetings with

[2] For comparison purposes, we estimated that compliance with the requirements of the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities Final Rule (71 FR 42727, July 27, 2006), would result in an annualized cost of about $7 million to achieve a cancer incidence reduction of 2 cancer cases per year. This yields a cost of $3.5 million per cancer case avoided based on the CalEPA unit risk estimate for PCE.

representatives of these industries. They submitted information that stressed the unique nature of their cleaning operations, the technical infeasibility, the uncertainty of our original cost estimates, the processes involved, including review of their process changes by other federal agencies such as FDA and FAA (see Section IV.A. for additional discussion), and the difficulty they would experience in complying with the proposed emission limits within the proposed timeframe. Based on new information they provided in response to the NODA, including new cost information, we re-analyzed the costs for each of these three sectors and estimated the annual cost effectiveness of complying with emission limits they provided in comments.

For the Aerospace sector, we estimated an MIR of 30-in-a-million and an annual cancer incidence of 0.066 at their baseline emission level. We then projected that implementation of the 100,000 kg/yr MC equivalent limit (the maximum reduction we discussed in the proposal) would reduce the MIR from halogenated solvent cleaning machines associated with this sector to about 20-in-a-million with a reduction to their annual cancer incidence to about 0.03 cancer cases annually. Our revised cost estimate showed a cost effectiveness of $2,000/ton with a total annualized cost of nearly $630,000.

For the narrow tube manufacturers, we estimated an MIR of 70-in-a-million with an annual cancer incidence of 0.08 at their baseline level of emissions. Based on comments from this industry indicating that they could reasonably accomplish a 10 percent reduction in their current emission levels within a three-year compliance time, we developed risk and cost estimates for that level of reduction. We have estimated that the MIR would decrease to approximately 60-in-a-million with very little change expected in the annual cancer incidence. The annual cost effectiveness for complying with an overall 10 percent reduction in total emissions limit would be a cost of over $3,600/ton with total annualized costs of nearly $700,000.

For the continuous web cleaners, we estimated a baseline MIR risk level of about 30-in-a-million with an annual cancer incidence of 0.03 cases. Comments from this industry suggested they could achieve an 80 percent overall control efficiency compared to their current emission levels, within a three-year compliance period. The current NESHAP limit requires a 70 percent overall control efficiency. To achieve the 80 percent overall efficiency, facilities would be required to reduce emissions by 33 percent ((1–70%) − (1–80%) / (1–70%) = 33%). We developed risk and cost estimates for that level of reduction. We have estimated that under this scenario, the MIR would decrease to approximately 20-in-a-million with and the annual cancer incidence would decrease to 0.02 cases annually. The annual cost effectiveness of complying with the 80 percent overall emission control efficiency rate is over $3,400/ton with a total annualized costs of over $600,000.

In summary, we are adopting no changes to the 1994 NESHAP, under CAA Section 112(f) for the halogenated solvent cleaning machines used by the above-noted specific industry sectors (*i.e.*, aerospace, narrow tube manufacturers, and the facilities that use continuous web cleaning machines) because the current level of emissions control called for by the existing NESHAP both reduces risk to acceptable levels and provides an ample margin of safety to protect public health. Further, additional standards are not necessary to prevent adverse environmental effects. The finding regarding an "ample margin of safety" is based on a consideration of the relatively small reductions in health risks likely to result from the feasible emission reductions we evaluated, the additional costs required to achieve further control, the lack of technically feasible control options for these sectors, and the time required to comply with any requirements.

C. What is the compliance schedule?

In this final rule, in accordance with CAA section 112(i)(3), we are promulgating a compliance deadline of three years from the effective date of this final rule for all existing halogenated solvent cleaning machines and for all existing halogenated solvent cleaning machines at military depot maintenance facilities. Facilities described in Section III.A.3 above are not subject to further requirements beyond the 1994 NESHAP.

At proposal, we determined that CAA section 112(i) was the controlling provision that addresses compliance deadlines for existing sources with regard to standards promulgated under CAA sections 112(d)(6) and 112(f)(2). See 71 FR 47684–86. We hereby incorporate our discussion by reference. In the NODA, we asked for comments on the issue of whether a two year compliance deadline was sufficient time to comply with the co-proposed facility-wide emission limits. We received significant comments on this compliance deadline issue.

We are persuaded by the commenters representing the general population that use halogenated solvent cleaning machines that existing sources will need more than 2 years to comply with the final revised standards. Affected facilities would have to plan their control strategy, purchase and install the control device(s), and subsequently, bring the control device(s) online. We, therefore, believe that for the remaining halogenated solvent cleaning facilities, this final compliance deadline of three years is more reasonable and realistic than the proposed two year compliance deadline.

D. What is the final decision on the applicable unit risk value?

At proposal, we explained that the Agency's IRIS health assessment for PCE is currently being revised. Therefore, we requested comment on the use of the CalEPA URE,[3] the OPPTS URE,[4] or other values in deriving the PCE emission limit for the final rule (71 FR 47680). We received comments both supporting and opposing our use of the CalEPA URE for PCE.

For those situations where a particular chemical does not have a cancer potency value in IRIS, we have established a prioritization process for accessing other health assessment information (as described in our "Residual Risk Report to Congress" on pages 56 through 58). This hierarchy includes peer reviewed cancer potency values from EPA as well as from other agencies that conduct chemical carcinogenicity assessments such as the California Environmental Protection Agency (CalEPA). See also our responses to comments on this issue in the final Coke Oven Batteries NESHAP (70 FR 19998–20000, (April 15, 2005)). In this final rulemaking, we have chosen to use the CalEPA URE in preference to the OPPTS value for a number of reasons. CalEPA's PCE cancer unit risk value was derived using two different approaches for estimating the metabolized dose in humans, whereas the OPPTS value incorporated a single model of metabolism. Additionally, while the CalEPA approach allowed for the consideration of variability and uncertainty, the OPPTS approach did not. We have used both the CalEPA and OPPTS UREs for PCE in the risk

[3] California Department of Health Services (CDHS), *Health Effects of Tetrachloroethylene (PCE)*, Berkeley, CA, April 1992. (Available in the rulemaking docket.)

[4] U.S. Environmental Protection Agency, *Cleaner Technologies Substitutes Assessment: Professional Fabricare Processes* (EPA 744–B–98–001), June 1998. (Available at *http://www.epa.gov/dfe/pubs/garment/CTSA/.*)

characterizations for the dry cleaning residual risk rulemaking (71 FR 42723) and for this rulemaking (71 FR 47670; see also the risk document in the rulemaking docket). However, for the purposes of this rulemaking, we have chosen to use the CalEPA URE to implement the facility emission limits. Explicit consideration of variability and uncertainty is more consistent with EPA's current approach for conducting risk assessments. EPA also uses the CalEPA URE in the 1999 National-Scale Air Toxics Assessment (available at: *http://www.epa.gov/ttn/atw/nata1999/*), in Superfund cleanup decisions, and in EPA's Air Toxics Risk Assessment Reference Library (available at: *http://www.epa.gov/ttn/fera/risk_atra_main.html*; dose-response values in Appendix C at: *http://www.epa.gov/ttn/fera/data/risk/vol_1/appendix_c.pdf*.

We have the authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to the science suggest that the public might experience significantly more or less risk than estimated in the risk assessment prepared for the rulemaking (See CAA section 301). In particular, it may become necessary at some time in the future to revise the facility emission limits if the pending IRIS assessments result in significant changes to the UREs for PCE, TCE, or MC.

Additionally, while we have chosen to use the CalEPA URE for PCE for implementing this rule, this should not be interpreted as a precedent for all future rules. As was stated earlier, in the dry cleaning residual risk rulemaking (71 FR 42723) and in this rulemaking, we used both the CalEPA and OPPTS values to characterize the risk. When there is uncertainty, it is EPA's preference to provide a range of values. However, for the purposes of this rulemaking, a single value was needed to implement the facility emission limits. EPA's choice of the CalEPA value does not mean that this is the only value to be considered while the EPA IRIS assessment is pending.

E. What is EPA's finding on the CAA section 112(d)(6) review requirements?

We stated in the proposal that in the technology review under CAA section 112(d)(6) we did not identify any additional control technologies beyond those that are already in widespread use within the source category (*e.g.*, freeboard refrigeration devices, extended freeboards, working mode and downtime covers). We concluded that the proposed rule changes would satisfy both CAA section 112(d)(6) and 112(f)(2). See 71 FR 47685.

Since the August 17, 2006 proposal, we have not identified any significant developments in practices, processes, or control technologies. We have discovered, however, that affected industries are researching the development of halogenated solvent cleaning machines and alternate cleaning technologies. At some time in the future these technologic developments could lead to significant technologies relevant to the CAA section 112(d)(6) analysis, but we understand that to date the engineering and implementation of such technology has not been proven to satisfy the performance needs of the industry coupled with the low-emission directives of the agency. We therefore conclude that the final facility-wide emissions limits we are promulgating today satisfy our obligations under both CAA sections 112(d)(6) and 112 (f)(2).

IV. Responses to Significant Comments

A. Significant Comments on the Proposal

During the public comment period, EPA received significant comments, new data, and information concerning program elements for which we specifically sought public comments. We received favorable and unfavorable comments on both proposed emission limits. Commenters provided substantial information on the use of the methylene chloride equivalency equation. We received significant comments on the implementation of the emission limits from commenters representing narrow tube manufacturing facilities, aerospace manufacturing and maintenance facilities, military depot maintenance facilities, facilities that use multiple solvent cleaning machines, and facilities that use continuous web cleaning machines.

All of the comments, information, and data submitted by commenters are compiled in the Response to Comments document available in the Air Docket ID No. EPA–HQ–OAR–2002–0009. Some of the more significant comments are discussed below.

1. Emission Limit Option 1 or Option 2

Comment: While four commenters supported the proposed Option 1 (40,000 kg/yr MC equivalent emission limit), other commenters encouraged EPA to set relative standards. Another commenter, an association of state air program administrators, believed that Option 2 (25,000 kg/yr of MC equivalent emission limit) still presented unacceptably high risks; but noted that it was preferable to Option 1. Three commenters supported our proposed Option 2. According to the commenters, Option 2 would provide significant emissions reductions and greater protection of public health, safety, and welfare. In addition to lowering the potential cancer and non-cancer chronic health risk associated with exposure to the three HAPs, the additional reductions of trichloroethylene (TCE) under Option 2 would likely augment the State's efforts to reach attainment with the 8-hour ozone standard since TCE is identified as an ozone precursor.

One commenter recognized the reductions in the number of people exposed to cancer risk and the capital costs between Option 1 and the more stringent Option 2. The commenter stated that under Option 2 the numbers of affected sources are greater than the number of affected sources under Option 1, but that EPA determined that those affected sources complying with Option 2 would still save money because the annual solvent savings were projected to exceed the annualized capital and operating costs. The commenter added that even at a financial cost, Option 2 would be warranted, and that given the financial savings, Option 2 was the only reasonable choice. One commenter stated that the proposed facility-wide emission limits would leave source owners only two compliance options: (1) Establish internal production restrictions or (2) install add-on capture and control equipment to ensure operating flexibility. Another commenter requested that EPA exempt batch cold cleaning machines operating with capture and control devices that are subject to federally-enforceable monitoring conditions in a Title V permit.

Response: As stated in Section II of the Preamble, we presented and discussed our evaluation of four other emission limits that would reduce residual risk. These emission limits were 100,000 kg/yr, 60,000 kg/yr, 15,000 kg/yr and 6,000 kg/yr (71 FR 47680–81). In this final rule, as stated in Section II.A. of the Preamble, we are promulgating the 60,000 kg/yr facility-wide MC equivalent emission limit. EPA's risk assessment for the proposal and an updated risk assessment for the final rule using data from EPA's 2002 NEI database show that the maximum individual risk (MIR) and population risks associated with the majority of halogenated solvent cleaning machines would be reduced by adopting the 60,000 kg/yr MC-equivalent emission limit. Based on the more recent assessment using the 2002 NEI, the MIR

would be reduced from 100-in-a-million to between 20 and 50-in-a-million and the total number of people with risks greater than 1-in-a-million would also be reduced from 4,000,000 people to between 500,000 and 1,000,000. Our cost analyses at proposal and the more recent revisions to the cost estimates based on the 2002 NEI show that these emission and risk reductions are technically feasible within the three-year time for compliance, and facilities would experience a cost savings implementing the emission limit. Therefore, we believe that the 60,000 kg/yr facility-wide emission limit (expressed as MC equivalent emissions) applied to the halogenated solvent cleaning machines, except where noted, provides an ample margin of safety to protect the public's health because it significantly reduces cancer risks, prevents adverse environmental effects, and given the level of the risk reductions, is technically feasible and can be accomplished at reasonable costs. EPA is not exempting batch cold cleaning machines that operate with capture and control devices that are subject to Title V permitting requirements.

2. Equation for MC Equivalents

Comment: Two commenters supported EPA's toxicity-weighted approach for calculating the facility-wide annual emission limits for affected sources, except where otherwise noted, that use more than one of the three HAPs subject to the proposed Subpart T residual risk rule. This toxicity-weighted calculation was proposed as Equations 1 and 9 in the Preamble, and proposed 40 CFR 63.471(a)(2), respectively. In our August 17, 2006 proposal, EPA requested comment on this methodology (71 FR 47675). Another commenter was concerned about the use of the methylene chloride equivalent. The commenter stated that the use of this term was somewhat misleading because rather than a toxic equivalent, this methodology reflects a weighted-emission approach using toxicity-weighted emission rates. The commenter further stated that while EPA conservatively added the cancer and noncancer toxicity-weighted emissions rates, the scaling factors we used were simply the ratio of the cancer unit-risk estimates and noncancer reference concentrations multiplied by the post-MACT emission rate or exposure level. The commenter also stated that because EPA did not specifically conduct toxicological comparisons (common mode of action and metabolites and possible synergistic interactions among the components of the mixture) for PCE, TCE and MC, we should be careful not to use the term "methylene chloride equivalent" as a "toxic equivalent," because the latter is a specific term associated with a supporting body of literature and a documented methodology. Another commenter noted that because the current recordkeeping and annual reports requirements, under 40 CFR 63.467 and 63.468 (f-g), were inapplicable to batch cold cleaning machines, our proposed methodology may not be suitable for all batch cold cleaning machines and requested flexibility in calculating emissions so long as the alternate methodology was scientifically sound and documented.

Response: In this final rule, we are finalizing as proposed the use of Equation 1 (and Equation 9) to calculate the MC equivalent for implementing the 60,000 kg/yr emission limit or the 100,000 kg/yr emission limit. EPA believes this methodology will facilitate the use of an annual emissions limit for multiple HAPs and allow flexibility in reducing the facility-wide emissions to meet this emissions limit. For cold batch cleaning machines at area sources, the requirements in the final rule do not apply.

3. Use of CalEPA or OPPTS URE for Implementation of the Emission Limit

Comment: Some commenters that use large halogenated solvent cleaning machines recommended that EPA not promulgate either Option 1 or 2 of the proposed rule, but rather defer promulgation of a final rule until completion of the IRIS re-evaluations of the URE for PCE.

One commenter believed that EPA included two different facility-wide annual emission limits for PCE because the IRIS URE was not available and will not be available before 2008. The commenter supported the use of CalEPA URE because it was clearly more health protective and more appropriate than the OPPTS URE value.

One commenter stated several reasons why EPA should use the CalEPA URE: (1) EPA's Air Toxics Risk Assessment Reference Library recommended the use of the CalEPA URE for PCE, (2) the EPA Office of Air Quality Planning and Standards (OAQPS) recommended the use of the CalEPA URE in situations in which there are no IRIS data available (see EPA's "Prioritization of Data Sources for Chronic Exposure" Web site), and (3) OAQPS used the CalEPA URE for PCE when conducting the 1999 risk assessment for the National-Scale Air Toxics Assessment. They believed that EPA has an established precedent for use of the CalEPA URE and recommended that it be used for this residual risk standard as well.

Three commenters, one identifying itself as operating two continuous web cleaning lines in the world's largest integrated production of aluminum and aluminum semi-fabricated products stated that the two PCE UREs differ by a factor of ten and that EPA's selection of the applicable URE would obviously have a significant impact on control options available to their facility. They expressed concern that EPA would finalize an emissions limit by selecting an inappropriate URE and prior to completion of the IRIS reassessment for PCE. According to the commenter, the fact that the final IRIS URE "may be different from both the CalEPA and OPPTS values", means that inappropriate or unnecessary emission reduction strategies could be required as a result of EPA's promulgating the wrong PCE facility-wide limit in a final rule.

Another commenter suggested that EPA delay promulgation of this final rule until completion of IRIS assessments for PCE and TCE. One commenter stated that while EPA referenced both the OPPTS and the CalEPA UREs, there was little or no mention made of other URE studies conducted for PCE which would potentially indicate a different URE. The commenter stated the same is believed to be true regarding the URE for TCE.

Response: EPA has explained that when a particular chemical does not have a cancer potency value in IRIS, we have established a prioritization process for assessing other health assessment information (as described in our "Residual Risk Report to Congress" on pages 56 through 58). This hierarchy includes peer reviewed cancer potency values from EPA as well as from other agencies that conduct chemical carcinogenicity assessments such as CalEPA. See also our response to comments on this issue in the final Coke Oven Batteries NESHAP (70 FR 19998–20000, (April 15, 2005)).

Because we have not yet issued a final IRIS health assessment for PCE, we are using the CalEPA unit risk estimate (URE) of 5.9×10^{-6} $(ug/m^3)^{-1}$ to implement the emission limit for PCE in this final rule. See section III.D. of this Preamble for further discussion of our decision to use the CalEPA cancer URE.

We also have the authority to revisit (and revise, if necessary) any rulemaking if sufficient evidence becomes available that changes within the affected industry or significant improvements to the underlying science suggest that the public is exposed to significantly more or less risk than

estimated in the risk assessment prepared for this rulemaking (See CAA section 301). See also Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk Rules (71 FR 17712, 17715, (April 7, 2006). In particular, it may become necessary at some time in the future to revise the facility emission limits if the pending IRIS assessments result in significant changes to the UREs for PCE, TCE, or MC.

Additionally, while we have chosen to use the CalEPA URE for PCE for implementing this rule, this should not be interpreted as a precedent for all future rules. As was stated earlier, in the dry cleaning residual risk rulemaking (71 FR 42723) and in this rulemaking, we used both the CalEPA and OPPTS values to characterize the risk. When there is uncertainty, it is EPA's preference to provide a range of values. However, for the purposes of this rulemaking, a single value was needed to implement the facility emission limits. EPA's choice of the CalEPA value does not mean that this is the only value to be considered while the EPA IRIS assessment is pending.

4. Compliance Deadline

Comment: The majority of facilities that use halogenated solvent cleaning machines suggested that EPA should allow at least three years for existing sources to comply with the new requirements. Two commenters contended that EPA should be consistent with the HON rule [5] and provide affected facilities three years after the effective date of the promulgated standard to comply. Another commenter stated that the narrow tubing manufacturers could not comply with the proposed compliance period because compliance would require between one and two years to evaluate non-regulated solvents and an additional two to three years to obtain FDA and air permit approvals and implement the necessary equipment modifications. All commenters stated that sources subject to this new rule would need time to evaluate their compliance options; conduct feasibility testing (for solvent substitution) to ensure they can still achieve customer specifications; and design, build, and/or install any equipment or facility modifications potentially required. They stated that our proposed two year compliance deadline would be insufficient time for the regulated sources to comply. Two commenters stated that the proposed two year compliance time frame was not sufficient time for the installation of vacuum-to-vacuum machines. The commenters stated that even if the technology existed, that in order to meet the proposed two year compliance deadline, they would be required to take the following measures: (1) Conduct initial research and development effort to determine a control strategy; (2) perform a pilot study using the selected control strategy; (3) demonstrate to their customers that the resulting product meets contract specifications; (4) get acceptance by their customers that the change meets contract specifications; (5) design engineering work to develop the selected equipment and apply for air pollution control and other permits; (6) obtain permits to install the selected equipment; (7) order the equipment; (8) fabricate the equipment; (9) prepare the shop floor for installation of equipment; (10) receive and install the equipment; and (11) place the equipment in operation.

Three other commenters believed that the proposed two years compliance schedule did not provide sufficient time for the affected facilities to fully assess the impacts and develop approved alternatives. The commenters requested an extension of the compliance period. They stated that EPA has authority to allow up to three years for affected facilities to comply and that permitting authorities have authority to grant an additional one year for compliance purposes, under CAA section 112(i).

A large military depot maintenance facility commented that the proposed compliance time allowed in the proposed rule was inadequate. They also agreed with the Preamble discussions as to whether EPA could allow up to three years for existing sources to comply with the proposed limits. The commenter recommended that EPA allow a three-year compliance deadline.

Two commenters supported EPA's proposed two-year compliance deadline. One of the commenters, however, pointed out that existing solvent cleaning machines could receive a one year extension of time from permitting authorities. The commenter believed that the Congressional intent behind the compliance deadlines in CAA section 112(f) was to insure an expedited compliance schedule (90 days with a possible two-year extension) for controlling emissions from facilities that result in unacceptable risk levels. Two States provided comments supporting the proposed two year compliance deadline and one commenter advocated a 90-day compliance period.

Response: In this final rule, in accordance with CAA section 112(i)(3), EPA is promulgating a three-year compliance deadline from the effective date of this rule for all the existing affected sources. As explained in Section III.C. of the Preamble, we believe that CAA section 112(i) is the controlling provision addressing compliance deadlines for existing sources with regard to standards promulgated under CAA sections 112(d)(6) and (f)(2). EPA believes this will give owners or operators of solvent cleaning machines the necessary time to evaluate technologies for controlling emissions and possible alternatives to halogenated HAP solvent cleaning.

Comment: One commenter stated that proposed § 63.460(i) would allow sources that only have existing halogenated solvent cleaning machines two years to comply, but if they construct or reconstruct a single machine after August 17, 2006, they would lose the two-year compliance period. The commenter recommended that any facility that has existing halogenated solvent cleaning machines and that exceeds the proposed facility wide emission limits should be allowed two years from the date of the final rule to comply with the standard, even if one or more halogenated solvent cleaning machines are constructed or reconstructed after August 17, 2006.

Another commenter stated that if the Agency finalized the proposed rule, the compliance schedule should be amended to (1) Require new facilities constructed after the date of promulgation to be in compliance upon startup; (2) consider new facilities constructed prior to the date of promulgation to be existing facilities; (3) allow existing degreasing facilities that installed new equipment after the date of proposal, but prior to the date of promulgation, ten years to come into compliance with any new requirements consistent with CAA section 112(i)(7), and (4) allow the maximum amount of time possible for existing Halogenated Solvent Cleaning facilities to come into compliance. This commenter alluded to a three-year timeframe. The commenter cited one example of where the installation of new equipment at an existing facility would require additional or redesigned floor space and thus would require additional time for compliance.

Response: As stated in the earlier response, and in Section III.C. of this Preamble, we believe that it is reasonable to conclude that CAA section 112(i) is the controlling provision

[5] National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, (71 FR 76603) (December 21, 2006)).

addressing compliance deadlines for existing sources with regard to standards promulgated under CAA section 112(d)(6) and 112(f)(2). Thus, in this final rule, in accordance with CAA section 112(i)(3), EPA is promulgating a three-year compliance deadline from the effective date of this rule for existing sources. Further, for purposes of today's rule, existing sources are affected facilities (as defined in § 63.461) on which construction or reconstruction began on or before August 17, 2006. New sources are affected facilities that commence construction or reconstruction after August 17, 2006. This is consistent with CAA Section 112(i)(1)-(3). Additionally, "construction" and "reconstruction," are defined at 40 CFR 63.2. However, changes to the emission controls at a facility made to comply with existing source standards in today's rule do not trigger the reconstruction threshold.

5. Applicability of Control Requirements

Comment: One commenter that uses continuous web cleaning machines stated that it had installed two carbon adsorption devices (CAD) to address the TCE reductions required by the 1994 NESHAP. According to the commenter, even an upgrade of the systems would likely not enable the facilities to achieve either proposed emissions limit. The commenter suggested that for facilities that use continuous web cleaning machines, EPA should evaluate a range of emission reduction limits. The commenter stated that this method would have been consistent with the alternative standards set for the continuous web cleaning machines by the 1994 NESHAP.

Response: In light of this and similar comments by the aerospace and narrow tubing industries, EPA issued a NODA to gather specific data on the technical feasibility and costs of complying with the proposed emission limits, if feasible, and the period of time required to comply with the proposed emissions limit (71 FR 75184, (December 14, 2006)). EPA has re-evaluated the technical feasibility, costs and other factors that relate to facilities operating continuous web cleaning machines. Consequently, in this final rule, we are not promulgating any facility-wide emission limits for facilities that operate continuous web cleaning machines, facilities that operate halogenated solvent cleaning machines for the aerospace manufacturing and maintenance industry, and the narrow tubing manufacturing industry.

Comment: Numerous commenters from both the narrow tubing manufacturing industry that use MC, PCE and TCE, and airline maintenance facilities and aerospace industry that use PCE stated that switching to TCE or MC would be an unsuitable compliance option. They stated that facilities have procedural requirements for the higher vapor temperature of PCE and that TCE and MC's vapor temperature is inadequate for proper cleaning. The commenters stated that many original equipment manufacturers have not approved the use of alternative degreasing solvents. The commenters also stated that changing solvents involved a rigorous approval process by the original equipment manufacturers and the Federal Aviation Administration (FAA) in order to ensure that safety and quality criteria are met. The commenters stated that such an approval process could take more than two years.

The commenter also stated that EPA's proposed retrofit options for freeboard ratios, working mode covers and freeboard refrigeration devices are not expected to be sufficient to enable the facility to comply with the proposed facility-wide emission limits of the proposed rule. The commenter also stated that there are few manufacturers of vacuum-to-vacuum degreasing machines and they were not aware of this technology effectively cleaning parts of specific types and sizes. According to the commenter, similar facilities that installed the technology incurred costs of over $1 million with new annualized costs of approximately $80,000 per year. The commenter was concerned that compliance with the proposed standards would be achieved by using expensive technology, that has high capital costs and operating costs and that may not be proven effective or reliable for the operations of subject facilities.

Response: In response to this comment and certain comments discussed below, EPA issued a NODA (71 FR 75184, (December 14, 2006)) to gather more information pertinent to the halogenated solvent machines used by the aerospace industry, narrow tubing manufacturing industry, and the facilities that use continuous web cleaning machines. Responses to the NODA provided significant data and information that have led EPA to determine that it is both technologically infeasible and not cost effective for these industries to implement any further emission controls or requirements. Consequently, as stated in Section III.A.3., of the Preamble, we are not promulgating any facility-wide emission limits for halogenated solvent cleaning machines used by the aerospace manufacturing and maintenance industry, the narrow tubing manufacturing industry and for continuous web cleaning machines.

Comment: Two commenters associated with the aerospace industry stated that the FAA, Food and Drug Administration (FDA) and the Nuclear Regulatory Commission (NRC) guidelines for safety and quality control often dictate the types of solvents and materials that may be used in aerospace operations. According to the commenters, solvent cleaning criteria determined the quality of adhesion between aircraft assemblies and components and the various coatings, primers, sealants, and adhesives later applied to their surfaces, and improper degreasing could cause loss of coating adhesion and ultimate failure of specific aircraft component parts. The commenters also stated that they had explored solvent alternatives such as aqueous cleaners, and had encountered incompatibilities with FAA guidelines, such as inability to meet the degree of cleaning required, incompatibility of the parts being cleaned with the cleaning solution, longer required cleaning time, and problems associated with moisture left on parts being cleaned. The commenter stated that these regulatory and product specifications frequently dictated or otherwise limited aerospace cleaning options to PCE or TCE. However, some aerospace facilities maintain their PCE cleaning capacity because certain, very specific aerospace parts cannot be processed with MC or alternative solvents.

Response: In response to this comment, as earlier explained, EPA issued a NODA (71 FR 75184, (December 14, 2006)) to gather more information pertinent to the halogenated solvents cleaning machines used by the aerospace industry, narrow tubing manufacturing industry, and the facilities that use continuous web cleaning machines. Responses to the NODA provided significant information that has led EPA to conclude that it is both technologically infeasible and not cost effective for the above-noted facilities to implement any further emission controls or requirements. (See Section III.A.3. of the Preamble on costs of compliance). EPA is also persuaded that some halogenated solvent cleaning processes for the aerospace and narrow tubing industry are controlled by FAA, FDA, the NRC guidelines, and from protocols of original equipment manufacturers. Therefore, EPA is concluding in this final rule that solvent switching from PCE or TCE to MC may not be a viable option in some instances for the aerospace industry.

Consequently, as stated earlier in Section III.A.3., of this Preamble, EPA is not promulgating facility-wide emission limits for halogenated solvent machines used by the aerospace manufacturing and maintenance industry, the narrow tubing manufacturing industry and for continuous web cleaning machines.

Comment: Commenters from the narrow tube manufacturing industry stated that they use "one of a kind" machines in their degreasing operations. They described these machines as very large, some with dimensions approaching 110 ft. long by 10 ft. deep and 42 inches wide, with a capacity of 7,000 gallons of solvent. According to the commenters, these machines also heat the solvent, usually TCE, to its boiling point while condenser coils prevent evaporation by forming a cold air blanket over the cleaning machine in order to limit emissions. In addition, they explained that these machines are covered when not in use.

They also stated that the installation of vacuum-to-vacuum cleaning machines is not a feasible option because of their products' sizes and the lack of engineering information to establish whether machines of such size can be engineered and produced. They stated that EPA's proposed requirements would require them to design, obtain permits, develop and install these systems within two years.

Response: In response to this comment, as earlier explained, we issued a NODA (71 FR 75184, (December 14, 2006)) to gather more information pertinent to the halogenated solvent cleaning machines used by the aerospace industry, narrow tubing manufacturing industry, and the facilities using continuous web cleaning machines. Responses to the NODA provided significant information that has led EPA to determine that it is both technologically infeasible and not cost effective for the above-noted facilities to implement any further emission controls or requirements. EPA is also persuaded that it may be quite difficult for the above-noted industries to reduce emissions through chemical or physical means and technology applications to the levels required by our final promulgated emissions limits. Accordingly, due to the costs associated with compliance, technical feasibility, and other factors, EPA has determined that the current MACT requirements provided for the narrow tubing manufacturing industry both reduce HAP emissions to levels that both pose acceptable risk and protect public health with an ample margin of safety. As stated earlier in Section III.A.3., of the Preamble, EPA is not promulgating facility-wide emission limits for halogenated solvent cleaning machines used by the narrow tubing industries.

Comment: Two commenters stated that switching from PCE and/or TCE to MC (indicated as being lower risk) as a compliance alternative under the proposed revisions would likely result in an increased danger to public health and, more specifically, potentially increase the danger from employee exposure to MC emissions. The commenter stated that because employee exposure to MC is specifically regulated by the Occupational Safety and Health Administration (OSHA), switching to MC would be an error. According to the commenter, this is because applicable OSHA regulations would limit and/or restrict MC and would lead to increased employer costs, a fact the commenter believed EPA did not consider. One commenter stated that some halogenated solvent cleaning machines may have the potential for undetected fugitive emissions. The commenter added that the necessary monitoring for adequate employee protection from overexposure to MC would be far more expensive, more extensive, and more difficult to implement than monitoring for TCE.

Response: Before proposal, EPA was aware of the requirements of the Occupational Health and Safety Administration concerning worker safety when MC is used. 29 CFR part 1910, which are the applicable OSHA regulations, require employers to make an initial determination of each employee's exposure to MC. If the employer determines that employees are exposed below the action level, employers are required to make a record of the determination. Conversely, if the employees are exposed to MC above the action levels, employers are required to perform exposure monitoring.

In addition, EPA did not consider any costs associated with MC monitoring at proposal. EPA believes, however, that a facility would not incur costs if MC emissions do not exceed the OSHA levels. If a facility experiences worker exposure of MC emissions over the OSHA level, the facility incurs costs to develop a control plan for fugitive emissions and possibly implement an employee medical monitoring plan. To account for the possibility of increased costs, we reduced the number of units assumed to use solvent switching.

6. Costs Associated With Compliance

Comment: Seven commenters, from the aerospace and narrow tube manufacturing sectors, stated that EPA had underestimated its cost basis for vacuum-to-vacuum technology in the proposed rule. One commenter stated that because EPA's estimation used the costs for small halogenated solvent cleaning machines and applied the credit for cost reduction from recovered solvent to the large halogenated solvent cleaning machines with large amounts of recovered solvent, the estimate erroneously yielded a false return on investment. The commenter stated that discussions with manufacturers of available vacuum-to-vacuum units suggested costs approximately five times higher than the assumptions used by EPA for each unit, and this was assuming that the manufacturers could develop scaled-up units suitable for narrow tubing manufacturers. The commenter stated that because the larger size of their products would require construction of the new unit while maintaining operation, facilities would need to undergo building expansion. The commenter anticipated that installation costs, including building and required utilities and infrastructure, would likely be approximately three times the equipment cost. According to the commenter, assuming the technology was successful, EPA's capital cost basis was approximately fifteen times below its likely cost range. The commenter further stated that EPA's assumption of 97 percent solvent recovery was unlikely with regard to hypothetical future large units that would require storage and movement of solvent between storage tanks, solvent cleaning machines and other ancillary equipment. The commenter concluded that EPA's assumptions of the project payback were unrealistic both for large operations, whose capital cost was underestimated, and for small operations, whose solvent recovery payback would be smaller than the average figures used in the analysis.

Response: In response to this comment, as explained earlier, EPA issued a NODA (71 FR 75184, (December 14, 2006)) to gather more information on the costs of complying with the proposed standards by the aerospace industry, narrow tubing manufacturing industry, and the facilities that use continuous web cleaning machines. Responses to the NODA provided significant information that has led EPA to determine that it is both technologically infeasible and not cost effective for the above-noted facilities to implement any further emission controls or requirements.

As earlier stated, EPA is also persuaded that some solvent cleaning processes for the aerospace and narrow tubing industry are controlled by protocols from the FAA, FDA, NRC and

from protocols to satisfy original equipment manufacturers' specifications. As earlier stated, EPA has also concluded in this final rule that solvent switching from PCE or TCE to MC may not be a viable option in some instances for the aerospace industry. As also explained earlier in Section III.B. of the Preamble, EPA has re-analyzed the cost assumptions made at proposal for the aerospace industry separate from the halogenated solvent cleaning machines that are covered by this final rule, and has determined that due to costs, technical feasibility, and other factors requiring additional controls, would not be feasible at this time. Consequently, as stated earlier in section III.A.3 of the Preamble, we are not promulgating facility-wide emission limits for halogenated solvent cleaning machines used by the narrow tubing and aerospace manufacturing and maintenance industries.

Comment: Commenters that use continuous web cleaning machines stated that EPA's analysis of the technology and cost impacts of the two proposed emission limits failed to consider the impacts on continuous web machines. The commenters stated that while EPA identified numerous compliance options, solvent switching from PCE to TCE or MC would be the sole compliance option for continuous web cleaning machines. The commenters further stated that EPA was correct to conclude that neither retrofits nor machine replacement would be an available compliance option for continuous web cleaners; however, the commenters stated that "EPA should not have concluded that solvent switching would be an available option for continuous web cleaners." The commenters further stated that switching from TCE to MC is not an available option because "MC reacts with chemically active metals such as aluminum." The commenters also stated that MC is incompatible with some of the gaskets and seals in pumps, ports and manifold systems. The commenters added that MC is less stable as a continuous web cleaning solvent and would require additional monitoring and probably additional stabilization control systems. Additionally, the commenters stated that MC is not readily adsorbed by the carbon in carbon adsorption devices and, as such, solvent switching would require reconfiguration and possibly rebuilding of the carbon adsorption devices. According to the commenters, MC requires longer dwell time in the carbon beds, which would in turn require a greater carbon surface area and larger carbon filtration systems. The commenters also stated that quantities of TCE would react with MC and that facilities would need to conduct a complete purging of systems in order to prevent cross contamination. The commenters further stated that such purging would include the removal of significant production line components, which would lead to increased compliance costs.

The commenters also stated that EPA estimated a 29 percent increase in solvent consumption if switching from TCE to MC. The commenters, however, expected much higher increases. The commenters explained that because steel that is placed in cleaning machines is slightly heated above ambient temperature, any slight temperature elevation would cause MC to vaporize more readily than TCE. The commenters claimed that increases in solvent consumption rate would ultimately create elevated vapor concentrations in the carbon adsorption device thereby making recovery more difficult. The commenters further claimed that even though MC is cheaper per unit volume, more MC would be required to achieve the same level of cleaning.

The commenters also maintained that add-on control equipment, retrofits and machine replacement technologies identified in the proposed rule are for the typical halogenated solvent cleaning machines that were subject to the 1994 NESHAP, and not continuous web cleaning machines or systems. The commenters stated that modifications such as modifying freeboard ratios, adding working mode covers, or retrofitting freeboard refrigeration devices are inapplicable because no freeboard exists in continuous web cleaning machines, which are enclosed, with the exception of entrance and exit points during normal operations. The commenters further stated that vacuum-to-vacuum machines are only appropriate for batch cleaners. Because of these technical issues, the commenters stated that EPA did not evaluate the costs and technological feasibility of the facility-wide emission limits for the continuous web cleaning machines.

Response: In response to this comment, as stated earlier, EPA issued a NODA (71 FR 75184, (December 14, 2006)) to gather more information on the costs of complying with the proposed standards by the aerospace industry, narrow tubing manufacturing industry, and the facilities using continuous web cleaning machines. As also stated earlier, responses to the NODA-provided significant information has led EPA to re-evaluate costs of installing CADs and vacuum-to-vacuum machines. EPA has determined that compliance by continuous web cleaning machines with either the proposed 40,000 kg/yr limit or the 60,000 kg/yr MC equivalent limit would not be cost effective and either limit may be technically infeasible in some instances. Consequently, as stated in Section III.A.3 of this Preamble, EPA is not requiring continuous web cleaning machines to comply with the facility-wide emission limits we are promulgating for this final rule. EPA is concluding that the current level of control by the existing NESHAP both reduces HAP emissions to levels that present an acceptable risk and provides an ample margin of safety to protect public health and prevent adverse environmental effects.

Comment: One commenter, an industry association representing producers and users of halogenated solvents, indicated that MC is not compatible with some substrates because of its aggressive nature. In addition, the commenter stated that MC's low boiling point shortens the effective cleaning time and makes it ineffective for light-gauge metals where incomplete rinsing action may cause staining. According to the commenter, the low boiling point of MC also makes it less effective on stubborn soils, including high-melting point waxes and pitches and grossly contaminated parts. The commenter stated that PCE's higher boiling point makes it ideal for these applications. According to the commenter, PCE is also a popular choice for closed-loop equipment, where PCE's inherent stability reduces the possibility of hydrolysis.

The commenter also stated that while MC has the lowest vapor loss rate from an idling halogenated solvent cleaning machine, its low vapor density makes it the most difficult to control in a working degreaser where air movements generally increase losses. The commenter also stated that MC has the lowest vapor recovery rates in carbon adsorption systems used to collect solvents from many web and in-line machines. In addition, the commenter stated that MC users are subject to a comprehensive OSHA standard that requires a medical surveillance and removal program not required for PCE and TCE users.

Response: EPA recognizes that there are chemical and physical limitations when considering solvent switching as a method to reduce emissions in compliance with both the proposed and final facility-wide emission limits we are promulgating in this final rule. In the proposed rule, EPA assumed 30

percent of facilities would switch to a less potent solvent; however, significant comments have led us to re-evaluate these assumptions. Consequently, with regard to our solvent switching analysis, for this final rule, EPA has reduced the number of units for which solvent switching is an option from 30 percent to 15 percent. The cost analysis in Section III.B. of the Preamble to this final rule reflects this change.

7. General Comments

Comment: A number of commenters stated that the 1999 NEI data did not reflect current emission levels and were not a sufficient basis for assessing technical or economic feasibility. Some believed that the 1999 NEI database was obsolete and provided an incomplete emission database when used as a primary source of data for halogenated solvent emissions. The commenter stated that the industry had changed since 1999 due to local, regional, and State regulatory pressures. The commenter indicated that the most significant change since 1999 was the phase out of TCA manufacture for emissive use, which effectively eliminated its use for solvent cleaning. The commenters pointed out that EPA had access to the 2002 NEI database and encouraged EPA to re-evaluate the risk assessment using the updated database.

Response: In response to public comments we received on the August 17, 2006 rule proposal, we reassessed the risks associated with the halogenated solvent source category using the 2002 NEI inventory. The proposal was based on the 1999 inventory. These data were not available at the time the proposal was being developed.

Comment: One commenter stated that EPA established a MACT standard for the continuous web subcategory in December 1999 and therefore, Section 112(f) risk analysis for the subcategory is not required until December 2007. The commenter stated that the continuous web subcategory was established five years after the standard for the other halogenated solvent machines. According to the commenter EPA's proposed rule fails to recognize that under this requirement EPA has eight years from December 3, 1999 (or by December 3, 2007) to conduct the residual risk evaluation for the continuous web subcategory.

Response: Section 112(f)(2)(A) requires the Administrator to promulgate applicable standards "within 8 years after promulgation of standards," under section 112(d). We read this provision as allowing for our promulgation of standards, under section 112(f), within 8 years of the effective date of section 112(d) requirements, rather than within 8 years of the compliance date of the section 112(d) requirements. (See for example, section 112(f)(3) ("the Administrator shall establish a compliance date or dates * * * which shall provide for compliance as expeditiously as practicable but in no event later than three years *after the effective date of such standard.*" (Emphasis added)). The effective date of the Halogenated Solvent Cleaning NESHAP is December 2, 1994, and not December 3, 1999, as suggested by the commenter, although we subsequently made certain clarifications and amendments to these requirements. Our obligation to promulgate residual risk standards for this source category is therefore past, and we are now operating under a consent decree that required our promulgation of today's rule on or before December 15, 2006, subsequently extended to April 16, 2007. We also believe that there is nothing in the Act that precludes our completion of the residual risk review prior to 8 years after promulgation of section 112(d) standards.

Comment: One commenter stated that EPA had used a very simplistic model to perform the emissions evaluations which may be acceptable for an initial screening, but that the Agency had failed to provide information to either validate its approach or any indication as to whether the presented risk levels exceed the upper bound limit of 100-in-a-million using the correct facility information such as stack parameters. The commenter requested that EPA review the seven facilities with an estimated cancer risk greater than 100-in-a-million to determine whether the use of average stack parameters was appropriate and to revise the proposed rule accordingly. The commenter also requested that EPA add an option allowing facilities to conduct site-specific emission modeling to determine if a facility meets or exceeds the allowable MIR, which would depend on which option EPA finalized. Subsequently, EPA could use this modeling to set a site-specific facility limit that is higher than either proposed options.

Response: The choice of the proposed emission limits and the final emission limit is based on the level of risk reduced, cost and technical feasibility to achieve a particular emission limit. While we acknowledge the uncertainty inherent in the NEI data used, its effect on risk is not the only consideration for the proposed emission limits. In spite of the fact that perhaps 50 percent of the release parameters in the 1999 NEI database may be defaults, our understanding of this source category and our best engineering judgment suggested the data were reasonable to use in our risk assessment, (*e.g.*, the range of stack heights was appropriate for these sources). We also acknowledged that while our risk assessment was likely to overestimate risks, this overestimate was not likely to be large because of the many variables and assumptions used in the assessment that would yield lower estimated risk levels, (*e.g.*, the use of a probabilistic method for evaluating population risks). Therefore, a focused evaluation of the release parameters of a few facilities at the upper end of the risk spectrum, while possibly having some effect on their individual risk levels, is not likely to affect our overall conclusions about the level of risk from the entire source category.

Concerning the site specific emission modeling, EPA did not incorporate in the proposed rule an approach that would allow site specific modeling. Instead, EPA assessed risk on a source category basis. EPA also did not incorporate in the proposed rule an approach a low-risk alternative for compliance.

V. Responses to Significant Comments on EPA's December 14, 2006, Notice of Data Availability (NODA)

A. Emission Limits

Comment: Two commenters from the aerospace industry submitted available compliance options for the 40,000 kg/yr MC equivalent emission limit. One option involved switching from HAP chlorinated solvents to n-propyl bromide. Another option involved the facilities switching to an alkaline degreasing system with ultrasonic wash tanks.

One aerospace facility, which had a large operation with multiple halogenated solvent cleaning machines, submitted very detailed descriptions of each machine, the options available and the associated costs of implementation. For their multiple machines, they presented twelve emissions reduction options, five of which reduced their emissions to below the 40,000 kg/yr MC equivalent limit. The compliance options include a combination of machine covers, extension areas, additional drain time for parts, installing larger or additional carbon absorption systems and switching some current machines with vacuum-to-vacuum machines. The commenter indicated that completing these

compliance options would take six years or more.

Response: EPA recognizes that a few small aerospace facilities may operate with emissions at or below both the proposed and final promulgated emission limits. In the proposal, EPA assumed solvent switching and other technologies could be applied at a reasonable cost. EPA has discovered, however, that this industry is bound to the use of chlorinated solvents and solvent switching is not a viable option for compliance. As earlier stated, EPA also recognized that the affected facilities cannot undertake all the necessary modifications within the three-year compliance period. EPA also notes that all these considerations are true for the final promulgated 60,000 kg/yr emission limit.

Comment: Two commenters that use continuous web cleaning machines maintained that they could not comply with either of the proposed emission limits. Both facilities stated that they had installed carbon absorption devices, which operated at about 99 percent control efficiency, but that most of their emissions could not be captured by these devices because of the nature of continuous web cleaning machines. According to the commenters, fugitive emissions occur in different locations along production lines and along the cleaning process. The commenters provided some possible additions to their cleaning systems that would achieve additional reductions, but they did not provide information on the emission levels they could attain. The commenters stated that there are limited available technologies to capture emissions and that it would be technically difficult for them to capture a significant portion of their emissions. The commenters also maintained that attaining a degree of control rather than meeting an emission limit is a more appropriate measure of their emission reduction capability.

Response: EPA recognizes that continuous web machines are designed differently from general halogenated solvent cleaning machines, *i.e.*, batch and in-line cleaning machines. As explained in earlier responses, we have determined that it is both technologically infeasible and not cost effective for continuous web cleaning machines to comply with our final promulgated emissions limit. As also stated in Section III.A.3. of the preamble, in this final rule, we are not setting any emissions limits for facilities that use continuous web cleaners. As also explained earlier, we are concluding that the current level of control for continuous web cleaning machines called for by the existing NESHAP reduces HAP emissions to levels that present an acceptable risk, protects public health with an ample margin of safety, and prevents adverse environmental effects.

Comment: We received significant comments from five narrow tubing manufacturers. These commenters presented very significant and compelling reasons as to why they could not meet the proposed emission limits. The commenters indicated that carbon absorption systems were the only available feasible control technology but that installation would result in only a maximum of 25 percent overall emissions reduction. The commenters stated that vacuum-to-vacuum machines have not been engineered or tested to the sizes that are required for their specific industrial processes. They claimed that such large vacuum-to-vacuum machines are not available from machine manufacturers. One commenter stated that after five years of research and design they may be able to achieve the 100,000 kg/yr MC equivalent emission limit.

Response: EPA is persuaded that narrow tube manufacturing facilities are the most technically challenged in reducing emissions to the levels called for by either our proposed or final promulgated 60,000 kg/yr emission limit. EPA has also determined that this industry is bound to the use of chlorinated solvents and solvent switching is not a viable option for compliance. Furthermore, EPA is persuaded that vacuum-to-vacuum technology has not developed to a point where this industry can install these machines into their processes with certainty of performance. Therefore, EPA has concluded in this rule that this industry could only achieve both the proposed and final promulgated emissions limits by implementing newly engineered and untested technology. Consequently, as explained earlier in Section III.A.3. of the Preamble, EPA is adopting no changes to the 1994 NESHAP for the halogenated solvent cleaning machines used by the narrow tubing industry, and we are concluding that the current level of control by the existing NESHAP reduces HAP emissions to levels that present an acceptable risk, protects public health with an ample margin of safety, and prevents adverse environmental effects.

B. Cost Impacts

Comment: One aerospace facility maintained that the application of various technologies would result in 85 percent overall emissions reduction at capital costs of between $1.1 and $1.7 million, for this particular facility, but that it would need considerable more time beyond the proposed two years compliance period to implement the proposed emissions limits.

Response: As a result of the comments on compliance costs, EPA re-evaluated the ability of the aerospace industry to feasibly implement in a cost effective manner other emission limits we discussed at proposal but did not propose (ranging from 60,000 kg/yr to 250,000 kg/yr MC equivalent emission limits). We relied on commenters' submissions to assist us in revising our cost estimates for complying with these emissions limits by the aerospace industry and also relied on it in part in applying cost assumptions to the remainder of the other industries that use halogenated solvent cleaning machines.

The results indicated that implementing additional emission control levels, (ranging from 60,000 kg/yr to 250,000 kg/yr MC equivalent emission limits), within a three-year compliance period would result in total capital costs of over $9 million with a cost effectiveness of about $2,000/ton of solvent used. Furthermore, EPA calculated the total annualized costs for each cancer case avoided would be more than $17.5 million for the 100,000 kg/yr MC equivalent emission limit. Therefore, EPA is concluding in this final rule that the NESHAP requirements for aerospace manufacturing and maintenance degreasing machines, provide an ample margin of safety and that the requirements set forth in this final rule are not applicable to halogenated solvent cleaning machines that are associated with the aerospace manufacturing and maintenance industry and facilities. Under this final rule, the 1994 NESHAP requirements remain applicable to all the halogenated solvent cleaning machines associated with the aerospace manufacturing and maintenance facilities.

Comment: Commenters that use continuous web cleaning machines projected the capital costs of complying with the proposed emission limits (through "additions" to their production lines) at about $1,000,000.

Response: EPA recognizes the unique character of continuous web cleaning machines and is persuaded that technical emission control choices are limited to CADs to attain significant emission reductions. EPA has assumed that CADs may only achieve a 10 to 30 percent overall reductions in facility-wide emissions. Therefore, CAD alone would be insufficient for purposes of complying with the final promulgated

emissions limit. We have taken this into consideration in promulgating the final rule.

Comment: The narrow tube manufacturing industry calculated their costs of compliance with the proposed emission limits on the basis of installing CAD and researching and designing new and untested vacuum-to-vacuum technology. They indicated that capital costs for CAD installation ranged from $200,000 to $1,800,000. They also indicated that while this option is technically feasible it would only achieve 10 to 30 percent maximum in overall facility emissions reductions. The commenters further indicated that compliance with the proposed limits would require engineering new technology or relying on vacuum-to-vacuum machines, but that after conferring with vacuum-to-vacuum machine manufacturers, the cost estimates were more than $4,600,000 in capital costs with about $578,000 for operating costs. One facility, which produces specialized narrow tubing for medical applications, projected costs for vacuum-to-vacuum machines installation at $10.5 million and estimated that it would require between five and six years for the evaluation of the machines' cleaning performance. The commenters also stated that end-loading machines would require additional building space for loading and unloading tube bundles with lengths of 80 to 110 feet.

Response: EPA is persuaded that the narrow tubing industry is confronted with the biggest technological hurdle in achieving emissions reductions for purposes of achieving either the proposed or final promulgated emission limits. EPA is persuaded that emission control choices, for the narrow tubing industry, are limited to CAD, in order to attain the most significant emission reductions within the three-year compliance time frame. EPA is also persuaded that CAD may only achieve a 10 to 30 percent overall reductions in facility-wide emissions. Therefore, we have determined that installation of CAD alone would not control emissions to the level of either the proposed or final promulgated emission limits. We have also taken into consideration the costs for developing technology that will reduce emissions to both the proposed and final promulgated emissions limits. EPA has amended its cost analysis for this group of facilities and has determined that a cost effectiveness of over $3,600/ton, when joined with EPA's estimate of over $87 million in annual costs for each cancer case avoided, is unreasonable. Therefore, EPA is concluding in this final rule that the NESHAP requirements for narrow tube manufacturing provide an ample margin of safety, prevent adverse environmental effects and that the requirements set forth in this final rule will not be applicable to halogenated solvent cleaning machines associated with the narrow tubing manufacturing industry. Under this final rule, the 1994 NESHAP requirements remain applicable to all continuous web and halogenated solvent cleaning machines used by narrow tubing and aerospace manufacturing and maintenance facilities.

C. Compliance Schedule

Comment: Aerospace industries maintained that a five-year minimum compliance period would be necessary to investigate technology and protocol changes in order to comply with the proposed 40,000 kg/yr limit. A commenter from the narrow tubing industry suggested between five and ten years as necessary for them to investigate the probability of applying technology to reduce emissions to a significant amount, to either of the proposed emission limits.

The narrow tube manufacturing commenters stated that their machines are unique, indicated the non-availability of feasible emission reductions technology for either proposed emission limits and recommended that EPA allow the industry five to ten years for research and development of specific vacuum-to-vacuum technology for the specific needs of their industry.

Response: As stated in responses to earlier comments, EPA has considered these comments as significant and after re-evaluating compliance costs, technical feasibility and other factors, is concluding that, for the aerospace manufacturing and maintenance industry, narrow tube manufacturing industry, and facilities using continuous web cleaning machines, the current level of control provided by the existing NESHAP both reduces HAP emissions to levels that present an acceptable risk and provides an ample margin of safety to protect public health.

VI. Impacts

For sources required to comply with the 60,000 kg/yr MC equivalent emission limit, the national capital costs to reach compliance with the final rule are estimated to be $15,000,000 with annualized cost savings of $1.3 million. The capital costs for individual facilities would range from $15,000 to $800,000 with an average cost of about $200,000. More than 60 percent of the facilities implementing control technology would recognize a cost savings primarily from solvent savings. Capturing and controlling HAP emissions is a pollution prevention approach where emissions reduction translate into less PCE, TCE and MC consumption and reduced operating costs primarily because facilities would need to purchase less solvents. Using the 2002 NEI database, the maximum individual cancer risk is estimated to be reduced from 100-in-1 million to between 20 and 50-in-a-million (using both OPPTS and CalEPA potency values). The rule is expected to reduce cancer incidence from 0.55 cases annually to 0.36 cases annually, a reduction in cancer incidence of 0.19 cases annually.

EPA also estimates that to comply with the 100,000 kg/yr MC equivalent emission limit, military depot maintenance facilities are expected to incur $540,000 in capital costs with annualized savings of about $56,000. Using the 2002 NEI database, the maximum individual cancer risk is estimated to be reduced from six-in-a-million to three-in-a-million. The emission limit for military depot maintenance facilities is expected to reduce cancer incidence by 0.002 cases annually.

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." Executive Order (EO) 12866 gives the Office of Management and Budget (OMB) the authority to review regulatory actions that are categorized as "significant" under section 3(f) of the EP, *i.e.*, those actions that are likely to result in a rule that may raise novel legal and policy issues arising out of mandates in CAA section 112(f)(2) and 112(d)(6). Accordingly, EPA submitted this action to 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, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, which is briefly summarized in Section III.B. of the Preamble, is contained in National Cost Impacts Memorandum. A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Owners

or operators will continue to keep records and submit required reports to EPA or the delegated State regulatory authority. Notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to the 1994 Halogenated Solvent Cleaning NESHAP. Owners or operators subject to the 1994 Halogenated Solvent Cleaning NESHAP continue to maintain records and retain them for at least 5 years following the date of such measurements, reports, and records. Information collection requirements that were promulgated on December 2, 1994 in the Halogenated Solvent Cleaning NESHAP prior to the 2005 proposed amendments, as well the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards, are documented in EPA ICR No. 1652.05. The Office of Management and Budget (OMB) has previously approved these information collection requirements contained in the existing regulations 40 CFR part 63 subpart T under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0273, EPA ICR number 1652.05. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 9 and 48 CFR part 15.

We have established a public docket for this action, which includes the ICR, under Docket ID number EPA–HQ–OAR–2003–0009, which can be found in *http://www.regulations.gov*. This final decision will not change the burden estimates from those developed and approved in 1994 for the national emission standard.

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 the final action 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.

As mentioned earlier in this Preamble, facilities across several industries use halogenated solvents to degrease their products, therefore a number of size standards are utilized in this analysis. For the industries represented in this analysis, the employment size standard varies from 500 to 1,500 employees. The annual sales standard is as low as 4 million dollars and as high as 150 million dollars.

After considering the economic impacts of this final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the economic impact of the final rule to affected small entities in the entire halogenated solvent cleaning source category. The final rule is expected to affect 125 ultimate parent entities that will be regulated as major sources. Forty of the parent entities, or approximately one-third, are defined as small according to the SBA small business size standards. None of the small firms has an annualized cost of more than 0.7 percent of sales associated with meeting the requirements for major sources, and 16 of the forty affected small firms are estimated to incur no costs or have cost savings associated with compliance with the final rule. For more information, please consult the economic impact analysis for this rulemaking.

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 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 we establish 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.

We have 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 the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it 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 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. None of the affected halogenated solvent cleaning facilities are owned or operated by State or 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 Tribe Governments" (65 FR 67249, November 9, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final decision.

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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, the Agency believes this action represents reasonable further efforts to mitigate risks to the general public, including effects on children. This conclusion is based on our assessment of the imposed emission limits that would reduce chlorinated solvent impacts on human health associated with exposures to halogenated solvent cleaning operations.

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

The final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This final rule will have a negligible impact on energy consumption because about ten percent of entities using halogenated solvent cleaning will have to reduce emissions through a range of activities involving simple process changes to the installation of additional emission control equipment or special low emitting machines to comply. The cost of energy distribution should not be affected by the final rule at all since the standards do not affect energy distribution facilities. We also expect that there would be no impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Further, we have concluded that this final rule is not likely to have any significant adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final revision to the 1994 NESHAP for halogenated solvent cleaning do not include requirements for technical standards beyond what the NESHAP requires. Therefore, the requirements of the NTTAA do not apply to this action.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment 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 this final rule amendment in the **Federal Register**. The final rule amendment is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule is effective on May 3, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: April 16, 2007.

Stephen L. Johnson,

Administrator.

■ For 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 T—[Amended]

■ 2. Section 63.460 is amended by revising paragraphs (c), (d), and (g) and adding paragraph (i) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(c) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction after November 29, 1993 shall achieve compliance with the provisions of this subpart, except for § 63.471, immediately upon start-up or by December 2, 1994, whichever is later.

(d) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993 shall achieve compliance with the provisions of this subpart, except for § 63.471, no later than December 2, 1997.

* * * * *

(g) Each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart, except for § 63.471, no later than December 2, 1999.

* * * * *

(i) The compliance date for the requirements in § 63.471 depends on the date that construction or reconstruction of the affected facility commences. For purposes of this paragraph, affected facility means all solvent cleaning machines, except solvent cleaning machines used in the manufacture and maintenance of aerospace products, solvent cleaning machines used in the manufacture of narrow tubing, and continuous web cleaning machines, located at a major source that are subject to the facility-wide limits in Table 1 of § 63.471(b)(2), and for area sources, affected facility means all solvent cleaning machines, except cold batch cleaning machines, located at an area source that are subject to the facility-wide limits in Table 1 of § 63.471(b)(2).

(1) Each affected facility that was constructed or reconstructed on or before August 17, 2006, shall be in compliance with the provisions of this subpart no later than May 3, 2010.

(2) Each affected facility that was constructed or reconstructed on or after August 17, 2006, shall be in compliance with the provisions of this subpart on May 3, 2007 or immediately upon startup, whichever is later.

■ 3. Section § 63.471 is added to Subpart T to read as follows:

§ 63.471 Facility-wide standards.

(a) Each owner or operator of an affected facility shall comply with the requirements specified in this section. For purposes of this section, affected facility means all solvent cleaning machines, except solvent cleaning machines used in the manufacture and maintenance of aerospace products, solvent cleaning machines used in the manufacture of narrow tubing, and continuous web cleaning machines, located at a major source that are subject to the facility-wide limits in paragraph (b)(2) of this section, and for area sources, affected facility means all solvent cleaning machines, except cold batch cleaning machines, located at an area source that are subject to the facility-wide limits in paragraph (b)(2) of this section.

(b)(1) Each owner or operator of an affected facility must maintain a log of solvent additions and deletions for each solvent cleaning machine.

(2) Each owner or operator of an affected facility must ensure that the total emissions of perchloroethylene (PCE), trichloroethylene (TCE) and methylene chloride (MC) used at the affected facility are equal to or less than the applicable facility-wide 12-month rolling total emission limit presented in Table 1 of this section as determined using the procedures in paragraph (c) of this section.

TABLE 1.—FACILITY-WIDE EMISSION LIMITS FOR FACILITIES WITH SOLVENT CLEANING MACHINES

Solvents emitted	Facility-wide annual emission limits in kg—for general population degreasing machines	Facility-wide annual emission limit in kg for military depot maintenance facilities
PCE only[a]	4,800	8,000
TCE only	14,100	23,500
MC only	60,000	100,000
Multiple solvents—Calculate the MC-weighted emissions using equation 1	60,000	100,000

[a] PCE emission limit calculated using CalEPA URE.

Note: In the equation, the facility emissions of PCE and TCE are weighted according to their carcinogenic potency relative to that of MC. The value of A is 12.5. The value for B is 4.25.

$$WE=(PCE\times A)+(TCE\times B)+(MC) \quad \text{(Eq. 9)}$$

Where:

WE = Weighted 12-month rolling total emissions in kg (lbs).

PCE = 12-month rolling total PCE emissions from all solvent cleaning machines at the facility in kg (lbs).

TCE = 12-month rolling total TCE emission from all solvent cleaning machines at the facility in kg (lbs).

MC = 12-month rolling total MC emissions from all solvent cleaning machines at the facility in kg (lbs).

(c) Each owner or operator of an affected facility shall on the first operating day of every month, demonstrate compliance with the applicable facility-wide emission limit on a 12-month rolling total basis using the procedures in paragraphs (c)(1) through (5) of this section. For purposes of this paragraph, "each solvent cleaning machine" means each solvent cleaning machine that is part of an affected facility regulated by this section.

(1) Each owner or operator of an affected facility shall, on the first operating day of every month, ensure that each solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that has been cleaned of soiled materials. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions as specified in paragraphs (c)(2) and (3) of this section. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

(2) Each owner or operator of an affected facility shall, on the first operating day of the month, using the records of all solvent additions and deletions for the previous month, determine solvent emissions (E_{unit}) from each solvent cleaning machine using equation 10:

$$E_{unit} = SA_i - LSR_i - SSR_i \quad \text{(Eq. 10)}$$

Where:

E_{unit} = the total halogenated HAP solvent emissions from the solvent cleaning

machine during the most recent month i, (kilograms of solvent per month).

SA_i = the total amount of halogenated HAP liquid solvent added to the solvent cleaning machine during the most recent month i, (kilograms of solvent per month).

LSR_i = the total amount of halogenated HAP liquid solvent removed from the solvent cleaning machine during the most recent month i, (kilograms of solvent per month).

SSR_i = the total amount of halogenated HAP solvent removed from the solvent cleaning machine in solid waste, obtained as described in paragraph (c)(3) of this section, during the most recent month i, (kilograms of solvent per month).

(3) Each owner or operator of an affected facility shall, on the first operating day of the month, determine SSR_i using the method specified in paragraph (c)(3)(i) or (c)(3)(ii) of this section.

(i) From tests conducted using EPA reference method 25d.

(ii) By engineering calculations included in the compliance report.

(4) Each owner or operator of an affected facility shall on the first operating day of the month, after 12 months of emissions data are available, determine the 12-month rolling total emissions, ET_{unit}, for the 12-month period ending with the most recent month using equation 11:

$$ET_{unit} = \left[\sum_{j=1}^{12} E_{unit}\right] \quad \text{(Eq. 11)}$$

Where:

ET_{unit} = the total halogenated HAP solvent emissions over the preceding 12 months, (kilograms of solvent emissions per 12-month period).

E_{unit} = halogenated HAP solvent emissions for each month (j) for the most recent 12 months (kilograms of solvent per month).

(5) Each owner or operator of an affected facility shall on the first operating day of the month, after 12 months of emissions data are available, determine the 12-month rolling total emissions, $ET_{facility}$, for the 12-month period ending with the most recent month using equation 12:

$$ET_{facility} = \left[\sum_{j=1}^{i} ET_{unit}\right] \quad \text{(Eq. 12)}$$

Where:

$ET_{facility}$ = the total halogenated HAP solvent emissions over the preceding 12 months for all cleaning machines at the facility, (kilograms of solvent emissions per 12-month period).

ET_{unit} = the total halogenated HAP solvent emissions over the preceding 12 months for each unit j, where i equals the total number of units at the facility (kilograms of solvent emissions per 12-month period).

(d) If the applicable facility-wide emission limit presented in Table 1 of paragraph (b)(2) is not met, an exceedance has occurred. All exceedances shall be reported as required in § 63.468(h).

(e) Each owner or operator of an affected facility shall maintain records specified in paragraphs (e)(1) through (3) of this section either in electronic or written form for a period of 5 years. For purposes of this paragraph, "each solvent cleaning machine" means each solvent cleaning machine that is part of an affected facility regulated by this section.

(1) The dates and amounts of solvent that are added to each solvent cleaning machine.

(2) The solvent composition of wastes removed from each solvent cleaning machines as determined using the procedure described in paragraph (c)(3) of this section.

(3) Calculation sheets showing how monthly emissions and the 12-month rolling total emissions from each solvent cleaning machine were determined, and the results of all calculations.

(f) Each owner or operator of an affected facility shall submit an initial notification report to the Administrator no later than May 3, 2010. This report shall include the information specified in paragraphs (f)(1) through (5) of this section.

(1) The name and address of the owner or operator of the affected facility.

(2) The address (*i.e.*, physical location) of the solvent cleaning machine(s) that is part of an affected facility regulated by this section.

(3) A brief description of each solvent cleaning machine at the affected facility including machine type (batch vapor, batch cold, vapor in-line or cold in-line), solvent/air interface area, and existing controls.

(4) The date of installation for each solvent cleaning machine.

(5) An estimate of annual halogenated HAP solvent consumption for each solvent cleaning machine.

(g) Each owner or operator of an affected facility shall submit to the Administrator an initial statement of compliance on or before May 3, 2010. The statement shall include the information specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The name and address of the owner or operator of the affected facility.

(2) The address (*i.e.*, physical location) of each solvent cleaning machine that is part of an affected facility regulated by this section.

(3) The results of the first 12-month rolling total emissions calculation.

(h) Each owner or operator of an affected facility shall submit a solvent emission report every year. This solvent emission report shall contain the requirements specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The average monthly solvent consumption for the affected facility in kilograms per month.

(2) The 12-month rolling total solvent emission estimates calculated each month using the method as described in paragraph (c) of this section.

(3) This report can be combined with the annual report required in § 63.468(f) and (g) into a single report for each facility.

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labor monitoring system they intend to market.

II. What is The Environmental Impact Of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Thus, neither an environmental assessment nor an environmental impact statement is required.

III. What is The Economic Impact Of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1–year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply with the Paperwork Reduction Act of 1995?

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required.

VI. What References are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Barnev Ltd., dated October 15, 2006.

List of Subjects in 21 CFR Part 884

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884–OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 884.2800 is added to subpart C to read as follows:

§ 884.2800 Computerized Labor Monitoring System.

(a) *Identification.* A computerized labor monitoring system is a system intended to continuously measure cervical dilation and fetal head descent and provide a display that indicates the progress of labor. The computerized labor monitoring system includes a monitor and ultrasound transducers. Ultrasound transducers are placed on the maternal abdomen and cervix and on the fetal scalp to provide the matrix of measurements used to produce the display.

(b) *Classification.* Class II (special controls). The special controls are the FDA guidance document entitled: "Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Computerized Labor Monitoring Systems." See § 884.1(e) for availability of this guidance document.

Dated: April 13, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–7702 Filed 4–23–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0093; FRL–8304–2]

RIN 2060–AN10

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks (Automobiles and Light-Duty Trucks NESHAP) which were promulgated on April 26, 2004, under the authority of section 112(d) of the Clean Air Act. The direct final rule amends provisions in the Automobiles and Light-Duty Trucks NESHAP to clarify the interaction between the Automobiles and Light-Duty Trucks NESHAP and the National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (Plastic Parts NESHAP), to clarify the meaning of certain regulatory provisions, and to correct certain errors identified in the regulatory text. EPA is also taking direct final action on amendments to the Plastic Parts NESHAP to clarify that screen printing is not subject to that rule.

DATES: The direct final rule is effective on June 25, 2007 without further notice,

unless EPA receives adverse written comment or a public hearing is requested. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant provisions of this rule, will not take effect. Written comments must be received on or before May 24, 2007 unless a public hearing is requested by May 4, 2007. If a public hearing is requested, written comments must be received on or before June 8, 2007. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on May 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0093, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov* and *salman.dave@epa.gov.*
- *Fax:* (202) 566–1741 and (919) 541–0246.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: Air and Radiation Docket (6102T), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0093. EPA's policy is that all comments received 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 information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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: For further information contact Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number (919) 541–0859; fax number (919) 541–0246; e-mail address: *salman.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Why is EPA using a direct final rule? EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This direct final rule amends provisions in the Automobiles and Light-Duty Trucks NESHAP to clarify the interaction between the Automobiles and Light-Duty Trucks NESHAP and the Plastic Parts NESHAP, to clarify the meaning of certain regulatory provisions, and to correct certain errors identified in the regulatory text. The direct final rule also amends the Plastic Parts NESHAP to clarify that screen printing is not subject to that rule.

However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule if adverse comments are received on this direct final rule or a public hearing is requested, and the direct final rule is, therefore, withdrawn. We will not institute a second comment period on the proposed rule. Any parties interested in commenting must do so at this time. For further information about commenting on this direct final rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment or a public hearing is requested, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

If we receive adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision.

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	336111	Automobile manufacturing.
	336112	Light truck and utility vehicle manufacturing.
	336211	Motor vehicle body manufacturing.
	336120	Heavy duty truck manufacturing.
	323113	Commercial screen printing.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rule. 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.

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

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 25, 2007. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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

I. Background
II. Amendments
A. Applicability
B. Recordkeeping
C. Electrodeposition Primer
D. Transfer Efficiency
E. Equations
F. Monitoring
G. Uncounted Capture and Control
H. Definitions
III. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility
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. Congressional Review Act

I. Background

On April 26, 2004, we issued the final Automobiles and Light-Duty Trucks NESHAP (69 FR 22602). The final NESHAP established standards to control organic hazardous air pollutant (HAP) emissions from new and existing automobile and light-duty truck surface coating operations. This action amends the final Automobiles and Light-Duty Trucks NESHAP to clarify the interaction between that rule and the Plastic Parts NESHAP, to clarify the meaning of certain regulatory provisions, and to correct certain errors in the regulatory text. On April 19, 2004, we issued the final Plastic Parts NESHAP (69 FR 20968). The final NESHAP established standards to control organic hazardous air pollutant (HAP) emissions from new and existing plastic parts coating operations. Today's action amends the Plastic Parts NESHAP to clarify that screen printing is not subject to that rule. None of the amendments will have any effect on the stringency of the rules.

II. Amendments

All of the amendments discussed below are amendments to the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII), except for one amendment to the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP) which is discussed at the end of section II.A. "*Applicability.*"

A. Applicability

Plastic or composite body parts are used in many automobiles and light-duty trucks. These parts are typically fabricated (molded, stamped, formed, etc.) and prime coated at plastic or composites molding facilities, and then sent to automobile or light-duty truck assembly facilities where they receive an additional prime coat and topcoat. The coating activities at plastic or composites molding facilities were considered in the development of the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP) and are subject to that regulation. The coating activities at automobile or light-duty truck assembly facilities were considered in the development of the final Automobiles and Light-Duty Trucks NESHAP and are subject to that regulation.

The application of "topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks" is used as an applicability criterion in 40 CFR 63.3081(b) of the final Automobiles and Light-Duty Trucks NESHAP. The intent of this applicability criterion was to keep the coating of plastic or composite body parts at plastic or composites molding facilities, which is subject to the Plastic Parts NESHAP, from being subject to the Automobiles and Light-Duty Trucks NESHAP. The structure of this applicability criterion was based on our knowledge, at the time, of the application of prime coat to plastic or composite body parts at plastic or composites molding facilities. Specifically, at the time we developed the applicability criterion, we were unaware of any application of topcoat to plastic or composite body parts occurring at plastic or composites molding facilities.

We have since learned that there is some application of topcoat to plastic or composite body parts at plastic or composites molding facilities. The applicability criterion in 40 CFR 63.3081(b) of the Automobiles and Light-Duty Trucks NESHAP, therefore, could have the unintended consequence of making coating at plastic and composite molding facilities subject to Automobiles and Light-Duty Trucks NESHAP. We have amended 40 CFR 63.3081(b) and added a definition of "plastic or composites molding facility" to clarify that the application of topcoat to plastic or composite body parts at a

plastic or composites molding facility does not trigger applicability of this subpart as long as all of the body parts topcoated at the plastic or composites molding facility for use in new automobiles or new light-duty trucks were fabricated (molded, stamped, formed, etc.) at that facility or at another plastic or composites molding facility with the same owner or operator, none of the new vehicles in which these body parts are used are assembled at the plastic or composites molding facility, and the plastic or composites molding facility does not topcoat all of the body parts for any single new automobile or new light-duty truck.

We are also amending the Plastic Parts NESHAP because there has been some confusion as to whether that NESHAP regulates screen printing. Specifically, the definition of the term "coating" in the Plastic Parts NESHAP includes the word "ink." Some screen printing is done on plastic. Screen printing on plastic, however, is part of the printing and publishing source category. The printing and publishing source category is addressed in the National Emission Standards for the Printing and Publishing Industry (40 CFR part 63, subpart KK). We are, therefore, amending 40 CFR 63.4481 of the Plastic Parts NESHAP to clarify that screen printing is not subject to the Plastic Parts NESHAP.

B. Recordkeeping

After publication of the final Automobiles and Light-Duty Trucks NESHAP, a question was raised about the types of records required to be kept under 40 CFR 63.3130(o). The question was whether these records were limited to operating instructions, or whether other records, such as construction blueprints, also needed to be maintained. We have amended 40 CFR 63.3130(o) to clarify that the operating instructions for each add-on control device and each continuous parameter monitoring system must be kept on-site for the life of the equipment in a location readily available to plant operators and inspectors.

C. Electrodeposition Primer

An electrodeposition primer tank or system typically contains tens of thousands of gallons of material. As a result, monthly material usage for electrodeposition primer is typically determined by tracking additions to the tank or system over the month. This contrasts to other coating operations, such as topcoat or primer-surfacer, where monthly usage of each material is typically determined by tracking additions to a small (*e.g.*, 500 gallon) day tank over the month and the change in the amount of material in the day tank from the beginning of the month to the end of the month.

After publication of the final rule, we were asked if we could clarify that material usage and other parameters relevant to electrodeposition primer are determined based upon additions to the tank or system over the month. We have amended 40 CFR 63.3161(e) to clarify that for electrodeposition primer the mass fraction of organic HAP, density and volume of each material used is to be determined for each material added to the tank or system during the month. We have amended 40 CFR 63.3161(f) to clarify that for electrodeposition primer the volume fraction of coating solids is to be determined for each material added to the tank or system during the month.

The determination of capture efficiency is discussed in 40 CFR 63.3165 of the final rule. The introductory text to 40 CFR 63.3165 of the final rule states that a bake oven air seal is not considered a natural draft opening to a permanent total enclosure or a temporary total enclosure provided the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. This includes electrodeposition bake oven air seals. Capture of emissions from electrodeposition bake ovens is also discussed in 40 CFR 63.3171(f) of the final rule. After publication of the final rule, we were asked if we could clarify that electrodeposition bake oven air seals were intended to be considered in the same manner under 40 CFR 63.3171(f) as they are considered in 40 CFR 63.3165 introductory text. We have amended 40 CFR 63.3171(f) to clarify that an electrodeposition bake oven air seal is not considered a natural draft opening provided the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven.

D. Transfer Efficiency

The final rule requires that transfer efficiency be determined for many coatings used in automobile or light-duty truck coating operations. The final rule states that transfer efficiency may be determined using ASTM Method D5066–91 (Reapproved 2001), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis (incorporated by reference, see 40 CFR 63.14), or the guidelines presented in Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). The final rule provides default transfer efficiency values for electrodeposition primer coatings, glass bonding primers, glass bonding adhesives, and final repair coatings. The guidelines provide default transfer efficiency values for certain specialty or low-use coatings such as blackout and interior color.

After publication of the final rule, a question was raised about whether the default transfer efficiency values in the guidelines could be used for chip resistant edge primer, lower body anti-chip coating and underbody anti-chip coating. These types of coatings are not explicitly mentioned in the guidelines, because the guidelines do not discuss primer-surfacer operations in detail. We believe it is appropriate to apply the default transfer efficiency values in the guidelines to these types of coatings and are amending the rule accordingly. Similar to blackout, lower-body anti-chip coating and chip resistant edge primer are applied to relatively small areas of the vehicle. Underbody anti-chip coatings are typically applied with efficient airless applicators. Specifically, we have amended 40 CFR 63.3161(g) to provide default transfer efficiency values for these types of coatings. We have also added definitions of "chip resistant edge primer," "lower body anti-chip coating," and "underbody anti-chip coating," and revised the definitions of "anti-chip coating," "deadener," and "primer-surfacer" to better identify the types of coatings for which default transfer efficiency values can be used.

E. Equations

We have corrected Equation 5 in 40 CFR 63.3161(l) by removing "/100" from the end of the equation. This division by 100 is incorrect because the transfer efficiency (TE) is expressed as a decimal value rather than as a percentage.

We have revised Equation 4 in § 63.3165(e) by changing the symbol "Pi" to "Pv,i" to emphasize that the panel test result in this equation is expressed in mass (kg) of volatile organic compounds (VOC) per *volume* (liter) of coating solids deposited. This helps distinguish this equation from Equation 7 in 40 CFR 63.3165(e) where the symbol "Pm,i" is used to emphasize that the panel test result in that equation is expressed in *mass* (kg) of VOC per mass (kg) of coating solids deposited.

We have revised the description of the symbol "$Wvoc_{c,i}$" in Equations 6 and 7 in 40 CFR 63.3165(e) to specify that the guidelines for combining analytical

VOC content and formulation solvent content are in Section 9 of the Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Coating Operations (Protocol). The description of the symbol "$Wvoc_{c,i}$" in Equations 6 and 7 in 40 CFR 63.3165(e) of the final rule provided only a general reference to the Protocol.

We have corrected Equation 7 in 40 CFR 63.3165(e) by adding a multiplier of "100" to the numerator of the equation. This multiplier is needed in order for the result of the equation to be expressed as a percentage.

F. Monitoring

The temperature operating limits for thermal oxidizers, catalytic oxidizers and condensers are identified as "3-hour" operating limits in Table 1 of the final rule. The "3-hour" specification was inadvertently omitted from 40 CFR 63.3167(a)(2), (b)(2), and (d)(2) of the final rule. We have revised 40 CFR 63.3167(a)(2), (b)(2), and (d)(2) to clarify that these operating limits are 3-hour averages.

Catalyst activity testing and internal inspection of the catalyst are specified in 40 CFR 63.3167(b)(6) of the final Automobiles and Light-Duty Trucks rule. Similar specifications are provided in 40 CFR 63.4567(b)(4) of the Plastic Parts NESHAP. The specifications in the Plastic Parts NESHAP include an explanation of how to proceed if problems are found during annual catalyst activity testing or annual internal inspection of the catalyst. This explanation was inadvertently omitted from the final Automobiles and Light-Duty Trucks rule. We have revised 40 CFR 63.3167(b)(6) to explain how to proceed if problems are found during annual catalyst activity testing or annual internal inspection of the catalyst.

The exceptions provided in 40 CFR 63.3167(f), for capture devices that are part of a PTE or that capture emissions from a downdraft spray booth or from a flashoff area or bake oven associated with a downdraft spray booth, were inadvertently omitted from the entry for "Emission capture system that is not a PTE" in Table 1 of the final rule. We have revised Table 1 of the final rule to make the entry for "Emission capture system that is not a PTE" consistent with 40 CFR 63.3167(f) of the final rule and to correct a typographical error.

G. Uncounted Capture and Control

Some facilities have capture systems or add-on control devices installed and operated to control VOC emissions which they do not need to take into account in order to demonstrate compliance with the emission limitations for organic hazardous air pollutants in the final rule. After publication of the final rule, we were asked whether testing and monitoring requirements apply to capture systems or add-on control devices that are not taken into account in demonstrating compliance with the emission limitations for organic hazardous air pollutants in the final rule. Other surface coating NESHAP have separate compliance demonstration provisions for "emission rate without add-on control" and "emission rate with add-on control". We intended to provide the same flexibility in the Automobiles and Light-Duty Trucks NESHAP. We, therefore, have added new sections 40 CFR 63.3169 and 40 CFR 63.3174 and added a definition of "controlled coating operation" to clarify that the requirements for capture system or add-on control device reporting, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, or removal efficiency do not apply to capture systems or add-on control devices which the owner or operator *chooses not* to take into account when demonstrating compliance with the applicable emission limitations. If, at a later date, the owner or operator decides to take any such capture system or add-on control device into account when demonstrating compliance with the emission limitations, then, at that time, the owner or operator must comply with the reporting, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, or removal efficiency for that capture system or add-on control device.

H. Definitions

In addition to the definition changes described above, we have made several other changes to the definitions in the final rule. After publication of the final rule, we were asked if we could clarify that "bake oven air seals" may be present both on bake ovens associated with spray booths and on bake ovens associated with electrodeposition primer operations. We have revised the definition of "bake oven air seal" to clarify that both bake ovens associated with spray booth and electrodeposition primer bake ovens may have bake oven air seals. We have also revised the definition of "spray booth air seal" to make it consistent with the definition of "bake oven air seal." The definition of "bake oven air seal" referred to "entry or entry vestibule to or an exit or exit vestibule" whereas the definition of "spray booth air seal" inadvertently referred only to "entry vestibule or exit vestibule." We have revised the definition of "touchup bottle" to allow the container size to be up to 0.25 liters and to clarify that the applicator may be a brush or other non-atomizing applicator.

III. 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. OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart IIII) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0550, EPA ICR No. 2045.03. A copy of the Information Collection Request (ICR) may be obtained from Ms. Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Analysis

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 direct final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration size standards for companies identified by NAICS codes 336111 (automobile manufacturing) and 336112 (light truck and utility vehicle manufacturing) with 1,000 or fewer employees or by NAICS code 323113 (commercial screen printing) with 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the above definition, there are no small entities presently engaged in automobile and light-duty truck surface coating. While there are small entities presently engaged in commercial screen printing, today's direct final rule amendments would not impose any requirements on commercial screen printers.

After considering the economic impacts of the final rule on small entities, EPA has concluded and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This is based on the observation that this action affects no small entities since none are engaged in the surface coating of automobiles and light-duty trucks, and no requirements are imposed on commercial screen printers.

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 1 year. Before promulgating a 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 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 direct final rule amendments 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 1 year. The direct final rule amendments add no additional burden on sources. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 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" 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."

The direct final rule amendments 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. No facilities subject to the direct final rule amendments are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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." The direct final rule amendments 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, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

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

EPA interprets Executive Order 13045 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. The direct final rule amendments are not subject to Executive Order 13045 because they are based solely on technology performance.

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

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The direct final rule amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct 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 direct final rule amendments in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on June 25, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: April 18, 2007.

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 IIII—[Amended]

■ 2. Section 63.3081 is amended by revising paragraph (b) to read as follows:

§ 63.3081 Am I subject to this subpart?

* * * * *

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, that, except as noted in paragraph (b)(1) of this section, is located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks, and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, in which you choose to include, pursuant to § 63.3082(c), any coating operations which apply coatings to new other motor vehicle bodies or body parts for new other motor vehicles; parts intended for use in new automobiles, new light-duty trucks, or new other motor vehicles; or aftermarket repair or replacement parts for automobiles, light-duty trucks, or other motor vehicles; and the affected source is located at a facility that is a major source, is located at a major source, or is part of a major source of emissions of HAP. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(1) You are not subject to this subpart if you meet all of the criteria of paragraphs (b)(1)(i) through (iii) of this section:

(i) Your coating operation is located at a plastic or composites molding facility;

(ii) All of the body parts topcoated at your facility for use in new automobiles or new light-duty trucks were fabricated (molded, stamped, formed, etc.) at your facility or at another plastic or composites molding facility which you own or operate, and none of the new vehicles in which these body parts are used are assembled at your facility; and

(iii) You do not topcoat all of the body parts for any single new automobile or new light-duty truck at your facility.

(2) [Reserved]

* * * * *

■ 3. Section 63.3130 is amended by revising paragraph (o) to read as follows:

§ 63.3130 What records must I keep?

* * * * *

(o) For each add-on control device and for each continuous parameter monitoring system, a copy of the equipment operating instructions must be maintained on-site for the life of the equipment in a location readily available to plant operators and inspectors. You may prepare your own equipment operating instructions, or they may be provided to you by the equipment supplier or other third party.

■ 4. Section 63.3161 is amended by:

■ a. Revising paragraph (e);

■ b. Revising paragraph (f) introductory text;

■ c. Adding a new sentence at the end of paragraph (g); and

■ d. Revising paragraph (l) to read as follows:

§ 63.3161 How do I demonstrate initial compliance?

* * * * *

(e) *Determine the mass fraction of organic HAP, density, and volume used.* Follow the procedures specified in § 63.3151(a) through (c) to determine the mass fraction of organic HAP and the density and volume of each coating and thinner used during each month. For electrodeposition primer operations, the mass fraction of organic HAP, density, and volume used must be determined for each material added to the tank or system during each month.

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

(g) * * * For blackout, chip resistant edge primer, interior color, in-line repair, lower body anti-chip coatings, or underbody anti-chip coatings, you may assume 40 percent transfer efficiency for air atomized spray, 55 percent transfer efficiency for electrostatic spray and high volume-low pressure spray, and 80 percent transfer efficiency for airless spray.

* * * * *

(l) *Calculate the total volume of coating solids deposited.* Determine the total volume of coating solids deposited, liters, in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems used in coating operations added to the affected source pursuant to § 63.3082(c) using Equation 5 of this section:

$$V_{sdcp} = \sum_{i=1}^{m} (Vol_{c,i})(V_{s,i})(TE_{c,i}) \qquad \text{(Eq. 5)}$$

Where:

V_{sdcp} = Total volume of coating solids deposited during the month, liters.

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

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

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

M = Number of coatings used during the month.

* * * * *

■ 5. Section 63.3165 is amended by:

■ a. Revising Equation 4 in paragraph (e) introductory text;

■ b. Revising Equation 6 in paragraph (e)(2); and

■ c. Revising paragraph (e)(3) to read as follows:

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

* * * * *

(e) * * *

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

Where:

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

$P_{v,i}$ = Panel test result for coating, i, or for the coating representing coating, i, in the panel test, kg of VOC per liter of coating solids deposited.

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

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

* * * * *

(2) * * *

$$VOC_i = (D_{c,i})(Wvoc_{c,i}) \qquad \text{(Eq. 6)}$$

Where:

VOC_i = Mass of VOC per volume of coating for coating, i, or composite mass of VOC per volume of coating for the group of coatings including coating, i, used during the month in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, kg VOC per liter coating.

$D_{c,i}$ = Density of coating, i, or average density of the group of coatings, including coating, i, kg coating per liter coating, density determined according to § 63.3151(b).

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

(3) As an alternative, you may choose to express the results of your panel tests in units of mass of VOC per mass of coating solids deposited and convert such results to a percent using Equation 7 of this section. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the mass of coating solids deposited per mass of coating used, mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the mass of coating solids deposited per mass of coating used and average values for the mass of VOC per volume of coating, average values for the group of coatings for mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the mass of coating solids deposited per mass of coating used, mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section. Panel test results expressed in units of mass of VOC per mass of coating solids deposited must be converted to percent capture efficiency using Equation 7 of this section:

$$CE_i = (P_{m,i})(W_{sdep,i})(100)/(Wvoc_{c,i}) \quad \text{(Eq. 7)}$$

Where:

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

$P_{m,i}$ = Panel test result for coating, i, or for the coating representing coating, i, in the panel test, kg of VOC per kg of coating solids deposited.

$W_{sdep,i}$ = Mass of coating solids deposited per mass of coating used for coating, i, or composite mass of coating solids deposited per mass of coating used for the group of coatings, including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, kg of solids deposited per kg of coating used, from Equation 8 of this section.

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

* * * * *

■ 6. Section 63.3167 is amended by:
■ a. Revising the second sentence of paragraph (a)(2);
■ b. Revising paragraph (b)(2);
■ c. Revising paragraph (b)(6); and
■ d. Revising the second sentence of paragraph (d)(2) to read as follows:

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

* * * * *

(a) * * *

(2) * * * This average combustion temperature is the minimum 3-hour average operating limit for your thermal oxidizer.

* * * * *

(b) * * *

(2) Use all valid data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The minimum 3-hour average operating limits for your catalytic oxidizer are the average temperature just before the catalyst bed maintained during the performance test of that catalytic oxidizer and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test of that catalytic oxidizer, except during periods of low production, the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. A low production period is when production is less than 80 percent of production rate during the performance test of that catalytic oxidizer.

* * * * *

(6) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(4) or (b)(5) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(6)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures. If problems are found during the catalyst activity test, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations.

(ii) Monthly external inspection of the catalytic oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found during the annual internal inspection of the catalyst, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations. If the catalyst bed is replaced and is not of like or better kind and quality as the old catalyst, then you must conduct a new performance test to determine destruction efficiency according to § 63.3166. If a catalyst bed is replaced and the replacement catalyst is of like or better kind and quality as the old catalyst, then a new performance test to determine destruction efficiency is not required and you may continue to use the previously established operating limits for that catalytic oxidizer.

* * * * *

(d) * * *

(2) * * * This average condenser outlet gas temperature is the maximum 3-hour average operating limit for your condenser.

* * * * *

■ 7. Section 63.3169 is added to read as follows:

§ 63.3169 What are the requirements for a capture system or add-on control device which is not taken into account when demonstrating compliance with the applicable emission limitations?

You may have capture systems or add-on control devices which you choose not to take into account when demonstrating compliance with the applicable emission limitations. For any such capture system or add-on control device, you are not required to comply with the requirements of §§ 63.3093, 63.3100, 63.3110, 63.3120, 63.3130, 63.3131, and 63.3160 through 63.3168 with regard to notification, reporting, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, or removal efficiency. If, at a later date, you decide to take any such capture system or add-on control device into account when demonstrating compliance with the emission limitations, then at that time you must comply with the requirements of §§ 63.3093, 63.3100, 63.3110, 63.3120, 63.3130, 63.3131, and 63.3160 through 63.3168 with regard to notification, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, and removal efficiency, as applicable, for that capture system or add-on control device.

■ 8. Section 63.3171 is amended by revising paragraph (f) to read as follows:

§ 63.3171 How do I demonstrate initial compliance?

* * * * *

(f) *Capture of electrodeposition bake oven emissions.* You must show that the electrodeposition bake oven meets the criteria in sections 5.3 through 5.5 of Method 204 of appendix M to 40 CFR part 51 and directs all of the exhaust gases from the bake oven to an add-on control device. For purposes of this showing, an electrodeposition bake oven air seal is not considered a natural draft opening provided you demonstrate that the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. You may use lightweight strips of fabric or paper, or smoke tubes to make such demonstrations. You cannot count air flowing from an electrodeposition bake oven air seal into an electrodeposition bake oven as air flowing through a natural draft opening unless you elect to treat that

electrodeposition bake oven air seal as a natural draft opening.

* * * * *

■ 9. Section 63.3174 is added to read as follows:

§ 63.3174 What are the requirements for a capture system or add-on control device which is not taken into account when demonstrating compliance with the applicable emission limitations?

You may have capture systems or add-on control devices which you choose not to take into account when demonstrating compliance with the applicable emission limitations. For any such capture system or add-on control device, you are not required to comply with the requirements of §§ 63.3093, 63.3100, 63.3110, 63.3120, 63.3130, 63.3131, and 63.3160 through 63.3168 with regard to notification, reporting, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, or removal efficiency. If, at a later date, you decide to take any such capture system or add-on control device into account when demonstrating compliance with the emission limitations, then at that time you must comply with the requirements of §§ 63.3093, 63.3100, 63.3110, 63.3120, 63.3130, 63.3131, and 63.3160 through 63.3168 with regard to notification, reporting, recordkeeping, performance tests, monitoring, operating parameters, capture efficiency, add-on control device efficiency, destruction efficiency, and removal efficiency, as applicable, for that capture system or add-on control device.

■ 10. Section 63.3176 is amended by:

■ a. Revising the definitions of "Anti-chip coating," "Bake oven air seal," "Controlled coating operation," "Deadener," "In-line repair," "Primer-surfacer," "Spray booth air seal," and "Touchup bottle."

■ b. Adding in alphabetical order definitions of "Chip resistant edge primer," "Lower body anti-chip coating," "Plastic or composites molding facility," and "Underbody anti-chip coating" to read as follows:

§ 63.3176 What definitions apply to this subpart?

* * * * *

Anti-chip coating means a specialty type of coating designed to reduce stone chipping damage. Anti-chip coating may be applied to broad areas of the vehicle or to selected vehicle surfaces that are most vulnerable to impingement by stones and other road debris. Anti-chip coating is typically applied after the *electrodeposition primer* and before the *topcoat*. Anti-chip coating is a type of *primer-surfacer*.

* * * * *

Bake oven air seal means an entry or entry vestibule to or an exit or exit vestibule from a bake oven which isolates the bake oven from the area immediately preceding (for an entry or entry vestibule) or immediately following (for an exit or exit vestibule) the bake oven. No significant VOC generating activity takes place in a bake oven air seal. Fresh air is supplied into a bake oven air seal and is then directed in part into the bake oven and in part into the area immediately preceding or immediately following the bake oven. All types of bake ovens, including ovens associated with spray booths and electrodeposition primer bake ovens, may have bake oven air seals.

* * * * *

Chip resistant edge primer means an *anti-chip coating* applied to the leading edge of parts such as the hood or roof.

* * * * *

Controlled coating operation means a *coating operation* from which some or all of the organic HAP emissions are routed through a *capture system* and an *add-on control device* which are taken into account when demonstrating compliance with an emission limitation in this subpart.

* * * * *

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

* * * * *

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

* * * * *

Lower body anti-chip coating means an *anti-chip coating* applied to lower body surfaces such as rocker panels, valence panels, lower portions of doors, or lower portions of fenders.

* * * * *

Plastic or composites molding facility means a facility where the purchase cost of capital equipment used for plastic or composites molding, including presses, tooling, and associated material processing and handling equipment, is greater than the purchase cost of capital equipment used for the surface coating of new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks.

Primer-surfacer means an intermediate protective coating applied on the *electrodeposition primer* and under the *topcoat*. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer may also be called *guide coat* or *surfacer*.

Anti-chip coating is a type of primer-surfacer.

* * * * *

Spray booth air seal means an entry or entry vestibule to or exit or exit vestibule from a spray booth which isolates the spray booth from the area immediately preceding (for an entry or entry vestibule) or immediately following (for an exit or exit vestibule) the spray booth. No coating application or other VOC generating activity takes place in a spray booth air seal. Fresh air is supplied into a spray booth air seal and is then directed in part into the spray booth and in part into the area immediately preceding or immediately following the spray booth.

* * * * *

Touchup bottle means a coating container with a volume of 0.25 liter or less used with a brush or other non-atomizing applicator.

* * * * *

Underbody anti-chip coating means an *anti-chip coating* applied to the underbody or wheel wells primarily for the purpose of protecting these areas of the vehicle from stone chipping.

* * * * *

■ 11. Table 1 to subpart IIII of part 63 is amended by revising entry 7 to read as follows:

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

For the following device * * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit by
*	*	*
7. Emission capture system that is not a PTE.	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3167(f). This applies only to capture devices that are not part of a PTE that meets the criteria of § 63.3165(a) and that are not capturing emissions from a downdraft spray booth or from a flashoff area or bake oven associated with a downdraft spray booth.	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3168(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

Subpart PPPP—[Amended]

■ 12. Section 63.4481 is amended by revising paragraph (c) introductory text and adding paragraph (c)(17) to read as follows:

§ 63.4481 Am I subject to this subpart?

* * * * *

(c) This subpart does not apply to surface coating or a coating operation that meets any of the criteria of paragraphs (c)(1) through (17) of this section.

* * * * *

(17) Screen printing.

* * * * *

[FR Doc. E7–7760 Filed 4–23–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0841; FRL–8304–1]
RIN 2060–A034

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Illinois Portion of the St. Louis, Illinois-Missouri Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) in an ozone nonattainment area classified as marginal, moderate, serious or severe upon the application of the Governor of the state in which the nonattainment area is located. This final action extends the Act's prohibition against the sale of conventional gasoline (*i.e.*, gasoline that is not RFG) to the Illinois portion of the St. Louis, Illinois-Missouri moderate ozone nonattainment area. The Agency will implement this prohibition for refiners and all other persons in the fuel distribution system other than retailers and wholesale purchaser-consumers on June 1, 2007. For retailers and wholesale purchaser-consumers, EPA's final action implements the prohibition on July 1, 2007. As of the compliance date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the Federal RFG program.

DATES: This final rule is effective April 20, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0841. 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 Air 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: Kurt Gustafson, Transportation and Regional Programs Division (Mail Code 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: 202–343–9219; fax number: 202–343–2800; e-mail address: *gustafson.kurt@epa.gov*.

SUPPLEMENTARY INFORMATION: Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA must require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. This final action extends the prohibition set forth in section 211(k)(5) against the sale of conventional (*i.e.*, non-reformulated) gasoline to the Illinois portion of the St. Louis, Illinois-Missouri moderate ozone nonattainment area. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers,and distributors), this rule establishes the implementation date of the prohibition in Section 211(k)(5) as June 1, 2007. For retailers and wholesale purchaser-consumers, this rule establishes the implementation date of the prohibition in section 211(k)(5) on July 1, 2007. As of the implementation date for retailers and wholesale purchaser-consumers, the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area will be a covered area for all purposes in the Federal RFG program.

The final preamble and regulatory language are also available electronically from the **Federal Register** Web site or via the docket at the *http://www.regulations.gov* site listed above.

General Information

Does This Action Apply to Me?

This action may affect you if you produce, distribute, or sell gasoline for use in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.	Kent and Queen Anne's Counties.	05/2/06, 05/19/06	December 22, 2006 [Insert page number where the document begins].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.321 is amended by revising the ozone table entry for the Kent and Queen Anne's Area to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/ classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Kent and Queen Anne's Area				
Kent County	December 22, 2006	Attainment.		
Queen Anne's County	December 22, 2006	Attainment.		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until December 31, 2006.
[3] November 22, 2004.

* * * * *

[FR Doc. E6–21887 Filed 12–21–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0093; FRL–8260–7]

RIN 2060–AN10

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks (Automobiles and Light-Duty Trucks NESHAP) which were promulgated on April 26, 2004, under the authority of section 112(d) of the Clean Air Act. The direct final rule amendments provide the option of including surface coating of heavier motor vehicles under this rule. This action also makes direct final rule amendments to the National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (Miscellaneous Metal Parts NESHAP) and the National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (Plastic Parts NESHAP) to maintain consistency between these rules and the Automobiles and Light-Duty Trucks NESHAP.

DATES: The direct final rule is effective on February 20, 2007 without further notice, unless EPA receives adverse written comment by January 22, 2007 or by February 5, 2007 if a public hearing is requested by January 2, 2007. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which amendments, sections, or paragraphs will become effective and which are being withdrawn due to adverse comment. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on January 8, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0093. All documents in the docket are listed in the *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. 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, Room B–102, 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult

EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number (919) 541–0859; fax number (919) 541–0246; e-mail address: *salman.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	336111	Automobile manufacturing.
	336112	Light truck and utility vehicle manufacturing.
	336211	Motor vehicle body manufacturing.
	336120	Heavy duty truck manufacturing.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rule. 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final Automobiles and Light-Duty Trucks NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII), the Miscellaneous Metal Parts NESHAP (40 CFR 63, subpart MMMM), and the Plastic Parts NESHAP (40 CFR 63, subpart PPPP) if material adverse comments are filed. Instructions for submitting comments are provided in that document. If we receive any material adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to material adverse comment. We will address all public comments in a subsequent final rule, should the EPA determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive material adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 20, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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

I. Background
II. Amendments
III. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
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. Congressional Review Act

I. Background

On April 26, 2004, we issued the final Automobiles and Light-Duty Trucks NESHAP (69 FR 22602). The final NESHAP established standards to control organic hazardous air pollutant (HAP) emissions from new and existing automobile and light-duty truck surface coating operations. Today's action amends the final rule by adding an option to include the coating of heavier vehicle bodies and parts for heavier vehicles in the affected source under this NESHAP. We are also making direct final rule amendments to the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM), and the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP) to maintain consistency between these rules and the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII). None of the amendments will have any discernable effect on the stringency of the rules.

II. Amendments

The discussion in this section of the preamble pertains to the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) unless otherwise noted as applying to the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM) or the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP). Each of these rules has an early 2007 compliance date for existing sources.

The main focus of the final rule is the coating of new automobile or new light-duty truck bodies, and body parts for new automobiles or new light-duty trucks. The final rule also allows the owner or operator of an automobile and light-duty truck coating affected source to include in that affected source any coating operation which applies coatings to parts intended for use in new automobiles or new light-duty trucks or as aftermarket repair or replacement parts for automobiles or light-duty trucks which would otherwise be subject to the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM) or the Plastic Parts NESHAP (40 CFR part 63,

subpart PPPP). This makes it possible for such a facility to demonstrate compliance with requirements applicable to all of these activities within the final rule rather than having to demonstrate compliance with two or three rules.

Some automobile and light-duty truck surface coating facilities also coat heavier vehicle bodies or body parts for heavier vehicles. The heavier vehicle bodies or body parts for heavier vehicles may be coated using the same equipment and materials that are used to coat automobile and light-duty truck bodies or body parts for automobiles and light-duty trucks. The final rule does not currently provide an option for including the coating of heavier vehicle bodies or body parts for heavier vehicles in the automobile and light-duty truck affected source. Lacking such an option, a facility which coats automobiles or light-duty trucks and also coats heavier vehicle bodies or body parts for heavier vehicles would be subject to the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) and also would be subject to the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM) or the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP). Adding the option of including the coating of heavier vehicle bodies or body parts for heavier vehicles in the automobile and light-duty truck affected source would make it possible for such a facility to demonstrate compliance with requirements applicable to all of these activities within the final rule rather than having to demonstrate compliance with two or three rules.

Some facilities that coat only heavier vehicle bodies or body parts for heavier vehicles have paint shops that are designed and operated in the same manner as paint shops that are used to coat automobile and light-duty truck bodies and body parts for automobiles and light-duty trucks. The permit requirements for these heavier vehicle paint shops are often structured in the same way as permit requirements for automobile and light-duty truck paint shops. The volatile organic compounds (VOC) compliance demonstration procedures that are used for these heavier vehicle paint shops are often the same as the VOC compliance demonstration procedures that are used for automobile and light-duty truck paint shops and very similar to the HAP compliance demonstration procedures in the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII). Without the option of including these heavier vehicle paint shops under the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII), these heavier vehicle paint shops will have to demonstrate compliance both with VOC requirements using automobile and light-duty truck procedures and HAP requirements using very different procedures as specified in the other NESHAP. Adding the option of including the coating of heavier vehicle bodies or body parts for heavier vehicles in the automobile and light-duty truck affected source would make it possible for such a facility to demonstrate compliance with HAP requirements using the very similar procedures in the Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII).

We, therefore, have amended the final rule by adding an option to include the coating of heavier vehicle bodies, body parts for heavier vehicles, and parts for heavier vehicles in the affected source under this NESHAP. The direct final amendments use the term "other motor vehicle" which is defined as "a self-propelled vehicle designed for transporting persons or property on a street or highway that has a gross vehicle weight rating over 8,500 pounds." The emissions limits in the Automobiles and Light-Duty Trucks NESHAP (40 CFR 63, subpart IIII) are more stringent than the emissions limits in the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM) and the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP). As a result, any heavier vehicle coating operation that is included in this NESHAP will be required to achieve the same or greater organic HAP emission reduction than it would have been required to achieve under the other NESHAP. The first monthly compliance period for existing sources in the Automobiles and Light-Duty Trucks NESHAP begins on April 26, 2007 and ends on May 31, 2007. The first 12-month compliance period for existing sources in the Miscellaneous Metal Parts NESHAP begins on January 2, 2007 and ends on February 29, 2008. The first 12-month compliance period for existing sources in the Plastic Parts NESHAP begins on April 19, 2007 and ends on May 31, 2008. We believe the earlier start of the first compliance period for existing sources in the Miscellaneous Metal Parts NESHAP is inconsequential, particularly since the first compliance period for existing sources in the Automobiles and Light-Duty Trucks NESHAP will end sooner and continuous compliance with the Automobiles and Light-Duty Trucks NESHAP will be demonstrated on a monthly basis as opposed to the 12-month rolling basis used in the other two rules.

We have amended the Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM) to allow the coating of metal heavier vehicle bodies, metal body parts for heavier vehicles, and metal parts for heavier vehicles to comply with the Automobiles and Light-Duty Trucks NESHAP (40 CFR 63, subpart IIII) in lieu of complying with the Miscellaneous Metal Parts NESHAP. We have amended the Plastic Parts NESHAP (40 CFR part 63, subpart PPPP) to allow the coating of heavier plastic vehicle bodies, plastic body parts for heavier vehicles, and plastic parts for heavier vehicles to comply with the Automobiles and Light-Duty Trucks NESHAP (40 CFR 63, subpart IIII) in lieu of complying with the Plastic Parts NESHAP.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) initially notified EPA that it considered this action a "significant regulatory action" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993). Nevertheless, after reviewing information regarding this action, OMB waived review of this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action adds optional provisions to the final standards. OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart IIII) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0550, EPA ICR No. 2045.02. A copy of the Information Collection Request (ICR) may be obtained from Ms. Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You also may download a copy from the Internet at *http://www.epa.gov/icr*. Include the ICR number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

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

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

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration size standards for companies identified by NAICS codes 336111 (automobile manufacturing) and 336112 (light truck and utility vehicle manufacturing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the above definition, there are no small entities presently engaged in automobile and light-duty truck surface coating.

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This is based on the observation that the final rule affects no small entities since none are engaged in the surface coating of automobiles and light-duty trucks.

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 1 year. Before promulgating a 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 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 direct final rule amendments 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 1 year. The direct final rule amendments provide the option of including surface coating of heavier motor vehicles under this rule and, therefore, add no additional burden on sources. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 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" 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."

The direct final rule amendments 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. No facilities subject to the direct final rule amendments are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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." The direct final rule amendments 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, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

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

and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments 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 direct final rule amendments are 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 they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. The direct final rule amendments provide the option of including surface coating of heavier motor vehicles under this rule and, therefore, add no additional burden on sources. We have, therefore, concluded that the direct final rule amendments are 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, 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. The direct final rule amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct 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 direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on February 20, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: December 18, 2006.

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 IIII—[Amended]

■ 2. Section 63.3080 is revised to read as follows:

§ 63.3080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for facilities which surface coat new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks. This subpart also establishes NESHAP for facilities which surface coat new other motor vehicle bodies or body parts for new other motor vehicles which you choose to include in your affected source pursuant to § 63.3082(c). This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

■ 3. Section 63.3081 is amended by revising paragraph (b) to read as follows:

§ 63.3081 Am I subject to this subpart?

* * * * *

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, that is located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks, and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, in which you choose to include, pursuant to § 63.3082(c), any coating operations which apply coatings to new other motor vehicle bodies or body parts for new other motor vehicles; parts intended for use in new automobiles, new light-duty trucks, or new other motor vehicles; or aftermarket repair or replacement parts for automobiles, light-duty trucks, or other motor vehicles; and the affected source is located at a facility that is a major source, is located at a major source, or is part of a major source of emissions of HAP. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

* * * * *

■ 4. Section 63.3082 is amended by revising paragraphs (c) and (e) to read as follows:

§ 63.3082 What parts of my plant does this subpart cover?

* * * * *

(c) In addition, you may choose to include in your affected source, and thereby make subject to the requirements of this subpart, any coating operations, as defined in § 63.3176, which would otherwise be subject to the National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (subpart MMMM of this part) or the National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (subpart PPPP of this part) which apply coatings to new other motor vehicle bodies or body parts for new other motor vehicles, parts intended for use in new automobiles, new light-duty trucks, or new other motor vehicles, or aftermarket repair or replacement parts for automobiles, light-duty trucks, or other motor vehicles.

* * * * *

(e) An affected source is a new affected source if:

(1) You commenced its construction after December 24, 2002; and

(2) The construction is of a completely new automobile and light-duty truck assembly plant, automobile and light-duty truck paint shop, automobile and light-duty truck topcoat operation, other motor vehicle assembly plant, other motor vehicle paint shop, or other motor vehicle topcoat operation where previously no automobile and light-duty truck assembly plant, automobile and light-duty truck assembly paint shop, or automobile and light-duty truck assembly topcoat operation had existed; and

(i) No other motor vehicle assembly plant, other motor vehicle paint shop, or other motor vehicle topcoat operation had existed previously; or

(ii) No previously existing other motor vehicle assembly plant, other motor vehicle paint shop, or other motor vehicle topcoat operation is subject to this subpart; or

(iii) If the facility was previously not a major source for HAP, no previously existing other motor vehicle assembly plant, other motor vehicle paint shop, or other motor vehicle topcoat operation is made part of the affected source under this subpart.

* * * * *

■ 5. Section 63.3110 is amended by revising paragraph (b) to read as follows:

§ 63.3110 What notifications must I submit?

* * * * *

(b) You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after June 25, 2004, whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after April 26, 2004. Existing sources that have previously submitted notifications of applicability of this rule pursuant to § 112(j) of the CAA are not required to submit an Initial Notification under § 63.9(b) except to identify and describe all additions to the affected source made pursuant to § 63.3082(c). If you elect to include the surface coating of new other motor vehicle bodies, body parts for new other motor vehicles, parts for new other motor vehicles, or aftermarket repair or replacement parts for other motor vehicles in your affected source pursuant to § 63.3082(c) and your affected source has an initial startup before February 20, 2007, then you must submit an Initial Notification of this election no later than 120 days after initial startup or February 20, 2007, whichever is later.

* * * * *

■ 6. Section 63.3176 is amended by:

■ a. Removing the definition of "Automobile and/or light-duty truck assembly plant".

■ b. Adding in alphabetical order definitions for "Automobile and light-duty truck assembly plant," "Other motor vehicle," and "Other motor vehicle assembly plant" to read as follows:

§ 63.3176 What definitions apply to this subpart?

* * * * *

Automobile and light-duty truck assembly plant means a facility which assembles automobiles or light-duty trucks, including coating facilities and processes.

* * * * *

Other motor vehicle means a self-propelled vehicle designed for transporting persons or property on a street or highway that has a gross vehicle weight rating over 8,500 pounds. You may choose to make the coating of other motor vehicles subject to this subpart pursuant to § 63.3082(c).

Other motor vehicle assembly plant means a facility which assembles other motor vehicles, including coating facilities and processes.

* * * * *

Subpart MMMM—[Amended]

■ 7. Section 63.3881 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 63.3881 Am I subject to this subpart?

* * * * *

(d) * * * Surface coating operations on metal parts or products (e.g., parts for motorcycles or lawnmowers) not intended for use in automobiles, light-duty trucks, or other motor vehicles as defined in § 63.3176 cannot be made part of your affected source under subpart IIII of this part.

* * * * *

Subpart PPPP—[Amended]

■ 8. Section 63.4481 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 63.4481 Am I subject to this subpart?

* * * * *

(d) * * * Surface coating operations on plastic parts or products (e.g., parts for motorcycles or lawnmowers) not intended for use in automobiles, light-duty trucks, or other motor vehicles as defined in § 63.3176 cannot be made part of your affected source under subpart IIII of this part.

* * * * *

[FR Doc. E6–21975 Filed 12–21–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0935; FRL–8105–6]

Flucarbazone–sodium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite in or on wheat, forage at 0.30 parts per million (ppm); wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone–sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. Arysta LifeScience North America Corporation, 15401 Weston Parkway, Suite 150, Cary, NC 27513 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 22, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0935. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule

List of Subjects in 33 CFR Part 117 Bridges.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.465, paragraphs (b), (c), (d), (e), and (f) are redesignated paragraphs (c), (d), (e), (f) and (g). A new paragraph (b) is added and paragraph (a) introductory text is revised to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

* * * * *

(b) The draw of the Valentine bridge, mile 44.7 at Valentine, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least four hours advance notification is given. During the advance notification period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in water traffic occur.

* * * * *

Dated: December 8, 2006.

Joel R. Whitehead,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E6–21834 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–00475; FRL–8259–6]

RIN 2060–AK14

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In 1994, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry. This rule is commonly known as the hazardous organic NESHAP (HON) and established maximum achievable control technology standards to regulate the emissions of hazardous air pollutants from production processes that are located at major sources.

The Clean Air Act directs EPA to assess the risk remaining (residual risk) after the application of the maximum achievable control technology standards and to promulgate additional standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. The Clean Air Act also requires us to review and revise maximum achievable control technology standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time.

On June 14, 2006, EPA proposed two options regarding whether to amend the current emission standards for synthetic organic chemical manufacturing industry units. This action finalizes one of those options, and reflects our decision not to impose further controls and not to revise the existing standards based on the residual risk and technology review. It also amends the existing regulations in certain aspects.

DATES: This final rule is effective on December 21, 2006.

ADDRESSES: *Docket:* EPA has established a docket for the final rule under Docket ID No. EPA–HQ–OAR–2005–0475. 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 at *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West, Room B–102, 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Randy McDonald, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711, telephone (919)541–5402, fax (919) 541–0246, e-mail *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule are synthetic organic chemical manufacturing industry (SOCMI) facilities that are major sources of hazardous air pollutant (HAP)

emissions. The final rule affects the following categories of sources:

Category	NAICS* Code	Examples of potentially regulated entities
Industry	325	Chemical manufacturing facilities.

*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 regulated by the final rule.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of the final rule are available on the WWW through the Technology Transfer Network Web site (TTN). Following signature, EPA posted a copy of the final rule 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.

Judicial Review. Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rulemaking is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 20, 2007. Under CAA section 307(d)(7)(B), only an objection to the final rulemaking that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the rule's requirements 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 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, 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.

Organization of this Document. This preamble is organized as follows:

I. Background Information
A. What Is the Statutory Authority for These Actions?
B. What Did We Propose?
II. Risk and Technology Review
A. Final Decision
B. Summary of Changes to the Rule
III. Responses to Significant Comments
A. Data Collection
B. Risk Determination
C. Administrative Requirements
D. Impacts Estimation
E. Clarification Changes
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility
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. Background Information

A. What is the statutory authority for these actions?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) calls for us to promulgate national performance or technology-based emission standards for those sources. For "major sources" that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum 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. We first published the MACT standard for SOCMI on April 22, 1994, at 59 FR 19402 (codified at 40 CFR part 63, subparts F, G, H, and I). 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).

The second stage in standard-setting is described in 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 to 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. The Congress did not act on any of the recommendations in the report, thereby triggering the second stage of the standard-setting process, the residual risk phase.

CAA Section 112(f)(2) requires us to determine, for each CAA section 112(d) source category, whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime 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. EPA may also adopt more stringent standards, if necessary, to prevent an adverse environmental effect (defined in CAA section 112(a)(7) as "any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *."), after considering cost, energy, safety, and other relevant factors.

B. What did we propose?

On June 14, 2006 (71 FR 34422), we proposed two options regarding whether to revise the current emission standards for new and existing SOCMI process units. The first proposed option would have imposed no further controls, based on a proposed finding that the existing standards protect public health with an ample margin of safety and prevent adverse environmental effects. Moreover, under the first option, we proposed that no further tightening of current standards was "necessary" in

light of developments in practices, processes, and control technologies.

The second proposed option would have required further reductions of organic HAP at certain process units, based on a proposed finding that additional controls were reasonable in order to protect public health with an ample margin of safety. This option was also based on a proposed finding that, in order to further reduce risks, tightening of current standards was "necessary" after taking into account developments in practices, processes, and control technologies. The second option would have applied additional controls for equipment leaks and controlled some storage vessels and process vents that are not required to be controlled under the current rule. The proposed changes under Option 2 are summarized in the table below:

Emission source	Proposed changes to standards
Storage vessels	A Group 1 storage vessel also includes storage vessels that store one or more HAP listed in table 38 to subpart G of part 63, and has a combined HAP emission rate greater than 4.54 megagrams per year (5.0 tons HAP per year) on a rolling 12-month average.
Process vents	A Group 1 process vent also includes process vents for which the vent stream emits one or more HAP listed in table 38 to subpart G of part 63, and the total resource effectiveness index value is less than or equal to 4.0.
Equipment leaks	For chemical manufacturing process units (CMPU) containing at least one HAP listed in table 38 to subpart G of part 63, monthly monitoring of equipment components is required until the process unit has fewer than 0.5 percent leaking valves in gas/vapor service and in light liquid service.

II. Risk and Technology Review

A. Final Decision

We conclude in this rulemaking that there is no need to revise the HON rule under the provisions of either section 112(f) or 112(d)(6) of the CAA. This conclusion essentially reflects our decision to select Option 1 from the proposal, except for certain minor technical amendments we are adopting that are discussed later.

We are adopting no changes to the current HON rule under CAA section 112(f) because the current level of control called for by the existing MACT both reduces HAP emissions to levels that present an acceptable level of risk and protects public health with an ample margin of safety. The finding regarding an "ample margin of safety" is based on a consideration of the additional costs of further control (as represented by Option 2) and the relatively small reductions in health risks that are achieved by that alternative.

As explained at proposal, we judge that the level of risk from the current HON rule is acceptable for the following reasons. The maximum individual lifetime cancer risk is estimated to be 100-in-1 million, and this level of risk occurs at only two facilities. There are no people with estimated cancer risks greater than 100-in-1 million resulting from exposure to HON HAP emissions, which is the presumptively acceptable level of maximum individual lifetime cancer risk under the 1989 Benzene NESHAP criteria. The HON process units at 32 facilities are estimated to pose cancer risks greater than 10-in-1 million, with 9,000 people estimated to be exposed in this risk range. The HON process units at the remaining 206 facilities are estimated to pose cancer risks of 10-in-1 million or less. For the exposed population, total annual cancer incidence is estimated at 0.14 cases per year. The Hazard Index (HI) values (representing long-term noncancer public health risks) barely exceed 1, with only 20 people estimated to be exposed to HI levels greater than 1. We also found minimal concern for noncancer effects from short-term inhalation exposures from HAP. The lifetime cancer risk and noncancer adverse health effects estimated from multipathway exposure are also well below levels generally held to be of concern. Finally, after considering costs, energy, safety, and other relevant factors, it is not necessary to tighten HON requirements in order to prevent adverse environmental effects, or to account for developments in practices, processes, and control technologies.

In determining that the current HON rule protects public health with an ample margin of safety, we have determined that the estimated annual costs of Option 2 ($6 million per year) would be unreasonable given the minor associated improvements in health risks. Baseline cancer incidence under the current HON rule is estimated at 0.14 cases per year. Proposed Option 2 would reduce incidence by about 0.05 cases per year. Statistically, this level of risk reduction means that Option 2 would prevent one cancer case every 20 years. At proposal we estimated costs to be $13 million per year for Option 2. Based on public comments, we revised one of the Option 2 control requirements and the costing procedure for equipment leaks and this resulted in a revised cost estimate $6 million per year. Even at the $6 million per year cost, we consider the cost of Option 2 to be unreasonable given the level of incidence reduction achieved. The changes in the distribution of risks do not warrant the additional costs. The maximum individual cancer risk under Option 2 would be reduced from 100-in-1 million to 60-in-1 million. The cancer risks for 450,000 people would be shifted to levels below 1-in-1 million. Further, changes in the distribution of risk—that is, the aggregate change in risk across the population—reduces risk by only 0.05 cancer cases per year. This result suggests that Option 2 would yield very small changes in individual risk for most of the affected population. For this reason, the estimates of the shift in risk distribution do not serve as particularly effective measures of the change in health risk. Finally, the maximum HI is barely above 1.0 and would be reduced from above 1.0 to below 1.0 for only 20 people. We conclude that this degree of additional public health protection is not warranted in light of the costs to industry of compliance with proposed Option 2. Consequently, we have determined that it is not reasonable to impose any additional controls to provide an ample margin of safety to protect public health.

In the technology review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994. We concluded that imposing additional controls under proposed Option 2 would achieve, at best, minimal emission and risk reductions. Option 2 would reduce organic HAP emissions by 1,700 tons per year, reduce cancer incidence by 0.05 cases per year, and reduce HI below 1 for about 20 individuals. We estimate that no one is currently exposed to emissions from HON sources causing cancer risks exceeding 100-in-1 million, the presumptively acceptable level for individual lifetime cancer risk under the Benzene NESHAP. (The relationship

between residual risk and the CAA section 112(d)(6) review is explained in our proposal at 72 FR 34436.) Thus, because of the lack of any significant developments in practices, processes, or technologies, and the limited effect in reducing public health risk, we find that additional controls are not warranted under CAA section 112(d)(6).

B. Summary of Changes to the Rule

While we are making no changes to the control requirements of the existing standards based on the residual risk and technology review, we are publishing three technical amendments under CAA section 112(d)(2) designed to clarify provisions of the existing rule and provide for effective implementation. At proposal, we solicited comments on a list of rule clarifications. After considering public comments, we have decided not to adopt some of the proposed changes at this time. We may consider some of these proposed changes again in the future, in which case we intend to provide an additional opportunity to comment on them. However, we are finalizing one minor change on which we solicited comments. We are also making two minor changes for which we did not solicit comments but which were recommended by commenters. We are also clarifying in this preamble that liquid streams generated from control devices (e.g., scrubber effluent) are wastewater. No rule changes are necessary for this clarification.

1. Group Status Changes for Wastewater

The revised rule clarifies the requirement to redetermine Group status for wastewater streams if process or operational changes occur that could reasonably be expected to change the wastewater stream from a Group 2 to a Group 1 stream. Examples of such process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or addition of recovery equipment. Although 40 CFR 63.100(m) generally applies to Group 2 wastewater streams becoming Group 1, this change clarifies requirements for redetermining group status for wastewater by including provisions analogous to those in 40 CFR 63.115(e), which requires redetermination of total resource effectiveness index value (TRE) for process vents due to process or operational changes.

2. Removal of Methyl Ethyl Ketone (MEK) from HON Tables

In the final rule we have removed MEK from Tables 2 and 4 of 40 CFR part 63, subpart F and tables 9, 34, and 36 of 40 CFR part 63, subpart G. MEK was removed from the HAP list on December 19, 2005 (70 FR 75047). At that time, MEK was not removed from various applicability tables in the HON, 40 CFR part 63, subparts F and G.

3. Vapor Balancing for Storage Tanks

In the final rule we have decided to waive all notification and reporting requirements for owners or operators of facilities where railcars, tank trucks, or barges, which are part of the vapor balancing control option, are reloaded or cleaned. We are also allowing off-site reloading and cleaning operations to comply with monitoring, recordkeeping, and reporting provisions of any other applicable 40 CFR part 63 standards in lieu of the monitoring, recordkeeping, and reporting in the HON. These provisions have been added to other MACT standards because the vapor balancing provisions provide owners and operators flexibility in meeting the requirements of the MACT standards without sacrificing the level of emission reductions being achieved. Further, making these changes provide consistency between similar emission sources being controlled under similar rules.

These amendments reflect a logical outgrowth of our proposed rule, and are reasonable decisions made in response to public comments we received regarding these issues.

III. Responses to Significant Comments

The proposal provided a 60-day comment period ending August 14, 2006. We received comments from 34 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 and our responses can be found in the public docket for the promulgated rule, EPA–HQ–OAR–2005–0475.

A. Data Collection

Comment: One commenter stated that a major flaw in the risk assessment is that EPA failed to use its CAA section 114 authority to collect data for the risk assessment and, instead, used "voluntary, fragmentary, 7-year-old industry-submitted data from well under half of the affected facilities." The commenter stated that the 1999 Residual Risk Report to Congress emphasizes the need for site-specific data for more refined assessments, and that EPA has not collected such data in the risk assessment for the HON. The commenter stated that the purpose of the risk assessment was to determine the residual risk from SOCMI facilities, and that the data EPA used to perform the assessment was not of the type and quality to achieve that objective.

Response: The CAA does not specify the type of data, or the method of acquiring it, that EPA must use for conducting residual risk assessments under CAA section 112(f). EPA can use data other than those gained through its CAA section 114 authority, if doing so enables the agency to determine the remaining risks presented after application of MACT standards. At the time EPA was considering options for data collection, the industry trade association (American Chemistry Council) volunteered and prepared questionnaires to member companies. EPA reviewed the questionnaire and determined that the information requested by it would greatly facilitate our conducting a residual risk assessment. The data received through the questionnaire represented a significant fraction of the facilities in the source category (approximately 44 percent), and include site-specific data on emissions sources, locations, and release parameters. Where emission release parameter data were missing, EPA used environmentally protective defaults in the modeling. While it is true that the data are now 7 years old, a significant amount of time was needed to collect and analyze the data, run the models, analyze the results, and prepare the rulemaking package. Moreover, the mere age of the data does not necessarily affect its utility for assessing whether sources that have achieved compliance with MACT continue to present risks of concern, given that the essential question addressed by our assessment is whether the MACT controls themselves are adequately protective of public health with an ample margin of safety.

Comment: One commenter stated that EPA has performed no analysis to determine that the industry data used in the risk assessment are representative of the source category as a whole. The commenter stated that for EPA to adequately satisfy CAA section 112(f), it must be able to accurately identify the risk associated with the most exposed individual and accurately estimate risk more generally from sources within the source category. The commenter stated that, to do this, EPA must have sufficient data regarding all of the important factors for estimating risk (including size, quantity of emissions, the specific characteristics of emission points, proximity, and population density of surrounding communities, important meteorological and

topological data, co-located emission sources, ambient background levels, etc.). The commenter stated that the factor of 2.3 that EPA used to scale up the population risk from the assessed facilities to the entire source category is arbitrary and unreasonable because it assumes constant population density.

Response: The data used in the assessment were obtained from all responses to the industry questionnaire, and include site-specific data on emissions sources, locations, and release parameters. The data represent a significant fraction of the category (approximately 44 percent), and include sources with high and low emissions, sources that are geographically proportional to the entire source category, and sources that emit nearly all organic HAP thought to be emitted from the category.

While the emissions data obtained through the industry questionnaire cannot be proven to be proportional to the emissions from the entire source category, EPA does have whole-facility emissions data for 226 facilities (the entire source category is estimated at 238 facilities) in the National Emissions Inventory (NEI), and we performed a screening-level risk assessment using these data to determine if there were HON facilities posing greater public health risks than those included in the industry data. Although the NEI data were for the whole facility (and not just the HON emission points), we used NEI data codes (MACT codes, Standard Industrial Classification codes, and Source Classification Codes) to judge whether risks estimated using the NEI data could be attributed to the HON source category. We found that the highest risks from using the NEI data were of the same order of magnitude as those estimated using the industry data. Based on this general corroboration with the NEI data, we concluded that the industry data were the most detailed and comprehensive data available that were specific to the source category, and that the data were appropriate for use in conducting the residual risk assessment.

EPA did use a factor of 2.3 to estimate population risk associated with facilities not included in the industry data. This factor is simply the ratio of the total number of HON facilities to the number of facilities in the industry data, and reflects our expectation, based on further comparison to the NEI data, that on average, the population densities around the facilities not in the industry data are similar to the densities around the facilities that were in the industry data. We estimate that there are 61.6 million people living within the 50-kilometer modeling radius of the 105 HON facilities included in the industry data. An estimated 82.8 million people live within the 50-kilometer modeling radius of the 226 HON facilities modeled using the NEI data. Accordingly, the sources in the industry-supplied data are located near 75 percent of the total exposed population, but represent 44 percent of the total number of facilities in the industry. This comparison indicates that many of the facilities not in the industry data are located in less densely populated areas or in the same areas as the facilities included in the industry data. Therefore, the population densities around the modeled facilities appear to be representative.

In the risk assessment, EPA showed that facilities with overlapping modeling domains (facility "clusters") did not lead to significantly higher estimated risks to the individual most exposed because such risks are generally driven by the nearest facility. However, facility clusters did increase the numbers of individuals within certain cancer risk ranges. Although the total population around all facilities in the source category is not a factor of 2.3 greater than the total population around the facilities in the industry data, the additional facilities would increase the risks to some of the same segments of the population, resulting in higher risk to individuals in the population.

B. Risk Determination

Comment: One commenter believed that EPA has misinterpreted the CAA by adopting the 1989 Benzene two-step framework to set residual risk standards under the 1990 CAA. The commenter concluded that the proper interpretation is that CAA section 112(f)(2)(A) specifies 1-in-1 million as a bright line and mandates promulgation of standards to reach at least this level of health protection. The commenter believed that CAA section 112(f)(2)(B) merely leaves standing, those relevant rules that were promulgated under section 112 as it existed prior to the 1990 CAA. The commenter disagreed with EPA's position that Congressional inaction ratifies EPA's interpretation of CAA section 112(f)(2)(B). The commenter believed that Congressional failure to respond to the EPA Report to Congress, which provided notification of the intent to utilize the 1989 Benzene two-step approach, does not justify overriding the plain statutory language of CAA section 112(f).

Response: We disagree with the commenter. Our policy on using the Benzene NESHAP for implementing CAA section 112(f) has been fully explained in the Coke Oven Batteries NESHAP (see 70 FR 19992, April 15, 2005) and the Residual Risk Report to Congress, and our approach here is fully consistent with our prior practice. The commenter's argument that the statute requires CAA section 112(f) residual risk standards to reduce cancer risk to the most exposed individual to less than 1-in-1 million lacks a basis in the statutory text or in policy. CAA Section 112(f)(2)(A), in stating that EPA is to conduct residual risk rulemaking if the "lifetime excess cancer risk to the individual most exposed to emissions from a source in a category or subcategory" is greater than 1-in-1 million, does not establish what the level of the standard must be other than to require them to "provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the CAA Amendments of 1990) [* * *]." Read in light of CAA section 112(f)(2)(B)'s express preservation of EPA's pre-enactment interpretation of CAA section 112, Congress clearly preserved EPA's ability to apply the same two-step formulation established by the Benzene NESHAP in making future "ample margin of safety" determinations under CAA section 112(f)(2).

Under that test, there is no single risk level establishing what constitutes an ample margin of safety. Rather, the Benzene NESHAP approach codified in CAA sections 112(f)(2)(A) and (B) is deliberately flexible, requiring consideration of a range of factors (among them estimates of quantitative risk, incidence, and numbers of exposed persons within various risk ranges; scientific uncertainties; and weight of evidence) when determining acceptability of risk (the first step in the ample margin of safety determination (54 FR 38045, September 14, 1989). Determination of an ample margin of safety, the second step in the process, requires further consideration of these factors, plus consideration of technical feasibility, cost, economic impact, and other factors (54 FR 38046, September 14, 1989). As we stated in our "Residual Risk Report to Congress" (EPA–453/R–99–001) issued under CAA section 112(f)(1), we do not consider the 1-in-1 million individual cancer risk level as a "bright line" mandated level of protection for establishing residual risk standards, but rather as a trigger point to evaluate whether additional reductions are necessary to provide an ample margin of safety to protect public health. This interpretation is supported by the language in the preamble to the Benzene NESHAP, which was

incorporated by Congress in CAA sections 112(f)(2)(A) and (B).

The Report to Congress was intended, among other things, to explain how EPA would implement CAA section 112(f) by investigating the methods available for assessing public health risks after the technology-based standards were applied and explaining any uncertainties in the methods. Congress also asked us to make recommendations for changes to the CAA section 112(f) as a result of the investigation. A plain reading of the CAA section 112(f)(2)(A) indicates that if, based on the report, Congress judged that residual risk standards were unnecessary or that the analytical methods for implementing the provisions were inadequate, then Congress would enact revisions to CAA section 112(f). The choice by Congress not to respond to the report clearly indicates that we should proceed with our general approach as explained in our Report to Congress.

We consequently believe that the commenter's bright line approach is not supported by the statute, and is incorrect as a matter of law. It is true that the Senate version of CAA section 112(f) mandated elimination of lifetime risks of carcinogenic effects greater than 1-in-10 thousand to the individual in the population most exposed to emissions of a carcinogen. (See "A Legislative History of the Clean Air Act Amendments of 1990," pages 7598 and 8518.) However, this version of the legislation was not adopted. We believe that the rejected Senate version of CAA section 112(f) shows that Congress considered mandating a level of risk reduction and chose not to do so.

In any event, EPA has concluded that the flexible approach to risk acceptability and ample margin of safety set forth in the Benzene NESHAP is reasonable and appropriate in light of the complex judgments EPA must make under CAA section 112(f).

Comment: One commenter argued that CAA section 112(f)(2)(A) very clearly prohibits using cost as a consideration for standards promulgated to provide an ample margin of safety to protect public health. CAA Section 112(f)(2)(A) directs EPA to promulgate standards in order to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The commenter maintained that this construction allows cost as a consideration only for standards designed to prevent an adverse environmental effect where such standards are more stringent than necessary to protect human health with an ample margin of safety. As part of their argument, the commenter cited the Supreme Court decision in *American Trucking Associations* v. *Whitman* (2001), which addressed ambient air quality standards established under section 109 of the CAA, as providing precedent that cost cannot be considered in developing regulations to protect public health with a margin of safety. The commenter claimed that this court decision abrogated the District of Columbia Circuit decision on *Vinyl Chloride*, upon which the Benzene two-step policy is based. They also pointed out that the 1990 CAA removed the statutory language that *Vinyl Chloride* relied upon heavily. The commenter pointed out that unlike the previous CAA, section 112(f) of the 1990 CAA does not contain the phrase "* * * set the standard at the level which in [the Administrator's] judgment provides an ample margin of safety to protect public health." The commenter claimed that exclusion of the specific requirement to use judgment invalidates the basis of *Vinyl Chloride*.

Response: The clear reading of CAA section 112(f) allows us to take cost into consideration within the context of the two-step policy of the 1989 Benzene NESHAP. The stipulation in CAA section 112(f)(2)(A) that costs, energy, safety, and other factors can be taken into consideration in setting standards to prevent an adverse environmental effect does not mean that costs cannot be taken into consideration in determining standards to protect public health. To the contrary, CAA section 112(f)(2)(A) states that residual risk standards are to provide an ample margin of safety to protect public health "in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990)." This formulation, coupled with CAA section 112(f)(2)(B), which states that nothing in CAA section 112(f)(2)(A) or any other part of CAA section 112 shall be construed as affecting the EPA's interpretation of this section as set forth in the preamble to the 1989 Benzene NESHAP, reflects Congress' endorsement of the Benzene NESHAP approach, including the use of costs in determining an ample margin of safety.

The court decision cited by the commenter, *American Trucking Association* v. *Whitman*, has no relevance to decisions on ample margin of safety made under section 112 of the CAA. That case addressed the consideration of cost in the context of setting national ambient air quality standards under CAA section 109. The *American Trucking Association* v. *Whitman* decision does not specifically address, nor does it apply (nor could it have, as a matter of jurisdiction, since the court was not faced with an issue requiring a ruling on an interpretation of CAA section 112), to the different statutory requirements for regulating HAP under CAA section 112 or to any prior judicial precedent interpreting CAA section 112. Also, we do not read the 1990 CAA as overturning or otherwise disapproving of the court's decision in *Vinyl Chloride*. By directing us under CAA sections 112(f)(2)(A) and (B) to follow the 1989 Benzene NESHAP policy, the 1990 CAA requires the Administrator to use judgment both in establishing risk levels that constitute a safe level of exposure and in balancing costs against remaining risks for determining an ample margin of safety. Therefore, by eliminating the wording in CAA section 112(f)(2)(A) to use "judgment," Congress eliminated a redundant specification and did not remove the legal basis of the *Vinyl Chloride* decision.

Comment: Several commenters contended that revising the HON pursuant to CAA section 112(d)(6) is not necessary and not justified. The commenters stated that EPA's Option 2 would revise the MACT beyond-the-floor decisions, that emission reductions to be gained from Option 2 are significantly overstated, and that the emission reduction does not justify the cost. Several commenters noted that Option 2 alternatives do not represent any "developments in practices, processes, and control technologies" but rather simply reflect an apparent decision by EPA that higher cost options that were rejected in the original beyond-the-floor analysis are now somehow acceptable.

Response: We do not agree that in reviewing a standard under CAA section 112(d)(6), the CAA mandates that only the question of whether newly developed emission control measures have been identified since the publication of the MACT standards be addressed. CAA Section 112(d)(6) requires that EPA review and revise standards "as necessary." As we explain later, the instruction to revise "as necessary" indicates that EPA should use judgment in this regulatory decision, and is not precluded from considering additional relevant factors, such as risk and the evolution of costs of previously considered measures. At the time of a MACT determination, the beyond-the-floor decision is made without knowledge of the level of risks posed by an industry. In the subsequent reviews of the standards, we have substantial discretion in weighing all of the relevant factors, including all

available control measures that are more stringent than that required by the current NESHAP, emission reductions, public health risk impacts, costs, and any other relevant factors to determine what further controls, if any, are necessary.

Comment: Several commenters contended that the application of CAA section 112(d)(6) should incorporate the framework of CAA section 112(f)(2) because this approach would require the Administrator to weigh the potential for future risk reduction under CAA section 112(d)(6) against the cost of that reduction in the same manner as set forth in the second step of the 1989 Benzene NESHAP rule. One commenter added that technology reviews that focus solely on the cost-per-ton of additional emission controls and do not consider the risk reduction potential could result in the imposition of technology controls that yield very little, if any, benefit. Another commenter stated that when a MACT standard achieves protection of public health with an ample margin of safety and prevents adverse environmental effects, as is the case with the HON, no further revisions are "necessary" even if there have been developments in control technologies. The commenter believed that a determination of ample margin of safety and no adverse environmental effects alone is sufficient to determine that revision of the standard is not necessary under CAA section 112(d)(6). The commenter supported EPA's position that risk benefits are appropriate to consider under the CAA section 112(d)(6) decision.

Another commenter rejected EPA's interpretation that the term "revise as necessary" allows EPA to import into its 8-year evaluation the consideration of cost and risk. The commenter maintained that emission standards adopted under CAA section 112(d)(2) themselves were the product of a technology-driven evaluation that did not incorporate cost as a factor in the initial stages, and did not permit consideration of risk at all. The commenter continued that EPA has illegally substituted a risk/cost analysis for the requirement to perform an analysis of the technical feasibility of emission controls to establish the level of control of the best performing HON sources.

Response: We have addressed the relationship between CAA sections 112(f) and 112(d) in other recent rulemakings, as well as in the proposal for today's final rule. See, *e.g.*, our response to comments document for the Dry Cleaning Facilities Residual Risk Rule (71 FR 42727, July 27, 2006) (EPA's Summary of Public Comments and Responses to the Proposed Rule is located at docket no. EPA–HQ–OAR–2005–0155). As we explained in our proposal (see 71 FR 34436, June 14, 2006), the findings that underlie a CAA section 112(f) risk determination will often be key factors in making any subsequent CAA section 112(d)(6) technology review determinations. While our action today makes no changes to control requirements under the HON and it is, therefore, not necessary to respond to their individual points, we disagree with the commenters who state that a determination under CAA section 112(f) of an ample margin of safety and no adverse environmental effects alone will, in all cases, necessarily cause us to determine that a revision is not necessary under CAA section 112(d)(6). Our decision today should not be viewed as a departure from our general view, articulated in the proposal, that in some cases, even if risk factors remain the same from one round of CAA section 112(d)(6) review to another, changes in costs of or in the availability of control technology may be sufficient to alter a previous conclusion about whether to impose further controls.

In response to the commenter who claimed we may not consider risks or costs at all under CAA section 112(d)(6), we continue to interpret the use of the phrase "as necessary" in that section as conferring discretion on the agency to exercise its judgment as to what factors may drive an evaluation of available practices, processes, and control technologies. The ambiguous term "as necessary" inherently requires an EPA comparison between control measures and some goal or end. As the first rounds of both CAA section 112(f) residual risk and CAA section 112(d) technology review occur 8 years following MACT, it is reasonable to interpret these duties as being compatible with and informative of each other, and for the ultimate goal of revising standards as needed to protect public health with an ample margin of safety as influencing what we determine is generally "necessary," in terms of whether to impose further technological controls under CAA section 112(d)(6).

Comment: One commenter contended that, for residual risk assessments, EPA may not rely on actual emissions, which represents "over-control" of emissions, with no comparison to allowable emissions. The commenter stated that if sources are being over-controlled as EPA suggests, then EPA's analysis of risk underestimates the risk remaining after implementation of the HON. The commenter added that the assessment required in CAA section 112(f)(2)(A) is of the "standards" adopted under CAA section 112(d). If the current "standards" are not adequate to protect public health with an ample margin of safety, more stringent standards are necessary. The commenter claimed that, if sources are over-controlling, but nothing in the CAA section 112(d) standards would prevent backsliding, the statute requires EPA to adopt more stringent limits to maintain that over-control. If the over-control occurs because State or local agencies have adopted tighter limits, the commenter concluded that more stringent limits are feasible, and EPA must either (a) adopt those limits nationally to provide uniform protection or (b) explain why such standards would be infeasible.

Several commenters agreed with EPA that, for this source category, the use of 1999 actual emissions data rather than allowable emissions do not lead to an underestimating of risk. The commenters pointed out that the conservatism of the health benchmark values and the exposure estimates outweigh any potential underestimation of emission levels based on using actual emissions, and added that EPA emission data based on actual emissions is conservatively high since the Toxics Release Inventory shows a reduction in emissions since 1999.

Response: EPA's position on the use of both allowable and actual emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999, April 15, 2005). There we explained that modeling the allowable levels of emissions 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 data on them is available, in both steps of the Benzene NESHAP analysis in order to avoid overestimating emissions and their risks (including incidence) and to account for how sources typically strive to perform better than required by standards to allow for process variability and not exceed standards due to emissions increases on individual days. Failure to consider these data in risk assessments, we said, would unrealistically inflate risk levels.

The preamble to the proposed HON residual risk standards included a discussion of actual versus allowable emissions from HON emission points (71 FR 34428). We explained that, for this source category, using available data on actual emissions enabled us to approximate allowable emissions, and that basing the analysis on actual

emissions here provided an acceptable method for determining the remaining risks to public health and the environment after application of the MACT standards. In the HON proposal preamble, we acknowledged that there is some uncertainty regarding the differences between actual and allowable emissions. For some emission points, it was not possible to estimate allowable emissions from available information. A requirement to determine the applicability of controls for some emission points was intentionally not included in the HON because it was seen as an unnecessary burden for points that would be controlled anyway. For these emission points there is no readily available data that can be used to determine the applicability of control requirements. Without such data, there is no accurate way to determine allowable emissions under the current rule. However, for equipment leaks which represent the most significant impact on the cancer risk at the HON facilities, the standards are work practice standards and the actual emissions and allowable emissions are likely the same for equipment in the leak detection and repair program required by the HON. More frequent monitoring of equipment components (for example, monthly instead of quarterly) could result in actual emissions being lower than allowable emissions, but few, if any, sources monitor more frequently than required by the HON.

We concluded that there is no reason to believe that there is either a substantial amount of overcontrol of Group 1 sources or voluntary control of Group 2 sources such that actual emissions are not a reasonable approximation of allowable emissions. Rather, actual emissions appear to reflect the results of our prior application of MACT (allowing for process variability), and no evidence in the record suggests that sources could make changes that significantly increase their emissions and risks but still comply with MACT control requirements. Consequently, basing the risk analysis on actual emissions in this case enabled us to determine the remaining risks to public health and the environment after application of the specific MACT standards applicable to HON sources.

Comment: One commenter argued that EPA must address inorganic HAP. The Risk Assessment acknowledges that inorganic HAP, such as hydrochloric acid and chlorine, may be emitted from HON sources, but that these compounds were not considered because data were not available to characterize emissions. The commenter argued that EPA cannot rely on the circular justification that the original HON regulated only organic HAP. The commenter argued that the residual risk provisions of CAA section 112(f) direct EPA to estimate the remaining risk for the regulated categories, whatever chemicals that risk may encompass. The commenter added that EPA's attempt to screen out inorganic HAP from further risk assessment by looking at these emissions in isolation is invalid. The commenter contended that EPA must look at the combined target organ specific HI from all emissions allowed under the current standards, including inorganic emissions, to determine if the residual risk is acceptable. Moreover, the commenter stated that EPA cannot avoid the consideration of emission controls for inorganics based only on a screening analysis; such control decisions for both the residual risk and the CAA section 112(d)(6) determination must consider other factors such as costs and feasibility.

Response: We acknowledge that inorganic HAP (such as hydrochloric acid and chlorine) are emitted from some HON sources and that these pollutants require consideration even though they were not regulated HAP in the existing NESHAP. We stated in the preamble to the proposed rule that inorganic HAP were not considered in the primary assessment because data were not available to characterize emissions. However, we conducted an additional analysis using information in the NEI to estimate the risk from the entire plant site at which the HON processes are located. The NEI contains information on both organic and inorganic HAP emitted from each facility. EPA estimated hazard indices (total, not target organ specific) for each of the 226 HON facilities for which NEI data were available. There were many instances where inorganic HAP were responsible for hazard indices exceeding 1, but there were no instances where the inorganic HAP were associated with HON processes. Therefore, EPA concluded that not including inorganic HAP in the primary risk assessment did not affect the results of the analysis, and that no further assessment of inorganic HAP emissions was necessary in order to determine whether remaining risks from HON sources after application of MACT are at acceptable levels. Furthermore, as discussed earlier in the preamble, it is not reasonable to impose any additional controls to provide an ample margin of safety to protect public health.

C. Administrative Requirements

Comment: One commenter argued that EPA has not appropriately addressed impacts on children and other sensitive receptors. The commenter stated that even though EPA acknowledged in the risk assessment that children face greater exposure and are more susceptible to the adverse health effects from airborne contaminants, these factors were not addressed. The commenter stated that EPA determined that "[t]he proposed rule is not subject to the Executive Order (13045: Protection of Children From Environmental Health Risks and Safety Risks) * * * because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children." This commenter contended that this conclusion is based on our assessment of the information on the effects on human health and exposures associated with SOCMI operations. The commenter could not find such an assessment referenced in the Risk Assessment. The commenter also stated that EPA ignored the effects on other sensitive receptors, *e.g.*, active adults.

Response: First, since this rulemaking is not economically significant under Executive Order 12866, Executive Order 13045 does not apply to this matter.

EPA acknowledges that population subgroups, including children, may have the potential for risk greater than the general population due to greater relative exposure and/or greater susceptibility to the toxicant. With respect to exposure, the risk assessment implicitly accounts for this greater potential for exposure by assuming lifetime (rather than simply childhood) exposure, which would tend to yield higher estimates of risks. The exposure assessment described the maximum modeled lifetime exposure of residents near HON facilities. The exposed population was conservatively presumed to be exposed to airborne concentrations at their residence continuously, 24 hours per day for a full lifetime, including childhood.

With regard to children's potentially greater susceptibility to non-cancer toxicants emitted by HON facilities, the assessment relied on Agency (or comparable) hazard identification and dose-response values which have been developed to be protective for all subgroups of the general population, including children. For example, a review[1] of the chronic reference value

[1] A Review of the Reference Dose and Reference Concentration Process. U.S. Environmental

process concluded that the Agency's reference concentration (RfC) derivation processes adequately considered potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC values pertain to the full human population "including sensitive subgroups," a phrase which is inclusive of childhood.

On the issue of cancer dose-response values, our revised cancer guidelines and new supplemental guidance recommend applying default adjustment factors to account for exposures occurring during early-life exposure to those chemicals thought to cause cancer via a mutagenic mode of action. For these chemicals, the supplemental guidance indicates that, in lieu of chemical-specific data on which age or life-stage specific risk estimates or potencies can be determined, default "age dependent adjustment factors" can be applied when assessing cancer risk for early-life exposures to chemicals which cause cancer through a mutagenic mode.[2] However, at the present time, we have not determined whether any of the HAP emitted by the HON source category cause cancer via a mutagenic mode of action. While several of the HON pollutants may be carcinogenic by such a mechanism, our policy is not to apply these adjustment factors unless we have completed a peer-reviewed assessment that explicitly makes this determination after consideration of the full scientific literature.

Although we are not yet certain whether or not a childhood potency adjustment is needed, the estimated risks must also be considered in the context of the full set of assumptions used for this risk assessment. For example, we used a health-protective assumption of a 70-year exposure duration in our risk estimates; however, using the national average residency time of 12 years would reduce the estimate of risk by roughly a factor of 6. Our unit risk estimates for HAP are considered a plausible upper-bound estimate; actual potency is likely to be lower and some of which could be as low as zero. After considering these and other factors, we continue to consider the risks from emissions after application of the current HON rule to be acceptable (within the meaning of the Benzene NESHAP decision framework discussed at 69 FR 48339–48340, 48347–48348, August 9, 2004). As mentioned in the recently published cancer guidelines, we will continue to develop and present, to the extent practicable, an appropriate central estimate and appropriate lower and upper-bound estimates of cancer potency. Development of new methods or estimates is a process that will require independent peer review.

Comment: One commenter argued that EPA failed to adequately address environmental effects or to comply with the requirements of the Endangered Species Act (ESA). The commenter objected to EPA's assumption in the ecological assessment that the aquatic and terrestrial communities surrounding HON sources were healthy and unaffected by other stressors. Additionally, the commenter claimed that EPA is on record acknowledging its obligation to comply with the ESA during the residual risk phase of the air toxics program, and yet EPA failed to do so.

Response: The commenter is correct that EPA has publicly agreed that the consultation requirements of the ESA potentially apply to CAA section 112(f) residual risk rulemakings. *See Sierra Club* v. *EPA*. 353 F.3d 976 (District of Columbia Circuit, 2004). This is because CAA section 112(f)(2)(A) provides us with authority to tighten NESHAP, after consideration of costs and other relevant factors, to prevent an "adverse environmental effect." CAA section 112(a)(7) defines this term to mean "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*" (emphasis added). Therefore, CAA section 112(f) clearly provides EPA discretion to promulgate a residual risk rule in a manner that inures to the benefit of listed species (see 50 CFR 402.03), at least in cases where adverse environmental effects are of a significant magnitude.

However, under section 7(a)(2) of the ESA and the implementing regulations promulgated by the Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services), an action agency such as EPA has a duty to initiate consultation with the services only where it determines that its action may have an impact (either beneficial or adverse) on listed threatened or endangered species or on their designated critical habitat. Where the action agency determines that its action will have no such effect, the consultation duty is not triggered. For the HON residual risk rulemaking, based on the ecological risk analysis we discuss below, EPA has determined that its action has no effect, either adverse or beneficial, on listed species or their critical habitat.

We conducted a screening-level ecological risk analysis to assess the affects of persistent and bioaccumulative toxic HAP emissions on aquatic and terrestrial receptors. Only two HAP, hexachlorobenzene and anthracene, were estimated to pose any potential for exposures via routes beyond direct inhalation. All ecological hazard quotient (HQ) values are well below levels of concern, with the highest HQ being 0.05 from benthic/sediment exposure by aquatic life to anthracene. The highest hexachlorobenzene HQ is 0.02 from surface water exposure by aquatic life. HQ values of equal to or less than 1.0 are indicative of no effect. EPA concluded that these levels are not high enough to constitute "significant and widespread" adverse environmental effects as defined in CAA section 112(a)(7), and that there is not an effect on threatened or endangered species or on their critical habitat within the meaning of the ESA, as implemented at 50 CFR 402.14(a). Therefore, EPA concluded that a consultation with the Services regarding endangered species was not necessary. The statement regarding communities being unaffected by other toxic chemicals or environmental stressors was meant to convey that the assessment considered only the contribution of HON emissions to media concentrations.

D. Impacts Estimation

Comment: One commenter contended that EPA overestimated the costs for controlling process vents, equipment leaks, and storage vessels. The commenter also contended that EPA

Protection Agency. Risk Assessment Forum. EPA/630/P–02/002F. December 2002.

[2] The "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens" recommends applying default adjustment factors to early life stage exposures to carcinogens acting through a mutagenic mode of action. The Supplemental Guidance recommends an integrative approach that can be used to assess total lifetime risk resulting from lifetime or less-than-lifetime exposure during a specific portion of a lifetime. The following adjustments represent the approach suggested in the Supplemental Guidance: (1) For exposures before 2 years of age (i.e., spanning a 2-year time interval from the first day of birth up until a child's second birthday), a 10-fold adjustment; (2) for exposures between 2 and less than 16 years of age (i.e., spanning a 14-year time interval from a child's second birthday up until their sixteenth birthday), a 3-fold adjustment; and (3) for exposures after turning 16 years of age, no adjustment. Assuming a constant lifetime exposure, incorporation of these adjustment factors would increase the estimate of lifetime cancer risk by roughly 60 percent (factor of 1.6). If exposures were from 3 years to 73 years, the adjustment factor would be less than 1.6. If exposures were from 16 years to 86 years, no adjustment would be necessary.

should have selected more stringent control options for these sources, such as lower leak definitions for equipment leaks. Other commenters expressed their view that EPA underestimated costs of controlling each of the sources by using outdated costs and inappropriate assumptions.

Response: Cost algorithms and information used for the cost impacts analysis were based on previous EPA studies and rulemaking actions and are well documented and accepted. Costs from previous years were scaled to 2001 dollars using engineering cost indices to account for inflation. We consider the cost information that we used to estimate impacts to be appropriate for this analysis and are not underestimated. We would also like to clarify that we analyzed control options with more stringent requirements for each source (e.g., requiring lower equipment leak percent leakers and leak definitions), but determined the emission reductions and risk reductions did not warrant the costs.

However, in response to the comments, we re-evaluated Option 2. Before rejecting the option overall, we decided to modify Option 2 to eliminate the high cost sources. We also re-evaluated the assumptions used in the cost analysis to reflect a range of likely costs rather than the most costly results.

At proposal, we estimated that sources having any amount of Table 38 HAP would be required to meet Option 2. We re-analyzed the costs of controlling process vents and equipment leaks assuming a trigger level of 5 percent Table 38 HAP. Additionally, we analyzed the impacts of reducing the TRE from a value of 4 from proposal to a value of 2. At proposal we calculated repair costs for leaking valves on a monthly basis. For the re-analysis, we assumed there would be no additional costs of repairing leaking valves because the frequency of repair would not change from the current HON when sources successfully repair valves on their existing schedule. At proposal, we calculated the annual cost of valve monitoring assuming all sources would have to monitor monthly. This assumption would provide the highest cost estimates. For the re-analysis, we calculated the annual cost of valve monitoring assuming that half of the sources would be able to conduct quarterly monitoring and half would still conduct monthly monitoring.

The resulting total annual cost for a re-evaluated Option 2 was estimated to be $6 million, less than half the $13 million annual cost of Option 2, as proposed. After considering these lower annual costs, EPA decided that the cost of further control still was not justified considering the small reduction in health risk resulting from HAP emission reductions achieved by Option 2.

E. Clarification Changes

Comment: Several commenters argued that many of EPA's proposed clarifications in the solicitation of public comments are significant, will result in additional costs and burdens with no identified environmental benefit, and are inconsistent, in some cases, with current rule language and 12 years of HON implementation. These commenters maintained these changes must be adopted through a formal rulemaking process.

Response: We have decided not to adopt some of the proposed clarifying changes at this time. If we further consider them, we will provide another opportunity to collect public comments on the specific regulatory language. However, we have decided that one of the proposed minor changes will not have any impact on costs of compliance, and are therefore adopting it in this final rule: Re-determining the group status of wastewater streams whenever process or operational changes occur. We are also making two minor changes not specifically discussed in the proposal but for which we received comments urging their adoption: removal of MEK from tables in subparts F and G to 40 CFR part 63, and waiving recordkeeping requirements for off-site reloading or cleaning operations that take part in the vapor balancing compliance option for storage tanks. These changes are discussed in Section II.B of this preamble.

We are also clarifying in this preamble that liquid streams generated from control devices (e.g., scrubber effluent) are wastewater. We notified the public at proposal that we intended to incorporate this clarification in the rule. However, commenters affirmed that the regulatory text already clarifies this and additional rule language is unnecessary. Therefore, no rule clarification language was added.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) deems the final rule to be a "significant regulatory action" because it raises novel legal and policy issues. Accordingly, EPA submitted the final rule to OMB for review. Changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The action does not require any further control of sources and the amendatory changes are estimated to have at most minor costs. However, OMB has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 63, subparts F, G, and H, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0443, EPA ICR number 1854.04. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

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.

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 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: (1) A small business as defined by the Small Business Administration; (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 that is independently owned and operated and is not dominant in its field.

For sources subject to the final rule, the relevant NAICS and associated employee sizes are as follows:

NAICS 32511—Petrochemical Manufacturing—1,000 employees or fewer.

NAICS 325192—Cyclic Crudes and Intermediates Manufacturing—750 employees or fewer.

NAICS 325199—All Other Organic Chemical Manufacturing—1,000 employees or fewer.

After considering the economic impacts of the final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. This action finalizes our decision not to impose further controls and not to revise the existing rule. Consequently, there are no impacts on any small entities.

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 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 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, 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 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. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action finalizes our decision not to impose further controls and not to revise the existing rule. Consequently, there are not costs associated with this action. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision is not subject to section 203 of 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 the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected SOCMI facilities are owned or operated by State 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 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own SOCMI facilities subject to the HON. Thus, Executive Order 13175 does not apply to the final rule.

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

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

The final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by the final rule present a disproportionate risk to children. This conclusion is based on our assessment of the information on the effects on human health and exposures associated with SOCMI operations.

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

The final 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 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 impacts.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final rule does not involve technical standards beyond those already provided under the current rule. 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, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that "appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group" (EPA, 1998).

The Agency has recently reaffirmed its commitment to ensuring environmental justice for all people, regardless of race, color, national origin, or income level. To ensure environmental justice, we assert that we shall integrate environmental justice considerations into all of our programs and policies, and, to this end, have identified eight national environmental justice priorities. One of the priorities is to reduce exposure to air toxics. At proposal, EPA requested comment on the implications of environmental justice concerns relative to the two options proposed since some HON facilities are located near minority and low-income populations. We received one comment regarding environmental justice concerns that is addressed in the response to comments document.

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 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule is effective December 21, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2006.

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 63—[Amended]

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

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

Subpart F—[Amended]

Table 2—[Amended]

■ 2. Table 2 to subpart F of part 63 is amended by removing the entry for "Methyl ethyl ketone (2–Butanone)."

Table 4—[Amended]

■ 3. Table 4 to subpart F of part 63 is amended by removing the entry for "Methyl ethyl ketone (2–Butanone)."

Subpart G—[Amended]

■ 4. Section 63.119 is amended by revising paragraph (g)(7)(ii) and adding paragraph (g)(7)(iv) to read as follows:

§ 63.119 Storage vessel provisions—reference control technology.

* * * * *

(g) * * *

(7) * * *

(ii) If complying with paragraph (g)(6)(i) of this section, comply with the requirements for closed vent system and control device specified in §§ 63.119 through 63.123. The notification and reporting requirements in § 63.122 do not apply to the owner or operator of the offsite cleaning or reloading facility.

* * * * *

(iv) After the compliance dates specified in § 63.100(k) at an offsite reloading or cleaning facility subject to paragraph (g) of this section, compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the monitoring, recordkeeping, and reporting provisions of paragraph (g)(7)(ii) or paragraph (g)(7)(iii) of this section. You must identify in your Notification of Compliance Status report required by § 63.152(b), the subpart to the part 63 with which the owner or operator of the reloading or cleaning facility complies.

■ 5. Section 63.132 is amended by adding paragraphs (c)(3) and (d)(3) to read as follows:

§ 63.132 Process wastewater provisions—general.

* * * * *

(c) * * *

(3) The owner or operator of a Group 2 wastewater shall re-determine group status for each Group 2 stream, as necessary, to determine whether the stream is Group 1 or Group 2 whenever process changes are made that could reasonably be expected to change the stream to a Group 1 stream. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or whenever there is a replacement, removal, or addition of recovery or control equipment. For purposes of this paragraph (c)(3), process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the range on which the original determination was based.

(d) * * *

(3) The owner or operator of a Group 2 wastewater shall re-determine group status for each Group 2 stream, as necessary, to determine whether the stream is Group 1 or Group 2 whenever process changes are made that could reasonably be expected to change the stream to a Group 1 stream. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or whenever there is a replacement, removal, or addition of recovery or control equipment. For purposes of this paragraph (d)(3), process changes do not include: Process upsets; unintentional, temporary

process changes; and changes that are within the range on which the original determination was based.

* * * * *

Table 9—[Amended]

■ 6. Table 9 to subpart G of part 63 is amended by removing the entry for "Methyl ethyl ketone (2–Butanone)."

Table 34—[Amended]

■ 7. Table 34 to subpart G of part 63 is amended by removing the entry for "Methyl ethyl ketone (2–Butanone)."

Table 36—[Amended]

■ 8. Table 36 to subpart G of part 63 is amended by removing the entry for "Methyl ethyl ketone (2–Butanone)."

[FR Doc. E6–21869 Filed 12–20–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 121206B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to provide reasonable opportunity to harvest the General category January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of January, including previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the 1999 Highly Migratory Species Fishery Management Plan (1999 FMP) (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. The final initial 2006 BFT specifications increased the General category retention limit to three fish for the June though August time-period, as well as established the following General category RFD schedule: all Saturday and Sundays from November 18, 2006, through January 31, 2007, and Thursday November 23, 2006, and Monday December 25, 2006, inclusive.

Due to the large amount of available quota and the low catch rates, NMFS extended the three-fish retention limit through September (71 FR 51529, August 30, 2006), October (71 FR 58287, October 3, 2006), November (71 FR 64165, November 1, 2006), and December (71 FR 68752, November 28, 2006) to enhance fishing opportunities while minimizing the risk of exceeding available quota. On October 2, 2006, NMFS published a final rule (71 FR 58058) implementing the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP). The HMS FMP revised the General category time-period subquota allocation scheme by dividing the coastwide General category into the following five distinct time-periods; June through August, September, October through November, December, and January of the following year. The effective date of these time-periods and their associated subquota was November 1, 2006.

Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	December 1 - 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	January 1 - 31, 2007, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger
	February 1 through May 31, 2007, inclusive	All	CLOSED

Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit, which was to remain in effect through August 31, 2006, inclusive, was extended through September, October, November, and December via separate actions published in the **Federal Register**. From January 1 - 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to



Federal Register

Wednesday,
December 20, 2006

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0051; FRL–8256–4]

RIN 2060–AJ78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 14, 1999, under the authority of section 112 of the Clean Air Act (CAA), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in the Portland cement manufacturing industry. On December 15, 2000, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded parts of the NESHAP for the Portland cement manufacturing industry to EPA to consider, among other things, setting standards based on the performance of the maximum achievable control technology (MACT) floor standards for hydrogen chloride (HCl), mercury, and total hydrocarbons (THC), and metal hazardous air pollutants (HAP).

EPA published a proposed response to the court's remand on December 2, 2005. We received over 1700 comments on the proposed response. This action promulgates EPA's final rule amendments in response to the court's remand and the comments received on the proposed amendments.

DATES: This final rule is effective on December 20, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0051. 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 (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 *www.regulations.gov* or in hard copy at EPA 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, EPA, 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) 541–5605; facsimile number (919) 541–3207; e-mail address *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. *Does this action apply to me?* Entities potentially affected by this action are those that manufacture Portland cement. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS [1]	Examples of regulated entities
Industry	32731	Owners or operators of Portland cement manufacturing plants.
State	None	None.
Tribal associations	None	None.
Federal agencies	None	None.

[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 regulated by this action. This table lists the types of entities that may potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. *Judicial Review.* The NESHAP for the Portland Cement Manufacturing Industry were proposed in December 2, 2005 (70 FR 72330). This action announces EPA's final decisions on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the D.C. Circuit by February 20, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 the final NESHAP may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

C. *How is this Document Organized?* The information presented in this preamble is organized as follows:

I. General Information
II. Background
III. Summary of the *National Lime Association* v. *EPA* Litigation
IV. EPA's Final Action in Response to the Remand
A. Determination of MACT for Mercury Emissions
B. Determination of MACT for HCl Emissions
C. Determination of MACT for THC Emissions
D. Evaluation of a Beyond-the-Floor Control Option for Non-Volatile HAP Metal Emissions
V. Other Rule Changes
VI. Responses to Major Comments
VII. Summary of Environmental, Energy, and Economic Impacts
A. What facilities are affected by the final amendments?
B. What are the air quality impacts?
C. What are the water quality impacts?
D. What are the solid waste impacts?
E. What are the energy impacts?
F. What are the cost impacts?
G. What are the economic impacts?
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
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 That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

II. Background

Section 112(d) of the CAA requires EPA to set emissions standards for major stationary sources based on performance of the MACT. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources in the category or subcategory or the best performing five sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). This level is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). 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 when doing so.

On June 14, 1999 (64 FR 31898), in accordance with these provisions, EPA published the final rule entitled "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry" (40 CFR part 63, subpart LLL).[1]

The legacy public docket for the final rule is Docket No. A–92–53. The final rule provides protection to the public by requiring Portland cement manufacturing plants to meet emission standards reflecting the performance of the MACT. Specifically, the 1999 final rule established MACT-based emission limitations for particulate matter (as a surrogate for non-volatile HAP metals), dioxins/furans, and for greenfield[2] new sources, THC (as a surrogate for organic HAP). We considered, but did not establish limits for, THC for existing sources and HCl or mercury for new or existing sources. In response to the mandate of the D.C. Circuit arising from litigation summarized below in this preamble, on December 2, 2005, we proposed amendments addressing standards for these pollutants. We received over 1700 comments on the proposed amendments. Most of these comments were from the general public and addressed the lack of a mercury emission limitation in the proposed amendments. This final action reflects our consideration of these comments. We have previously amended the Portland Cement NESHAP. Consistent with the terms of a settlement agreement between the American Portland Cement Alliance and EPA, EPA adopted final amendments and certain interpretative clarifications to the rule on April 5, 2002 (76 FR 16614), July 5, 2002 (67 FR 44766), and December 6, 2002 (67 FR 72580). These amendments generally relate to the rule's applicability, and to the performance testing, and monitoring provisions of the rule. In this action, we are also amending the rule to re-insert two paragraphs relating to the applicability of the Portland cement new source performance standards that were deleted in error in a previous amendment.

It should be noted that the rule text presented in this notice includes parts of the rule that are not being amended. This is done because, in some cases, adding additional rule text reduces the possibility of errors in updating the Code of Federal Regulations.

III. Summary of the National Lime Association v. EPA Litigation

Following promulgation of the NESHAP for Portland cement manufacturing, the National Lime Association and the Sierra Club filed petitions for review of the standards in the D.C. Circuit. The American Portland Cement Alliance, although not a party to the litigation, filed a brief with the court as *amicus curiae*. The court denied essentially all of the petition of the National Lime Association, but granted part of the Sierra Club petition.

In *National Lime Association* v. *EPA*, 233 F. 3d 625 (D.C. Cir. 2000), the court upheld EPA's determination of MACT floors for particulate matter (PM) (as a surrogate for non-volatile HAP metals) and for dioxin/furan. However, the court rejected EPA's determination that it need not determine MACT floors for the remaining HAP emitted by these sources, namely, mercury, other organic HAP (for which THC are a surrogate), and HCl (233 F. 3d at 633). The court specifically rejected the argument that EPA was excused from establishing floor levels because no "technology-based pollution control devices" exist to control the HAP in question (*Id.* at 634). The court noted that EPA is also specifically obligated to consider other pollution-reducing measures including process changes, substitutions of materials inputs, or other modifications (*Id.*). The court remanded the rule to EPA to set MACT floor emission standards for HCl, mercury, and THC. (*Id.* At 641.)

The Sierra Club also challenged EPA's decision not to set beyond-the-floor emission limits for mercury, THC, and non-volatile HAP metals (for which PM is a surrogate). The court only addressed the absence of beyond-the-floor emission limits for non-volatile HAP metals since EPA was already being required to reconsider MACT floor emission standards for mercury, THC, and HCl, and thus, by necessity, also must consider whether to adopt beyond-the-floor standards for these HAP. The Sierra Club argued, and the court agreed, that in considering beyond-the-floor standards for non-volatile HAP metals, EPA considered cost and energy requirements but did not consider non-air quality health and environmental impacts as required by the CAA (*Id.* at 634–35). The court also found EPA's analysis of beyond-the-floor standards deficient in its assertion that there were no data to support fuel switching (switching to natural gas) as a viable option of reducing emissions of non-volatile HAP metals (*Id.* at 635).

IV. EPA's Final Action in Response to the Remand

A. Determination of MACT for Mercury Emissions

1. Floor Determinations

In developing the proposed amendments we systematically evaluated all possible means of developing a quantified floor standard for mercury emissions from these sources, including both back end technology-based pollution control devices and front end feed and fuel control. See *National Lime*, 233 F. 3d at 634 (finding that EPA had erred in examining only technological (i.e., back-end) controls in considering a level for a mercury floor). We also were unable to devise any type of work practice standard that would result in mercury emissions reductions (70 FR 72332—72335, December 2, 2005).[3]

In response to comments on the proposed standards, we have performed additional evaluations of potential floors for mercury emissions (and also performed additional evaluations of

[1] Cement kilns which burn hazardous waste are in a separate class of source, since their emissions differ from Portland cement kilns as a result of the hazardous waste inputs. Rules for hazardous waste-burning cement kilns are found at subpart EEE of part 63.

[2] A new greenfield kiln is a kiln constructed after March 24, 1998 at a site where there are no existing kilns.

[3] Indeed, most of the options EPA considered are really beyond-the-floor alternatives, because they reflect practices that differ from those now in use by any existing source (including the lowest emitters). (Coal switching, switching to natural gas, and raw material switching are examples.) In EPA's view, a purported floor standard which forces every source in a category to change its practices is a beyond-the-floor standard. Such a standard may not be adopted unless EPA takes into account costs, energy, and non-air health and environmental impacts. 70 FR 72335.

beyond-the-floor options for mercury control). We obtained additional mercury emissions test data during and after the two comment periods on the proposed amendments and once again evaluated setting a floor based on the median of the 12 percent of the kilns demonstrating the lowest mercury emissions in stack tests. We discuss each of these possibilities in turn below.

a. *Control of Mercury in Primary*[4] *Raw Materials and Fossil Fuels.* i. *Mercury Emission Levels Reflecting Raw Material and Fossil Fuel Contributions are Inherently Site-Specific.*

As stated at proposal, mercury emissions come from the predominant input to a cement kiln by volume: The limestone which is the chief raw material for the kiln.[5] Small amounts of mercury also are found in other raw material inputs to the process.[6] Fossil fuel, almost always coal, is the other source of mercury emissions. Mercury levels in limestone vary enormously, both within a single quarry and between quarries, the result being that a single source may be unable to replicate its own performance in different tests, and could not duplicate a second source's performance since a kiln lacks access to any other kiln's limestone. Mercury levels in coal likewise vary significantly, although mercury emissions due to coal are normally swamped by the emissions attributable to limestone (70 FR 72333–34).

In an attempt to quantify the potential variability, we looked to see if there were facilities with multiple stack tests for mercury. We do have multiple test results for one of the lowest mercury emitters in the data base. During the first test with the raw mill on[7] the facility was one of the lower emitting facilities in the source category demonstrating emissions of 7.8 micrograms per dry standard cubic meter (μg/dscm) (all test values are corrected to seven percent oxygen). During a second test 8 years later (reflecting raw materials from the same quarry) mercury emissions with the raw mill on were 60 μg/dscm, a variability factor of roughly 8 times. We could identify no facility operational changes between the times of the two tests that would account for this large difference in mercury emissions.

We also obtained data from a facility that was retested for mercury in July 2005, within 3 months of an initial test. With the raw mill on, mercury emissions averaged 0.00138 pounds per hour in the April test and 0.00901 pounds per hour in the July test, a variability factor of 7. With the raw mill off, emissions averaged 0.00823 pounds per hour in the April test and 0.0189 pounds per hour in the July test. We also noted that during the April test mercury emissions with the raw mill off were below mercury emissions with the raw mill on in the July test. Because it is known that when the raw mill is on the raw meal adsorbs mercury, thereby reducing measured mercury emissions in the short term, we can only assume that the uncontrolled variation in the mercury levels in the raw materials—all of which come from the same quarry—was so great between the two tests that it negated the effect of the operating condition of the raw mill.

We also assessed potential variability by examining daily variations in cement kilns' raw materials and fuel mercury contents. We obtained data from an operating facility that analyzed samples of raw material and fuel each day over a 30 day period. We calculated average daily emissions assuming all the mercury in the raw materials and fuel was emitted. The average daily emissions would vary from a low of 0.09 lb to a maximum of 16.44 lb, or a factor of 183 (See Summary of Mercury Test data in Docket 2002–0051).

These are enormous swings in variability.[8] Moreover, it is virtually certain that the variability reflected in these results fails to cabin the total raw material and emissions variability experienced by the plants in the source category, since we have only a handful of results. These data confirm our tentative conclusion at proposal that constantly changing concentrations of mercury in kiln inputs leave no reliable way to quantify that variability. 70 FR 72333.

In the proposed amendments we also evaluated requiring facilities to switch from coal to natural gas as a method to reduce mercury emissions, or requiring use of so-called clean coal (70 FR 72333–34). We tentatively concluded that this was not feasible on a national basis due to insufficient supply and lack of infrastructure, and reiterate that conclusion here. One commenter noted that petroleum coke was another fuel that is lower in mercury and is currently used as a cement kiln fuel. However, a mercury standard based on requiring fuel switching to petroleum coke suffers from the same defects as requiring facilities to switch to natural gas. This fuel may not be available in all areas of the country and there may not be sufficient availability of the fuel to replace a significant percentage of the coal burned in cement kilns. Petroleum coke is a byproduct of petroleum refining, therefore the supply is limited by the demand for refined petroleum fuels. Petroleum coke has a low volatile matter content which can lead to ignition problems if burned without a supplemental fuel. It also typically has a higher sulfur content than coal. This can adversely affect kiln refractory life and increase internal corrosion of the kiln shell. As previously noted, each individual facility has specific requirements for raw material additives based on the chemical composition of its limestone. The minerals present in the coal ash fulfill part of those requirements. Therefore, replacing part or all of the coal currently used at a facility with petroleum coke, which has almost no ash, may force the facility to incorporate additional raw material additives containing mercury to compensate for the loss of the coal ash.

Thus, we adhere to the tentative conclusion reached at proposal: front end feed and fuel control of cement kilns is inherently site specific, and basing limits on kiln performance in individual performance tests which reflect only those inputs will result in limitations that kilns can neither duplicate (another kiln's performance) nor replicate (its own).

[4] We discuss in section IV.A.1.c below floor determinations for cement kilns using secondary materials (utility fly ash) as raw materials, in place of primary materials.

[5] Limestone makes up approximately 75 percent of the mass input to the kiln. Typically the way a cement plant is sited is that a limestone quarry suitable for cement production and that is expected to provide many years of limestone is identified and the plant is built next to the quarry. There are cases where a cement plant may purchase small amounts of limestone to blend with the limestone from its quarry. However, this close proximity of the quarry and cement plant is an inherent part of the cement manufacturing process and, therefore, a cement plant does not have the flexibility to obtain the bulk of its limestone from any other source. See 70 FR 72333.

[6] Post-proposal review of available data on other mercury raw materials indicates that other feed materials also contribute some mercury, though, in most cases, less than limestone. Other raw materials include (but are not limited to): shale or clay to provide alumina; iron ore to provide iron; and sand to provide silica. These raw materials are used in lesser amounts than limestone, and a cement plant may have some flexibility in the sources of other raw materials. As noted in the preamble to the proposed amendments, there are cases where a facility made changes to their raw materials (other then limestone) to reduce mercury emissions. However, this type of control is site specific based on the available materials and the chemical composition of the limestone. The site specific factors preclude using this as a basis for a national rule (70 FR 72334).

[7] See section c. below discussing operation of the in-line raw mill and its implication for mercury control.

[8] Variability of emissions based on the operation of air pollution controls are typically lower that those shown above because air pollution controls are typically designed to meet certain percent reduction or outlet emissions levels and to account for variations in inlet conditions.

ii. *Implications of Permit Limits for Mercury.* There are currently 19 cement kilns (out of 70 cement kilns for which we reviewed permit requirements) that have permit limits for mercury. At first blush, it might be argued that these permit limits demonstrate that variability of mercury emissions can be controlled, since sources must comply with the limitations. It might further be argued that these permit limits are "emission limitations achieved," the statutory basis for establishing floors for existing sources under section 112(d)(3). Likewise, for new sources, the lowest permit limit is arguably a measure of performance of the "best controlled similar source" (the permit itself being the means of control). We have determined, however, that for most facilities, the permit limit was established based on an estimate provided by the facility of the annual amounts of mercury that would enter the kiln with the raw materials and fuels. One facility had a mercury limit based on its estimated annual emission from an emissions test, and one facility had a limit based on a State law, although in neither case did the resulting permit cause a cement kiln source to alter or otherwise modify its existing practices to meet the limit. Thus, we find no cases where a facility actually has had to take any steps, either through the imposition of process changes or add-on controls, to reduce its mercury emissions as a result of any of these permit limits. See "Summary of Cement Kiln Permit Data for Mercury" in the docket.

We considered the option of setting an emissions limit, either on a pounds per year (lb/yr) or a pound per ton of clinker basis, based on the median of the top 12 percent of the 17 kilns with permit limitations. However, we repeat that none of the facilities with permit limits were required to actually take action to reduce mercury emissions. Their limits were all based on site specific factors (expected maximum conceivable levels of mercury emissions), and were set at a level that did not require the imposition of add-on controls, feed or fuel substitution, or any other constraint. Any limit we set based on these permits would require that at least some facilities apply beyond-the-floor control technology to meet the limit since feed and fuel control via substitution is not possible. Such a standard would impermissibly apply beyond-the-floor emission control without consideration of costs and other non-air health and environmental impacts.

We also considered a limit where each facility would set their own site specific limit based on the same procedures the facilities with permits used: determining in the course of the permitting process what its maximum conceivable mercury emissions are likely to be based on the facility's raw material and fuel inputs, and tacking on an additional variability factor. However, this would require that we set a separate limit for each facility, with each facility being its own subcategory (i.e. a different type of facility) based on its site specific raw materials and fuels. See 70 FR 72334, alluding to this possibility. EPA has great discretion in deciding whether or not to subcategorize within a source category. We do not believe a decision to individually subcategorize is warranted considering the fact that the result will be no discernable environmental benefit because conduct will be unaltered. *Chemical Mfr's Ass'n* v. *EPA*, 217 F. 3d 861, 866–67 (D.C. Cir. 2000) (arbitrary and capricious for EPA to impose costly regulatory obligations without some showing that the requirement furthers the CAA's environmental goals).

Therefore, we have determined that even though these permit limits exist, they have not resulted in a quantifiable reduction of mercury emissions. Any option to develop a MACT floor for mercury with these limits would either result in an unnecessarily complex rule with no environmental benefit, or a rule which improperly imposes a *de facto* beyond-the-floor standard without the required consideration of costs, energy and non-air quality impacts.

iii. *Why not Average the Performance Test Data?* Some commenters stated that EPA must simply average the results of the 12 per cent lowest mercury performance test data to establish the floor for existing sources, and establish the new source performance floor at the level of the lowest test result. We rejected this approach at proposal, and do so here, because it fails to account for the variability of mercury levels in raw materials and fuels and hence variability in performance. See 70 FR 72335; see also 70 FR 59436 (Oct. 12, 2006). We must, of course, account for sources' variability in establishing a MACT floor. *Mossville Environmental Action Now* v. *EPA*, 370 F. 3d 1232, 1241–42 (D.C. Cir. 2004). The only way all kilns, including the kilns with the lowest emission levels in individual tests, could meet this type of standard continuously, as required, would be to install backend technology-based control equipment. However, this would be a *de facto* beyond-the-floor standard, adopted impermissibly because of failure to assess cost, energy, and non-air quality health and environmental impacts. See 70 FR 72335.

We are aware that in the case of the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler NESHAP), we used short term emissions data and applied a variability factor to determine a floor for mercury emissions (69 FR 55236, September 13, 2004). We do not believe that approach is applicable to the Portland cement source category. First, in the case of the Boiler NESHAP the floor was based on performance of a control technology, fabric filters, which means that facilities were exercising some control over mercury emissions and variability could be realistically cabined and quantified, so that an emission limit could be replicable and duplicable. Though the majority of cement kilns also use fabric filters, the collected particulate in this source category consists of product and, to some extent, unprocessed raw materials. As a result most of the collected particulate is recycled back to the process, largely negating any impact of the particulate control technology on mercury emissions.[9] Second, the variabilities seen as a result of fuel inputs in the Boiler NESHAP are much lower than the variabilities indicated in the Portland cement industry where the mercury fuel variability is a distant second to the enormous variability of mercury in the raw materials. We do not believe the data exist to accurately quantify this variability.

Another option we considered was using long term data to set a floor. However, since, to our knowledge, continuous emission monitors for mercury have not been demonstrated on cement kilns, and none currently exist on cement kilns, there is no long term stack performance data on mercury emissions from cement kilns that we could use to set a numerical emissions limit. The only available long term data of which we are aware is from several facilities which have a requirement to perform monthly analyses of composited daily samples of fuels and raw materials to calculate a 12 month mercury emissions total. However, all these kilns are located in one state (Florida) with unrepresentatively low levels of mercury in limestone (so far as we can determine). We do not believe these data would be representative of

[9] As explained in the following section of the preamble, however, EPA has determined that the floor for both existing and new sources involves the removal from the kiln system of collected particulate under designated circumstances. In addition, the floor for new sources reflects reductions in mercury based on performance of a wet scrubber.

the source category as a whole. More basically, basing a standard on one set of kilns' raw material inputs still suffers from the defect that no facility has access to another's raw materials.

b. *Floors for Facilities Using Utility Fly Ash as Raw Material.* Some cement kilns use utility fly ash as an alternative raw material to replace shale or clay.[10] These kilns replace a natural material, shale or clay, with a secondary material (i.e. a recycled air pollution control residue), fly ash. Approximately 34 cement manufacturing facilities are currently using utility boiler fly ash as a feedstock. We reviewed the available data and have come to the conclusion that cement kilns using fly ash are a different type of kiln, within the meaning of section 112 (d) (1) of CAA, and that for cement kilns currently using fly ash, the current use would be considered the MACT floor. Our reasoning is as follows.

Use of fly ash can have an effect on mercury emissions since fly ash contains mercury in varying amounts. As discussed below, mercury emissions may be higher or lower depending on the amounts of mercury involved vis-à-vis the raw materials that would otherwise be used (if available). But as also explained more fully below, some cement kilns using fly ash do not have an alternative raw material source. Given that these kilns use a different raw material, not always replaceable, and that the material affects mercury emissions, we believe that these kilns are a separate kiln type, and hence a separate subcategory, for purposes of mercury emissions. For a similar conclusion see 64 FR at 52871 (Sept. 30, 1999) (cement kilns that choose to burn hazardous waste in place of fossil fuels are a separate source category for MACT purposes).

We attempted to determine if, in general, facilities that use fly ash have higher emissions of mercury than those that do not. An analysis of data for EPA's toxic release inventory and the National Emissions Inventory did not show differences significant enough that we could draw any definitive conclusions. We considered reviewing the available mercury emissions test data to determine if we could discern a trend. However, as previously discussed, we do not believe these data are representative of long term mercury emissions. We also attempted to obtain data on the important issue of the amounts and mercury contents of fly ash used relative to other raw materials. These data apparently do not exist, with one exception discussed in the next paragraph. We do know that the two highest mercury emitting facilities (in individual performance tests) do not use fly ash. Without data on the actual mercury contributions of all materials, we do not believe we can draw any valid general conclusions on the impact of the use of fly ash on mercury emissions.

We do have detailed data from one facility that used fly ash where 50 percent of the total mercury input to the kiln is in the fly ash. However, even for this facility, we cannot accurately quantify the impact on mercury emissions of the decision to replace the shale used at this facility with fly ash because we have been unable to obtain data on the mercury content of the shale the fly ash replaced. We also have no mercury analysis data from the time period when the facility used shale.

There are other factors to consider when we evaluate the environmental effects—generally quite positive—of substituting fly ash for shale or clay. First, fly ash in general has a lower organic material content than shale or clay. At the facility just mentioned, replacing the shale with fly ash reduced emissions of THC from around 80 parts per million by volume (ppmv) to 3 ppmv. Because fly ash can reduce kiln fuel consumption, it reduces emissions of sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and carbon monoxide (CO_2). Using fly ash as a kiln feed reduces the landfill requirements for disposal of utility fly ash. Use of fly ash reduces cement plant power consumption because it is usually fine enough that it can be added directly to the kiln rather then being ground in a mill. Use of fly ash also reduces fuel consumption because compared to the raw materials it typically replaces it is already highly calcined; it does not have the same types of large crystals as the raw materials it replaces (this improves burnability); some fly ashes have lower metal alkali content, thus avoiding hard burning to drive off alkali metals and reducing the need to operate the alkali bypass; it is drier than quarried materials, thus saving fuel used to dry materials. Many domestic cement plants have high pyrites in their quarry, especially in the shale or clay. In most cases, this pyrite is the main source of SO_2 emissions from the kiln. Using fly ash can significantly reduce the SO_2 emissions that result from pyrite in the raw materials. It also reduces the energy required for the quarring, milling, and transporting of the shale or clay prior to its use as a feedstock, as well as the associated air emissions.

It should also be noted that there are at least two new facilities whose permits specifically require use of fly ash as their alumina source, as they have no source for shale or clay, the primary material alternatives for alumina. Finally, a facility that currently uses fly ash may not be able to return to using the natural (i.e. primary) raw materials it replaced. For example, if the replaced raw materials were shale, the shale quarry may now be closed and the facility may not have access to a suitable shale supply.

Given the lack of any data to positively state the impact of fly ash on mercury emissions for the source category in general, as well as the positive environmental effects of using fly ash, there is no basis for a floor standard based on substituting other potential raw materials (such as shale or clay) for fly ash. At the same time, we do not see any means of identifying a floor for existing fly ash users based on substituting different fly ash types reflecting different mercury content. The recycled fly ash is not fungible. Cement kilns must carefully select only fly ash with needed properties within a relatively small tolerance. Cement kilns also usually are limited to fly ash available from boilers which are reasonably close to the kiln (typically within a few hundred miles) or shipping expense becomes prohibitive. The fly ash selection process is involved; it has taken years for kilns to identify a suitable fly ash source. Accordingly, we evaluate fly ash like the other raw material inputs into cement kilns, and do not believe that a floor that is based on substitution of either raw materials or other fly ash is justified because the input is variable and uncontrollable. We discuss in section IV.A.2 below the one exception to this conclusion for fly ash where the mercury content has been artificially increased by sorbent injection.

c. *Control of Collected Particulate (Cement Kiln Dust).* There are two operation factors that impact measured mercury emissions at the kiln stack. These are the use of in-line raw mills and the recycling of cement kiln dust (CKD).

Many (but not all) kiln systems have in-line raw mills. In these systems the kiln exhaust gas is routed through the raw mill to dry the raw materials. This process results in mercury contained in the flue gas being adsorbed by the raw meal.[11] This results in an apparent

[10] Though these are also raw materials inputs, the mass of clay or shale is typically less than 15 percent of the mass input to the kiln. Limestone makes up approximately 80 percent of the mass input.

[11] More specifically, when the mill is on-line, the kiln gas containing volatilized mercury is used to

reduction if mercury emissions are being measured at the kiln stack. However, the captured mercury is reintroduced into the kiln which creates a recycle loop of mercury until the captured mercury eventually escapes and is emitted to the atmosphere. Also, raw mills do not run continuously. When the raw mill is turned off, this effect of raw meal adsorption of mercury is negated and mercury emissions appear to increase. However, the increase is actually mercury that would have previously been emitted but was captured by the raw meal and returned to the kiln. The net effect is that an in-line raw mill does not increase or reduce mercury emissions over the long term; it simply alters the time at which the mercury is released.

Mercury is also adsorbed on the CKD collected in the particulate control device, typically a fabric filter or an electrostatic precipitators (ESP). Because the collected CKD mainly consists of product, and sometimes small amounts of raw materials, the collected CKD is recycled back to the kiln to the extent possible. The portion that cannot be recycled to the kiln is either sent to a landfill, or used in some other manner (i.e. some type of beneficial use). Most facilities require that a portion of the CKD be removed from the kiln system rather than returned to the kiln. This is done to bleed the kiln system of alkali materials that build up as they circulate which would otherwise contaminate product and damage the kiln lining. This practice necessarily reduces the overall volume of mercury emitted by cement kilns, as noted by several commenters, since the entrained mercury in the CKD is no longer available for release from the kiln. The amount of reduction is kiln-specific, based on the level of alkali materials in the kiln's raw materials and required product specifications, and therefore not quantifiable on a national basis. Nor would kiln-by-kiln site-specific emission standards be warranted, for the same reasons that site-specific limits based on mercury levels on raw material and fuel inputs are not justified. EPA is instead determining that a floor standard for both existing and new sources is the work practice that cement kiln dust be removed from the kiln system at the point that recirculation causes adverse effect on product.

d. *Standards Based on Performance of Wet Scrubbers.* There are at least five cement kilns that have limestone (wet) scrubbers installed for control of SO_2. Commenters noted that based on experience with utility boilers, and other similar combustion devices, there is reason to expect that the scrubbers installed on cement kilns also remove oxidized mercury.

To our knowledge, we obtained all the available data on wet scrubber controlled facilities after the comment period on the proposed amendments. This consists of data from 2004 and 2005 tests at two facilities measured exclusively at the scrubber outlet. These data range from 0.42 to 30 μg/dscm. Variability of mercury emissions at the scrubber-equipped kilns for which we have multiple test data differs by orders of magnitude. These data fall within the range of test data from all kilns (those with wet scrubbers and those without wet scrubbers). We have no test data for mercury measured at the scrubber inlet. As a result, we cannot, on the basis of the current data, determine with absolute certainty (though we believe it is reasonably certain) if the outlet mercury emissions from the wet scrubber equipped kilns are a result of mercury removal by the scrubber, or simply reflect the amounts of mercury in the raw materials. We now discuss the implications of this information for purposes of existing and new source floors. Note that the following discussion assumes the scrubbers remove oxidized mercury for reasons discussed below.

First, there are an insufficient number of wet-scrubber equipped kilns on which to base an existing source floor. The scrubber-equipped kilns would represent the best performing sources since data from other kilns simply reflect the mercury levels in kiln inputs on the day of the test. There are 158 operating kilns, and the information available to us indicates that only five of them are equipped with wet scrubbers. The median kiln of the top 12 percent would, therefore, not be a scrubber equipped kiln.[12]

However, for new sources mercury emissions would not be uncontrolled—solely dependent on raw material mercury content—but rather would reflect performance of "the best controlled similar source" (section 112 (d)(3)). A kiln so-equipped would thus have the best performance over time, since variability in mercury attributable to raw material and fuel inputs would be controlled in part.[13]

We believe there is a reasonable basis that wet scrubbers remove oxidized mercury from cement kiln emissions. First, wet scrubbers are known to remove oxidized mercury in most combustion applications though removal rates vary. We have speciated mercury test data on two kilns that indicate that there is a significant amount of oxidized mercury in at least some cement kilns. See mercury emission test data for Holcim, Dundee, MI and Lafarge, Alpena, MI, in docket EPA–HQ–OAR–2002–0051. Second, the limited data we have from cement kilns equipped with wet scrubbers is among the lowest end-of-stack mercury data in our data base (although not the lowest), which could indicate that some removal mechanism is involved. An important caveat, however, is that these data are exclusively end-of-stack, without paired inlet concentrations. These data thus do not with absolute certainty demonstrate that mercury removal is occurring or how much.

We estimated the performance of the best performing scrubber, and hence the new source MACT floor, to be 41 μg/dscm (corrected to 7 percent oxygen) using the following rationale. First, we limited the analysis to data from wet scrubber equipped kilns because, as just

sweep the mill of the finely ground raw feed particles. Since the mill temperature is only about 90 to 120 °C during this operational mode, the fine PM can adsorb the mercury in the gas stream, and the particles containing condensed mercury are stored in the raw feed silos. This stored raw mix then is fed to the kiln. The captured mercury is again volatilized and returned in the gas stream to the raw mill, only to be captured again in the raw mill, as described above. This process continues as long as the raw mill is on-line, and the raw feed continues to adsorb additional mercury through this process.

[12] Choosing the median source for assessing an existing source floor here is a reasonable manner of determining "the average emission limitation achieved by the best performing 12 percent of existing sources" (section 112 (d)(3)). Not only can the statutory term "average" be reasonably interpreted to mean median, but it is appropriate to do so here in order not to adopt a *de facto* beyond the floor standard. If one were simply to combine the mercury emission levels of the kilns equipped with wet scrubbers with other kilns whose mercury levels reflect raw material and fuel mercury levels at the time of the performance test, the resulting limit would not be achievable over time by any source other than one with a wet scrubber. Ostensible best performers would consequently have to retrofit with back end control, since otherwise they could not consistently achieve the results of their own performance tests.

[13] That is, variability would no longer be purely a function of the happenstance of the amount of mercury in raw materials (and fossil fuels) used in the test condition. As explained more fully below, performance of wet scrubbers, however, is variable, based not only on operation of the device but on mercury levels in input materials. Wet scrubbers on utility boilers, for example, are documented to remove between 0 to 72 percent of incoming mercury. See Control of Mercury Emissions from Coal-Fired Electric Utility Boilers: Interim Report Including Errata available at *http://www.epa.gov/nrmrl/pubs/600r01109/600r01109.htm*. We should note, however, that because utility boilers do not have the significant levels of alkaline materials that are present in cement kilns, which alkaline materials would impede mercury oxidation and scrubber efficacy, we do not view utility boilers as a "similar source" for purposes of section 112(d)(1).

discussed, the wet scrubber equipped kilns represent the best performing sources, regardless of their actual outlet emissions levels in individual performance tests. Second, we ranked all the wet scrubber mercury emissions with the raw mill off. We believe this is appropriate because the condition of raw mill off represents a normal operating mode for a cement kiln (albeit the operating mode when mercury emissions would be highest, as discussed above in section a.i). We then took the mean raw mill off value for mercury emissions from a cement kiln in our (limited) data base, and added to it a variability factor to account for normal variation in emissions. This variability factor is the standard deviation of the data multiplied by 2.326 (the z statistic) to produce the 99th confidence interval. We looked to all of the data, rather than to the data from the single lowest emitting kiln, because there are too few data points from that kiln (or from any one kiln) to estimate that kiln's variability. Given that variability is known to occur, we believe that this is the best approximation of variability of the best performing kiln presently available.

The result of this analysis is a new source floor of 41 μg/dscm that must be met continuously (raw mill on and raw mill off) (see further discussion in section A.3 below). This is an emissions limit that we believe will not be exceeded 99 percent of the time by the best performing kiln whose performance is used to set the standard.

Because of the limited performance data characterizing performance of the lowest-emitting scrubber-equipped kiln, the rule also contains an alternative new source mercury floor. The best performing kiln is equipped with a wet scrubber, although there could be questions about its performance over time. Therefore, if a new source installs a properly designed and operated wet scrubber, and is unable to achieve the 41 μg/dscm standard, then whatever emission level the source achieves (over time, considering all normal sources of variability) would become the floor for that source. Based on the design of the wet scrubber that is the basis of the new source floor, this would be a packed bed or spray tower wet scrubber with a minimum liquid-to-gas ratio of 30 gallons per thousand cubic feet of exhaust gas.

In sum, we conclude that floors for mercury for all existing cement kilns should be to remove accumulated mercury-containing cement kiln dust from the system at the point product quality is adversely affected. The floor for new sources is to utilize this same work practice, and in addition, to meet a standard of either 41 μg/dscm or a site-specific limit based on performance of a properly designed and operated wet scrubber.

As just explained, the mercury data on which the new source floor is based are not only limited, but fails to definitively answer the critical question of whether wet scrubbers are removing oxidized mercury, and, if so, to what extent. We are taking immediate steps to address this issue and augment the data base. In an action published elsewhere in this **Federal Register**, we are granting reconsideration of the new source standard adopted in this rule, both due to substantive issues relating to performance of wet scrubbers and because information about their performance in this industry has not been available for public comment. We also have initiated actions to obtain inlet and outlet test data for cement kilns equipped with wet scrubbers in order to determine if these controls remove mercury, and to what extent. In addition, we are committing to completing this reconsideration process within one year from December 20, 2006.

2. Beyond-the-Floor Determinations

During development of the original NESHAP for Portland cement manufacturing, we conducted MACT floor and beyond-the-floor analyses for kiln and in-line kiln/raw mill mercury emissions (63 FR 14182, March 24, 1998 and 64 FR 31898, June 14, 1999). We also conducted a beyond-the-floor analysis for mercury, based on the performance of activated carbon injection with an additional PM control device. Costs for the system would include the cost of the carbon injection system and an additional fabric filter (FF) to collect the carbon separately from the CKD. Based on the low levels of mercury emissions from individual Portland cement kilns, as well as the high cost per ton of mercury removed by the carbon injection/FF system, we determined that this beyond-the-floor option was not justified (63 FR 14202, March 24, 1998).

At proposal, EPA again concluded tentatively that a beyond the floor standard based on performance of activated carbon is not justified (70 FR 72335). We have since reevaluated beyond-the-floor control options for mercury emissions. This evaluation included both process changes and add-on control technology.

There are two potential feasible process changes that have the potential to affect mercury emissions. These are removing CKD from the kiln system and, for the subcategory of kilns that currently use fly ash as a raw material, replacing the fly ash with a lower mercury raw material. Substituting raw materials or fossil fuels with lower-mercury inputs could in theory reduce mercury emissions, but this alternative is infeasible for the reasons explained at 70 FR 72333–72334.

Generally, once mercury enters a kiln system, it has five potential fates: it may remain unchanged and become part of the final product; it may react with raw materials and exit the kiln in the clinker; it may vaporize in the high temperature of the kiln and/or preheater; it may condense or react with the cement kiln dust and be removed from the system; or it may exit the kiln system in vapor form or be adsorbed to a dust particle through the stack. In general, mercury in the fuel becomes volatilized near the kiln's combustion zone and is carried toward the feed end of the system along with combustion gases. Some of the mercury compounds pass through the entire system and exit in vapor phase through a stack. However, as the flue gas cools, some mercury may adsorb/condense onto dust particles in the cooler regions of the kiln system. Much of this dust containing condensed mercury would then be captured by the PM control device and for most kiln systems, returned to the kiln.

We evaluated, requiring a facility to further reduce the recycling of CKD beyond the wastage already needed to protect product quality, the floor for both existing and new sources. For a 600,000 tpy (tpy) kiln the estimated total annual cost would be $3.7 million just for replacement of CKD (which is actually product) and disposal of additional solid waste. This cost does not account for the increased raw materials costs and energy costs associated with reducing the recycling of the CKD. The mercury emissions reduction would range from 0.012 to 0.055 tpy based on assumed CKD mercury concentrations of 0.33 and 1.53 parts per million (ppm) respectively. The cost per ton of mercury reduction would range from $67 million to $308 million. See Costs and Impacts of Wasting Cement Kiln Dust or Replacing Fly Ash to Reduce Mercury Emissions in docket EPA–HQ–OAR–2002–0051. We note that the median value for the mercury content of recycled CKD for one study was only 0.053 ppm. See the report Mercury and Lead Content in Raw Materials in docket EPA–HQ–OAR–2002–0051. This would indicate that for the majority of the facilities the costs per ton would be even higher that those presented above. In addition, we

estimate that wasting 50 percent of the recycled CKD would reduce the energy efficiency of the process by six percent due to the need to process and calcine additional feed to replace the wasted CKD. It is possible that in some cases the wasted cement kiln dust could be mixed with the cement product rather than landfilled, or that some other beneficial use could be found. This would reduce the costs and non-air adverse impacts of this option. However, there are currently barriers to directly mixing CKD with clinker due to product quality and product specification issues. We do not have data available to evaluate the potential for beneficial use of the CKD. Based on these costs, the adverse energy impacts, and the increased adverse waste disposal impacts (see 64 FR 45632, 45635–36 (Aug. 20, 1999) for examples of potential hazards to human health and the environment posed by disposal of cement kiln dust), we do not believe this beyond-the-floor option is justified and therefore are not selecting it.

As previously noted, for the subcategory of facilities that use utility boiler fly ash as a kiln feed we determined that the current use represented the MACT floor. We considered two beyond-the-floor options for this subcategory. One option was to ban the use of any fly ash if it resulted in a mercury emissions increase over a raw material baseline, and the second was to only ban the use of fly ash whose mercury content had been artificially increased through the use of a sorbent to capture mercury in the utility boiler flue gas.

If we were to ban the use of utility boiler fly ash for any case where it has been shown to increase mercury emissions from the kiln over a raw material baseline, facilities would have to revert to using their previous raw materials, or to find alternative raw materials that provide the same chemical constituents as the fly ash. As previously noted, if a facility replaces their shale or clay with fly ash, the quarry for that material may now be closed and it may not be possible to cost-effectively obtain the previously used raw materials. And for at least two new facilities, the original raw materials used at startup will include fly ash, so there is no previously used material with which to compare the mercury content of the fly ash. Due to the site specific costs associated with raw materials, we don't have any data to calculate the costs of the beyond-the-floor option for the industry as a whole. In one example, we estimated the cost as approximately $136 million per ton of mercury reduction. See Costs and Impacts of Wasting Cement Kiln Dust or Replacing Fly Ash to Reduce Mercury Emissions in docket EPA–HQ–OAR–2002–0051. Also, this option would mean that all the fly ash currently being used as a cement kiln feed would now potentially have to be landfilled. This would generate an additional 3 million tpy of solid waste, with potential adverse health and environmental impacts associated with management of these wastes. There would also be adverse environmental air and non-air quality health and environmental impacts associated with the mining of additional raw materials that would have to be utilized. In addition, the overall kiln efficiencies (i.e. the amount of fuel required per ton of clinker produced) at the facilities using fly ash would be expected to decrease if the fly ash were replaced with shale or clay. This decrease may be as large as 10 percent (See Site Visit to Lafarge Cement in Alpena Michigan in the docket).

Based on the cost, energy, and adverse non-air quality health and environmental impacts, we believe that banning the current use of utility boiler fly ash is not justified.

We also separately evaluated the use of fly ash from a utility boiler where activated carbon, or some other type of sorbent injection, has been used to collect mercury. This practice does not currently occur. See 70 FR 72344 (voicing concern about potential for increased mercury emissions from cement kilns were such fly ash to be used). The mercury concentration in this type of fly ash will vary widely. However, full scale testing of fly ash from utility boilers using various sorbent injection processes has indicated there is a potential for sorbent injection to significantly increase fly ash mercury content (Characterization of Mercury-Enriched Coal Combustion Residues from Electric Utilities Using Enhanced Sorbents for Mercury Control in the docket EPA–HQ–OAR–2002–0051). Testing to date has shown increases by a factor of 2 to 10, and in one case of a very low mercury fly ash the increase was by a factor of 70.

Data from 16 cement facilities currently using fly ash not reflecting sorbed mercury showed mercury concentrations in the fly ash from 0.002 ppm to 0.685 ppm with a median of 0.136 ppm. Data on the fly ash mercury content of currently operating utility boilers testing sorbent injection showed levels ranging from 0.071 ppm up to 1.529 ppm with a median level of 1.156 ppm, significantly higher than the fly ash currently in use. Therefore, we see a potential for fly ash with enhanced mercury content due to sorbent injection at the utility site to increase mercury emissions from cement kilns, and for the increase to be much more significant than emissions attributable to the current fly ash being used.

We do not see a ban on the use of this type of fly ash as significantly affecting the overall current beneficial uses of fly ash. First, we do not anticipate the widespread use of activated carbon injection ACI in the utility industry until 2010 or later. Therefore, both the cement industry and the utility industry will have a significant amount of time to adjust to this requirement. Second, a utility boiler that decides to apply ACI for mercury control has the option of collecting the fly ash from sorbent injection systems separately from the rest of the facility's fly ash (e.g., EPRI'S TOXECON system). Therefore, the utility boiler could continue to supply non-sorbent fly ash to a cement kiln even after the application of ACI for mercury control. Finally, technology is being developed that would allow the mineral-rich portion of fly ash to be separated from the high carbon/high mercury portion.

Based on these factors, we are banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e., emissions not using the mercury increased fly ash). The facility has the burden of proving there has been no emissions increase over baseline. This requirement, adopted as a beyond-the-floor control, applies to both existing and new sources.

We also reevaluated our analysis of potential control options based on add-on control technology. These were control options based on the use of a limestone scrubber, and ACI.

As previously noted there are at least five cement kilns that have limestone (wet) scrubbers. As discussed in section IV.A.1.d above, there is a reasonable basis for believing that the wet scrubbers remove the oxidized mercury. There are no data available to allow us to definitively estimate the percent reduction expected. We performed a cost analysis based on an assumed mercury removal efficiency of 42 percent, which is transferred (solely for purposes of analysis) [14] from

[14] As explained in section 1.d, there are no data to definitively state that the percent reduction achieved by wet scrubbers in the utility industry are

Continued

performance of wet scrubbers in the utility boiler category and represents the greatest degree of removal one could expect to be consistently achieved for Portland cement kilns. We also note that the wet scrubber will achieve cobenefits of reducing SO_2 and dioxins (although dioxin removal would be relatively modest since any removal would be incremental to that required by the existing MACT dioxin standard for Portland cement kilns). The results of that analysis for an existing model large kiln are as follows:

TABLE 1.—PACKED BED SCRUBBER—COSTS AND EMISSION REDUCTIONS

Clinker production in tpy (tpy)	Total annualized cost ($/yr)	Emissions reduction		
		SO_2 (tpy)	D/F (g/yr)	Hg (lb/yr)
600,000	1,542,000	297	0.11	16.8–147

Based on this analysis the cost per ton of mercury removed ranges from $21 million per ton to $184 million per ton, a result that is not at all cost effective. In addition, a wet scrubber for a large kiln will generate approximately 45,500 tpy of solid waste and require approximately 980,000 kilowatt hour per year (kWhr/year) of electricity.

Based on the significant cost impacts per ton of emission reduction, and the adverse energy and solid waste impacts, and the uncertainty of the actual mercury emission reductions, we do not consider this control option to be reasonable for existing sources.

At proposal, EPA discussed and rejected a beyond-the-floor option based on the use of activated carbon injection. See 70 FR 72335. Commenters noted that our costs for ACI had not been updated from the costs calculated in development of the original NESHAP. In response, we have now updated our ACI costs based on more recent information. The total annualized costs for a large new or existing kiln ranges from $510,000 to $676,000 per year. Assuming an 80 percent reduction in mercury emissions, the cost per ton of mercury removal ranged from $4 million to $42 million per ton for existing kilns. The wide range in cost per ton of removal is mainly influenced by the baseline mercury emissions. Based on the wide variation we have seen in actual mercury emissions in this source category, the actual cost per ton would also vary widely from site to site as shown above.

We also evaluated a beyond-the-floor option for new kilns based on combining ACI and a wet scrubber. The incremental cost of ACI in this application is $9 to $89 million per ton of mercury removed, which we regard as a very high cost.

Our cost estimates assumed 80 percent emissions reduction for mercury. Though we are reasonably certain that ACI will remove mercury from cement kiln exhaust gas, we have no data on the actual expected removal efficiency. Data are available for one emissions test on a cement kiln burning hazardous waste. In this test the mercury removal efficiency averaged 89 percent removal. However, the inlet mercury concentration during the test varied from 65 to 267 μg/dscm. A review of the data for the individual test runs implies that the percent reduction decreases as the inlet concentration decreases. Almost all the non-hazardous waste cement kilns tested had mercury concentrations well below 65 μg/dscm. Therefore, the long term performance of ACI on mercury emissions from cement kilns is very uncertain. We also note that the application of ACI to a cement kiln (either alone or in combination with a wet scrubber) will generate approximately 1,600 tpy of solid waste for a new or existing large kiln. Recycling of the waste would be unlikely due to the toxics content.

For existing sources we rejected a control option based on the performance of ACI due to the significant cost per ton of mercury removed, increased energy use, and the adverse non-air quality health and environmental impacts (in the form of additional mercury and organic-laden waste generated). For new sources we rejected the option based on the performance of ACI combined with a wet scrubber for essentially the same reasons: significant cost per ton of mercury removed, increased energy use and adverse non-air quality health and environmental impacts. For both new and existing sources we also rejected this control option due to the uncertainty of the actual performance levels achieved, which leads to uncertainty of the actual cost per ton of mercury emissions reduction. We also note that the application of ACI potentially could result in a THC emission reduction of up to 117 tpy per kiln, though in most cases the reduction would be approximately 30 tpy or less. This THC emissions reduction is based on an assumed control efficiency of 50 percent. We do not see these small THC emission reductions (of which organic HAP are a small subset) to be a reason to alter our tentative decision at proposal that a standard based on performance of ACI is not justified as a beyond-the-floor control option.

Finally, for greenfield new sources (sources being newly built at a site without other cement kilns), we considered the option of requiring such a kiln to be sited at a low-mercury quarry. This concept has intuitive appeal: such a new kiln is not tied to an existing source of limestone, and so can choose where to be sited. The difficulty is in quantifying this type of standard. We cannot presently quantify what 'high mercury quarry' or 'low mercury quarry' means, and cannot responsibly select an arbitrary number that might make it impossible to build a new cement kiln in major parts of the country.

3. Conclusion

In sum, we conclude that the standards for mercury for all existing cement kilns are to remove accumulated mercury-containing cement kiln dust from the system at the point product quality is adversely affected. The standard for new sources is to utilize this same work practice, and in addition, to meet a standard of either 41 μg/dscm or a site-specific limit based on performance of a properly designed and operated wet scrubber.

In addition, we are banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e., emissions not using the mercury increased fly ash).

representatie of the percent reduction in the Portland cement source category. We used this figure in beyond-the-floor analyses as an upper bound best case for potential emission reductions.

Because the final standard is more stringent than the standard EPA proposed, the compliance date for sources which commenced construction after December 2, 2005, and before promulgation of this final rule is three years from December 20, 2006. See section 112(i)(2). New sources that commence construction after the date of promulgation of today's action must comply with the final rule upon start-up. However, as we are reconsidering the new source mercury standard and plan to take final action on that reconsideration in no more than a year and as construction of a new kiln generally takes at least 20–24 months, it is unlikely that any new source will be subject to the standard before completion of reconsideration.

We are also requiring that new sources demonstrate compliance by doing mercury emission testing with the raw mill off and with the raw mill on. The reason to test under both conditions is that (as explained in section A.1.c above) one other operation factor besides wet scrubber performance affecting emissions is the recycling of CKD. A facility could cut off CKD recycling for purposes of meeting the emission limit during testing with raw mill off, and then start recycling after the test which could result in the emissions limit being exceeded. We could simply limit CKD recycling to the level during the raw mill off test, but we believe this would potentially and needlessly restrict the ability of a facility to recycle CKD during raw mill on operation. During the test under each condition, the facility must record the amount of CKD recycle. The amount of CKD recycle becomes an operating limit not to be exceeded.

The limit for new sources adopted here also applies to both area and major new sources. We have applied this limit to area sources consistent with section 112(c)(6).

For facilities that elect to meet mercury emissions limits using ACI, we are incorporating the operating and monitoring requirements for ACI that are applicable when ACI is used for dioxin control.

B. Determination of MACT for HCl Emissions

In developing the 1999 Portland Cement NESHAP we concluded that no add-on air pollution controls were being used whose performance could be used as a basis for the MACT floor for existing Portland cement plants. For new source MACT, we identified two kilns that were using alkaline scrubbers for the control of SO2 emissions. But we concluded that because these devices were operated only intermittently, their performance could not be used as a basis for the MACT floor for new sources. Alkaline scrubbers were then considered for beyond-the-floor controls. Using engineering assessments from similar technology operated on municipal waste combustors and medical waste incinerators, we estimated costs and emissions reductions. Based on the costs of control and emissions reductions that would be achieved, we determined that beyond-the-floor controls were not warranted (63 FR 14203, March 24, 1998).

In the proposed amendments, we reexamined establishing a floor for control of HCl emissions from new Portland cement sources. Since promulgation of the NESHAP, wet scrubbers have been installed and are operating at a minimum of five Portland cement plants. See section IV.A.1.d above. For the reasons described above, this is an insufficient number of scrubbers on which to base an existing source floor for this category (id.). We did, however, propose to base the floor for new sources on the performance of continuously operated alkaline scrubbers, and proposed emissions levels of 15 ppmv at the control device outlet, or a 90 percent HCl emissions reduction measured across the scrubber, as the new source floor.

We also reexamined the MACT floor for existing sources. The only potential controls identified as a floor option was the operation of the kiln and PM control device themselves. Because the kiln and PM control system contain large amounts of alkaline CKD, the kilns themselves remove a significant amount of HCl (which reacts with the CKD and is captured as particulate). See 70 FR 72337 and 69 FR 21259 (April 20, 2004). We proposed as a floor the operation of the kiln and PM control as a work practice standard.

We also evaluated requiring the use of an alkaline scrubber as a beyond-the-floor control option for existing sources. We found that the costs and non-air quality health and environmental impacts were not reasonable for the emissions reductions achieved.

We also solicited comment on adopting alternative risk-based emission standards for HCl pursuant to section 112(d)(4) of the CAA (70 FR 72337). We suggested two possible approaches for establishing such standards. Under the first approach an alternative risk-based standard would be based on national exposure standards determined by EPA to ensure protection of public health with an ample margin of safety, and to be protective of the environment. For reasons discussed below we have decided to adopt this approach. Under the second approach, which we are not adopting, site specific risk analyses would be used to establish standards on a case-by case basis.

After careful consideration of the comments on the proposed amendments, we are not requiring control of HCl emissions from cement kilns under section 112(d). Under the authority of section 112(d)(4) of the CAA, we have determined that no further control is necessary because HCl is a "health threshold pollutant," and human health is protected with an ample margin of safety at current HCl emission levels. The following explains the statutory basis for considering health thresholds when establishing standards and the basis for today's decision, including a discussion of the risk assessment conducted to support the decision.

Section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) allows us to develop risk-based standards for HAP "for which a health threshold has been established" provided that the standards achieve an "ample margin of safety." Therefore, we believe we have the discretion under section 112(d)(4) to develop standards which may be less stringent than the corresponding technology-based MACT standards for threshold hazardous air pollutants emitted by some source categories. See 67 FR 78054, December 20, 2002 and 63 FR 18765, April 15, 1998.

In evaluating potential standards for HCl for this source category, we seek to assure that emissions from every source in the category result in exposures not causing adverse effects, with an ample margin of safety, even for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the "high end exposure estimate," defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the "ample margin of safety" requirement in section 112(d)(4).

Our decision not to develop standards for HCl from cement kilns is based on the following. First, we consider HCl to be a threshold pollutant. See 63 FR 18767, 67 FR 78054, and 70 FR 59407, October 12, 2005. Second, we have defined threshold values for HCl in the

form of an Inhalation Reference Concentration (RfC) and acute exposure guideline level (AEGL). Third, HCl is emitted from cement kilns in quantities that result in human exposure in the ambient air at levels well below these threshold values with an ample margin of safety. Finally, there are no adverse environmental effects associated with HCl emissions from cement kilns. The bases and supporting rationale for these conclusions are as follows.

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of carcinogenic risk and evidence of noncarcinogenic effects. For a detailed discussion of factors that we consider in deciding whether a pollutant should be categorized as a health threshold pollutant, please see the April 15, 1998, **Federal Register** document (63 FR 18766). In the April 15, 1998, action cited above, we determined that HCl, a Group D pollutant, is a health threshold pollutant for the purpose of section 112(d)(4) of the CAA (63 FR 18753).

The Portland Cement Association (PCA) conducted a risk assessment to determine whether the emissions of HCl from cement kilns at the current baseline levels resulted in exposures below the threshold values for HCl. We reviewed the risk assessment report prepared by the PCA and believe that it uses a reasonable and conservative methodology, is consistent with EPA methodology and practice, and reaches a reasonable conclusion that current levels of HCl emissions from cement kilns would be well under the threshold level of concern even for assumed worst-case human receptors.

The PCA analysis evaluated long-term and short-term ambient air concentrations resulting from emissions of HCl from Portland cement kilns in order to quantify potential non-cancer risks associated with such emissions, as well as to characterize potential ecological effects of those emissions. The approach is based on the USEPA guidance document entitled "A Tiered Modeling Approach for Assessing the Risks Due to Sources of Hazardous Air Pollutants" (USEPA 1992) (Tiered Modeling Approach) and is consistent with EPA risk characterization guidance "Air Toxics Risk Assessment Reference Library—Volume 2—Facility-Specific Assessment" (USEPA, 2004). The PCA conducted dispersion modeling for 67 cement plants and 112 cement kilns, representing about two-thirds of all operating cement plants in the U.S., using stack parameter data provided by cement companies and conservative assumptions regarding (among other factors) HCl stack concentrations, operating conditions, receptor locations, and dispersion characteristics. The kilns for which data were provided cover a full range of kiln types, operating conditions, and stack parameters. The three-tiered modeling approach consists of:

- Tier 1—Lookup tables.
- Tier 2—Screening dispersion modeling.
- Tier 3—Detailed dispersion modeling.

The concentration estimates from each modeling tier should be more accurate and less conservative than the previous one. As a result, the level of complexity of the modeling and data input information required for each tier is greater than for the previous tier. If a plant showed emissions below the threshold concentration in any tier, that plant was not included in the next tier of modeling.

In order to evaluate potential health impacts it is necessary to establish long term concentration thresholds. The RfC is a long-term threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of significant noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation (63 FR 18766, April 15, 1998). Therefore, the PCA used this RfC as the threshold value in their exposure assessment for HCl emitted from cement kilns.

The general approach was that actual release characteristics were used for stack height, stack diameter, exit temperature, and exit velocity, based on information provided by the individual facilities modeled by the PCA. The analyses performed under each tier assumed worst case operating scenarios, such as maximum production rate and 24 hours per day, 365 days per year operation, and that all kilns were located 10 meters from the property boundary line. HC1 emission rates were assumed to be 130 ppmv for all kiln types. This is an extremely conservative number. Hydrogen chloride emission rates are below 10 ppmv at most facilities, and the highest value for which we have data is below 45 ppmv. In the Tier 2 analyses, worse case metrological conditions were assumed. Further, it is important to note that these predicted impacts are located adjacent to facility property lines, many times in locations where chronic exposure is not expected. Impacts at potential residential locations would be expected to be significantly below those presented in the analysis.

The PCA study generated estimates of chronic (annual average) concentrations for comparison to the relevant health reference values or threshold levels. Chronic exposures were compared to the RfC of 20 $\mu g/m^3$ for long-term continuous exposure.

Noncancer risk assessments typically use a metric called the Hazard Quotient (HQ) to assess risks of exposures to noncarcinogens. The HQ is the ratio of exposure (or modeled concentration) to the health reference value or threshold level (i.e., RfC or REL). HQ values less than 1 indicate that exposures are below the health reference value or threshold level and are likely to be without appreciable risk of adverse effects in the exposed population. HQ values above 1.0 do not necessarily imply that adverse effects will occur, but that the potential for risk of such effects increases as HQ values exceed 1.0.

For the PCA assessment, if the HQ was found to be less than one for any of the tiers using conservative defaults and modeling assumptions, the analysis concluded with that tier. On the other hand, if the HQ exceeded one, analysis proceeded to subsequent tiers.

The Tier 1 modeling resulted in an HQ above 1 for most facilities. Therefore, a Tier 2 analysis was required. In the Tier 2 analysis, all facilities except for five showed an HQ below 1.

For the five facilities with an HQ above 1, additional data were obtained on the actual HCl and stack moisture concentrations at these facilities and the Tier 2 modeling analysis was rerun. The refined Tier 2 analysis resulted in HQ values of 0.30 or less for all five facilities.

Thus, we have evaluated and are comfortable with PCA's calculations and feel confident that exposures to HCl emissions from the facilities in question are unlikely to ever exceed an HQ of 1.0. Therefore, we believe that the predicted exposures from these facilities should still be protective of human health with an ample margin of safety. Put another way, total exposures for nearby residents would not exceed the short-term or long-term health based threshold levels or health reference values. Similarly, based on the PCA analysis we believe that the acute exposure to HC1 for these facilities would not exceed the short-term, health-based threshold level.

The standards for emissions must also protect against significant and widespread adverse environmental

effects to wildlife, aquatic life, and other natural resources. The PCA did not conduct a formal ec0ological risk assessment. However, we have reviewed publications in the literature to determine if there would be reasonable expectation for serious or widespread adverse effects to natural resources.

We consider the following aspects of pollutant exposure and effects: toxicity effects from acute and chronic exposures to expected concentrations around the source (as measured or modeled), persistence in the environment, local and long-range transport, and tendency for biomagnification with toxic effects manifest at higher trophic levels.

No research has been identified for effects on terrestrial animal species beyond that cited in the development of the HCl RfC. Modeling calculations indicate that there is little likelihood of chronic or widespread exposure to HCl at concentrations above the threshold around cement manufacturing plants. Based on these considerations, we believe that the RfC can reasonably be expected to protect against widespread adverse effects in other animal species as well.

Plants also respond to airborne HCl levels. Chronic exposure to about 600 μg/m3 can be expected to result in discernible effects, depending on the plant species. Further, in various species given acute, 20 minute exposures of 6,500 μg/m3, field studies report different sensitivity to damage of foliage. The maximum modeled long-term HCl concentration (less than 100 $\mu g/m^3$) is well below the 600 $\mu g/m^3$ chronic threshold, and the maximum short-term HCl concentration (less than 1600 $\mu g/m^3$) is well below the 6,500 $\mu g/m^3$ acute exposure threshold. Therefore, no adverse exposure effects on plant species are anticipated.

HCl is not considered to be a strongly persistent pollutant or one where long range transport is important in predicting its ecological effects. In the atmosphere, HCl can be expected to be absorbed into aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. Toxic effects of HCl to aquatic organisms would likely be due to the hydronium ion, or acidity. Aquatic organisms in their natural environments often exhibit a broad range of pH tolerance. Effects of HCl deposition to small water bodies and to soils will primarily depend on the extent of neutralizing by carbonates or other buffering compounds. Chloride ions are essentially ubiquitous in natural waters and soils so minor increases due to deposition of dissolved HCl will have much less effect than the deposited hydronium ions.

In conclusion, acute and chronic exposures to expected HCl concentrations around cement kilns are not expected to result in adverse environmental toxicity effects. HC1 is not persistent in the environment. Effects of HCl on ponds and soils are likely to be local rather than widespread. Finally, HCl is not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not anticipate any adverse ecological effects from HCl.

The results of the exposure assessment showed that exposure levels to baseline HCl emissions from cement production facilities are well below the health threshold value. Additionally, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when considering conservative estimates of exposure resulting from cement kiln emissions as well as considering background exposures to HCl and therefore, represent an ample margin of safety. Furthermore, no significant or widespread adverse environmental effects from HCl are anticipated. Therefore, under authority of section 112(d)(4), we have determined that further control of HCl emissions from new or existing cement manufacturing plants under section 112(d) is not necessary.

C. Determination of MACT for THC Emissions

1. Floor Determinations

THC serve as a surrogate for non-dioxin organic HAP emissions for this source category. During the development of the 1999 Portland Cement NESHAP, EPA identified no add-on air pollution control technology being used in the Portland cement industry whose performance could be used as a basis for establishing a MACT floor for controlling THC emissions from existing sources. EPA did identify two kilns using a system consisting of a precalciner (with no preheater), which essentially acts as an afterburner to combust organic material in the feed. The precalciner/no preheater system was considered a possible basis for a beyond-the-floor standard for existing kilns and as a possible basis for a MACT floor for new kilns. However, this system was found to increase fuel consumption relative to a preheater/precalciner design, to emit six times as much SO_2, two and one half times as much NO_X, and 1.2 times as much CO_2 as a preheater/precalciner kiln of equivalent clinker capacity. Taking into account the adverse energy and environmental impacts, we determined that the precalciner/no preheater design did not represent MACT (63 FR 14202, March 24, 1998). We also considered feed material selection for existing sources as a MACT floor technology and concluded that this option is not available to existing kilns, or to new kilns located at existing plants because these facilities generally rely on existing raw material sources located close to the source due to the cost of transporting the required large quantities of feed materials. However, for new greenfield kilns, feed material selection as achieved through appropriate site selection and feed material blending is demonstrated and is the basis for new source MACT (63 FR 14202, March 24, 1998).

In our proposed amendments we reexamined MACT for THC for both new and existing facilities. We proposed to adopt the same standards for Portland cement kilns as are applicable to kilns that fire hazardous waste (40 CFR 63.1220(a)(5)). Those standards are based on using good combustion conditions to destroy hazardous air pollutants in fuels. Our rationale for proposing to adopt these standards was that the THC and carbon monoxide (CO) standards guarantee that the kiln will operate under good combustion conditions and will minimize formation (and hence, emissions) of non-dioxin organic HAP from fuel combustion. We believed that the control of THC emissions from cement kilns which do not fire hazardous waste should be no more difficult to control than emissions for kilns that do fire hazardous waste because GCP are maintainable by either type of kiln, and the hazardous waste cement kilns would be the more challenged in that regard. Because we had no data upon which to set a different standard, and because we believed these levels were indicative of good combustion in any case, the adoption of the standards for cement kilns firing hazardous waste was deemed appropriate.

We continue to believe that good fuel combustion conditions are indicative of the performance of the median of the best performing 12 percent of existing sources for controlling non-dioxin organic HAP. However, based on comments received on the proposed amendments, and additional emission data analysis, we believe our proposed quantified method of monitoring good fuel combustion, i.e. setting specific THC or CO levels, was flawed.

Industry commenters had noted that the majority of the THC emissions from a cement kiln main stack result from the

introduction of feed materials into the cold end of the kiln. These emissions are essentially a function of the organic content of the raw materials, and cannot be controlled using GCP, which is the basis of our MACT floor. At proposal we agreed with this assessment (and continue to agree with it), but believed that the fact that cement kilns that burn hazardous waste can meet these standards indicated that the proposed level could be met by all cement kilns under good combustion conditions, even considering the fact that good combustion cannot control THC or CO emissions emanating from organic materials in the feed. We also believed that by allowing a facility to monitor CO as a surrogate for THC, we had provided sufficient flexibility to account for variations in feed material organic content.

We have reevaluated these assumptions. First, we obtained additional THC emission data from several facilities. These data demonstrate that there are certain cement facilities where THC emissions, with no indication of poor fuel combustion practices, exceed 20 ppmv. The data also indicate that achieving the 100 ppmv CO level, even for cement kilns with low organic content feed and good fuel combustion conditions, is not possible without use of a control device. See Lehigh CO and THC data in docket EPA-HQ-OAR–2002–0051. Moreover, the analogy with hazardous waste-burning cement kilns breaks down. If a cement kiln that fires hazardous waste cannot meet the THC or CO limits in the Hazardous Waste Combustor (HWC) NESHAP due to organic materials in their feed, they can (and have) simply stopped firing hazardous waste. This can either be done permanently, or temporarily anytime the kiln operator notes that THC or CO emissions are approaching the emission limits. This option is not available to cement kilns that do not fire hazardous waste; they cannot stop making cement without ceasing business altogether. This would mean that facilities with higher levels of organic materials in the raw materials would be forced to adopt some type of add-on control to meet the emissions limits. As we have previously stated, we believe this would result in the imposition of a beyond-the-floor standard without the mandated consideration of costs and other impacts. See 70 FR 72335.

As a result, although we adhere to our approach at proposal that the MACT floor for control of non-dioxin organic HAP at existing sources is operating under good combustion conditions, we are adopting a different means of demonstrating that good fuel combustion conditions exist.

In the final amendments, we are requiring that existing kilns and in-line kilns/raw mills must implement GCP designed to minimize THC from fuel combustion. GCP include training all operators and supervisors to operate and maintain the kiln, calciner, and pollution control systems in accordance with good engineering practices. The training shall include operating the kiln, calciner, and pollution control system in a manner to minimize excess emissions.

We have also reexamined the proposed MACT floor for new sources. There are currently two cement kilns with add-on controls which reduce emissions of THC. At one facility, activated carbon is injected into the flue gas and collected in the PM control device. The carbon adsorbs some of the THC. The collected carbon is then reinjected into the kiln in a location that ensures destruction of the collected THC. However, the THC emissions from this facility are the highest for any facility for which we have data. Therefore, we do not consider this to represent the best controlled source. This same facility also has an alternative control scheme for THC of a limestone scrubber followed by a regenerative thermal oxidizer (RTO). However, these control devices have not operated continuously due to significant operation problems caused by the site specific constituents in the flue gas. (See e-mail from Michael D. Maillard, Michigan Department of Environmental Quality in docket EPA–HQ–OAQ–2002–0051.) Because these controls have not been demonstrated to have the ability to operate continuously, we cannot consider them as the basis for a new source MACT floor (or an emission standard, for that matter).

A second facility also has a limestone scrubber followed by an RTO. The scrubber is necessary to prevent fouling, plugging, and corrosion of the RTO. In this case the scrubber/RTO operates continuously and efficiently. This facility has been tested and showed VOC (essentially the same as THC) emission levels of 4 ppmv (at 7 percent oxygen), and currently has a permit limit for VOC of approximately 9 ppmv. The RTO has a guaranteed destruction efficiency of 98 percent of the combined emissions of CO and THC. Based on this information we believe this facility is the best controlled source, and that the performance of a limestone scrubber followed by an RTO is the basis for new source MACT floor for non-dioxin organic HAP, measured as THC. We explain below how we assess the long-term performance capabilities of this control device considering variable organic levels in raw materials and other process variabilities.

We are retaining the proposed THC emission limit of 20 ppmv measured at the main kiln stack as the MACT floor for all new or reconstructed kilns and inline raw mill/kilns. An alternative to the 20 ppmv floor level is that a facility may demonstrate a 98 percent reduction in THC emissions from uncontrolled levels—the level of emission reduction required by permit for the best performing source in the category. We have determined in other rules that a 20 ppmv outlet emissions level or 98 percent destruction efficiency represent the long term performance of an RTO under the varying conditions typically encountered in industrial applications. See Thermal Incinerators and Flares in Docket EPA–HQ–OAR–2002–0051. As noted above, the one cement facility with an RTO operating full-time has actual and permitted emission levels which are below 20 ppmv. However, the performance guarantee at this facility is based on the combined emissions of CO and THC. Therefore, all new facilities could meet the permitted emission levels of the one facility that has an RTO only if they all have the same levels of CO in the exhaust gas. We have no data to support that all new kilns will have sufficient CO in the exhaust streams to guarantee that they can meet the same level of performance as the one facility noted above, or, conversely that this one facility would continue to meet the same THC levels if CO levels in its exhaust gas differed. We thus believe long term performance for THC alone is better characterized based on the well-established data documenting performance of RTO for THC. Moreover, the percent reduction achievable by an RTO is dependent on the inlet concentration of organics. See Thermal Incinerators and Flares in Docket EPA–HQ–OAR–2002–0051. Thus, we believe that a limit based on the demonstrated performance of RTO under a variety of circumstances is the best measure of the long term performance of this device under the circumstances likely to be encountered by new cement kilns, especially varying levels of organics in the feed.

2. Beyond-the-Floor Determinations

In the December 2005, proposed amendments we considered beyond-the-floor options for existing sources of substituting raw materials with lower organic contents, but we determined this beyond-the-floor option was not feasible (70 FR 72340). We also considered a beyond-the-floor THC

standard of 20 ppmv based on the use of the scrubber/RTO control system. Based on the available data, we estimate that approximately 75 percent of existing kilns could meet a 20 ppmv standard without the addition of controls. For an existing preheater/precalciner kiln that could not meet a 20 ppmv standard without controls, the capital cost would be approximately $10.7 million and the total annualized cost would be approximately $3.9 million. The cost per ton of THC reduction would be in the area of $20,000, assuming an inlet concentration of about 63 ppmv. We estimate that approximately 5 percent of the THC is actually organic HAP. Therefore, the cost of organic HAP reduction would be $398,000 per ton. In addition, the energy use for one large kiln to operate an RTO would be approximately 99.7 billion British thermal units per year, a very high energy consumption rate. The wet scrubber required upstream of the RTO would also result in 40 million gallons per year of additional water usage and create 45,500 tpy of solid waste (from dewatered scrubber sludge). Based on the costs, significant adverse energy impacts, and adverse non-air quality health and environmental impacts, we do not believe a beyond-the-floor standard is justified.

We also examined a beyond-the-floor regulatory option based on the use of ACI for THC control. The total annual cost for this option would be $470,000 to $600,000 for an existing preheater/preclaciner kiln. The cost per ton of THC reduction would be in the area of $5,000, assuming an inlet concentration of about 63 ppmv. We estimate that approximately 5 percent of the THC is actually organic HAP. Therefore, the cost of organic HAP reduction would be $100,000 per ton. In addition, this control option would generate approximately 850 tpy of solid waste. Based on the high costs, energy impacts, and adverse non-air quality health and environmental impacts, we do not believe a beyond-the-floor standard is justified.

We did not examine a beyond-the-floor regulatory option for new sources because there are no controls that would, on average, generate a greater THC reduction than a combination of a wet scrubber/RTO. Thus, the floor level is also new source MACT.

3. Conclusion

In sum, we conclude that the standards for THC for all existing cement kilns is implementing GCP designed to minimize THC emissions from fuel combustion. The compliance date for this standard is one year from December 20, 2006. Because all facilities already have some type of training program, we believe one year is sufficient to comply with this requirement. See section 112(1)(3) (compliance dates for MACT standards "shall provide for compliance as expeditiously as practicable").

The standard for new sources is to meet a THC standard of either 20 ppmv or a 98 percent reduction in THC emissions from uncontrolled levels. However, as explained above, performance of a back-end control device (*i.e.* the RTO, preceded by an enabling scrubber) was not the basis of the proposed new source standard. Information that one kiln utilizes an RTO, as well as information regarding the technical capabilities of RTO, emerged following the public comment period and therefore has not previously been available for public comment. To afford opportunity for comment, EPA is itself immediately granting reconsideration of the new source standard for THC in a notice published elsewhere in today's **Federal Register**.

The original Portland Cement NESHAP contains a 50 ppmv THC emissions limit for new greenfield kilns, kilns/inline raw mills, and raw materials dryers. There are no situations we can identify where a 50 ppmv limit would be more stringent than a 98 percent reduction limit. Since this 50 ppm limit is less stringent than the new source standard we are adopting in this rule reflecting performance of an RTO, it is obviously not appropriate to retain it. We are thus finding that the floor for greenfield new sources (and all other new sources under this rule) is 20 ppm/98 percent THC, with one exception. This new source limit will, at least for some new facilities, require the application of a back end control. For this reason, we do not believe this limit should be applied retroactively to sources constructed prior to December 2, 2005, the date of proposal for the amendment. See the response to comment concerning new sources in section VI for our rationale for this decision. So for sources constructed prior to December 2, 2005, we are not amending the 50 ppmv THC limit.

Consistent with section 112(c)(6) we are applying the 20 ppmv/98 percent reduction limit to both major and area new sources. We are also applying the limit to raw materials dryers. We anticipate that all new kilns will be preheater/precalciner kilns with an inline raw mill (*i.e.* there will be no separate dryer exhaust). This is the design of the kilns that form the basis of new source MACT for THC. However, we see no reason that the floor level of control should not apply in the case where there is a separate raw material dryer. We note that in the original NESHAP, the 50 ppmv standard also applied to raw material dryers.

We are adopting our proposed requirement that compliance for a THC standard will be demonstrated using a CEM and a 1-hour averaging period. See 70 FR 72340. The previous 50 ppmv standard for new greenfield sources was based on a monthly average. We believe a monthly average was appropriate for that standard (and are retaining monthly averaging for kilns subject to that standard) because the standard's basis is selection of raw materials. There can be significant short term variations in raw materials, even if a facility can meet the standard in the long term. In the case of these final amendments the required level of performance is based on an emissions control technology. Therefore, we do not anticipate the same type of short term variability that existed with the previous 50 ppmv standard.

Because the final standard is more stringent than the standard EPA proposed, the compliance date for sources which commenced construction after December 2, 2005, and before promulgation of this final rule is 3 years from December 20, 2006. See section 112(i)(2). We consider the final standard to be more stringent than the proposed standard because it is based on the performance of a control device (notwithstanding that the numeric limit is the same as proposed), and now controls both THC emissions from fuel combustion and THC emissions resulting from the organic materials in the kiln feed, and is more likely to result in significant costs and changes in operation than the proposed standard.

For new sources that elect to meet THC emissions limits using ACI, we are incorporating the operating and monitoring requirements for ACI that are applicable when ACI is used for dioxin control.

D. Evaluation of a Beyond-the-Floor Control Option for Non-Volatile HAP Metal Emissions

In our MACT determination for PM (the surrogate for non-volatile HAP metals), we concluded that well-designed and properly operated FF or ESP designed to meet the new source performance standards (NSPS) for Portland cement plants represent the MACT floor technology for control of PM from kilns and in-line kiln/raw mills. Because no technologies were identified for existing or new kilns that would consistently achieve lower

emissions than the NSPS, EPA concluded that there was no beyond-the-floor technology for PM emissions (63 FR 14199, March 24, 1998).

In *National Lime Association* v. *EPA*, the court held that EPA had failed to adequately document that substituting natural gas for coal was an infeasible control option, and also that EPA had not assessed non-air quality health and environmental impacts when considering beyond-the-floor standards for HAP metals (233 F. 3d at 634–35). As a result, the court remanded the beyond-the-floor determination for HAP metals for further consideration by EPA.

We presented our reexamination of a beyond-the-floor MACT control standard for HAP metals in the preamble to the proposed amendments, addressing the remand by showing that substitution of fuel or feed materials are either technically infeasible or cost prohibitive and therefore that a beyond-the-floor standard for HAP metals is not reasonable. (See 70 FR 72340–72341). We also indicated that non-air health and environmental impacts would be minimal, as would energy use implications (*id.* at 72341). We received no data in the comments on the proposed amendments that have altered our previous analysis. Therefore, we are not including a beyond-the-floor PM standard in these final amendments.

V. Other Rule Changes

On April 5, 2002, we amended the introductory text of 40 CFR 63.1353(a) to make it more clear that affected sources under the Portland Cement NESHAP were not subject to 40 CFR part 60, subpart F (67 FR 16615, April 20, 2002). In making this change, we inadvertently deleted paragraphs (a)(1) and (2) of 40 CFR 63.1353. The language in these paragraphs is still necessary for determining the applicability of 40 CFR part 60, subpart F. We proposed to reinstate these paragraphs as originally written in the final rule. We received no comments on this issue and are therefore reinstating the two paragraphs as proposed.

In the proposed amendments we requested comment on amending language published on April 5, 2002, whose purpose was to clarify that crushers were not subject to this NESHAP. The PCA believed that there had been misinterpretation of the amended rule text. However, we explained in the proposed amendments that we believe the PCA interpretation is not reasonable when reading the entire final NESHAP. However, we agreed that the rule language as written is conceivably open to more than one interpretation. See 70 FR 72341.

We proposed two resolutions to this issue. They were:

(1) Changing the wording of 40 CFR 63.1340(c) to make it clear that all raw materials storage and handling is covered by the NESHAP, but that crushers (regardless of their location) are not.

(2) Including crushers as an affected source in the Portland Cement NESHAP and incorporating the current requirements applicable to crushers contained in 40 CFR part 60, subpart OOO (and correspondingly, exempting crushers covered by the Portland Cement NESHAP from 40 CFR part 60, subpart OOO).

We received several comments from State and local agencies supporting our contention that the intent of the rule language at issue was to exclude crushers, and that our interpretation of the rule language was correct. We considered simply deleting the (potentially) confusing language and adding clarifying language that a crusher located after raw materials storage would be covered by this subpart. However, we have not been able to identify any facilities where the crusher is located after raw materials storage. In addition, we do not have data to determine the impacts of adding coverage of this piece of equipment to this subpart. For that reason, we are modifying the language in § 63.1340(c) to state that crushers are not covered by this subpart regardless of their location. There are currently no regulations that regulate existing crushers in this application. New crushers would potentially be subject to the requirements of 40 CFR 60, subpart OOO.

VI. Responses to Major Comments

This section presents a summary of responses to major comments. A summary of the comments received and our responses to those comments may be found in Docket ID No. EPA–HQ–OAR–2002–0051.

Comment: According to several commenters, EPA's proposal did not satisfy the mandate issued by the DC Circuit Court of Appeals. On EPA's analysis of MACT for mercury, HCl, and THC; EPA's beyond-the-floor analysis; and the risk-based exemptions from HCl standards, one commenter states they are unlawful, arbitrary, capricious, and irrelevant. These commenters state that the court was clear in its directive to EPA that the absence of technology-based pollution control devices for HCl, mercury, and THC did not excuse EPA from setting emission standards for those pollutants.

Response: Although we disagree with the premise of this comment, the comment is moot because we are setting standards for all HAP which was addressed by the court's mandate. We agree that the court stated the absence of technology-based pollution control devices for HCl, mercury, and THC did not excuse EPA from setting emission standards for those pollutants. In response to the court's opinion, we have evaluated all possibilities of setting standards, including technology based control, fuel and raw materials changes, and process modifications. We believe this evaluation is what the court intended. See 70 FR 72335.

Comment: Regarding EPA's rejection of beyond-the-floor standards for each HAP, one commenter states that EPA's reasoning is both unrelated to the relevant statutory mandate and arbitrary and capricious, as well as completely ignoring currently available control measures of which EPA is aware and which would result in reductions of emissions of mercury, HCl, THC and other HAP.

Response: Where we have rejected beyond-the-floor standards we have evaluated all available control methods that have been demonstrated for this source category. We also evaluated control technologies that have not been demonstrated, but that we have reason to believe may be effective (such as ACI). With one exception, which is banning the use of fly ash with elevated mercury contents that result from sorbent injection where such a practice would increase mercury emissions, in no case did we find that a beyond-the-floor standard was justified ("achievable" in the language of section 112(d)(2)) taking into consideration costs, energy, and non-air quality health and environmental impacts.

Comment: According to one commenter, EPA's refusal to set mercury standards demonstrates contempt of court. The commenter states that EPA's reconsideration of MACT for mercury did not satisfy the court's directive to establish emissions standards and not just reconsider the issue.

Citing the CAA's requirements to set emission standards for each HAP listed in 112(b) and, as directed in 112, for each category of sources for the HAP applying the maximum achievable degree of reduction, the commenter states that EPA's decision to not set mercury emission standards is unlawful.

Response: EPA strongly disagrees with the commenter's characterization of the proposed standards in the proposed rule. EPA issued the proposed rule consistent with the court's

instructions in the remand. In response to comments received, however, EPA has modified the proposal and adopted specific standards for each HAP covered by the court's mandate. Thus, this comment is moot, even accepting the commenter's premise (which EPA does not), since EPA is establishing standards (in the sense the commenter uses the term) for each HAP covered by the court's mandate. Moreover, as explained in other parts of this preamble, EPA has carefully analyzed many different possibilities for setting standards for the HAP covered by the remand, examining not only technology-based back end controls but control of inputs to cement kilns as well. We believe that our action fully satisfies both the letter and spirit of the court's mandate.

Comment: The commenter above states that EPA's arguments for not setting mercury standards are without merit and provide several justifications for its view. First the commenter states that EPA's arguments for not setting mercury standard are irrelevant because EPA has a clear statutory obligation to set mercury standard and any reason for not doing so must be invalid.

Response: This comment is now moot, as just explained.

Comment: According to the same commenter, EPA's view as to what is achievable cannot replace the CAA requirement to set MACT floors reflecting what the best performing sources are achieving. The commenter states that the CAA mandates a floor reflecting the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) and not what EPA believes would be achievable. The commenter states that the court expressly required EPA to set emission standards based on what the best performers are actually achieving and not what EPA thinks is achievable.

Response: As *Mossville* and earlier cases make clear, because MACT standards (based on floors or otherwise) must be met at all times, the standards must reflect maximum possible variability (assuming proper design and operation of the various control mechanisms). See discussion at 70 FR 72335 and 70 FR 59436.

Comment: The same commenter disagrees with EPA's argument that the governing case law (*National Lime Ass'n* and *CKRC*) did not involve facts where the levels of performance tests are dependent entirely on composition of raw materials and fuel and cannot be replicated or duplicated. The commenter states that the governing case law addresses that exact issue: EPA's decision not to set mercury standards; and fourth the commenter claims EPA mistakenly cites the Copper Smelters (*Sierra Club*) and PVC MACT cases (*Mossville*) as justification for its approach. According to the commenter, these cases pertain to beyond-the-floor standards and do not apply to floor standards, which require EPA to set floors at emission levels that the best sources achieved, regardless of what EPA thinks is achievable.

Response: The commenter's reading of *Mossville* is not correct. The case involved a floor standard. See 370 F. 3d at 1240–42. We explained at proposal why we believe the discussion of raw materials in Sierra Club is also applicable to a floor determination. See 70 FR at 72335 n. 4.

Comment: The commenter further states that EPA's argument that its emissions data do not reflect performance over time, merely relates to the sufficiency of EPA's data. The commenter states that EPA is required to develop an approach to setting a floor standard, including collecting more emissions data if needed.

Response: Floor standards are to reflect the performance of sources "for which the Administrator has emissions information" (section 112(d)(3)), which provision does not create an obligation to gather a specified amount of information. Moreover, not only must MACT standards, including standards reflecting the MACT floor, reflect performance variability but EPA may reasonably estimate what that variability can be, and is not limited to stack emissions measured in single performance tests as the commenter apparently believes. See *Mossville,* 370 F. 3d at 1242 (setting standard at a level slightly higher than the highest data point experienced by a best performing source "reasonably estimates the performance of the best * * * performing sources"). Most basically, because MACT standards must be met at all times, a standard must reflect performance variability that occurs at all times, and this variability is simply not accounted for in single stack test results for mercury from a cement kiln.

Comment: The same commenter disagrees with EPA's position that setting the floor at emission levels achieved by the relevant best sources would require kilns to install back-end controls, thus bypassing beyond-the-floor requirements of achievability, considering cost and other statutory factors. Contrary to EPA's position, the commenter argues that sources are using low mercury fuel and feed and some kilns are using controls that reduce mercury emissions, albeit they may not be doing so deliberately to reduce mercury emissions. According to the commenter, whether the sources are achieving low mercury emissions levels through deliberate measures or coincidentally are statutorily irrelevant.

Response: We disagree with all the points raised in the comment above and preceding comments that EPA's arguments for not setting mercury standards are without merit. As noted above, we believe we have met the court's directive by evaluating all available methods of mercury control, including changes to fuels, raw materials, and process controls. We do not agree that the court directed us to set standards regardless of the facts, nor do we agree that section 112(d)(3) of the CAA requires us to set floor standards that cannot be met without requiring even the best performing facilities to apply beyond-the-floor controls—controls not used by any sources in the source category, even those which are ostensibly the best performing (i.e. the lowest emitters in individual performance tests).

The commenter correctly noted that we are required to set standards based on facilities for which the administrator has emissions information. However, as explained previously in the notice, the emissions levels in the data available to the administrator are mainly influenced by factors that are beyond the control of the facilities tested, and the test results can neither be replicated by the individual facilities nor duplicated by other facilities. In addition, these are short term data that we believe are not indicative of the sources' long term emissions. The commenter states that we should get better data. However, they do not indicate how we would be able to perform this task given the fact that there are no long term data available for mercury emissions from cement kilns: We know of no case where any cement facility has applied mercury continuous emission monitoring (CEM) technology, or gathered any long term emissions data we could use to set a national standard. (We do note, however, that we are ourselves granting reconsideration of the new source standard for mercury, in part to initiate field testing of cement kilns equipped with wet scrubbers.)

The commenter further states that docket records for Portland cement, the hazardous waste standards, and electric utilities demonstrate that various pollution controls have the ability to reduce mercury emissions. We agree with this comment in part. We believe both ACI and wet scrubbers will reduce mercury from cement kilns (and the floor for mercury for new sources is

based on performance of a wet scrubber). We did evaluate these controls as beyond-the-floor control options and determined, based on what we consider reasonable assumptions of their performance, that requiring facilities to apply these controls was not achievable, within the meaning of section 112(d)(2) of the CAA, after considering costs, energy impacts, and non-air quality health and environmental impacts.

We also agree that fabric filters and ESPs can reduce mercury emissions because there is some mercury retained in the collected CKD. As explained earlier, we agree that this forms the basis of a MACT floor (and standard), although the degree of mercury reduction is site-specific based on the rate of recycling per kiln. Because the amount of emission reduction associated with the practice is site specific and not directly measurable, we are expressing the standard as a work practice. We also explained why requiring further reductions based on more CKD wastage is not justified as a beyond-the-floor standard based on considerations of cost and adverse non-air quality health and environmental impacts (increased waste generation and disposal), as well as increased energy use.

In no case did we find that any of the control options discussed by the commenter could be considered as the basis for a MACT floor for new or existing sources (with the two exceptions just noted) for reasons previously discussed.

We also note that the HWC NESHAP does have mercury limits. However, these limits are achieved by controlling the mercury input of the hazardous waste feed (through source separation, blending, or other means). Therefore, any comparison of the mercury limits for cement kilns that burn hazardous waste with cement kilns that do not is misplaced.[15]

The commenter notes that cement kilns are achieving superior mercury emissions through a variety of different means, and further states that whether they are doing this intentionally is legally irrelevant. The comment is correct that the reason for application of a particular control technique is irrelevant. *National Lime*, 233 F. 3d at 640. But the commenter fails to consider that even in the case where a facility applies some type of control scheme, and that scheme happens to also reduce a particular HAP, the facility is taking specific actions that results in a reduction of the pollutant. For example, a facility that installs a thermal oxidizer to reduce total hydrocarbons also reduces organic HAP, even though the thermal oxidizer may not have been installed for purposes of HAP reduction. However, the facility is still taking a specific action that reduces HAP emissions. Also, another facility can install a similar control device and expect to achieve the same result. Results thus can be duplicated from site to site.

In the case of cement kilns, the "actions" being taken that in some cases may reduce mercury emissions are the result of site specific factors that cannot necessarily be duplicated elsewhere. For example, facility A may achieve lower mercury emissions than facility B simply because the limestone quarry used by facility A has a lower mercury content (at least on the day of the respective performance tests). Facility A is not achieving lower mercury emissions deliberately, but it is still achieving a lower level. However, because facility B does not have access to facility A's quarry, it would have to use some other control technique to match facility A's mercury emissions. The commenter never disputes that requiring facility B (and quite possibly A) to match the performance will require installation of a control device not used in the industry. As explained at proposal and earlier in the preamble, this amounts to an impermissible de facto beyond-the-floor standard.

The commenter also states that the best performing kilns are achieving lower mercury emission using a variety of methods, but does not offer any data or analysis as to what these methods are, or how other facilities could duplicate the performance of the lower emitting facilities without adding some type of back end controls. In addition, due to the wide variation in emissions level due to variations in raw materials, we have no data to show conclusively that even if back end controls were applied that kilns with higher mercury emissions due to higher mercury contents in their limestone could achieve the same emissions levels as facilities with naturally occurring low mercury limestone used in the (one-time, snapshot) performance test.

Comment: Regarding EPA's rejection of a beyond-the-floor mercury standard on the basis of low levels of mercury emissions and high costs of reducing emissions, 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 other enumerated statutory factors. 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, i.e., without the measure, the standard would not reflect the "maximum" achievable degree of reduction. The commenter states that EPA does not claim that the use of ACI would not be achievable, only that ACI is not "justified." This position, according to the commenter, contravenes the CAA and exceeds EPA's authority and would allow EPA to avoid properly determining the maximum degree of reduction achievable considering cost and the other enumerated factors.

Response: We disagree with the commenter's interpretation.

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" (emphasis added). There is no such explicit directive in section 112 (d)(2). EPA accordingly does not accept the commenter's interpretation.

Comment: Several comments support EPA's decision not to develop either an existing or new source floor for mercury. The commenters state that an achievable floor cannot be developed

[15] Indeed, the entire reason that hazardous waste burning cement kilns are a different source category is the impact and potential controllability of the hazardous waste inputs. See 64 FR at 52871.

because wide variation in mercury concentrations in raw materials and fuels used by cement kilns would make compliance impossible. One commenter also agrees with EPA's statement that a national conversion of cement kilns to natural gas is not possible due to serious supply problems and the lack of an adequate natural gas infrastructure.

Response: We agree with these comments that the Agency cannot establish a floor based on raw material or fuel inputs.

Comment: One commenter restates its original position that EPA's arguments regarding its inability to establish floors are irrelevant, unlawful and arbitrary. The commenter states that evidence made available since the original comment period closed confirms that: (1) Some kilns perform better than others; (2) consistent and predictable differences in emission levels can be attributed to differences in the raw materials, fuel, kiln design and control technology; and (3) additional measures for controlling mercury emissions are available to kilns. The commenter states that there is evidence that: (a) Some kilns use raw materials that are consistently higher or lower in mercury than other kilns as evidenced by a cement kiln in Tehachapi, California that uses limestone from a quarry adjacent to an abandoned mercury mine and consistently reports high (2000 lb/yr) mercury emissions—other kilns have consistently lower mercury levels because they use raw materials with low mercury levels; (b) there are many measures by which mercury emissions can be reduced as exemplified by Holcim's statement that mercury emissions can be controlled by careful input control and EPA's acknowledgement that mercury emissions are affected by the use of mercury-contaminated fly ash—as only 39 of 112 plants choose to use fly ash, the commenter states that a plant's deliberate choice about using fly ash (as well as the choice by some to burn tires, or choosing to burn a rank of coal lower in mercury, and use of by products from steel mills and foundries and flue gas dryer sludge) results in consistent and predictable differences in their mercury emissions; (c) wet kilns emit more mercury than dry kilns (twice as much according to EPA), showing that the kiln design results in a consistent and predictable difference in mercury emissions; and (d) additional emissions data confirm that some kilns are achieving consistently better emission levels than others. Several comments were received regarding the adequacy of the emissions data used in EPA's analyses. Several commenters state that EPA should collect data on mercury emissions and then determine mercury limits based on data. Recommendations for collecting additional data included soliciting test data from State and local agencies. Several commenters state that EPA should conduct a new MACT floor and beyond-the-floor evaluation based on current and complete data—including data from state and local agencies where cement plants are located—on mercury emissions from Portland cement plants. According to one commenter, EPA explained that its decision not to set mercury standards was due to a lack of emissions data while in reality it chose not to gather data under an incorrect statutory interpretation that it did not have to set standards if it believed there was no control technology available. The commenter states that now EPA has access to more mercury emissions data than it initially claimed including: (1) Toxic release inventory (TRI) data based on mercury stack monitoring by 35 plants and, (2) as indicated by EPA, data on mercury content of coal fly ash, shale, and clay that is either already available or can be easily obtained from existing sources—the commenter notes that Florida DEP reports that kilns collect several samples of the mercury levels in their raw materials on a daily basis.

Response: We disagree that our arguments regarding the inability to establish floors are irrelevant, unlawful and arbitrary. We agree that some kilns emit less mercury than others in individual performance tests. The argument that these kilns consistently perform better over time than other kilns is not correct, however, as shown in section IV.A.1.a above, where we showed that one of the lowest emitting kilns in a single test was one of the highest emitting in a later test due to raw material mercury variability. We thus do not believe it is appropriate to use the term "perform better then others" because this implies that the emission levels achieved are the result of some controllable action or otherwise will perform over time at some predictable level. A facility cannot achieve a performance level similar to another facility by varying its inputs because, as previously discussed, one facility does not have access to another's raw materials (or fuels), and therefore cannot be expected to necessarily achieve the same mercury emissions levels based on input control. The commenter acknowledges that facilities have significant variations in raw materials mercury content.

The commenter also notes that only some facilities choose to use fly ash which results in predictable and consistent differences in mercury emissions. While the statement that only some facilities use fly ash is correct, there are no data to indicate that the use of fly ash results in consistent and predictable differences in mercury emissions. All the raw materials and fuels that enter the kiln affect mercury emissions. The decision to use fly ash may or may not affect mercury emissions based on the mercury content of the raw materials the fly ash replaces. The only way to predict the impact on mercury emissions of fly ash for the plant currently using this material would be to obtain long term detailed raw materials and fuel analyses for every plant, including analyses of the replaced materials. However, in many cases the replaced materials may no longer be available. Neither are the data available for the current materials being used. In no way does the use of fly ash make the mercury emissions any more consistent than for facilities not using fly ash, or vice versa. All kilns are still subject to uncontrollable variations in raw materials and fuels, of which fly ash is only a small part. In fact, the two facilities with the highest measured mercury emissions do not use fly ash, and one of these facilities, which happens to have 30 days of feed materials analyses for mercury, shows significant variations in mercury emissions. There are no data to support any contention that using fly ash will inevitably result in a mercury emissions increase at any specific site.

The commenter also stated that kiln design—wet versus dry—affects mercury emissions. There are no data to support that statement, nor are we aware of any reason a wet or dry kiln would perform differently with respect to mercury emissions. The information referred to by the commenter is from the TRI. These data do not differentiate between kilns that burn hazardous waste, which are a different class of kiln subject to different regulations, and those that do not. Cement kilns that burn hazardous waste tend to be wet kilns and also tend to have higher mercury emission than kilns that do not burn hazardous waste, because of higher mercury levels in the hazardous waste fuels burned by these kilns. Therefore, the data cited by the commenter do not support their conclusion.

Several commenters also suggested that EPA collect additional emission test data from State and local agencies. We collected additional data, and have begun the process of gathering more. See section IV.A.1.b above, and the separate notice in today's **Federal Register** announcing reconsideration of

the new source standard for mercury. We believe data in the record conclusively show that because of the variations in raw materials mercury content show that any mercury limit based on these data would not be achievable on a continuous basis, even by the kilns that form the basis of the floor, without the requirement of applying beyond-the-floor back end control technology. The TRI monitoring data referenced by one commenter is actually short term tests. To our knowledge, there are no cement kilns using mercury continuous monitors. The data the commenter referenced from Florida are daily samples, but they are only analyzed on a monthly basis. In any case, any emission limit based on these data would not solve the problem that other facilities do not have access to the same raw materials.

Comment: In commenting on the adequacy of EPA analysis of the MACT floor for existing and new sources, several comments were received recommending that EPA give further consideration to requiring the use of emission control technology for reducing mercury emissions.

Several commenters state that EPA's analysis should have considered wet scrubbers, dry scrubbers, wet absorbent injection, dry absorbent injection, and fly ash retorting with mercury controls. One commenter states that in evaluating the MACT floor, EPA should establish a link between mercury emissions and existing controls for sulfur and particulate matter and examine potential co-benefit reductions. According to the commenter, this would be similar to the approach used by EPA in establishing the initial mercury caps in the Clean Air Mercury Rule (CAMR). The commenter believes that specific control equipment will result in a percent reduction of mercury whether the mercury is from feedstock or from fuel. Standards could be expressed as a desired percent control achieved using a specific control technology combination for sulfur and particulate matter as was done in the coal-fired electric steam generating unit determinations. The commenter states that such an approach is necessary to determine a new source standard for Portland cement kilns. The commenter included the tables that were developed for the percent reduction determination for electric utilities. One commenter states that more than 60 U.S. and 120 international waste-to-energy plants fueled with municipal or industrial waste or sewage sludge use sorbent injection ahead of fabric filters to remove mercury from flue gases. The sorbents used include activated carbon, lignite coke, sulfur containing chemicals, or combinations of these compounds. Sorbent injection systems are demonstrated at the Holcim Dundee plant which is limited by its permit to 115 lb/yr mercury, most of which is assumed to be from coal. Mercury limits are also in place under the hazardous waste combustor rule (70 FR 59402): 120 μg/dscm for new or existing cement kilns; 130 μg/dscm for hazardous waste incinerators; 80 μg/dscm for large municipal waste combustors. The commenter states that these limits set a precedent for establishing more stringent mercury emission limits and that there are abatement technologies available to exceed requirements. The commenter provided emissions data for several U.S. cement kilns as well as emissions data from cement kilns operating in Europe. The commenter states that sorbent injection control technology is proven for mercury control and states that this technology has been demonstrated on full-scale demonstrations in the electric generating sector. According to the commenter, activated carbon is also used to remove SO_2, organic compounds, ammonia, ammonium, HCl, hydrogen fluoride, and residual dust after an ESP or FF and that the spent or used sorbent can be used as a fuel in the kiln and the particles are trapped in the clinker. The commenter notes that a cement manufacturer in Switzerland, fueled with renewable sludge waste, used activated carbon to achieve up to 95 percent reduction in SO_2 which correlates to an emission rate of less than 50 $\mu g/m^3$.

One commenter states that EPA should also consider pre-combustion technology for coal that has been demonstrated in the utility sector. One such technology, pre-combustion coal beneficiation, transforms relatively low cost, low rank western coal (lignite or subbituminous) into a cleaner more efficient energy source (k-Fuel™). This technology applies heat and pressure to reduce moisture and can increase heat value by 30–55 percent for low rank coals. The result is higher output per ton of coal while lowering emissions including reduction in mercury content by up to 70 percent or more and reduced emissions of SO_2 and NO_X.

Response: We have reevaluated the available emission control technology for reducing mercury emissions. The commenters mentioned numerous control technologies including wet scrubbers, dry scrubbers, wet sorbent injection, dry sorbent injection, and fly ash retorting. Dry sorbent injection and fly ash retorting have not been applied to cement kilns. Therefore, they cannot be considered the basis of a MACT floor. Dry scrubbers and wet sorbent injection systems have been applied at one location each, but these systems do not operate continuously and would therefore not be considered as a floor technology. We evaluated the carbon injection system mentioned by the commenter. However, the configuration of this system is different from the configuration required to achieve a mercury reduction. The fact that the facility meets a specific mercury limit is not attributable to the sorbent injection system, which is configured for control of total hydrocarbons. (See section IV.C. on why this facility does not represent new source MACT for THC emissions.)

We also are aware that wet scrubber technology has been applied to at least five cement kilns, and therefore we did evaluate wet scrubbers as a floor technology for both new and existing sources and as a beyond-the-floor technology for existing sources. Our analysis and conclusions are set out in sections IV.A.1.d and IV.A.2 above.

We did not evaluate control technologies other than wet scrubbers and ACI as a potential beyond-the-floor technology. We have no data to indicate that these controls are any more efficient or cost effective than the controls we did evaluate. In addition the performance of these controls is less certain than either wet scrubbers or ACI.

The commenter also notes that mercury limits have been applied to other source categories and to cement kilns that burn hazardous waste. The application of an emission limit to another source category or class of cement kiln does not, in and of itself, indicate that a mercury emissions limit is required or appropriate here. With respect to the mercury standards for cement kilns that burn hazardous waste, as noted earlier, these standards are based exclusively on control of mercury levels in the hazardous waste fuel inputs, and hence are not applicable to the Portland cement kiln category. See 70 FR 59648. In addition, we note that the limits mentioned are well above the emission test data for all but two cement kilns that do not burn hazardous waste. Cement kilns that burn hazardous waste typically have stack gas concentrations of 43 to 196 μg/dscm resulting from the hazardous waste alone (69 FR 21251, April 20, 2004). These levels, which reflect only the mercury emissions attributable to the hazardous waste, are themselves higher then the majority of the emission levels from cement kilns that do not burn hazardous waste, the majority of which are below 43 to 196 μg/dscm. See "Summary of Mercury Test Data" in Docket EPA–HQ–OAR–

2002–0051. Therefore, we believe it is reasonable to assume that cement kilns that do not fire hazardous waste are much lower emitters of mercury than the hazardous waste-firing cement kilns.

The commenter also mentioned pre-combustion technology for mercury control, including k-Fuel. Coal cleaning is another option for removing mercury from the fuel prior to combustion. In some states, certain kinds of coal are commonly cleaned to increase its quality and heating value. Approximately 77 percent of the eastern and midwestern bituminous coal shipments are cleaned in order to meet customer specifications for heating value, ash content and sulfur content. See Mercury Study Report to Congress: Volume VIII: An Evaluation of Mercury Control Technologies and Costs, December 1997. Given the fact that most coal is already cleaned, we believe that any benefits of mercury reduction from coal cleaning are already being realized. There is only one k-Fuel production plant of which we are aware, so this fuel is not available in sufficient quantities to be considered as a potential alternative fuel. We are not aware of any widely available coals that have been subjected to more advanced coal cleaning techniques. We also note that advanced coal cleaning techniques have an estimated cost of approximately $140 million per ton of mercury reduction. These costs per ton of removal are higher than costs of other potential beyond-the-floor technologies such as ACI and wet scrubbers.

Comment: Several comments were received regarding the need for EPA to include in its analysis of the MACT floor the use of work practices alone or in combination with control technologies to reduce mercury emissions. Two commenters state that the work practice of wasting a portion of the control device catch, that is disposing of a portion of the catch rather than recycling it back to the kiln, can reduce total mercury emissions. One commenter cites a European report showing that lowering the gas temperature upstream of the baghouse accompanied by disposing of part of the catch is an effective measure in reducing mercury emissions. According to the commenter, material removal is already practiced at many kilns in the U.S. for other reasons than mercury removal. This occurs for example when CKD is wasted or when a bypass is used at kilns with preheaters to relieve buildups of volatile components, e.g., chlorides or sulfates. The commenter states that such kilns emit less mercury through the stack than kilns that do not waste CKD. The commenter cites a publication of the PCA documenting this. The two commenters state that one opportunity to avoid the recycling of CKD is by mixing it with clinker to make masonry and other types of cement. One commenter states that CKD has numerous beneficial uses and can be sold as a byproduct by cement plants. The commenter addresses some of the barriers to the practice of mixing materials with clinker to make materials for sale. In response to comments that the industry apply various non-ACI controls or work practices to reduce mercury emissions, one commenter states that none of these practices have been demonstrated to be effective in controlling mercury emissions from cement kilns.

One commenter states that EPA could consider prohibiting or limiting CKD recycling in cement kilns while requiring ACI in conjunction with existing particulate matter control devices. According to the commenter, this approach would avoid the expense of an additional control device and its associated waste stream. The commenter recognizes that there is a possibility that the mercury and carbon level in the CKD may cause it to be considered a hazardous waste.

Two commenters support the use of alternative feed and fuel materials as techniques for reducing mercury emissions. One commenter states that EPA's evaluation of low-mercury fuels should have included petroleum coke. According to the commenter, testing at one kiln has shown that petroleum coke contained significantly less mercury than the coal previously used to fuel the kiln. The commenter also suggested evaluating the increasing use of tire-derived fuel and its impact on mercury emissions. One commenter states that data are available that indicate that mercury content of fuel and feed used by kilns is not so variable that an upper limit for mercury in coal and feed could not be set by EPA. One commenter states that EPA should collect sufficient data on the variability of mercury in feed and fuel materials to actually determine what the variability is.

One commenter responded to comments recommending that kilns switch from coal to petroleum coke, fuel oil, and tire-derived fuel because these have lower mercury concentrations. The commenter states that limited supply, long distances, and permitting issues make it impossible to replace a significant percentage of the coal burned with alternative fuels. The commenter states, however, that the industry could utilize a much larger amount of these fuels if permitting barriers were lowered.

Response: We agree that reducing the recycling of CKD has, in some cases, been shown to reduce mercury emissions and that this practice creates a floor for both existing and new sources. See section IV.A.1.c above. The amount of CKD recycled versus the CKD wasted at any facility is based on the concentration of alkali metals in the raw materials. Also, the effect of this practice on mercury emissions will be highly variable because the amount of mercury present in the cement kiln dust varies from facility to facility. Thus, we have adopted a work practice standard which will reflect these site-specific practices. We also have evaluated a beyond-the-floor control option based on further reducing the recycling of CKD back to the cement kiln and determined it was not achievable (within the meaning of section 112 (d)(2)) after considering costs, energy impacts, and non-air quality health and environmental impacts. This would also be the case if one combined ACI and reduced or eliminated the recycling of CKD.

One commenter also suggested the use of lower mercury fuels, specifically petroleum coke, and setting a limit for mercury emission based on the upper bounds of the limits of mercury in the feed and fuel. The comment on petroleum coke is addressed above in section IV.A.1.a.i. We rejected this later option because it would set a limit that has no environmental benefit because it achieves no emissions reduction. See section I.A.1.b above. Another commenter mentioned the problems with setting a limit based on changes to fuels, namely that limited supply would preclude any MACT floor based on fuel switching, and would likewise preclude any beyond-the-floor option. We agree with those comments. See 70 FR 72334.

Comment: Several comments support EPA's decision not to set "beyond-the-floor" mercury standards for the following reasons: (1) Any possible activated carbon injection "back-end" control technology would be prohibitively expensive; (2) the cost per mass of mercury emissions reduced would be astronomical; and (3) the application of such possible activated carbon injection would generate additional solid waste and increase energy use.

Response: We agree with these comments for the reasons previously discussed.

Comment: A commenter states that in the beyond-the-floor evaluation, EPA failed to consider other control measures that reduce mercury emissions. The commenter cited coal cleaning, mercury-specific coal

treatments, optimization of existing control (the commenter supplied a list of optimizing technologies), as well as currently available control technologies such as enhanced wet scrubbing, Powerspan-ECO®, Advanced Hybrid Filter, Airborne Process, LoTox process, and MerCAP. According to the commenter, mercury reductions for these technologies range from 20 percent to over 90 percent. According to the commenter, EPA's failure to evaluate any of these measures is arbitrary and capricious and contravenes CAA 112(d)(2) which requires the agency to set standards reflecting the maximum degree of reduction achievable through the full range of potential reduction measures.

In a later comment, the same commenter states that EPA failed to satisfy the CAA by not considering end-of-stack controls. As an example of a controlled source, the commenter states that Holcim's Zurich plant successfully uses the Polvitec system, a carbon filter system that controls mercury as well as organic pollutants.

One commenter objects to EPA's refusal to set beyond-the-floor mercury standards as unlawful and arbitrary. The commenter states that EPA failed to consider eliminating the use of fly ash as a beyond-the-floor standard even though it is possible for kilns not to use fly ash—a majority of kilns do not use any fly ash—and not using fly ash would reduce mercury emissions. For example, the commenter states that more than half the mercury emissions from an Alpena, MI kiln are from fly ash. According to the commenter, kilns could also reduce mercury emissions by using cleaner fuel (e.g., natural gas), using coal with lower mercury content, refraining from the use of other mercury containing by-products from power plants, steel mills, and foundries, and refraining from the use of flue gas dryer sludge. One commenter recommends that EPA conduct a new beyond-the-floor evaluation based on up-to-date and complete data.

Response: We have conducted additional beyond-the-floor analyses for all demonstrated control techniques for cement kilns. This included banning use of utility boiler fly ash as feed to cement kilns, reducing the recycling of CKD, use of wet scrubbers, and use of ACI. The statement that not using fly ash would reduce mercury emissions is not supported by existing data, as explained in section IV.A.1.b above. These are discussed in section I.A.2 above. The commenters mentioned other additional control techniques including both add-on controls and coal cleaning. These are not demonstrated control technologies for this source category. In the case of any coal cleaning technology, we did not specifically evaluate these technologies. We know of no case where these technologies have been used in the cement industry, or any other industry, as the basis for control of mercury emissions, therefore they cannot be considered a floor technology. We also do not consider these technologies to be demonstrated to the point where we would consider them as the basis of a beyond-the-floor standard. As noted above, most coals are already cleaned. Coals that have been cleaned using advanced cleaning techniques are not generally available. In addition, data from an evaluation of advanced coal cleaning indicated that the costs were approximately $140 million per ton of mercury reduction. See Mercury Study Report to Congress: Volume VIII: An Evaluation of Mercury Control Technologies and Costs, December 1997.

Comment: Citing the information used to estimate costs and mercury reductions associated with ACI as outdated, unsupported and unexplained, one commenter states that EPA's estimates are inadequate and, furthermore, ignores the more recent ACI data used in EPA's power plant rulemaking.

Response: We have updated our ACI costs based on more recent information. As explained above in discussions of potential beyond-the-floor options based on performance of ACI, we still do not find such standards to be achievable within the meaning of section 112 (d)(2).

Comment: One commenter states that recent tests for mercury emission from Portland cement plants in New York and Michigan show that EPA does not have an accurate picture of mercury emissions from this industry. The commenter states that the lack of accurate information affected EPA's analysis of ACI as a beyond the floor control. The commenter recommends that EPA conduct additional stack testing to collect accurate emissions data.

One commenter also states that EPA does not provide information on the amount of mercury that would be reduced by ACI. The commenter states that self-reported mercury emission data provided by industry in EPA's TRI, appear to grossly underestimate actual kiln mercury emissions and provides examples of such under-reporting. Based on the limited emissions test data, the commenter states that actual mercury emissions data could be ten times greater than the TRI estimates. The commenter states that EPA's estimate of the cost of ACI and the amount of mercury that would be reduced are arbitrary and capricious and, therefore, so is EPA's reliance on cost per ton estimates as a basis for rejecting ACI as a beyond-the-floor technology.

Two commenters state that, given mercury's toxicity and the significant mercury emissions from Portland cement plants, they strongly disagree with EPA's conclusion that standards to limit mercury emissions are "not justified."

Response: The commenters did not provide data to support their claims that mercury emissions from this source category are significantly underestimated. We are aware that recent tests at several facilities have indicated that they had significantly underestimated their mercury emissions. In some cases the mercury emissions were significantly higher. We are also aware of recent tests where the measured mercury emissions were low, and in at least one case was actually below previous estimates. We do not agree that these few cases indicate that our current estimates of mercury emissions are significantly in error.

Comments: Several commenters state that EPA has ignored or undervalued non-air impacts. Commenters state that EPA should consider non-air environmental, economic, and societal impacts resulting from contamination of water bodies and their lost recreational and commercial fishing uses negatively affecting tourism and jobs; and neurological effects on children caused by mercury exposures among females of child-bearing age. According to commenters, local advisories against eating fish due to mercury tissue levels undercut efforts to encourage fish consumption as a way to reduce risk of heart disease. One commenter states that in failing to set maximum degree of reduction standards that are achievable, EPA did not consider the costs of not setting mercury standards, including the public health costs of increased exposure to mercury in children as well as the societal costs of contaminated water bodies, fish, and other wildlife.

Response: The purpose of 112(d) standards is to apply maximum achievable control technology. The consideration of impacts such as those discussed above is performed during the section 112(f) residual risk phase. See *Sierra Club* v. *EPA*, 353 F. 3d 976, 989–90 (D.C. Cir. 2004) (rejecting the commenter's argument). We have begun this analysis for this source category. The results of this analysis will be included in a separate rulemaking.

Comment: Several commenters raised concerns related to the local impacts of industrial mercury emissions. According to one commenter, the high temperature of cement kilns results in mercury emissions that fall out and are deposited much closer to the source than was previously thought. One commenter cites research that confirms that mercury disproportionately affects nearby residents and that shows that nearly 70 percent of the mercury in an area's rainwater comes from nearby coal-burning industrial plants. One commenter states that EPA did not consider impacts of mercury hot spots, citing Florida and EPA research showing a reduction in local and regional fish mercury levels when MACT standards for medical and municipal incineration were implemented. The commenter provided documentation of impacts on local environments of lowering local or regional mercury emissions. One commenter states that they are concerned over the documented levels of mercury in fish in their county and the fact that three recently permitted Portland cement plants in their county are permitted to emit over 400 lb/yr of mercury in addition to a coal fired electrical generating plant that emits over 70 lbs of mercury annually.

Response: These factors will be considered in the section 112(f) residual risk analysis discussed above. It is impermissible to consider these risk-based factors in setting the technology-based standards at issue here.

Comment: EPA solicited comments on a potential ban of the use of mercury-containing fly ash from utility boilers as an additive to cement kiln feed. Numerous commenters state that a ban is premature for several reasons, with their objections falling into one of several groupings: anti-Resource Conservation and Recovery Act (RCRA) policy to encourage recycling that is protective of human health and the environment, CAMR in litigation, mercury removal technology not yet developed, substitutes may be more harmful, and cost of a ban has not been considered. Due to these concerns about the completeness of data they believe are relevant to banning the use of fly ash as a cement plant raw material, the commenters suggest the fly ash ban be postponed and studied further for now.

Two commenters add that banning fly ash use, thereby requiring cement manufacturers to use substitutes for raw materials, cannot be used as the basis of a national rule due to the variability of mercury content of fly ash. These commenters also state that banning the use of fly ash could result in power companies having trouble finding ways to manage fly ash that would not increase impacts on land use and other ecosystem values. These commenters state that further study of such trade-offs is necessary.

Another commenter notes that approximately 2.5 million tons of fly ash is used annually in cement kilns, thus reducing the need for an equivalent amount of natural materials that would come from virgin sources. Another commenter notes that some configurations of coal-fired electric generating unit control equipment can reduce the level of ash-bound mercury, and that research is being conducted on methods that capture and stabilize mercury, producing a secondary waste product separate from the ash stream.

One commenter adds that the costs of replacing fly ash with other materials could be in excess of $10 million per ton of mercury removed. This commenter also states that the use of some alternate materials could result in emissions of HAP, including mercury, and increased emissions of criteria pollutants either directly or as the result of increased fuel usage per ton of clinker produced. One commenter agrees with EPA that fly ash from electric utility boilers may progressively contain more mercury as the electric utility industry reduces its mercury emissions. According to the commenter, some boiler fly ash is of a quality that allows it to be added directly as a raw material for concrete where most of the mercury is permanently bound; lower quality fly ash is unusable in concrete and instead is added as a raw material additive to the cement kiln. This commenter, however, recommends that EPA consider work practices, monitoring, and mercury controls rather than a ban on fly ash.

Two commenters state that data from TRI showing that 64 percent of kilns not using fly ash account for 60 percent of mercury emissions, while the 36 percent that do use fly ash account for about 40 percent of mercury emissions, do not justify a conclusion that fly ash feedstock from utility boilers that control mercury is a culprit in mercury emissions from cement kilns.

Two commenters, citing EPA's positing that wet kilns may emit more mercury than dry kilns, suggest that the driver for mercury emissions from kilns may be the type of kiln rather than the feedstock.

Two commenters note that EPA acknowledges that the proposed ban fails to consider the solid waste and economic impacts of diverting 2–3 million tons/yr from beneficial use to disposal in landfills, including the economic impacts of lost revenue from the sale of fly ash, landfill disposal fees, and the potential rate increases for electricity consumers; and the environmental impacts of relying on virgin feedstock—which contains mercury as well as organic compounds—including increased energy use, additional air emissions, and impacts on natural resources.

One commenter states that there are many advantages (a list of the environmental and energy benefits is included as part of the comment) associated with the use of fly ash as an alternative for some naturally occurring raw materials. The commenter states that they also understand the impacts that the use of fly ash may have on mercury emissions and are looking at approaches that may be used to minimize mercury emissions from use of fly ash. They state that they will provide additional information on a preferred approach should one be identified.

One commenter opposes a blanket ban on use of fly ash without regard to its source or the use of analysis to determine mercury content. The commenter agrees that setting mercury emission limits is inappropriate given the variability in concentration in raw materials and that it would be contrary to case law under CAA section 112. The commenter lists the manufacturing and environmental benefits of using fly ash as a substitute for other raw materials: reduced fuel consumption in kiln; reduced power consumption for grinding; reduce emissions of organics (THC) and combustion emissions (NO_X, SO_2, and CO); reduce need to dispose of fly ash; and reduced SO_2 emissions from reduced use of raw materials containing pyrites. The commenter states that in some regions, fly ash is the only source of aluminum for some cement plants. Also, they state that like other raw materials, the mercury content of fly ash can vary widely. The commenter recommends an approach that allows the use of fly ash if companies can demonstrate that mercury emissions will not be significantly impacted. Such an approach is being developed by the commenter and will be submitted to EPA as a supplement to their comments.

Response: We have considered the comments above and have come to the conclusion that a ban on the current use of utility boiler fly ash is not warranted. See section I.A.1.b above.

Comment: Several commenters are opposed to allowing the use of fly ash if it means increased mercury emissions. One commenter cited a study showing that fly ash mercury content can vary from 0.005 to 120 micrograms

per cubic gram of ash as evidence that EPA needs to limit the use of fly ash in cement and should also evaluate other additives, including cement kiln dust, for their mercury emissions potential. One commenter states that if the mercury in fly ash will cause the fly ash to be classified as a hazardous waste, its use should be banned until the fate of mercury in the cement manufacturing process is better understood.

One commenter states that EPA should take into consideration future increases in the mercury content of coal combustion products (CCP) resulting from the Clean Air Interstate Rule and the CAMR. They state that the higher mercury content of CCP used in producing Portland cement as well as the recycling of cement kiln dust could cause mercury emissions to increase.

Several commenters understand that fly ash is a necessary component in the manufacturing process, but believe measures should be implemented to avoid increased mercury emissions. One commenter recommends the use of fly ash as long as control requirements are included in the rule, e.g., work practice standards and other strategies to prevent an increase in mercury emissions from the fly ash. One commenter states that EPA should require either: (1) Carbon injection with fabric filtration without insufflation; or (2) treatment of the ash to remove and capture the mercury. According to the commenter, if these do not adequately reduce mercury emissions, the fly ash should not be used. Another commenter states that EPA should include provisions for pollution prevention plans, in which monitoring and testing of mercury sources are conducted and appropriate work practices or other measures are evaluated and implemented to control mercury emissions. The commenter states that the facility can then determine the least cost approach for achieving mercury reductions.

One commenter states that EPA needs to further investigate the practice of adding fly ash to understand the concentration of mercury being added and subsequent emissions of mercury. The commenter states that if alternatives are available, EPA should consider banning the use of fly ash.

Response: We received comments both for and against the use of utility boiler fly ash. As previously noted in this notice, we performed our own evaluation of the practice based on the available data. The result of our analysis was that even though we are aware of one facility where the use of fly ash contributes to approximately half of the facility's mercury emissions, we cannot state that this occurs at other cement kilns using fly ash. We also note numerous positive environmental effects of using fly ash in lieu of shale and clay, including increases in overall kiln energy efficiency, and a potential reduction in THC emissions. Given the lack of data that the use of fly ash adversely affects mercury emissions (i.e. causes an increase in emissions over raw materials that would be used in place of the fly ash) other then at one facility, and the other positive environmental benefits, we do not believe any action is warranted on fly ash use as currently practiced in the industry.

The commenters also expressed concern that as utility boilers apply ACI or other sorbents to reduce their mercury emissions, utility boiler fly ash will have significantly increased mercury concentrations, likely well in excess of levels in clay and shale that would be used in its place. We agree with this concern. As previously noted the available data indicate that ACI (or other sorbent) can significantly increase fly ash mercury content. For this reason, we have added a provision in the final rule to ban the use as a cement kiln feed utility boiler fly ash whose mercury content has been artificially increased through the use of sorbent injection, unless it can be shown that the use of this fly ash will not increase mercury emissions over a cement kiln's raw material baseline.

Comment: Regarding EPA's decision to not set HCl standards for existing kilns, a commenter states that EPA's action is unlawful, contemptuous of court, and arbitrary for all of the reasons cited above by the commenter in their comment on EPA's action on the mercury rule. In addition, the commenter also finds EPA's proposal regarding HCl unlawful and arbitrary for the following reasons.

The commenter states that EPA asserts that it "reexamined" the MACT floor for existing sources whereas the court directed EPA to "set" HCl standards. Thus, according to the commenter, EPA's stated reason for not setting HCl standards for existing kilns (the number of kilns equipped with scrubbers is insufficient to constitute 12 percent of the kilns) is irrelevant. According to the commenter, the approach EPA is required to take is to average the emission levels with those of the other best performing sources to set the floor. The commenter states that such a level would not reflect the performance of scrubbers, rather it would reflect the level achieved by the best performing sources as required by the CAA. The commenter states also that EPA's reasoning that the unavailability of low-chlorine feed or fuel justifies a decision not to set HCl standards for existing kilns is irrelevant, because EPA has an unambiguous legal obligation to set floors reflecting the HCl emission levels achieved by the relevant best performing kilns.

One commenter states that in setting work practice standards for HCl, EPA did not satisfy the CAA criteria that apply when it is "not feasible to prescribe or enforce an emission standard." The commenter states that a work practice standard is unlawful because EPA did not and could not claim that: (1) HCl cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant or that such conveyance would be inconsistent with any existing law; or (2) the application of measurement methodology is not practicable due to technological and economic limitations.

Response: The comment is moot. EPA is not requiring section 112(d) control of HCl emissions since emissions of this HAP from cement kilns will remain protective of human health with an ample margin of safety and will not result in adverse effects on the environment, even under highly conservative worst case assumptions as to potential exposure. See section IV.B above, and CAA section 112(d)(4). The court's opinion does not address the possibility of using the section 112(d)(4) authority on considering technology-based standards for HCl and EPA's use of that authority violates nothing in either the letter or spirit of the court's mandate.

Comment: Two commenters took issue with EPA's proposed definition of "new" sources as it applies to the proposed HCl limits for new kilns. Regarding EPA's new source standards for HCl (15 ppmv or 90 percent HCl reduction), one commenter states that EPA has created a compliance loophole for kilns that commenced construction before December 2, 2005 and is unlawful. According to the commenter, the CAA defines new source where construction or reconstruction commenced after the Administrator "first" proposes regulations. The commenter states that EPA first proposed standards on March 24, 1998, and that any kiln at which construction or reconstruction was commenced after March 24, 1998, is a new source and must meet new source standards. The commenter states that EPA ignores that its violation of a clear statutory duty, (i.e., its failure to promulgate HCl standards in the 1998 rulemaking), is the reason that sources built after March 24, 1998, have not already installed

pollution controls necessary to meet new source HCl standards.

Response: We disagree with these comments. First, the comment is moot with respect to an HCl new source standard because, based on the authority of section 112(d)(4), EPA has determined that no such standard is required because emissions will be at levels which are protective of human health with an ample margin of safety, and will not have an adverse effect on the environment. However, the same issue of the applicability date for new sources is presented for mercury and THC, so we are responding to the comment.

The whole premise of new source standards being potentially more strict than for existing sources, and requiring new sources to comply immediately with those requirements (see section 112(d)(3) (new source floor criteria are more stringent than those for existing sources) and 112(i)(1)), is that these sources are being newly constructed and hence can immediately install the best pollution controls without incurring the time or the expense of retrofitting. Put another way, new sources know from the beginning of the construction effort what controls will be required, and do not have to incur the higher costs and the time-consuming disruptions normally associated with control retrofits. If we were to require "new sources" that commenced construction prior to December 2, 2005, to retroactively install controls because we have changed rule requirements, then these particular sources would have to bear retrofit costs that we do not believe were intended by the CAA. Immediate compliance would also be an impossibility.[16]

The commenter states that the statute mandates this result because a new source is defined as a source constructed or reconstructed after the Administrator "first proposes" regulations "establishing an emission standard" applicable to the source. The commenter thus concludes that the new source trigger date must be March 24, 1998, the proposal date of the 1999 rule. This reading makes no sense in the context of a court action which essentially required EPA to reexamine the entire issue, and re-determine what the standard should be. Under such circumstances, the only reasonable date for determining new source applicability for a resulting standard would be the date EPA proposes it. Moreover, even under the commenter's (strained) reading, EPA did not propose standards for mercury, hydrocarbons, or HCl for these sources in the 1998 proposal until December 2, 2005; this is why the rule was remanded by the D.C. Circuit.[17] Hence, for the HAP covered by this rule, the new source trigger date would be December 2, 2005, even under the commenter's reading. However, we repeat that we disagree with the commenter's interpretation because it results in situations antithetical to the underlying premise of a new source standard: namely that amendments to new source standards will result in existing sources having to comply immediately with both new source standards and immediate compliance dates. This would be both unfair and impossible. Congress simply cannot have intended this result.

Comments: Regarding the proposed work practice standards for existing kilns (operate at normal operating conditions and operate a particulate control device), one commenter states that there is not enough information to require "normal operating conditions" for kilns and air pollution control device. According to the commenter, "normal" kiln conditions may not be best for HCl removal. This commenter also states that existing operating & maintenance (O&M) and start up, shut down, and malfunction (SSM) plans already ensure normal operation. Other commenters state that this proposed work practice is arbitrary as there is no "normal operating condition" for all kilns in the U.S. The commenters state that a multitude of factors—combustion parameters, kiln design, raw material inputs, fuel characteristics, etc—make this requirement unworkable.

One commenter notes that 40 CFR 63.6(e) already requires plants to minimize emissions during an SSM event to the extent consistent with good air pollution practices and with safety considerations. The commenter states EPA should clarify that the proposed requirement to continuously operate kilns under normal conditions and operate a particulate control device is subject to the SSM provisions elsewhere in the NESHAP (section 63.6(e)). The same commenter later submitted another comment restating their position on HCl that standards for existing and new kilns are not necessary and do not represent the MACT floor.

Response: This comment is also moot given EPA's decision not to set a section 112(d) standard for HCl based on the authority of section 112(d)(4) of the CAA.

Comment: One commenter states that EPA has not demonstrated that it has examined the costs associated with alkaline scrubbers in establishing a MACT floor for new sources. The commenter states that EPA's scrubber costs are not representative of a wet scrubber that can meet limits of up to 90 percent control of SO_2. According to the commenter, EPA's cost are for dry or wet lime spray systems incapable of 90 percent reduction on preheater/precalciner kilns. The commenter provides capital and annualized costs for a 1 million tpy kiln of $18 to $25 million and $4.5 to $7 million, respectively. The commenter states that using EPA's range of 12 to 200 tpy of HCl removal, this translates to a cost of between $35,000 and $375,000 per ton of HCl removed. The commenter states that this range is higher than the range EPA considered unreasonable for existing kiln beyond-the-floor controls ($8,500 to $28,000 per ton removed). The commenter concludes that wet scrubbers are not a reasonable option.

The commenter adds that dry or wet lime spray systems can remove SO_2 prior to the raw mill but essentially perform the same function as the raw mill, and therefore achieve an incremental removal efficiency far below 90 percent. The commenter states that this would be less cost effective than EPA described for existing kiln beyond-the-floor technology.

Response: This comment is also moot in relation to HCl given EPA's decision not to set a section 112(d) standard for HCl based on the authority of section 112(d)(4) of the CAA. However, it now has relevance in regards to the costs of controlling mercury emissions because we evaluated wet scrubbers for mercury control from existing sources as a beyond-the-floor option and new sources as a floor option. We did further investigation of the potential costs of alkaline (wet) scrubbers and revised our cost estimates after proposal based on data developed as part of the Industrial Boiler NESHAP. The scrubber costs are based on alkaline scrubbers specifically designed to remove HCl and/or SO_2 from a coal-fired boiler and we have made the required adjustments in cost to account for differences in the flue gas

[16] As it happens, under this rule, the compliance date for sources which [0] commenced construction after December 2, 2005, and before promulgation of this final rule is 3 years because the standards adopted are more stringent than those proposed on December 2, 2005. See CAA section 112(i)(2). However, the same issue will arise should EPA adopt revised standards as a result of the periodic review mandated by section 112(d)(6). There is no indication that Congress intended the draconian result of sources constructed at the time of the initial MACT rule (which could be decades in the past for a section 112 (d)(6) revised standard) to be considered new sources.

[17] Greenfield cement kilns, for which EPA adopted a new source standard for THC in 1999, are a separate type of new source for purposes of this analysis.

characteristics of a cement kiln versus a coal-fired boiler.

Comment: One commenter states that EPA's proposed risk-based exemptions from HCl standards are unlawful, arbitrary and capricious. On the proposal to develop a single national risk-based HCl standard based on the RfC for HCl the commenter states no national risk-based HCl standard exists making it impossible to comment effectively on any provisions in the cement rule that might rely on a hypothetical future rulemaking. The commenter continues stating that any attempt to set risk-based standards on a national rule that does not exist and is not currently available for review, would contravene the CAA notice and comment requirements. The commenter states further that 112(d)(4) allows EPA to set health-based emission standards only for those pollutants for which a health threshold has been established, and that no cancer threshold has been set for HCl (nor is there any classification of HCl with respect to carcinogenicity and none exists). Also, the commenter states that no non-cancer threshold has been set for HCl and that the integrated risk information system (IRIS) RfC, on which EPA attempts to rely, does not purport to be an established threshold. According to the commenter, disclaimers in IRIS negate any notion that it provides an established threshold for HCl.

Response: We largely disagree with these comments. Section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) effectively allows us to consider risk-based standards for HAP "for which a health threshold has been established" provided emissions of the HAP are at levels that provide an "ample margin of safety." Therefore, we believe we have the discretion under section 112(d)(4) to develop standards which may be less stringent than the corresponding technology-based MACT standards for some categories emitting threshold pollutants, or not to set a standard if it is apparent that emissions from the source category (i.e. from any source in the category, or any potential new source) would remain protective of human health and the environment with an ample margin of safety and protective of the environment.

The data are inadequate to make a determination as to whether HCl is carcinogenic in either humans or animals, so EPA has not developed an assessment for carcinogenicity of HCl.

The IRIS noncancer assessment for HCl provides a RfC for inhalation. An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure of the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The existence of a threshold for noncancer effects of HCl is established by general toxicological principles, i.e., that organisms are able to repair some amount of corrosive tissue damage of the type caused by HCl. If the damage does not exceed an organisms' ability to repair it, then no adverse effects will occur. Although the underlying data for HCl did not identify subthreshold exposures for chronic effects, this was due to experimental design issues rather than the absence of a threshold. EPA is unaware of any studies, theory, or experts that suggest HCl does not have a threshold for adverse effects.

Comment: Two commenters submitted comments on the need for HCl standards. According to the commenters, based on a risk analysis using 14 preheat/precalciner kilns at 13 cement plants using a range of in-stack HCl concentrations as well as a sensitivity analysis using higher hazardous waste kiln HCl concentrations, risks are well below the short-term and long-term thresholds. Based on this minimal risk, the commenters state that there is no need for an HCl standard for new kilns or the proposed operational standard for existing kilns. The commenters state that additional data will be submitted to demonstrate that there is minimal risk and no need for HCl standards.

As stated in its comments on the original proposal, one commenter states that a standard for HCl is not warranted for either existing or new sources. Since the close of the previous comment period, the commenter conducted a study to evaluate the long term and short term health risks of HCl emissions from 112 kilns at 67 plants. According to the commenter, risks were assessed using EPA modeling guidance and conservative modeling assumptions. The commenter states that based on their analysis, both chronic and acute risks are below acceptable levels and that none of the kilns studied have the potential to generate HCl emissions that result in air concentrations exceeding EPA's RfC threshold for chronic health effects or Cal EPA's reference exposure level threshold for acute effects. Based on these results, the commenter states that there is no justification for an HCl standard for new or existing cement kilns. The commenter included a copy of the health risk analysis with their comments. Another commenter refers to the above information submitted by another commenter that risks to health from HCl are well below levels acceptable for both chronic and acute impacts.

Response: As discussed in section IV.B above, we have reviewed the risk analysis provided by the commenter and agree that additional control of HCl is not required.

Comment: Regarding emission standards for THC, one commenter states that although EPA has proposed limits, they have not set standards for the main kiln stack at existing sources and new sources at existing plants. The commenter states that EPA's position on THC standards is unlawful, contemptuous of court, and arbitrary for the same reasons given by the commenter above regarding EPA position on mercury standards (see above). The same commenter in a later submission, states that the preamble to the proposed rule appears to indicate that EPA did not set emission standards for THC emissions from the kiln's main stack, although the regulatory text does specify emission limits for the kiln's main stack.

Response: Since EPA is setting standards for THC (as a surrogate for non-dioxin organic HAP), and also proposed to do so, this comment is not factually accurate (and, as noted in earlier responses, mischaracterizes the court's mandate in any case). In addition, as previously discussed, we do not agree with the commenter that the court's mandate required us to set standards regardless of the facts. The court noted that we had inappropriately limited our analysis to add-on back end control technologies. As is the case with mercury and HCl, setting some type of emission limits based on test data would mean that many facilities would have to apply a beyond-the-floor add-on control technology to meet the floor level of control without consideration of the costs, energy, and non-air health and environmental impacts.

Comments: One commenter states that EPA has improperly borrowed standards from its 1999 regulations for hazardous waste combustors, which were found unlawful and vacated [18] rather than setting standards that reflect the THC or CO emission levels actually achievable by the best performing sources (12 percent of cement kilns for existing and best performing cement kiln for new). The commenter states further that although maintaining good combustion

[18] This is incorrect; the THC rules for hazardous waste incinerators/cement kilns/lightweight aggregate kilns were not challenged and were therefore not vacated by the D.C. Circuit. See *CKRC*, 255 F.3d at 872.

conditions affects THC emissions, it is not the only factor that does so and cites the plants' selection of raw materials as affecting THC emissions. The commenter states that EPA's new greenfield source standard reflects that use of low organic feed materials affects THC emissions and also cites statements by Florida DEP and Holcim that selection of feed materials can affect THC emissions. The commenter states that EPA admits that add-on controls, e.g., ACI and scrubber/RTO (in use on two kilns), as well as precalciner/no preheater technology reduce THC emissions. According to the commenter, because these other factors can affect THC emissions, EPA has incorrectly set the floor based on good combustion control only. The commenter states that EPA concedes that cement kilns may be able to achieve better THC emission levels than through the use of good combustion alone when it discusses in the proposed rule that nonhazardous waste cement kilns should be "less challenged" than hazardous waste kilns in meeting the proposed limits and that the "lack of any hazardous waste feed for a non-hazardous waste (NHW) cement kiln should make it easier to control the combustion process." The commenter states that EPA did not account for the fact that nonhazardous waste burning kilns can control their combustion conditions and thus THC emission more easily than hazardous waste burning kilns, instead just borrowing the standard for hazardous waste burning kilns without attempting to show that the proposed limits reflect what is actually achievable by the relevant best performers. According to the commenter, EPA's arguments that it does not have to consider factors other than good combustion were rejected by the court as irrelevant and EPA must set the THC limits reflecting the average emission level that the best sources actually achieve.

Response: In the original NESHAP, we noted that THC emissions were primarily a function of the organic materials in the kiln feed. As we have previously discussed, a facility has a starkly limited ability to change their raw materials to reduce their organic content. The fact that individual facilities have successfully reduced organic contents of their feed materials to reduce THC emissions does not indicate that this option is available to all facilities. Therefore, we cannot use this option as the basis of a national standard for existing facilities.[19]

For new greenfield facilities we established in the 1999 rule that a facility would have the option to site the quarry at a location with low enough organic content that they could meet a 50 ppmv THC emissions limit. We determined that this was feasible because two facilities had already done so at the time we promulgated the original NESHAP. This limit was not remanded by the court and is currently in effect.

As we have previously discussed, we do not agree that the court decision compels us to set a THC standard that will require some sources to install a beyond-the-floor control technology under the guise of a floor standard. These facts have not changed from the original NESHAP.

However, at proposal we noted that facilities could control THC resulting from combustion of fuel.[20] We explained that the basis of the MACT floor for cement kilns firing hazardous waste was also good combustion, and these kilns had established limits for THC as a quantitative measure of good combustion conditions. Given the fact that both classes of kilns were using the same method of control, we proposed to apply the same limits to kilns that did not burn hazardous waste. We have no data, and none were supplied by the commenter, to make any judgments about whether or not kilns that do not burn hazardous waste could actually meet a more stringent standard. Because the standards are based on complete combustion of the fuel, and because of the extremely high temperatures in the end of the kiln where the fuels are introduced (both those that burn hazardous waste and those that do not), we believe that both types of kilns should achieve comparable complete destruction of organic materials present in the fuels under normal operating conditions reflecting good combustion. Simply because we state that controlling THC emissions from kilns that do not burn hazardous waste should be less difficult than controlling emissions from kilns that do burn hazardous waste does not imply that one type of kiln can achieve a measurably lower THC emission level than another.

Comments: Several commenters state that it is inappropriate to set THC floor limits based on a different source category, i.e., HWC. According to the commenters, at issue is the control of products of incomplete combustion (PIC) vs. control of hydrocarbons from feed materials. They state that HWC have the option ceasing to burn hazardous waste when exceeding the limit (and can do so easily using automatic waste feed cutoff systems) and that the HWC THC standard only applies when hazardous waste is being burned.

Three commenters state that the HWC MACT standards were based on EPA's RCRA Boiler and Industrial Furnace rules, which in turn were based on the need to safely manage hazardous waste, a need that is irrelevant to the facilities covered under the current proposal.

Response: We agree with this comment and have removed the proposed quantified limits for existing sources. We have not removed the limit for new sources because the basis of the new source floor (and standard) is performance of a RTO (preceded by a scrubber to enable the RTO to function). Application of an RTO (in series with a scrubber) would allow new cement kilns to meet a 20 ppmv standard, or to remove 98 percent of incoming organic HAP measured as THC.

Comment: Three commenters state that EPA has no empirical data demonstrating that any NHW kiln can achieve the proposed limits on a continuous basis. One commenter states that bench scale studies estimated that for varying organic levels, 47 percent of samples would have resulted in emissions that exceed the 20 ppmv limit.

Response: We agree with this comment and have removed the proposed limits for existing sources. We have not removed the limit of new sources because the basis for the new source floor is now the performance of a RTO. Application of an RTO would allow the facilities noted in the comment to meet a 20 ppmv standard.

Comment: Three commenters state that the contribution to THC/CO from raw materials outweighs the measure of THC/CO for good combustion of hazardous waste fuels. Thus, THC and CO are not useful indicators of good combustion. One commenter notes that available information shows that it is difficult to correlate HC and HAP emissions. The commenter further states that several studies show that neither THC nor CO is a reliable surrogate for good combustion or PIC or HAP emissions. According to the commenter, HC emissions are a function of: (1) Raw material organic content; (2) source of fuel and firing location; (3) temperature profile; (4) oxygen concentration; and (5) type of manufacturing process. One

[19] EPA could subcategorize each source based on its raw material organic content (each source being a different "type"), but rejects this alternative as being a paper exercise not producing environmental benefit.

[20] Fuel organics can be controlled because they are fed into the hot end of the kiln. Feed materials are fed into the other end of the kiln and therefore have the opportunity to vaporize and leave with the exhaust gas before they reach the portions of the kiln which are hot enough to combust them.

commenter states that the high temperatures required for the formation of cement clinker (>2700F) ensure as complete combustion of fuels as is possible.

Response: We agree with the comment that because organic contributions from processing raw materials is the chief contributor to measured THC levels (since such emissions are not combusted and hence are not largely destroyed), having a quantified limit for THC as a measure of good combustion is not appropriate for existing cement kilns that do not burn hazardous waste. We disagree with the more general statements regarding the appropriateness of a THC indicator for organic HAP, and indeed are continuing to utilize THC as an indicator for new sources. As noted in the proposal of the original NESHAP, the organic HAP component of THC emissions varies widely (63 FR 14196). However, THC emissions do contain organic HAP. Applying MACT to THC emissions will also control organic HAP, but will be less costly than attempting to set individual limits for each individual organic HAP (64 FR 31918).

We also agree with the comment that combustion conditions in the hot end of the kiln where fuels are fired should assure destruction of organics (including organic HAP) in the fuel. For this reason, we adhere to our position at proposal that good combustion conditions in the cement kiln should assure destruction of organic HAP in fuel and represents the measure of best performance for reducing emissions of organic HAP from existing cement kilns. As explained in section I.C above, we have chosen a different means of expressing good combustion conditions than the quantified THC limit which we proposed.

Comment: Three commenters state that it is inappropriate to apply limits for non-dioxin organic HAP when feed materials have varying levels of organics, which EPA acknowledges by setting THC limits only for new greenfield sources (EPA also applied variability of feed/fuel materials in justifying rules or lack of rules for mercury, HCl and non-mercury metals). Two commenters add that a Reaction Engineering study shows that organics emitted from kiln feed is extremely variable across the country with levels varying by over four orders of magnitude.

Response: We agree with these comments and have made appropriate changes in the final rule to the proposed floor for existing cement kilns' non-dioxin organic HAP emissions to account for the essentially uncontrollable variability in organic HAP levels in raw materials.

Comment: A commenter states that EPA failed to consider the reduction in THC as part of the beyond-the-floor analysis of ACI. According to the commenter, organic HAP potentially controlled by ACI include polychlorinated biphenyls, polycyclic organic matter, and polyaromatic hydrocarbons. According to the commenter, to determine the maximum degree of reduction in THC emissions that is achievable for cement kilns, the CAA requires that EPA evaluate the reductions achievable through the use of ACI.

One commenter states that: (1) EPA did not determine, as required by the CAA for beyond-the-floor standards, the maximum degree of reduction in THC emissions achievable through GCP; (2) EPA did not show that its standards reflect the maximum degree of reduction achievable through combustion controls in light of its findings that NHW burning kilns should be able to achieve the THC standards more easily than hazardous waste burning kilns; (3) EPA did not determine the maximum degree of reduction achievable through the judicious selection of raw materials although they acknowledge that such methods will control THC emissions and that kilns are already using it and can control THC emissions through the use of other materials such as fly ash and kilns can and do import raw materials from sources that are not co-located or immediately nearby; (4) EPA did not determine the degree of reduction achievable through the use of end-of-stack controls already in use in the cement industry, including ACI, which EPA only considered for mercury and dioxin control and which would reduce THC emissions significantly and also reduce mercury and dioxin emissions;[21] (5) EPA failed to determine the maximum degree of reduction achievable through the use of limestone scrubber/RTO even though the agency is aware that such devices can significantly reduce emissions of THC (as well as HCl) and are already in use in the industry and does not contend that they are too expensive; and (6) EPA failed to consider or determine the maximum degree of reduction achievable through the use of a carbon coke filter system such as the Polvitec system in use at Holcim's Zurich plant. For the reasons (1–7) listed above, the commenter states that EPA's beyond-the-floor analysis for THC contravenes CAA 112(d)(2) which requires that EPA's final standards reflect the maximum degree of reduction achievable through any and all reduction measures, and any claim that EPA's THC standard reflects the maximum achievable degree of reduction would be arbitrary and capricious in light of EPA's failure to consider these technologies or explain its decision not to base beyond-the-floor standards on any or all of them.

Response: We have no actual test data to establish the impact of ACI on THC emissions, but are using a figure of 50 percent, which reflects the best estimates of the one facility using ACI for organics control. As explained in section IV.C above, the facility in question is extremely unusual in that the uncontrolled THC emission levels are much higher than any other facility in the source category, so the 50 percent reduction figure is probably more efficient than would be achieved industry-wide. As explained in section IV.A.2 above, however, even assuming this degree of reduction, we did not find a beyond-the-floor option based on performance of ACI to be achievable within the meaning of section 112(d)(2).

The commenter also stated that we did not assess the maximum degree of THC reduction achievable by optimized combustion practices. There are no data available to perform this type of analysis and none were provided by the commenter. Moreover, THC levels significantly below those associated with good combustion conditions are not necessarily indicative of further organic HAP reductions. See discussion at 70 FR 59462–59463 (October 12, 2005).

We also did not evaluate the degree to which "judicious selection" of raw materials can be used to reduce THC emissions, except that we have previously established that a greenfield facility can limit THC emission to 50 ppmv by selection of limestone with sufficiently low organic materials contents. We are aware that cement production facilities can import some raw materials from sources other than those nearby. However, the fact that in some cases materials can be imported from a farther distance does not change the fact that each individual cement facility has specific raw materials needs based on their particular limestone and other raw materials. We do not have data, nor are data available, to develop a national rule that would cover every possible raw material substitution to reduce THC emissions.

The commenter also stated we did not assess the maximum degree of emission

[21] Since the rule already contains a standard for dioxin, incremental reductions attributable to use of ACI are quite small; see section IV.a.2 above.

reduction achievable through the use of end-of-stack controls. However, as previously discussed, there are no data available for us to perform this analysis for any controls other than an RTO. In the case of an RTO, we have evaluated its performance as a beyond-the-floor control for existing sources. In that case, we determined requiring a facility to apply an RTO as a beyond-the-floor option was not achievable, within the meaning of section 112(d)(2), due to the high costs and adverse energy utilization impacts. The new source standard for THC is based on performance of an RTO (in tandem with a scrubber), as discussed previously. We do not believe any further control is technically feasible.

The commenter also stated we had not considered the use of a carbon coke system. The source for this comment notes that there was one facility in Europe. We note the plant in question was designed to burn pelletized sewage sludge. The source of the comment does not indicate the performance or costs of this system. We assume it would perform similarly to a carbon adsorption system, which achieves emission reductions similar to those of an RTO. We believe that the wet scrubber/RTO system, which is demonstrated on a cement kiln in the United States, is a viable beyond-the-floor option. Given the lack of demonstration of a carbon coke filter in this country, the fact that we have a viable alternative as a beyond-the-floor option (an RTO), and the fact that the carbon coke filter is unlikely to perform any better than an RTO, we do not believe consideration of a carbon coke filter is warranted.

Comment: Several commenters oppose EPA's proposed regulation of area sources for THC. Three commenters state that there is no legal basis for regulating area sources. The commenters note that there is no "statement of basis and purpose" as required by CAA 307(d)(3).

One commenter recommends that EPA exempt area sources, which would experience the same cost as major sources with fewer benefits; or consider less stringent options, e.g., periodic stack test rather than CEM.

Response: As previously noted, in the original 1999 NESHAP for this source category we regulated THC emissions from area sources because the THC emissions from a cement kiln are likely to contain polycyclic organic matter. This pollutant is listed in section 112(c)(6) of the CAA as a pollutant. The commenter provided no data that would lead us to change this determination (63 FR 14193–94).

We also considered requiring periodic stack tests rather then THC CEM. However, the current rule already requires kilns at greenfield area sources to install a THC CEM. We could see no justification for allowing a more lenient THC monitoring option for new kilns at non-greenfield facilities.

Comment: One commenter states that the requirement for THC CEM will impose additional cost for no benefit. The commenter recommends that EPA eliminate numerical limits or require less costly monitoring options, e.g., periodic stack testing. The commenter recommends that if EPA does require CEM, extend the compliance date to at least 2 years because the State certification process requires more than 1 year.

Response: We have not adopted a requirement that existing sources install a THC monitor. For new sources, the compliance date is ordinarily the effective date of the rule or startup, whichever is later. See section 112(i)(1). However, in this case, because the new source standard is more stringent than proposed (see discussion in section IV.C.3 above), sources which commenced construction or reconstruction after December 2, 2005, but before December 20, 2006, will have until December 21, 2009 to comply. See section 112(i)(2).

Comment: Two commenters favor including all crushers in the Portland cement NESHAP and establishing emission limits for crushers based on the requirements in 40 CFR, subpart OOO, if they satisfy the requirements of the CAA. One commenter cites State requirements for primary crushers of 10 percent opacity, work practices, and a baghouse with outlet concentration of 0.01 grams per dry standard cubic feet; secondary crushers are subject to a 20 percent opacity limit. The commenter provided a copy of their State requirements for crushers at cement manufacturing facilities.

One commenter states that applicability based on location relevant to other sources is confusing and recommended that EPA put all appropriate requirements for the sources in one requirement and remove 63.1340(c) altogether.

Response: We agree that applicability based on location relevant to other sources is confusing. However, in our final determination on this issue we decided that crushers should not be covered under this NESHAP. The reasons are first, we have no definitive information that there are any facilities that currently have crushers after raw materials storage. Second, we have no data to set a floor for existing crushers that might potentially be covered. We considered using the current Nonmetallic Mineral NSPS, which established standards of performance for new crushers. But we have no data to determine if the NSPS for this source category would be an appropriate MACT floor. Finally, we believe we can resolve the issue by simply stating that crushers are not covered by this regulation. It was never our intent that this rule regulate equipment typically associated with another source category.

Comment: One commenter states that all of the raw material handling and storage, except crushing, should be covered by the Portland cement NESHAP. They state that the only non-metallic mining activities subject to the NSPS subpart OOO are at the quarry and at the crusher. The commenter states that under the alternative interpretation offered by EPA, several steps characteristic of cement manufacturing would not be included in subpart LLL, for example the "on-line" measurement devices such as cross-belt neutron analyzers that are used in the preblending and proportioning steps. The commenter states further that the raw mix fed to the raw mill is the product of the very careful instrumentally-aided proportioning and blending operation that is one of the most important series of steps in the cement manufacturing process.

Response: We agree with this comment.

VII. Summary of Environmental, Energy, and Economic Impacts

A. What facilities are affected by the final amendments?

We estimate that there are approximately 94 cement plants currently in operation. These 94 plants have a total of 158 NHW cement kilns. We estimate that 20 new kilns with a capacity of 20,900,000 tpy of clinker capacity will be subject to the final amendments by the end of the fifth year after promulgation of the amendments. Note that national impacts are based on the estimated capacity increase, not on a specific number of model kilns.

B. What are the air quality impacts?

For existing kilns, we estimate that the impacts of the amendments will essentially be zero because we believe that all existing kilns are already performing the work practices prescribed in the amendments. For the 20 new kilns the variation in mercury and hydrocarbon emissions from kilns makes it difficult to quantify impacts on a national basis with any accuracy.

For mercury emissions we estimate a new kiln with a capacity of 650,000 typ of clinker will have an emission reduction ranging from zero to 280 lb/yr. We estimate the national mercury emissions reduction to be 1300 to 3000 lb/yr in the fifth year after promulgation.

Reported hydrocarbon emission test results range from less than 1 ppmv dry basis (at 7 percent oxygen) to over 140 ppmv dry basis (Docket A–92–53) measured at the main kiln stack. For 52 kilns tested for hydrocarbon emissions (Docket A–92–53), approximately 25 percent had emissions of hydrocarbons that exceeded the 20 ppmv THC limit at the main stack. The average hydrocarbon emissions for the kilns exceeding 20 ppmv was 62.5 ppmv. Assuming that most new kilns will be sited at existing locations this would imply that 15 out of 20 new kilns will have no THC emissions reduction as a result of the THC Standard. For a new kiln that, in the absence of the standard, would emit near the average hydrocarbon level of 62.5 ppmv, the application of new source MACT consisting of an RTO would result in a reduction of about 196 tpy for a 650,000 tpy kiln. We also estimate that for 15 percent of the new kiln capacity will have uncontrolled emissions that exceed the 20 ppmv limit, but will use alternatives to application of an RTO (such as ACI) to meet the THC emissions limit. These kilns will achieve an emissions reduction of approximately 103 tpy for a new 650,000 tpy new kiln. The total national reduction will be 1100 tpy in the fifth year after promulgation of the standard.

The THC and mercury standards for new sources will also result in concurrent control of SO_2 emissions. For kilns that elect to use an RTO to comply with the THC emissions limit it is necessary to install an alkaline scrubber upstream of the RTO to control acid gas and to provide additional control of PM. We estimate that approximately 25 percent of the additional capacity built in the next five years will have to install wet scrubbers for mercury control, and 10 percent will install a wet scrubber/RTO system for THC control. The SO_2 emissions reductions for a new 650,000 tpy kiln will be approximately 320 tpy, and is estimated as 3640 nationally.

Note that we have determined that reducing SO_2 emissions also results in a reduction in secondary formation of fine PM because some SO_2 is converted to sulfates in the atmosphere. Therefore, the THC standards will also result in a reduction in emissions of fine PM.

In addition to the direct air emissions impacts, there will be secondary air impacts that result in the increased electrical demand generated by new sources' control equipment. These emissions will be an increase in emissions of pollutants from utility boilers that supply electricity to the Portland cement facilities. Assuming two new kilns will install a scrubber followed by an RTO, three will install an ACI system, and five will install wet scrubbers, we estimate these increases to be 105 tpy of NO_X, 47 tpy of CO, 157 tpy of SO_2, and 5 tpy of PM at the end of the fifth year after promulgation.

C. What are the water quality impacts?

There should be no water quality impacts for the proposed amendments. The requirement for new sources to use alkaline scrubbers upstream of the RTO will produce a scrubber slurry liquid waste stream. However, we are assuming the scrubber slurry produced will be dewatered and disposed of as solid waste. Water from the dewatering process will be recycled back to the sc in the form of aqueous discharges, addition of a scrubber will increase water usage by about 41 million gallons per year (gyps) for each new 650,000 tpy kiln that installs a scrubber, or a national total of 460 million gyps.

D. What are the solid waste impacts?

The solid waste impact will be the generation of scrubber slurry that is assumed to be dewatered and disposed of as solid waste, and solid waste from the ACI systems. The amount of solid waste produced is estimated as 519,300 tpy in the fifth year after promulgation of the amendments.

E. What are the energy impacts?

Requiring new kilns to install and operate alkaline scrubbers and RTO will result in increased energy use due to the electrical requirements for the scrubber and increased fan pressure drops, and natural gas to fuel the RTO. We estimate the additional electrical demand to be 41 million kWhr per year and the natural gas use to be 271 billion cubic feet by the end of the fifth year.

F. What are the cost impacts?

The final rule amendments should impose minimal costs on existing sources. These costs will be recordkeeping costs to document CKD wastage. The costs for new sources include the THC monitor and recordkeeping costs for CKD wastage on all new kilns, a wet scrubber for mercury control on five new kilns, and a wet scrubber/RTO on two of the new kilns. The estimated capital cost for a new 650,000 tpy kiln to install a THC monitor is $140,000, to install a wet scrubber is $2.7 million, and to install a wet scrubber/RTO is $10.7 million. For kilns where the uncontrolled THC emissions are below 40 ppmv, we are assuming they will opt for a lower cost THC control, such as ACI. The estimated capital cost for ACI applied to a new 650,000 tpy kiln is $1.0 to $1.6 million. The total estimated national capital cost at the end of the fifth year after promulgation is $64 to $67 million.

The estimated annualized cost per new 650,000 tpy kiln is an estimated as $34,000 to $37,000 for kilns a THC monitor, $470,000 to $597,000 for ACI, $1.4 to $1.5 million for a wet scrubber, and $3.6 to $3.9 million for a wet scrubber/RTO. National annualized costs by the end of the fifth year will be an estimated $26 to $28 million.

G. What are the economic impacts?

EPA conducted an economic analysis of the amendments to the NESHAP which have cost implications. For existing sources the only requirement with any cost implication is the requirement to keep records of CKD wastage. These costs are very small. We assessed earlier Portland cement regulations with greater per source costs, and those costs did not have a significant effect on the cost of goods produced. Since the conditions that produced those conclusions still exist today, EPA believes these new regulations will not have a discernible impact on the Portland cement market for existing sources.

For new sources, both the magnitude of control costs needed to comply with the final amendments and the distribution of these costs among affected facilities have a role in determining how the market will change. The final amendments will require all new kilns constructed on or after December 2, 2005, to install THC monitors. As with existing sources, the cost on a THC monitor is not significant compared to the costs assessed in the earlier regulations. However, the cost for ACI or for the wet scrubbers/RTO systems are significant. We estimate that 3 of the 20 new kilns will have to install ACI, 2 of 20 new kilns will be required to install a wet scrubber/RTO system to meet the limits for THC, and five kilns will install a wet scrubber to meet the new source mercury limits.

Because of the high cost of transportation compared to the value of Portland cement, the market for Portland cement is localized and characterized by imperfect competition. The possible outcomes of the final amendments are either a deferral in

bringing the new kiln into production or a price increase in the immediate region around the two new kilns that face control costs. For perfect competition, control costs at a new facility will be completely passed on in the long run to the purchaser of the good. With imperfect competition the outcome is harder to predict. Less than full cost pass through is a likely possibility.

The model new kilns used in this analysis have a clinker capacity of 650,000 tons/yr. The annual control cost would be up to $597,000 for kilns that apply ACI, $1.5 million for a kiln that applies a wet scrubber, and $3.9 million for a kiln that applies an scrubber/RTO, in 2002 dollars. Clinker is an intermediate good in the production of Portland cement and corresponds to a Portland cement capacity of 720,000 tons/yr. To compare the costs to the value of the Portland cement in 2004 of $85 for a national average mill value we use the Chemical Engineering Plant Cost Index for 2004 and 2002 to get a 2004 annual cost of $640,000 for kilns that require ACI, $1.7 million for kiln that apply wet scrubbers, and $4.4 million for those that apply an scrubber/RTO. The value of the Portland cement produced in a year at the $85 price would be $61 million. If the cost were to be fully passed on to the purchaser in a higher price the price would increase by 1.0 to 7.2 percent, to values of $86 to $91, respectively.

With the increasing demand for Portland cement and the high capacity utilization of existing plants and the nature of the regional markets, it is unlikely that the new kilns would be delayed. Because of the imperfect competition, it is likely in the regions around the two new kilns facing control, the price of the Portland cement would increase but by less than the 1.0 to 7.2 percent that would be required to fully cover the control costs.

VIII. 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 raised novel legal and 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.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the 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. 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.

These requirements include records of CKD removal from the kiln system at all existing and new sources, and requirements for new kilns constructed after December 2, 2005, to install and test a continuous monitor to measure THC. We expect these additional requirements to affect 94 facilities over the first 3 years. The estimated annual average burden is outlined below.

Affected entity	Total hours	Labor costs	Total annual O&M costs	Total costs
Industry	4,159	$679,105	$161,672	$840,777
Implementing Agency	213	16,100	NA	16,100

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 information collection request 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 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 today's proposed rule amendments 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 this final rule amendments 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 the final rule amendments are small businesses. We determined there are 6 or 7 small businesses in this industry out of a total of 44. Each small business operates a single plant with one or more kilns. The total annualized cost of the standards in the amendments for an existing kiln is

nominal. The revenue for the entire small business sector is estimated to be around $260 million (2003 dollars). New sources, will incur higher costs because new kilns must install a THC monitor, and approximately three of the 20 new kilns will have to install ACI, two will have to install wet scrubbers, and two will have to install a wet scrubber/RTO system for THC control. For new sources that must install controls, the cost of control is estimated to be one to seven percent of the expected revenue from a new kiln. We currently do not have any information on plans for small businesses to build new kilns.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final amendments on small entities. The emission standards are representative of the floor level of emissions control, which is the minimum level of control allowed under CAA. Further, the costs of required performance testing and monitoring for non-dioxin organic HAP emissions from new sources have been minimized by specifying emissions limits and monitoring parameters in terms a surrogate for organic HAP emissions, which surrogate (THC) is less costly to measure.

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 1 year. Before promulgating a 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 rule amendments 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 1 year, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, these final rule 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" 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."

The final rule amendments do not have federalism implications. The final rule amendments 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, because State and local governments do not own or operate any sources that would be subject to the proposed rule amendments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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." The final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to today's action. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

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

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

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 rule. The final rule amendments 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 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. These rule requirements will have energy effects due to the energy requirements for the control devices required for new sources. We estimate the additional electrical demand to be 15 million kWhr per year and the

natural gas use to be 270 billion cubic feet by the end of the fifth year. We do not consider these energy impacts to be significant.

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, 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 final rule involves technical standards. EPA cites EPA Method 29 of 40 CFR part 60 for measurement of mercury emissions in stack gases for new cement kilns.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results are in the docket for this rule.

One voluntary consensus standard was identified as an acceptable alternative to an EPA test method for the purposes of the final rule. The voluntary consensus standard ASTM D6784–02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)," is an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury.

The search for emissions measurement procedures identified two other voluntary consensus standards. EPA determined that these two standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the two methods are discussed below.

The voluntary consensus standard EN 13211:2001, "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," is not acceptable as an alternative to the mercury portion of EPA Method 29 primarily because it is not validated for use with impingers, as in EPA method, although the standard describes procedures for the use of impingers. This European standard is validated for the use of fritted bubblers only and requires the use of a side (split) stream arrangement for isokinetic sampling because of the low sampling rate of the bubblers (up to 3 liters per minute, maximum). Also, only two bubblers (or impingers) are required by EN 13211, whereas EPA method requires the use of six impingers. In addition, EN 13211 does not include many of the quality control procedures of EPA methods, especially for the use and calibration of temperature sensors and controllers, sampling train assembly and disassembly, and filter weighing.

The voluntary consensus standard CAN/CSA Z223.26–M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method," is not acceptable as an alternative to EPA Method 29 (for mercury). This standard is not acceptable because of the lack of detail in quality control. Specifically, CAN/CSA Z223.26 does not include specifications for the number of calibration samples to be analyzed, procedures to prevent carryover from one sample to the next, and procedures for subtraction of the instrument response to calibration blank as in EPA method. Also, CAN/CSA Z223.26 does not require that the calibration curve be forced through or close to zero (or a point no further than ±2 percent of the recorder full scale) as in EPA method. Also, CAN/CSA Z223.26 does not include a procedure to assure that two consecutive peak heights agree within 3 percent of their average value and that the peak maximum is greater than 10 percent of the recorder full scale, as in EPA methods. CAN/CSA Z223.26 does not include instructions for a blank and a standard to be run at least every five samples, and specifications for the peak height of the blank and the standard as in EPA method.

Section 63.1349 to subpart LLL of this rule lists the testing methods included in the regulation. 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. 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 on December 20, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, and Reporting and recordkeeping requirements.

Dated: December 8, 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 LLL—[Amended]

■ 2. § 63.1342 is revised to read as follows:

§ 63.1342 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to subpart LLL.

■ 3. Section 63.1343 is revised to read as follows:

§ 63.1343 Standards for kilns and in-line kiln/raw mills.

(a) *General.* The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill. All gaseous, mercury and D/F emission limits are on a dry basis, corrected to 7 percent oxygen. All total hydrocarbon (THC) emission limits are measured as propane. The block averaging periods to demonstrate compliance are hourly for 20 ppmv total hydrocarbon (THC) limits and monthly for the 50 ppmv THC limit.

(b) *Existing kilns located at major sources.* No owner or operator of an existing kiln or an existing kiln/raw mill

located at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:

(1) Contain particulate matter (PM) in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the alkali bypass are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(c) *Reconstructed or new kilns located at major sources.* No owner or operator of a reconstructed or new kiln or reconstructed or new inline kiln/raw mill located at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the bypass stack are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(4) Contain total hydrocarbons (THC), from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, in excess of 20 ppmv if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 20 ppmv standard you may demonstrate a 98 percent reduction of THC emissions from the exit of the kiln to discharge to the atmosphere. If the source is a greenfield kiln that commenced construction on or prior to December 2, 2005, then the THC limit is 50 ppmv.

(5) Contain mercury from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, or the alkali bypass in excess of 41μg/dscm if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 41 μg/dscm standard you may route the emissions through a packed bed or spray tower wet scrubber with a liquid-to-gas (l/g) ratio of 30 gallons per 1000 actual cubic feet per minute (acfm) or more and meet a site-specific emissions limit based on the measured performance of the wet scrubber.

(d) *Existing kilns located at area sources.* No owner or operator of an existing kiln or an existing in-line kiln/raw mill located at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F in excess of 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(2) Contain D/F in excess of 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(e) *New or reconstructed kilns located at area sources.* No owner or operator of a new or reconstructed kiln or new or reconstructed in-line kiln/raw mill located at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(2) Contain total hydrocarbons (THC), from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, in excess of 20 ppmv if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 20 ppmv standard you may demonstrate a 98 percent reduction of THC emissions from the exit of the kiln to discharge to the atmosphere. If the source is a greenfield kiln that commenced construction on or prior to December 2, 2005, then the THC limit is 50 ppmv.

(3) Contain mercury from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, or the alkali bypass in excess of 41 μg/dscm if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 41 μg/dscm standard you may route the emissions through a packed bed or spray tower wet scrubber with a liquid-to-gas (l/g) ratio of 30 gallons per 1000 actual cubic feet per minute (acfm) or more and meet a site-specific emissions limit based on the measured performance of the wet scrubber.

■ 4. Section 63.1344 is amended as follows:

■ a. Revising paragraphs (c) through (e);

■ b. Adding paragraphs (f) through (i).

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

* * * * *

(c) The owner or operator of an affected source subject to a mercury, THC or D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must operate the carbon injection system in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) The three-hour rolling average activated carbon injection rate shall be equal to or greater than the activated carbon injection rate determined in accordance with § 63.1349(b)(3)(vi).

(2) The owner or operator shall either:

(i) Maintain the minimum activated carbon injection carrier gas flow rate, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c), or

(ii) Maintain the minimum activated carbon injection carrier gas pressure drop, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c).

(d) Except as provided in paragraph (e) of this section, the owner or operator of an affected source subject to a mercury, THC or D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must specify and use the brand and type of activated carbon used during the performance test until a subsequent performance test is conducted, unless the site-specific performance test plan contains documentation of key parameters that affect adsorption and the owner or operator establishes limits based on those parameters, and the limits on these parameters are maintained.

(e) The owner or operator of an affected source subject to a D/F, THC, or mercury emission limitation under

§ 63.1343 that employs carbon injection as an emission control technique may substitute, at any time, a different brand or type of activated carbon provided that the replacement has equivalent or improved properties compared to the activated carbon specified in the site-specific performance test plan and used in the performance test. The owner or operator must maintain documentation that the substitute activated carbon will provide the same or better level of control as the original activated carbon.

(f) Existing kilns and in-line kilns/raw mills must implement good combustion practices (GCP) designed to minimize THC from fuel combustion. GCP include training all operators and supervisors to operate and maintain the kiln and calciner, and the pollution control systems in accordance with good engineering practices. The training shall include methods for minimizing excess emissions.

(g) No kiln and in-line kiln/raw mill may use as a raw material or fuel any fly ash where the mercury content of the fly ash has been increased through the use of activated carbon, or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e. emissions not using the fly ash). The facility has the burden of proving there has been no emissions increase over baseline.

(h) All kilns and in-line kilns/raw mills must remove (i.e. not recycle to the kiln) from the kiln system sufficient cement kiln dust to maintain the desired product quality.

(i) New and reconstructed kilns and in-line kilns/raw mills must not exceed the average hourly CKD recycle rate measured during mercury performance testing. Any exceedance of this average hourly rate is considered a violation of the standard.

■ 5. Section 63.1346 is revised to read as follows:

§ 63.1346 Standards for new or reconstructed raw material dryers.

(a) New or reconstructed raw material dryers located at facilities that are major sources can not discharge to the atmosphere any gases which:

(1) Exhibit opacity greater than ten percent, or

(2) Contain THC in excess of 20 ppmv, on a dry basis as propane corrected to 7 percent oxygen if the source commenced construction after December 2, 2005. As an alternative to the 20 ppmv standard, you may demonstrate a 98 percent reduction in THC emissions from the exit of the raw materials dryer to discharge to the atmosphere. If the source is a greenfield dryer constructed on or prior to December 2, 2005, then the THC limit is 50 ppmv, on a dry basis corrected to 7 percent oxygen.

(b) New or reconstructed raw materials dryers located at a facility that is an area source cannot discharge to the atmosphere any gases which contain THC in excess of 20 ppmv, on a dry basis as propane corrected to 7 percent oxygen if the source commenced construction after December 2, 2005. As an alternative to the 20 ppmv standard, you may demonstrate a 98 percent reduction in THC emissions from the exit of the raw materials dryer to discharge to the atmosphere. If the source is a greenfield dryer constructed on or prior to December 2, 2005, then the THC limit is 50 ppmv, on a dry basis corrected to 7 percent oxygen.

■ 6. Section 63.1349 is amended as follows:

■ a. By revising paragraph (b)(4);

■ b. By adding paragraph (b)(5);

■ c. By removing paragraph (f).

§ 63.1349 Performance Testing Requirements.

* * * * *

(b) * * *

(4)(i) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter. The duration of the performance test shall be three hours, and the average THC concentration (as calculated from the one-minute averages) during the three-hour performance test shall be calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(ii) The owner or operator of an affected source subject to limitations on emissions of THC who elects to demonstrate compliance with the alternative THC emission limit of 98 percent weight reduction must demonstrate compliance by also operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 at the inlet to the THC control device of the kiln, inline kiln raw mill, or raw materials dryer in the same manner as prescribed in paragraph (i) above. Alternately, you may elect to demonstrate a 98 weight percent reduction in THC across the control device using the performance test requirements in 40 CFR part 63, subpart SS.

(5) The owner or operator of a kiln or in-line kiln/raw mill subject to the 41 μg/dscm mercury standard shall demonstrate compliance using EPA Method 29 of 40 CFR part 60. ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), is an acceptable alternative to EPA Method 29 (portion for mercury only). If the kiln has an in-line raw mill, you must demonstrate compliance with both raw mill off and raw mill on. You must record the hourly recycle rate of CKD during both test conditions and calculate an average hourly rate for the three test runs for each test condition.

* * * * *

■ 7. Section 63.1350 is amended as follows:

■ a. Revising paragraphs (g), (h) and (n); and

■ b. Adding paragraphs (o) and (p).

§ 63.1350 Monitoring requirements.

* * * * *

(g) The owner or operator of an affected source subject to an emissions limitation on D/F, THC or mercury emissions that employs carbon injection as an emission control technique shall comply with the monitoring requirements of paragraphs (f)(1) through (f)(6) and (g)(1) through (g)(6) of this section to demonstrate continuous compliance with the D/F, THC or mercury emissions standard.

(1) Install, operate, calibrate and maintain a continuous monitor to record the rate of activated carbon injection. The accuracy of the rate measurement device must be ±1 percent of the rate being measured.

(2) Verify the calibration of the device at least once every three months.

(3) The three-hour rolling average activated carbon injection rate shall be calculated as the average of 180 successive one-minute average activated carbon injection rates.

(4) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average is added to the previous 179 values to calculate the three-hour rolling average.

(5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on, or from on to off, the calculation of the three-hour

rolling average activated carbon injection rate must begin anew, without considering previous recordings.

(6) The owner or operator must install, operate, calibrate and maintain a continuous monitor to record the activated carbon injection system carrier gas parameter (either the carrier gas flow rate or the carrier gas pressure drop) established during the mercury, THC or D/F performance test in accordance with paragraphs (g)(6)(i) through (g)(6)(iii) of this section.

(i) The owner or operator shall install, calibrate, operate and maintain a device to continuously monitor and record the parameter value.

(ii) The owner or operator must calculate and record three-hour rolling averages of the parameter value.

(iii) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average shall be added to the previous 179 values to calculate the three-hour rolling average.

(h) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (h)(1) through (h)(3) of this section to demonstrate continuous compliance with the THC emission standard:

(1) The owner or operator shall install, operate and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A, of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part.

(2) The owner or operator is not required to calculate hourly rolling averages in accordance with section 4.9 of Performance Specification 8A if they are only complying with the 50 ppmv THC emissions limit.

(3) For facilities complying with the 50 ppmv THC emissions limit, any thirty-day block average THC concentration in any gas discharged from a greenfield raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a greenfield in-line kiln/raw mill, exceeding 50 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

(4) For new facilities complying with the 20 ppmv THC emissions limit, any hourly average THC concentration in any gas discharged from a raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a kiln or in-line kiln/raw mill, exceeding 20 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

* * * * *

(n) Any kiln or kiln/in-line raw mill using a control device (other then ACI) to comply with a mercury emissions limit or equipment standard will monitor the control device parameters as specified in 40 CFR part 63 subpart SS.

(o) For kilns and in-line kilns/raw mills complying with the requirements in Section 63.1344(g), each owner or operator must obtain a certification from the supplier for each shipment of fly ash received to demonstrate that the fly ash was not derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of mercury emissions control. The certification shall include the name of the supplier and a signed statement from the supplier confirming that the fly ash was not derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of emission control.

(p) If the facility opts to use a fly ash derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of mercury emissions control and demonstrate that the use of this fly ash does not increase mercury emissions, they must obtain daily fly ash samples, composites monthly, and analyze the samples for mercury.

■ 8. Section 63.1351 is revised to read as follows:

§ 63.1351 Compliance dates.

(a) Except as noted in paragraph (c) below, the compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 14, 2002.

(b) Except as noted in paragraph (d) below, the compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998, is June 14, 1999, or upon startup of operations, whichever is later.

(c) The compliance date for an existing source to meet the requirements of GCP for THC is December 20, 2007.

(d) The compliance date for a new source which commenced construction after December 2, 2005, and before December 20, 2006 to meet the THC emission limit of 20 ppmv/98 percent reduction or the mercury standard of 41 μg/dscm or a site-specific standard based on application of a wet scrubber will be December 21, 2009.

■ 9. Section 63.1355 is amended by adding paragraphs (d), (e) and (f) to read as follows:

§ 63.1355 Recordkeeping requirements.

* * * * *

(d) You must keep annual records of the amount of CKD which is removed from the kiln system and either disposed of as solid waste or otherwise recycled for a beneficial use outside of the kiln system.

(e) You must keep records of the amount of CKD recycled on an hourly basis.

(f) You must keep records of all fly ash supplier certifications as required by § 63.1350(o).

■ 10. Section 63.1356 is amended by revising paragraph (a) to read as follows:

§ 63.1356 Exemption from new source performance standards.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, any affected source subject to the provisions of this subpart is exempt from any otherwise applicable new source performance standard contained in subpart F or subpart OOO of part 60 of this chapter.

(1) Kilns and in-line kiln/raw mills, as applicable, under 40 CFR 60.60(b), located at area sources are subject to PM and opacity limits and associated reporting and recordkeeping, under 40 CFR part 60, subpart F.

(2) Greenfield raw material dryers, as applicable under 40 CFR 60.60(b), located at area sources, are subject to opacity limits and associated reporting and recordkeeping under 40 CFR part 60, subpart F.

* * * * *

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Walter L. Tweedy,

Acting Manager, System Support Group, ATO Central Service Area.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0058; FRL–8252–2]

RIN 2060–AN32

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration of Emissions Averaging Provision and Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters. After promulgation of this final rule, the Administrator received petitions for reconsideration of certain provisions in the final rule. Subsequently, EPA published a notice of the reconsideration and requested public comment on proposed amendments to the NESHAP. After evaluating public comments, we are adopting each of the amendments that we proposed.

DATES: This final rule is effective on February 5, 2007. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of **Federal Register** as of February 5, 2007.

ADDRESSES: EPA has established a docket for this action under docket ID No. EPA–HQ–OAR–2002–0058. 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 (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 Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room B102, 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. James Eddinger, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426, fax number: (919) 541–5450, e-mail address: *eddinger.jim@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by the final rule:

Category	NAICS code	Examples of potentially regulated entities
Any industry using a boiler or process heater in the final rule ...	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational Services.

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 would be regulated by this final rule, you should carefully examine the applicability criteria in 40 CFR 63.7485 of this final rule. If you have any questions regarding the applicability of this final rule to a particular entity, contact the person listed 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 rule will be available on the WWW through the Technology Transfer Network Web site (TTN). EPA has posted a copy of the final rule 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 5, 2007. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Background Information Document. EPA proposed and provided notice of the reconsideration of the NESHAP for industrial, commercial, and institutional boilers and process heaters on October 31, 2005 (70 FR 62264) and received 17 comment letters on the proposal. A memorandum "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to GE Petition and Reconsideration of the Final Rule," containing EPA's responses to each public comment is available in Docket No. EPA–HQ–OAR–2002–0058.

Organization of this document: The information presented in this preamble is organized as follows:

I. Statutory Authority for the Final Rule
II. Background
III. What changes are included in this final rule?
A. American Society for Testing and Materials (ASTM) Test Methods
B. Utility Steam Generating Units
C. Fuel Analysis Requirement
D. Consolidated Testing
1. Compliance With Consolidated Testing
2. Monitoring of Common Stack
3. Emissions Averaging when Units in Different Subcategories are Ducted to Common Stack
4. Continuous Compliance With the Emissions Averaging Provision
5. Monthly Compliance Demonstrations and Calculations
E. Definitions
IV. Responses to Significant Comments
A. Scope of Emissions Averaging Provision
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C. Definitions
D. Testing Methods
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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Statutory Authority for the Final Rule

Section 112 of the Clean Air Act (CAA) requires us to list categories and subcategories of major sources and area sources of hazardous air pollutant (HAP) and to establish NESHAP for the listed source categories and subcategories. Industrial boilers, commercial and institutional boilers, and process heaters were listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for industrial, commercial, and institutional (ICI) boilers and process heaters (Boilers NESHAP) as subpart DDDDD of 40 CFR part 63 under section 112(d) of the CAA. The NESHAP contain technology-based emissions standards reflecting the maximum achievable control technology and a health-based compliance alternative for certain threshold pollutants. We proposed these standards for ICI boilers and process heaters on January 13, 2003 (68 FR 1660).

In the preamble for the January 2003 proposed rule, we discussed our consideration of a bubbling compliance alternative and requested comment on incorporating a bubbling compliance alternative (*i.e.*, emission averaging) into this final rule as part of EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced. (See 68 FR 1686.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the emissions averaging approach. We received a total of 40 public comment letters regarding the emissions averaging approach in the proposed rule during the comment period. We summarized major public comments on the proposed emissions averaging approach, along with our responses to those comments, in the preamble to the final rule (69 FR 55238) and in the memorandum "Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised)" (RTC Memorandum) which was placed in the docket for the final rule.

In the September 2004 final rule, we adopted an emissions averaging provision for existing large solid fuel boilers. The procedures that affected sources must use to demonstrate compliance through emissions averaging were promulgated at 40 CFR 63.7522. (See 69 FR 55257.) For each existing large solid fuel boiler in the averaging group, the emissions are capped at the emission level being achieved on the effective date of the final rule (November 12, 2004). Under emissions averaging provision in the 2004 final rule, compliance must be demonstrated on a 12-month rolling average basis, determined at the end of every calendar month. If a facility uses this option, it must also develop and submit an implementation plan to the applicable regulatory authority for review and approval no later than 180 days before the date that the facility intends to demonstrate compliance.

Following promulgation of the emissions averaging provision in the final rule, the Administrator received a petition for reconsideration pursuant to section 307(d)(7)(B) of the CAA from General Electric (GE). Under this section, the Administrator is to initiate reconsideration proceedings if the petitioner can show 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.

GE requested that EPA reconsider portions of the emissions averaging provision that it believes could not have been practicably addressed during the public comment period. In the alternative, GE requested clarification that the final rule already allows for consolidated testing of commonly vented boilers. By a letter dated April 27, 2005, we informed GE that we intended to grant their petition for reconsideration. On October 31, 2005, we published a notice of reconsideration and proposed amendments to the final rule (70 FR 62264).

In the notice of reconsideration of the emissions averaging provision, we proposed amendments to 40 CFR 63.7522 and solicited comment in the following areas: (1) Allowing testing of a common stack in situations where each of the units vented to the common stack are in the existing solid fuel subcategory; (2) treating a group of boilers that vent through a common emissions control system to a common stack as a single existing solid fuel boiler for the purpose of subpart DDDDD of 40 CFR part 63; (3) treating a group of boilers that vent through more than one common emissions control system as distinct units and requiring individual compliance testing according to the methods specified in Table 8 to subpart DDDDD; (4) demonstrating compliance with opacity limits using a single continuous opacity monitoring system (COMS) located in the common stack if each of the boilers venting to the common stack has an applicable opacity limit; (5) treating certain common stack situations as a single emission point for purposes of averaging emissions with other existing large solid fuel boilers located at the facility.

In addition, our October 31, 2005 notice of proposed rulemaking included several corrections to subpart DDDDD of 40 CFR part 63 that were not related to emissions averaging. Several clarifying amendments addressed: (1) The applicability of firetube boilers in the small unit subcategories and limited use subcategories; (2) the definitions of firetube and watertube boilers with respect to "hybrid boilers"; and (3) the equivalent methods allowed in Table 6 to subpart DDDDD. The proposed corrections include language that: (1) Excludes electric utility steam

generating units that are covered by 40 CFR part 60, subpart Da or 40 CFR part 60, subpart HHHH; (2) adds Equation 4A to subpart DDDDD for calculating a 12-month rolling average emission rate when using the emissions averaging option; (3) requires an oxygen monitor to be installed when a carbon monoxide monitor is required by the rule; and (4) updates American Society of Testing and Materials (ASTM) test methods in Table 6 to subpart DDDDD.

A comprehensive response to public comments is available in a document entitled "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to GE Petition and Reconsideration of the Final Rule," which can be found in the docket (Docket No. EPA–HQ–OAR–2002–0058).

III. What Changes Are Included in This Final Rule?

In this final action, we are making a limited number of corrections and amendments to 40 CFR 63.14 and sections 63.7491, 63.7510, 63.7522, 63.7525, 63.7540, 63.7541, 63.7575, and Table 6 of subpart DDDDD consistent with our October 2005 proposal. These changes improve and clarify the procedures for implementing the emissions averaging provision and for conducting compliance testing when boilers are vented to a common stack. Among other technical corrections, we also are clarifying several definitions to help affected sources classify "limited use" and "hybrid" boilers. We have modified some of regulatory language that we proposed based on public comments, but overall, we are adopting amendments to the emission averaging provision and other provision in subpart DDDDD that are in substantially the same form as what we proposed in October 2005.

A. American Society for Testing and Materials (ASTM) Test Methods

We are adopting the proposed revisions relating to ASTM test methods without change. As suggested by the ASTM, we are amending Table 6 to subpart DDDDD to reflect updated ASTM test methods. Similar changes are also being made to 40 CFR 60.14 (Incorporation by Reference) of the General Provisions. Additionally, we are publishing in Table 1 of this preamble a list of testing methods that EPA previously reviewed and approved for use as "alternative" methods that are considered "equivalent" for the purpose of Table 6 to subpart DDDDD.

TABLE 1.—LIST OF EQUIVALENT METHODS APPROVED AS OF FEBRUARY 15, 2005

Pollutant or Analyte	EPA-approved equivalent method
Arsenic	SW–846–7060.[a]
	SW–846–7060A.
Chlorine	ASTM D2361.
Hydrogen Chloride	SW–846–5050.
	SW–846–9056.
	SW–846–9076.
	SW–846–9250.
	ASTM E776–87.
Mercury	EPA Method 1631E.
	SW–846–1631.
	ASTM D6722–01.
	EPA 821–R–01–013.
Higher Heating Value	ASTM E711–87 (1996).
	ASTM D240.
Moisture content of Coal Fuel.	ASTM D2691–95.
Moisture Analysis	EPA 160.3 Mod.
Digestion Procedure	EPA–821–R–01–03.
	ASTM D586 (Dry Ash method).
Sample Preparation for TSM.	SW–846–3050B.
Sample Preparation and Digestion for TSM.	SW–846–3050.
	TAPPI T266.
Sample Preparation and Grinding.	ASTM E829–94.
Selenium	SW–846–7740.
Total Selected Metals	EPA 200.8.
	ASTM D6357–04.
	ASTM D4606–03.
	EPA 7060A.
	SW–846–6020A.
	SW–846–6020.

[a] *http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm.*

This table is not meant to be exhaustive, because the list of equivalent methods is dynamic. This table is meant to serve as guidance for the methods that have been approved to date. We emphasize that equivalent methods may be used in lieu of the prescribed methods in Table 6 to subpart DDDDD at the discretion of the source owner or operator. Therefore, maintaining a list of "approved methods" in the final rule is not necessary. Similarly, approval of equivalent methods by EPA or the delegated implementation authority is not necessary.

B. Utility Steam Generating Units

We are adopting the regulatory language that we proposed to avoid overlapping coverage between subpart DDDDD of 40 CFR part 63 and other rules that apply to certain types of electric utility steam generating units. The types of boilers and process heaters that are not subject to subpart DDDDD are listed in 40 CFR 63.7491. Our intention was to exempt from subpart DDDDD any units that are already or will be subject to regulation for HAP under another standard. (See 69 FR 1663.) Because regulations relating to electric utility steam generating units were under development at the time of promulgation of subpart DDDDD, we were unable to reference a specific rule citation that applied to electric utility steam generating units. Instead, subpart DDDDD excluded electric utility steam generating units by using only the definition of electric utility steam generating units contained in section 112(a)(8) of the CAA.

On May 18, 2005, EPA promulgated the Clean Air Mercury Rule (70 FR 28606). In that rule, EPA established standards of performance for mercury (40 CFR part 60, subpart Da) from new electric utility steam generating units, as well as mercury emission guidelines for existing electric utility steam generating units (40 CFR part 60, subpart HHHH). After that rule was promulgated, it was brought to our attention that the scope of the exclusion in subpart DDDDD of 40 CFR part 63 for electric utility steam generating units was unclear. Confusion resulted because 40 CFR part 60, subparts Da and HHHH, employ different definitions to determine applicability. (See 70 FR at 28609.) Thus, to clarify applicability of subpart DDDDD, we are amending 40 CFR 63.7491(c) to exclude "an electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) or a Mercury Budget unit covered by 40 CFR part 60, subpart HHHH."

C. Fuel Analysis Requirement

We received a comment raising the question of whether we intended for units which combust only a single fuel type to be required to conduct fuel analysis when demonstrating compliance through performance (stack) testing, as required by 40 CFR 63.7510(a). Our intent, as stated in the September 2004 preamble to the final rule (69 FR 55225), was that "Units burning only a single fuel type (not including startup fuels) do not need to determine, by fuel analysis, the fuel inlet operating limit when conducting performance tests." In this final action, we are adding similar language to 40 CFR 63.7510(a) to make this understanding explicit in the text of our regulations. This change was not included among the corrections we proposed in October 2005. However, since this revision is based on language in the September 2004 preamble that has not given rise to any objection, we are adopting this correction as part of this final rule.

D. Consolidated Testing and Emissions Averaging

The current language for the emissions averaging option in 40 CFR 63.7522 requires testing of each individual boiler in the averaging group. Our intent with regard to the emissions averaging option in the final rule was to provide an equivalent, more flexible, and less costly compliance alternative. Since testing emissions from a common stack for a group of boilers would be equivalent to the average emissions calculated from emissions tests on each individual boiler, we are amending subpart DDDDD of 40 CFR part 63 to allow testing of emissions at the common stack under specified situations described below.

Consolidated testing of the common stack must be conducted when each boiler is operated under representative testing conditions as specified in the National Stack Testing Guidance issued by EPA on September 30, 2005.

The amendments to 40 CFR 63.7522 adopted in this action are substantially the same as what we proposed in October 2005. However, based on public comments, we have modified some of the proposed language and added some conforming amendments to other provisions of subpart DDDDD of 40 CFR part 63 that relate to emissions averaging.

1. Compliance With Consolidating Testing

GE sought clarification on the consolidated testing procedures necessary to demonstrate compliance in two different common stack situations. In one situation, the exhaust from three existing large solid fuel boilers are combined and vented through a common emissions control system to a common stack. In the other situation, the exhaust from two existing large solid fuel boilers are each individually controlled prior to being vented to a common stack. In the revised regulatory provisions set forth below, we are amending this final rule to clarify how to demonstrate compliance under these two circumstances. The final amendments address these two circumstances in the same way that we proposed in October 2005.

In the first situation, a group of units that share a common control device before venting to a common stack is treated as a single source. In such situations, an operator can demonstrate compliance by testing at the common stack without using the emissions averaging equations in 40 CFR 63.7522 for each unit or submitting an implementation plan. We are also adding language in section 63.7522(k) of subpart DDDDD to clarify that the common stack situations described above may be treated as a separate single emission point for purpose of including these units in an emissions averaging group with other existing large solid fuel boilers located at the facility.

We are adopting a slightly different approach for averaging emissions from groups of affected units that vent to a common stack through more than one emissions control system. These distinct approaches are necessary to ensure that a source with more than one emissions control system demonstrates continuous compliance at each emissions control system. Where a group of boilers vents to a common stack through more than one emission control system, continuous compliance will be demonstrated according to the methods specified in Table 8 to subpart DDDDD.

2. Monitoring of Common Stack

In this final action, we are adding an amendment to section 63.7541 of subpart DDDDD to address the COMS requirements for facilities participating in the emissions averaging option. If each of the boilers venting to a common stack has an applicable opacity operating limit, a dry control system, and no units from other subcategories or nonaffected units vent to the common stack, then a single COMS may be located in the common stack instead of each duct to the common stack. Alternately, if any of the boilers venting to the common stack does not have an applicable opacity operating limit, but each of the existing solid fuel units is equipped with a dry control system and no nonaffected units vent to the common stack, a COMS monitor may be located at the common stack instead of each duct to the common stack. We amended 40 CFR 63.7541 to allow for a COMS monitor at the common stack in this situation.

We discussed this approach in the October 2005 proposal (70 FR at 62268), but did not include any regulatory language in that action. Commenters requested that we make explicit in our regulations that this practice is permissible when sources elect to demonstrate compliance using emissions averaging.

3. Emissions Averaging When Units in Different Subcategories Are Ducted to Common Stack

In response to the GE petition for reconsideration, we proposed amendments that would limit the emissions averaging provision to common stack scenarios that contained solely units in the existing large solid fuel subcategory. In this final action, we have decided to expand the emissions averaging provision to allow units in the existing large solid fuel subcategory to conduct performance tests at the end of a common stack configuration with affected units from other subcategories and nonaffected units under specific circumstances.

As a result of public comments submitted, we now recognize that affected units from several subcategories (*e.g.*, both gas and solid fuel fired units) and nonaffected units are sometimes ducted to a common stack. To address these situations, we are adopting a revised amendment to the emissions averaging provision in 40 CFR 63.7522 that allows consolidated testing of units in the existing large solid fuel subcategory as long as the commonly vented units from other subcategories and nonaffected units follow specific procedures during the consolidated compliance test.

The emissions averaging provision is only applicable to units in the existing large solid fuel subcategory. EPA did not find cause to promulgate emissions limitations for many of the subcategories of existing units. However, new units are subject to different emissions limitations than existing units. These differing emissions limitations make it difficult to allow consolidated testing of emissions from sources in different subcategories under an emissions averaging approach.

However, to eliminate this obstacle to consolidated testing when existing large solid fuel units may share a duct or stack with units in other subcategories or nonaffected units covered by another NESHAP category, we are requiring facilities to shut down, or vent to a different stack, affected boilers or process heaters in other subcategories or nonaffected units in other categories prior to performing a consolidated compliance test for the units in the large solid fuel subcategory. Testing of a common stack in these situations will measure the average emissions from the averaging group of existing large solid fuel units, just as if each boiler in the large solid fuel subcategory was tested individually and their emissions averaged. By requiring the affected units from other subcategories or nonaffected units to be shut off, or vented to a different stack, during testing, the consolidated testing for certain stack configurations allows the group of existing large solid fuel boilers to demonstrate initial compliance at a lower cost.

Allowing the testing of a common stack under these conditions also

satisfies the criteria discussed in the September 2004 preamble to the final rule (69 FR 55239) that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. This final rule fully satisfies each of these criteria.

The provision promulgated in this action only allows averaging of emissions from existing units in the large solid fuel subcategory. Emissions from units that are shut down or vented elsewhere during compliance testing are not included in the average or co-mingled with the emissions that are the focus of the test.

4. Continuous Compliance With the Emissions Averaging Provision

As a result of this expansion to the emissions averaging provision, we had to establish continuous compliance procedures with this provision to address common stack scenarios with units from multiple subcategories or nonaffected units. In this final rule, we are also amending 40 CFR 63.7541 to establish continuous compliance procedures under the emissions averaging provision for common stack configurations with different subcategories or nonaffected units. These amendments require affected units to maintain 3-hour average parametric limits on all the control devices for existing large solid fuel boilers venting to a common stack. The parametric limits will ensure that the control devices continue to operate under the conditions established during the initial compliance test. These amendments establish continuous compliance requirements for common stack configurations that were not previously eligible to comply with the emissions averaging provision.

5. Monthly Compliance Demonstrations and Calculations

This final rule includes several additional amendments to subsections (d), (e), and (f) of section 63.7522 that were recommended in public comments. These amendments clarify that, under the emissions averaging provision, continuous compliance must be demonstrated at the end of every month (12 times per year). In addition, we have made several corrections to the formulas used in emissions averaging calculations. Additional details on these amendments are reflected in the Response-to-Comments document that is available in Docket No. EPA-HQ-OAR-2002-0058.

E. Definitions

In the October 2005 notice, we proposed to add or amend several definitions in subpart DDDDD of 40 CFR part 63 to clarify our intent and correct inadvertent omissions. In this final action, we are adopting modified versions of several definitions based on public comments. In addition, we are promulgating three additional definitions to provide additional clarity requested by commenters.

We have added a definition for "common stack" similar to the definition provided in 40 CFR part 72 at the request of some of the commenters.

We have also added a definition for "voluntary consensus standards" since this term is used to define "equivalent" as this term is used in Table 6 of subpart DDDDD. We are adopting the same definition of "equivalent" that we proposed, but we have added language to Table 6 of subpart DDDDD to clarify that equivalent methods may be used in lieu of the prescribed methods in Table 6 at the discretion of the source owner or operator.

The definitions for both "firetube boiler" and "watertube boiler" are amended to include criteria for classifying boilers designed with both firetubes and watertubes, commonly referred to as "hybrid boilers." Based on comments, we are adopting a modified definition of firetube boiler to include boilers that utilize a containment shell that encloses firetubes and allows the water to vaporize and steam to separate. We have also modified the definition of watertube boilers that we proposed to include boilers that incorporate a steam drum with tubes connected to the drum to separate steam from water.

We have amended the proposed definitions for both small gaseous and small liquid fuel subcategories to clarify that these subcategories include all firetube boilers, regardless of size, as well as other types of boilers with a rated capacity of 10 million MMBtu per hour heat input or less. We have amended the definitions to clarify our intent that firetube boilers greater than 10 MMBtu per hour heat input are still part of the small subcategory.

We have also added an amendment to the definitions for both the small and large gaseous fuel subcategories to allow for units in these two categories to periodically test using liquid fuel as long as the tests do not exceed a combined total of 48 hours during any calendar year. This allowance was adopted because of the need to test an emergency fuel in order to ensure that the unit could effectively operate using the emergency fuel during a period of gas curtailment. California regulations stipulate a 48-hour limit on this periodic testing on emergency fuels, and we have adopted their precedent.

We are also amending the definition of "fuel type" in response to a comment we received. Questions have been raised on whether we intended for units that may burn evidence seized in drug raids as a public service for a variety of enforcement agencies to test these materials as part of the compliance testing requirements. It is reportedly exceedingly difficult to arrange for a test of these materials given the security that surrounds them. Also, facilities have been approached about burning retired U.S. flags. Burning is the preferred mode of disposal of retired U.S. flags. Since we did not intend to include contraband materials, or U.S. flags, as a fuel when a facility is conducting performance tests or fuel analyses to demonstrate compliance, we are amending the definition of "fuel type" to include the statement "Contraband, prohibited goods, or retired U.S. flags, burned at the request of a government agency, are not considered a fuel type for the purpose of this subpart." We do not classify facilities designed and operated for energy recovery as commercial and industrial solid waste incinerators if they combust small amounts of others materials. (See 70 FR 55568, 55575; September 22, 2005.)

A revision to the definition of "fuel type" was not included among the corrections that we proposed. However, since this amendment addresses a *de minimis* situation that supports law enforcement efforts and respect for a national symbol, we are adopting this correction in this final action.

IV. Responses to Significant Comments

We received 17 public comment letters on the proposed rule and notice of reconsideration. Complete summaries of all the comments and EPA responses are found in the Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section). The most significant comments are summarized below.

A. Scope of Emissions Averaging Provision

Comment: Several commenters requested that EPA expand the common stack testing option to include common stack configurations with groups of boilers from different subcategories or units not subject to the boiler NESHAP. Two of these commenters added that in

many situations the layout of boilers and ductwork to common stacks make it impractical to perform emissions testing on each individual boiler venting to the common stack due to a lack of appropriate sampling location and duct configurations. One commenter (OAR–2002–0058–0722) added that in order to test each individual unit a source would have to build a temporary testing system of stacks and ductwork to demonstrate initial compliance, and this temporary system would still not be suitable for demonstrating continuous compliance. The commenter contended that without expanding the testing to groups of boilers from different source categories venting to a common stack, the NESHAP would require a source to reconfigure its ductwork and build new stacks.

One commenter approved of EPA's amendments to allow common stack performance testing under the circumstances provided in the proposed amendments.

Response: We agree in part with the commenters' recommendation and have modified the rule to allow performance testing to be conducted at the end of stacks that receive emissions from boilers from different subcategories and nonaffected units in other NESHAP categories, as long as the emissions from these other units are stopped or redirected as described further below. However, we do not consider it appropriate to allow averaging of emissions from units in other subcategories or nonaffected units or consolidated testing of co-mingled emissions from units in other subcategories or nonaffected units. EPA has generally imposed limits on emissions averaging programs, which includes no averaging between emission units that are not part of the same source category. Since these units are generally subject to different emissions limitations, averaging or co-mingling of emissions would not provide a reliable demonstration of compliance with the applicable emissions limitation for those sources in a particular category or subcategory.

Nevertheless, we do consider it appropriate under specified conditions described further below to allow testing at the end of the common stack for existing large solid fuel units at facilities with stack configurations that contain units from other subcategories (*e.g.*, gas-fired units) and nonaffected units. EPA has established a clear and enforceable method for demonstrating initial, annual, and continuous compliance when units of different subcategories and nonaffected units vent to a common stack. Further, extending the common stack testing option to these stack configurations will not cause adverse effects to human health or the environment. The total emissions out of the stack will not increase as a result of this extension and compliance with the emission limits of each unit feeding the common stack will be determined by parametric limits on the control device through which the units vent to the common stack.

Facilities that have common stack configurations consisting of units subject to the boiler NESHAP and units from other source categories also have the prerogative to petition for alternate testing and compliance plans on a site-specific basis.

B. Compliance Testing and Monitoring

Comment: Several commenters suggested an alternative methodology to meet the requirements of initial and annual compliance tests for units opting to use the emissions averaging provision. These commenters suggested that during the initial and subsequent annual compliance tests, all boilers venting to the common stack that are not subject to emission limits be turned off (*i.e.* gas-fired units or nonaffected units). These commenters suggested that shutting down units of different subcategories or nonaffected units would satisfy the requirements of the boiler NESHAP. One commenter added that these methods will still provide reliable test data to the regulatory authorities to demonstrate compliance. One commenter added that since many large solid fuel units share a stack with gas-fired units, the NESHAP, as proposed in the notice of reconsideration, would require individual performance testing on each large solid fuel boiler, which would greatly increase the costs of testing compliance and increase system downtime.

Response: We agree that turning off units from other subcategories (*e.g.*, gas-fired units) and nonaffected units during the testing period, satisfies the requirements of the boiler NESHAP emissions averaging provision. Allowing the testing of a common stack, when units from other subcategories and nonaffected units are turned off satisfies the criteria that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. The provision promulgated in this action only allows averaging of emissions from existing units in the large solid fuel subcategory. Emissions from units that are shut down or vented elsewhere during compliance testing are not included in the average or co-mingled with the emissions that are the focus of the test.

Facilities that have common stack configurations, with units subject to the boiler NESHAP and nonaffected units, have the prerogative to petition for alternate testing and compliance plans on a site-specific basis. The type of testing discussed here is one example of an alternate testing and compliance plan that a facility would petition for on a site-specific basis. We have adjusted the rule language in 40 CFR 63.7522(h) to allow for shutting down units from other subcategories and nonaffected units to demonstrate compliance with the emissions averaging provision when units belonging to different subcategories of the boiler NESHAP and nonaffected units vent to the same stack as large solid fuel boilers.

Comment: Two commenters suggested that parametric limits be set on all control devices used on solid fuel fired units and that these parametric limits be used to demonstrate continuous compliance with the emissions averaging provision of the boiler NESHAP. These commenters added that parametric limits on the control devices for existing large solid-fuel boilers would ensure that these control devices operated under the conditions established during the initial compliance test and provide a defensible way to demonstrate continuous compliance with the emissions averaging provision of the boiler NESHAP. One commenter suggested that parametric compliance limits be set on any control device in the group of units sharing a common stack, regardless of whether the conditions are wet or dry in the stack.

Response: We agree that setting parametric limits on all control devices for existing large solid-fuel boilers venting to a common stack is an acceptable method for demonstrating continuous compliance with the emissions averaging provision of the boiler NESHAP. These parametric limits are a clear and enforceable method of demonstrating compliance. We have adjusted the rule language in 40 CFR 63.7541 to allow for a facility to demonstrate continuous compliance under the emissions averaging provision by using parametric limits on the control devices of existing large solid fuel units venting to a common stack.

Comment: One commenter requested that EPA allow for a COMS at a common stack even when a source does not make use of the emissions averaging provision and opts to do performance testing on individual boilers. The commenter added that this regulatory flexibility will reduce compliance costs and maintain adequate levels of emissions monitoring.

Two commenters requested that EPA clarify 40 CFR 63.7525(b) to allow a COMS to be located at the common stack, regardless of whether the group of boilers sharing a common stack consists of boilers of different subcategories. One commenter suggested that it did not believe EPA intended to require a COMS on individual units sharing a common stack. The commenter added that it is impractical, due to a lack of space or adequate location, to install individual COMS monitors in the duct work for groups of boilers that share a common stack. The commenter cites 40 CFR part 60, appendix B, Performance Specification (PS)–1, to reference that in many cases this requirement has been satisfied by placing a COMS on the common stack.

One commenter suggested that language be added to 40 CFR 63.7522(j)(3) to indicate that a COMS monitor is required at a common stack, even when each individual boiler unit has a separate opacity operating limit. The commenter is concerned that without additional language, 40 CFR 63.7522(j)(3) could be misinterpreted to require a COMS in each duct leading to the common stack. The commenter noted that although there is discussion of this intent in the preamble (70 FR 62268), the commenter suggested that there be language added to this effect in the actual rule text. The commenter also suggested that language be added to 40 CFR 63.7541(a)(2) to clarify that a single COMS monitor for a group of units that each vents through a unique control system and then to a common stack. The commenter suggested this language is necessary so that this group of units is treated similarly to a group of units venting through a common control device to a common stack with respect to the requirements of a COMS.

Response: We agree with these suggestions as long as all units feeding the common stack are in the existing large solid fuel subcategory. The emissions averaging provision was intended to be an option for affected facilities to allow for increased regulatory flexibility. We reiterate here that if a source chooses to do performance testing for HAP emissions at each individual unit, the source is still eligible to locate a COMS monitor on the common stack as long as all the units feeding the common stack are in the existing large solid fuel subcategory.

We disagree with the commenter's suggestion to allow for a COMS monitor to be located at the common stack when groups of boilers from different affected subcategories or nonaffected units are feeding the stack. We also disagree with allowing a single COMS unit to be placed on the common stack if the units feeding the common stack belong to other source categories.

C. Definitions

Comment: Several commenters requested that EPA modify the definitions of firetube and watertube boilers to account for hybrid boilers. The commenters suggested that EPA make the distinction between the two units based on the location of the containment or steam separation system in the unit in order to clarify the basic difference between fire tube and water tube units. Three commenters added that water tube units incorporate a steam drum, which provides for steam separation from water, whereas a fire tube unit uses a containment shell, inside which the water vaporizes and steam separates. One commenter suggested that a water tube boiler be defined as a boiler that has a water tube type of steam drum, with no additional heat exchange surface in the form of fire tubes running through the drum. The commenter suggested that a fire tube boiler be defined as any hybrid type of boiler where steam separation takes place in a vessel that also contains fire tubes that provide the major heat input to the water. The commenter added that this approach will simplify interpretation of this definition. Two commenters requested that EPA adopt the following addition to the definition of firetube boiler to account for hybrid boilers: "All owners or operators of hybrid boilers that have been registered/certified by the National Board of Boiler and Pressure Vessel Inspectors and/or the State as firetube boilers as indicated by "Form P–2" (Manufacturers Data Report For All Types of Boilers Except Watertube and Electric As Required by the Provisions of the American Society of Mechanical Engineers (ASME) Code Rules, Section I) shall be considered small units for the purpose of this subpart."

Response: We agree with the distinction between a firetube and watertube boiler using the criteria of whether a unit has a containment shell or a steam drum. We consider the ASME Code Rules and Forms to be an acceptable and established method for classifying vessel types. We have modified the proposed definitions of watertube and firetube boilers to allow a facility to classify its hybrid vessel by one of two methods: (1) Determining whether or not the unit has a steam drum or containment system, or (2) the indication of firetube boiler on the ASME P–2 form.

Comment: Two commenters requested that the definition for large gaseous fuel units be changed to allow for units to combust oil during periods of natural gas supply emergencies or natural gas curtailment. The commenters added that if the unit combusts oil for periodic testing under these circumstances, this unit should not be automatically categorized in the large oil fuel subcategory.

Response: We agree that it is necessary for gas-fired units that are designed for combusting oil during periods of natural gas curtailment to periodically tune the unit for proper oil firing and combustion to be prepared for such periods. Based on review of current regulations in California regarding equipment testing of non-gaseous fuel, periodic testing of oil is allowed for a combined total of 48 hours during any calendar year. This periodic testing for up to 48 hours, which is in addition to periods of combusting oil during natural gas curtailment, will not cause a boiler to be categorized in the oil fuel subcategories. We have amended the definitions to clarify that gas boilers that fire liquid fuel for the purposes of periodic testing are not included in the liquid fuel subcategories.

D. Testing Methods

Comment: Several commenters requested that EPA list some specific examples of equivalent methods in Table 6 to subpart DDDDD. The commenters specifically added that since the promulgation of the NESHAP, EPA has received and approved many site-specific requests for the use "equivalent" methods. The commenters requested that any approved methods be added to Table 6.

Another commenter disagreed with deleting test method ASTM D3684–01 from Table 6 to subpart DDDDD. The commenter added that this test method should be retained in Table 6, and the final revised table should indicate that this test method is applicable for determining both arsenic and selenium.

Two commenters requested that the latest revisions of following test methods be listed in Table 6 to subpart DDDDD: ASTM D3684 for coal mercury analysis, ASTM D3683 for coal total selected metals, and ASTM D4208 for coal chlorine content. These

commenters added that these methods have a long history as established standard methods. By adding these methods to Table 6, sources or testing companies would not have to petition for approval of these established methods. These commenters also added that many coal chlorine levels exceed the upper bound (1136 parts per million) on the concentration range for repeatability and reproducibility on ASTM D6721, and that ASTM D4208 is a more appropriate testing method on coals with high chlorine concentrations.

Two commenters recommended that EPA provide authority to the States for approving equivalent testing methods that have already been accepted by EPA on multiple similar site-specific requests. The commenters added that providing authority to the States is an efficient way to determine approved equivalent testing methods.

Response: With this action, we have clarified the definition of equivalent method. Equivalent methods are voluntary consensus standards (VCS) or EPA methods which are applicable to the fuel type or target analyte being measured. Although we disagree with adding a complete list of equivalent methods already approved to the final rule itself, we have provided a list of these previously approved methods in the preamble to the final rule. We have also added a definition of VCS to the final rule to help clarify what equivalent methods are. Equivalent methods may be used in lieu of the prescribed methods in Table 6 to subpart DDDDD at the discretion of the source owner or operator. Therefore, publishing a list of or adding to the list of approved methods is not necessary. Similarly, State or EPA approval of equivalent methods is not necessary.

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 is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. 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 final action imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the final rule amendments, the information collection request has not been revised. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0551 (EPA No. 2028.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

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 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 final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, 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 that is not dominant in its field.

After considering the economic impacts of this final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the final rule imposes no additional regulatory requirements on owners or operators of affected sources.

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 section, 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, for 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's 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 the private sector in any 1 year. Although the original NESHAP had annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), this final rule does not add new requirements that would increase this cost. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this final rule is 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."

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 requirements discussed in this action will not supersede State regulations that are more stringent. 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 (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. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this final 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 EPA.

This final rule is not subject to the Executive Order because EPA does not have reason to feel that the environmental health or safety risks associated with the emissions addressed by this action presents a disproportionate risk to children. This demonstration is based on the fact that this action does not affect the emissions limits contained in this final rule.

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

This final rule is not a "significant energy actions" 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 action is not likely to have any adverse energy effect.

I. National Technology Transfer and Advancement Act

As noted in the final 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 in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. During the development of this final rule, EPA searched for voluntary consensus standards that might be applicable. EPA adopted the following standards in this final rule: (1) ASTM D2013–04, "Standard Practice for Preparing Coal Samples for Analysis," (2) ASTM D2234–D2234M–03E01, "Standard Practice for Collection of a Gross Sample of Coal," (3) ASTM D6721–01, "Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydroylsis Microcoulometry," (4) ASTM D3173–03, "Standard Test Method for Moisture in the Analysis Sample of Coal and Coke," (5) ASTM D4606–03, "Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method," (6) ASTM D6357–04, "Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry," (7) ASTM D6722–01, "Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis," and (8) ASTM D5865–04, "Standard Test Method for Gross Calorific Value of Coal and Coke."

Table 6 to subpart DDDDD of 40 CFR part 63 lists the fuel analysis methods included in this final rule. Under 40 CFR 63.7(f) in 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. 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 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 rule" as defined by 5 U.S.C. 804(2). This final rule will be effective February 5, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: November 30, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 of the code of Federal Regulations is amended to read as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraphs (b)(55) through (62) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(55) ASTM D2013–04, Standard Practice for Preparing Coal Samples for Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(56) ASTM D2234–D2234M–03€[1], Standard Practice for Collection of a Gross Sample of Coal, IBR approved for Table 6 to subpart DDDDD of this part.

(57) ASTM D6721–01, Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry, IBR approved for Table 6 to subpart DDDDD of this part.

(58) ASTM D3173–03, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

(59) ASTM D4606–03, Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method, IBR approved for Table 6 to subpart DDDDD of this part.

(60) ASTM D6357–04, Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry, IBR approved for Table 6 to subpart DDDDD of this part.

(61) ASTM D6722–01, Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(62) ASTM D5865–04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

* * * * *

Subpart DDDDD—[Amended]

■ 3. Section 63.7491 is amended by revising paragraph (c) to read as follows:

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

* * * * *

(c) An electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) or a Mercury (Hg) Budget unit covered by 40 CFR part 60, subpart HHHH.

* * * * *

■ 4. Section 63.7510 is amended by revising paragraph (a) to read as follows:

§ 63.7510 What are my initial compliance requirements and by what date must I conduct them?

(a) For affected sources that elect to demonstrate compliance with any of the emission limits of this subpart through performance testing, your initial compliance requirements include conducting performance tests according to § 63.7520 and Table 5 to this subpart, conducting a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart, establishing operating limits according to § 63.7530 and Table 7 to this subpart, and conducting CMS performance evaluations according to § 63.7525. For affected sources that burn a single type of fuel, you are exempted from the initial compliance requirements of conducting a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart.

* * * * *

■ 5. Section 63.7522 is amended as follows:

■ a. By revising paragraph (b),

■ b. By revising paragraph (c),

■ c. By revising paragraph (d),

■ d. By revising paragraph (e),

■ e. By revising paragraph (f), and

■ f. By adding paragraphs (h) through (k).

§ 63.7522 Can I use emission averaging to comply with this subpart?

* * * * *

(b) Separate stack requirements. For a group of two or more existing large solid fuel boilers that each vent to a separate stack, you may average particulate matter or TSM, HCl and mercury emissions to demonstrate compliance with the limits in Table 1 to this subpart if you satisfy the requirements in paragraphs (c), (d), (e), (f), and (g) of this section.

(c) For each existing large solid fuel boiler in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on November 12, 2004 or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on November 12, 2004.

(d) The emissions rate from the existing large solid fuel boilers participating in the emissions averaging option must be in compliance with the limits in Table 1 to this subpart at all times following the compliance date specified in § 63.7495.

(e) You must demonstrate initial compliance according to paragraph (e)(1) or (2) of this section.

(1) You must use Equation 1 of this section to demonstrate that the particulate matter or TSM, HCl, and mercury emissions from all existing large solid fuel boilers participating in the emissions averaging option do not exceed the emission limits in Table 1 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n} (\text{Er} \times \text{Hm}) \div \sum_{i=1}^{n} \text{Hm} \qquad \text{(Eq. 1)}$$

Where:

Ave Weighted Emissions = Average weighted emissions for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as calculated according to Table 5 to this subpart or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Hm = Maximum rated heat input capacity of boiler, i, in units of million Btu per hour.

n = Number of large solid fuel boilers participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, you may use Equation 2 of this section as an alternative to using Equation 1 of this section to demonstrate that the particulate matter or TSM, HCl, and mercury emissions from all existing large solid fuel boilers participating in the emissions averaging option do not exceed the emission limits in Table 1 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sm} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sm} \times \text{Cf} \qquad \text{(Eq. 2)}$$

Where:

Ave Weighted Emissions = Average weighted emission level for PM or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as calculated according to Table 5 to this subpart or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Sm = Maximum steam generation by boiler, i, in units of pounds.

Cf = Conversion factor, calculated from the most recent compliance test, in units of million Btu of heat input per pounds of steam generated.

(f) You must demonstrate continuous compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraphs (f)(1) through (3) of this section. The first monthly period begins on the compliance date specified in § 63.7495.

(1) For each calendar month, you must use Equation 3 of this section to calculate the monthly average weighted emission rate using the actual heat capacity for each existing large solid fuel boiler participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hb}) \div \sum_{i=1}^{n}\text{Hb} \qquad \text{(Eq. 3)}$$

Where:

Ave Weighted Emissions = monthly average weighted emission level for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate, (as calculated during the most recent compliance test, (as calculated according to Table 5 to this subpart) or fuel analysis (as calculated by the applicable equation in § 63.7530(d)) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Hb = The average heat input for each calendar month of boiler, i, in units of million Btu.

n = Number of large solid fuel boilers participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, you may use Equation 4 of this section as an alternative to using Equation 3 of this section to calculate the monthly weighted emission rate using the actual steam generation from the large solid fuel boilers participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sa} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sa} \times \text{Cf} \qquad \text{(Eq. 4)}$$

Where:

Ave Weighted Emissions = monthly average weighted emission level for PM or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate, (as calculated during the most recent compliance test (as calculated according to Table 5 to this subpart) or by fuel analysis (as calculated by the applicable equation in § 63.7530(d))) for boiler, i, for particulate matter or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Sa = Actual steam generation for each calendar month by boiler, i, in units of pounds.

Cf = Conversion factor, as calculated during the most recent compliance test, in units of million Btu of heat input per pounds of steam generated.

(3) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the monthly average weighted emission rate determined under paragraph (f)(1) or (2) of this section. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 4A of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current month and the previous 11 months.

$$E_{avg} = \frac{\sum_{i=1}^{n}ER_i}{12} \qquad \text{(Eq. 4A)}$$

Where:

Eavg = 12-month rolling average emission rate, (pounds per million Btu heat input)

ERi = Monthly weighted average, for month "i", (pounds per million Btu heat input)(as calculated by (f)(1) or (2))

* * * * *

(h) Common stack requirements. For a group of two or more existing large solid fuel boilers, each of which vents through a single common stack, you may average particulate matter or TSM, HCl and mercury to demonstrate compliance with the limits in Table 1 to this subpart if you satisfy the requirements in paragraph (i) or (j) of this section.

(i) For a group of two or more existing large solid fuel boilers, each of which vents through a common emissions control system to a common stack, that

does not receive emissions from units in other subcategories or categories, you may treat such averaging group as a single existing solid fuel boiler for purposes of this subpart and comply with the requirements of this subpart as if the group were a single boiler.

(j) For all other groups of boilers subject to paragraph (h) of this section, the owner or operator may elect to:

(1) Conduct performance tests according to procedures specified in § 63.7520 in the common stack (if affected units from other subcategories (*e.g.*, gas-fired units) or nonaffected units vent to the common stack, the units from other subcategories and nonaffected units must be shut down or vented to a different stack during the performance test); and

(2) Meet the applicable operating limit specified in § 63.7540 and Table 8 to this subpart for each emissions control system (except that, if each boiler venting to the common stack has an applicable opacity operating limit, then a single continuous opacity monitoring system may be located in the common stack instead of in each duct to the common stack).

(k) *Combination requirements.* The common stack of a group of two or more boilers subject to paragraph (h) of this section may be treated as a separate stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

■ 6. Section 63.7525 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) If you have an applicable work practice standard for carbon monoxide, and your boiler or process heater is in any of the large subcategories and has a heat input capacity of 100 MMBtu per hour or greater, you must install, operate, and maintain a continuous emission monitoring system (CEMS) for carbon monoxide and oxygen according to the procedures in paragraphs (a)(1) through (6) of this section by the compliance date specified in § 63.7495. The carbon monoxide and oxygen shall be monitored at the same location at the outlet of the boiler or process heater.

(1) Each CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification (PS) 3 or 4A of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

* * * * *

■ 7. Section 63.7540 is amended by revising paragraph (a)(4) to read as follows:

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) * * *

(4) If you demonstrate compliance with an applicable HCl emission limit through performance testing and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum chlorine input using Equation 5 of § 63.7530. If the results of recalculating the maximum chlorine input using Equation 5 of § 63.7530 are higher than the maximum chlorine input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.7520 to demonstrate that the HCl emissions do not exceed the emission limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.7530(c).

* * * * *

■ 8. Section 63.7541 is amended as follows:

■ a. By revising paragraph (a) introductory text,

■ b. By revising paragraph (a)(2),

■ c. By adding paragraph (a)(5), and

■ d. By revising paragraph (b).

§ 63.7541 How do I demonstrate continuous compliance under the emission averaging provision?

(a) Following the compliance date, the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of paragraphs (a)(1) through (5) of this section.

* * * * *

(2) You must maintain the applicable opacity limit according to paragraphs (a)(2)(i) through (ii) of this section.

(i) For each existing solid fuel boiler participating in the emissions averaging option that is equipped with a dry control system and not vented to a common stack, maintain opacity at or below the applicable limit.

(ii) For each group of boilers participating in the emissions averaging option where each boiler in the group is an existing solid fuel boiler equipped with a dry control system and vented to a common stack that does not receive emissions from affected units from other subcategories or nonaffected units, maintain opacity at or below the applicable limit at the common stack;

* * * * *

(5) For each existing large solid fuel boiler participating in the emissions averaging option venting to a common stack configuration containing affected units from other subcategories and/or nonaffected units, maintain the appropriate operating limit for each unit as specified in Tables 2 through 4 to this subpart that applies.

(b) Any instance where the owner or operator fails to comply with the continuous monitoring requirements in paragraphs (a)(1) through (5) of this section, except during periods of startup, shutdown, and malfunction, is a deviation.

■ 9. Section 63.7575 is amended as follows:

■ a. By revising the definitions for "Firetube boiler," "Fuel type," "Large gaseous fuel subcategory," "Large liquid fuel subcategory," "Large solid fuel subcategory," "Small gaseous fuel subcategory," "Small liquid fuel subcategory," "Watertube boiler," and

■ b. By adding definitions for "Common Stack," "Equivalent," and "Voluntary Consensus Standard" in alphabetical order.

§ 63.7575 What definitions apply to this subpart?

* * * * *

Common Stack means the exhaust of emissions from two or more affected units through a single flue.

* * * * *

Equivalent means the following only as this term is used in Table 6 to subpart DDDDD:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix; or is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the mercury, selenium, or arsenic) using an aliquot of the dried sample, then the drying temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an "as received" basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (mercury, TSM, or total chlorine) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice, or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table 6 to subpart DDDDD for the same purpose.

* * * * *

Firetube boiler means a boiler that utilizes a containment shell that encloses firetubes (tubes in a boiler having water on the outside and carrying the hot gases of combustion inside), and allows the water to vaporize and steam to separate. Hybrid boilers that have been registered/certified by the National Board of Boiler and Pressure Vessel Inspectors and/or the State as firetube boilers as indicated by "Form P–2" (Manufacturers' Data Report for All Types of Boilers Except Watertube and Electric, As Required by the Provisions of the ASME Code Rules, Section I), are considered to be firetube boilers for the purpose of this subpart.

* * * * *

Fuel type means each category of fuels that share a common name or classification. Examples include, but are not limited to, bituminous coal, subbituminous coal, lignite, anthracite, biomass, construction/demolition material, salt water laden wood, creosote treated wood, tires, residual oil. Individual fuel types received from different suppliers are not considered new fuel types except for construction/demolition material. Contraband, prohibited goods, or retired U.S. flags, burned at the request of a government agency, are not considered a fuel type for the purpose of this subpart.

* * * * *

Large gaseous fuel subcategory includes any watertube boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment, gas supply emergencies, or for periodic testing of liquid fuel, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Periodic testing of liquid fuel is not to exceed a combined total of 48 hours during any calendar year.

Large liquid fuel subcategory includes any watertube boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Large gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment, gas supply emergencies or for periodic testing of liquid fuel not to exceed a combined total of 48 hours during any calendar year are not included in this definition.

Large solid fuel subcategory includes any watertube boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

* * * * *

Small gaseous fuel subcategory includes any size of firetube boiler and any other boiler or process heater with a rated capacity of less than or equal to 10 MMBtu per hour heat input that burn gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply emergencies, or for periodic testing of liquid fuel. Periodic testing is not to exceed a combined total of 48 hours during any calendar year.

Small liquid fuel subcategory includes any size of firetube boiler and any other boiler or process with a rated capacity of less than or equal to 10 MMBtu per hour heat input that do not burn any solid fuel and burn any liquid fuel either alone or in combination with gaseous fuels. Small gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment, gas supply emergencies or for periodic testing of liquid fuel not to exceed a combined total of 48 hours during any calendar year are not included in this definition.

* * * * *

Watertube boiler means a boiler that incorporates a steam drum with tubes connected to the drum to separate steam from water.

* * * * *

Voluntary Consensus Standards or VCS mean technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. EPA/OAQPS has by precedent only used VCS that are written in English. Examples of VCS bodies are: American Society of Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), International Standards Organization (ISO), Standards Australia (AS), British Standards (BS), Canadian Standards (CSA), European Standard (EN or CEN) and German Engineering Standards (VDI). The types of standards that are not considered VCS are standards developed by: the U.S. states, *e.g.*, California (CARB) and Texas (TCEQ); industry groups, such as American Petroleum Institute (API), Gas Processors Association (GPA), and Gas Research Institute (GRI); and other branches of the U.S. government, *e.g.* Department of Defense (DOD) and Department of Transportation (DOT). This does not preclude EPA from using standards developed by groups that are not VCS bodies within their rule. When this occurs, EPA has done searches and reviews for VCS equivalent to these non-EPA methods.

* * * * *

■ 10. Table 6 and text before table to subpart DDDDD are revised to read as follows:

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources. However, equivalent methods may be used in lieu of the prescribed methods at the discretion of the source owner or operator:

TABLE 6.—TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant * * *	You must * * *	Using * * *
1. Mercury * * *	a. Collect fuel samples * * *	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, See § 63.14(b)) or equivalent.
	b. Composite fuel samples * * *	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see § 63.24(b)) or ASTM E711–87 (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) (IBR, see § 63.14(b)) or equivalent.
	f. Measure mercury concentration in fuel sample * * *.	ASTM D6722–01 (for coal) (IBR, see § 6314(b)) or SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples or equivalent.
	g. Convert concentration into units of pounds of pollutant per MMBtu of heat content.	
2. Total Selected metals * * *	a. Collect fuel samples * * *	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	b. Composite fuel samples * * *	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (IBR, see § 63.14(b)) or equivalent.
	f. Measure total selected metals concentration in fuel sample * * *.	SW–846–6010B or ASTM D6357–04 (for arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel for all solid fuels) and ASTM D4606–03 (for selenium in coal) (IBR, see § 63.14(b)) or ASTM E885–88 (1996) for biomass) (IBR, see § 63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	
3. Hydrogen Chloride * * *	a. Collect fuel samples * * *	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03€[1] (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	b. Composite fuel samples * * *	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples * * *.	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type * * *.	ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type * * *.	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) or equivalent.
	f. Measure chlorine concentration in fuel sample * * *.	SW–846–9250 or ASTM D6721–01 (for coal) or ASTM E776–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content..	

[FR Doc. E6–20637 Filed 12–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FDMS Docket No. EPA–R03–OAR–2006–0933; FRL–8252–3]

State Operating Permit Programs; Delaware; Amendments to the Definition of a "Major Source"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the State of Delaware's operating permit program to correct the definition of "major source." Delaware's revision was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to submit to EPA program revisions in accordance with the Federal Title V regulations. The EPA granted final approval of Delaware's operating permit program on November 19, 2001. Delaware amended its operating permit program to address the Federal EPA amendment to the Federal Title V regulation, which went into effect on November 27, 2001, and this action approves this amendment. Any parties interested in commenting on this action granting approval of Delaware's amendment to the Title V operating permit program should do so at this time.

DATES: This rule is effective on February 5, 2007 without further notice, unless EPA receives adverse written comment by January 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0933 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *campbell.dave@epa.gov*.

C. Mail: EPA–R03–OAR–2006–0933, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0933. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On May 18, 2004, the State of Delaware submitted an amendment to its State operating permit program. This amendment is the subject of this document and this section provides additional information on the amendment by addressing the following questions:

What Is the State Operating Permit Program?
What Are the State Operating Permit Program Requirements?
What Is Being Addressed in This Document?
What Is Not Being Addressed in This Document?
What Changes to Delaware's Operating Permit Program Is EPA Approving?
What Action Is Being Taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of "major" sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10} and $PM_{2.5}$); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478, has informed FDA that it has changed its name to Mylan Bertek Pharmaceuticals, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600 in the table in paragraph (c)(1) remove the entry for "Bertek Pharmaceuticals, Inc." and alphabetically add a new entry for "Mylan Bertek Pharmaceuticals, Inc."; and in the table in paragraph (c)(2) revise the entry for "062794" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Mylan Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478.	062794
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
062794	Mylan Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478
* *	* * *

Dated: November 16, 2006.

Bernadette Dunham,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–20250 Filed 11–28–06; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0021; FRL–8249–3]

RIN 2060–AM30

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for site remediation activities. This final rule revises specific provisions in the rule to resolve issues and questions subsequent to promulgation; correct technical omissions; and correct typographical, cross-reference, and grammatical errors.

DATES: This final rule is effective on November 29, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0021. 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 & Radiation Docket, Docket ID No. EPA–HQ–OAR–2002–0021, EPA/DC, EPA West, Room B102, 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Ready Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Chemicals and Coatings Group, Sector Policies and Programs Division (E143–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–3078, facsimile number: (919) 541–0246, electronic mail (e-mail) address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the NESHAP include:

Category	NAICS[1]	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271.	Site remediation activities at businesses at which materials containing organic HAP currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with co-located site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities to clean up materials contaminated with organic HAP.

Category	NAICS [1]	Examples of regulated entities
State/ Local/ Tribal Government	.....	Tribal governments that conduct site remediation activities to clean up materials contaminated with organic HAP.

[1] North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to this final rule. This final rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic hazardous air pollutant (HAP) and other hazardous material. Thus, for many businesses and facilities subject to the rule, the regulated sources (*i.e.*, the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation at the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx), and plastic materials and synthetics manufacturing (NAICS code 3252xx).

However, we are also aware of site remediation activities potentially subject to the rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the 40 CFR part 63, subpart GGGGG-National Emissions Standards for Hazardous Air Pollutants: Site Remediation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final action will also be 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 29, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to the 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 the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Background
II. Final Amendments to Rule
  A. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities
  B. 1 Megagram (Mg) Site Remediation Applicability Exemption
  C. Short-Term Site Remediation Exemption (30-day)
  D. Point of Determination of Remediation Material VOHAP Concentration
  E. Requirements for Equipment Leaks
  F. Other Rule Corrections
III. 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. Congressional Review Act

I. Background

On October 8, 2003 (68 FR 58172), we issued a NESHAP for site remediation activities (40 CFR part 63, subpart GGGGG). This NESHAP implements section 112(d) of the CAA by requiring owners and operators of facilities that are major sources of HAP emissions and where a site remediation is conducted, that meets the definitions and conditions specified in this rule, to comply with emission standards and work practices for control of HAP reflecting application of the maximum achievable control technology.

After promulgation of subpart 40 CFR part 63, GGGGG, we received questions about our intent and interpretation of specific provisions in the rule. To clarify these issues, we decided that technical amendments to the rule are appropriate. We proposed on May 1, 2006, (71 FR 25531) amendments to subpart GGGGG to clarify certain provisions of the rule and to correct unintentional technical omissions and terminology, typographical, printing, and grammatical errors that we have identified since promulgation of the original rule. A 60-day period, which ended on June 30, 2006, was provided to accept public comments on the proposed amendments to subpart GGGGG. We received comments on the proposed amendments from 12 commenters.

A petition for reconsideration for 40 CFR part, subpart GGGGG was filed by the Sierra Club on December 8, 2003. The amendments to subpart GGGGG promulgated by this action do not address any issues cited in the Sierra Club's petition. We are still reviewing the items for reconsideration and will address them in a future notice.

II. Final Amendments to Rule

We are amending 40 CFR part 63, subpart GGGGG to clarify our intent for applying and implementing specific rule requirements and to correct unintentional technical omissions and editorial errors. This action promulgates our proposed regulatory language for the amendments to subpart GGGGG except

for those provisions, as noted below, for which modifications were made to the regulatory language for the final amendments in response to specific public comments. Our original projections for the subpart GGGGG compliance costs, environmental benefits, burden on industry, or the number of affected facilities are not changed by these final amendments.

This final rule promulgated by this action reflects our full consideration of all the comments we received on the amendment proposal. Our responses to all of the substantive public comments on the proposal are presented in a comment summary and response document available in Docket ID No. EPA–HQ–OAR–2002–0021 and at *http://www.epa.gov/ttn/atw/siterm/sitermpg.html.*

A. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities

The major source determination requirements used for determining the applicability of 40 CFR part 63, subpart GGGGG are amended for certain facilities involved with oil and natural gas production to be consistent with special directives for these facilities in CAA section 112(n)(4)(A). As discussed in the preamble for the proposed amendments (71 FR 25536), in the Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH) we address the provisions of CAA section 112(n)(4)(A) by limiting the emission points that are aggregated for the major source status determination of a production field facility to only the glycol dehydration units and storage vessels with flash emission potential, as defined in the rule (see 40 CFR 63.761). Consistent with our approach used for subpart HH, we are amending subpart GGGGG to specify that for a major source status determination of a production field facility, only the HAP emissions from the glycol dehydration units and storage vessels with the potential for flash emissions, as defined in subpart HH, are to be aggregated with the HAP emissions from the site remediation activities at the facility.

Several commenters on the proposed amendments stated that in compliance with the CAA section 112(n)(4) statutory directives, EPA should provide a similar applicability provision in 40 CFR part 63, subpart GGGGG for natural gas transmission and storage facilities consistent with the major source definition in the Natural Gas Transmission and Storage Facilities NESHAP (40 CFR part 63, subpart HHH). We agree that such a provision is appropriate, and are amending subpart GGGGG to specify that for natural gas transmission and storage facilities, HAP emissions are to be aggregated according to the definition of major source in § 63.1271 for a major source determination.

B. 1 Megagram (Mg) Site Remediation Applicability Exemption

The final amendments clarify the 40 CFR part 63, subpart GGGGG language with respect to how the 1 Mg applicability exemption is to be applied at a facility. Under this applicability exemption, site remediation activities conducted at your facility are not subject to the requirements of subpart GGGGG (except for certain recordkeeping requirements) if you determine that the total quantity of the HAP that is contained in the remediation material excavated, extracted, pumped, or otherwise removed during all of the site remediations conducted at your facility is less than 1 Mg annually. This final rule language for the exemption provisions does not change how the 1 Mg limit is applied nor change the documentation requirements for the exemption, but adds clarifying language stating that the 1 Mg limit applies on a facility-wide, annual basis and that there is no restriction to the number of site remediations that can be conducted under the exemption. Also, in response to public comments on the proposed regulatory language, the term "annual" was substituted for "calendar year", and language was added to the final rule stating that a Title V permit does not have to be reopened or revised solely to include the recordkeeping requirement required for the 1 Mg exemption. However, the recordkeeping requirement must be included in the facility's Title V permit the next time the permit is renewed, reopened, or revised for another reason.

C. Short-Term Site Remediation Exemption (30-Day)

Subpart GGGGG of 40 CFR part 63 is amended to clarify the rule language with respect to our intent for application of the 30-day site remediation exemption, including those situations when the remediation material is transferred off-site. Under this exemption, site remediations at your facility with affected sources subject to regulation under subpart GGGGG that can be completed within 30 days are exempted from having to meet the air emission control requirements specified in this final rule. The final rule language explicitly defines the beginning and end of the 30-day period for the purpose of qualifying for the exemption.

The first day of the 30-day exemption period is defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. Certain activities that you perform to prepare for the actual cleanup of the contaminated media are not counted as part of the 30-day period. The period of time (*i.e.*, number days) that you are required to perform the following activities are not counted as part of the 30-day interval that cannot be exceeded in order to qualify for the exemption provided that these activities are completed before the actual site cleanup begins: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

The last day of the 30-day exemption period is defined as the day on which all of the remediation materials generated by the cleanup have been treated or disposed of in a manner such that the organic HAP in the material no longer have a reasonable potential for volatilizing and being released to the atmosphere (*e.g.*, placed in a landfill). The exemption does not apply to a site remediation where the only activities completed during the 30-day period are excavating, pumping, or otherwise removing the remediation material from the contaminated area, and then storing this material on-site (*e.g.*, in waste piles, tanks, or containers) to be treated or disposed at some later date after the end of the 30-day period. In this case, the processes and equipment used for site remediation need to meet the applicable air emission control requirement in 40 CFR part 63, subpart GGGGG (unless the site remediation qualifies for another exemption allowed under the rule).

It was our intent that this exemption be used for those short-term site remediations for which all of the remediation materials generated by the cleanup are treated or disposed within the 30-day period to meet the requirement that the organic HAP constituents in the materials no longer have a reasonable potential for volatilizing and subsequent release to the atmosphere. However, we recognize that in some situations where the remediation materials are shipped off-site for treatment or disposal, unexpected special circumstances

beyond the direct control of the facility owner or operator may not allow the final treatment or disposal of the remediation material sent to the off-site location to be completed within the 30-day period required to qualify for the exemption. To address these situations, this final rule includes a provision allowing you to qualify for the exemption provided that all of the remediation material generated by your cleanup is transferred off-site within the 30-day exemption period according to the existing requirements specified in section 63.7936 of subpart GGGGG for remediation material transferred to another party or shipped to another facility. The requirements in section 63.7936 apply to the off-site transfer of remediation materials that have an average total average volatile organic HAP (VOHAP) concentration equal to or greater than 10 parts per million by weight (ppmw), and provide the owner or operator of the affected facility from which the remediation material is transferred with several compliance options. This final rule adds the requirement that you must include in the applicable shipping documentation used to transfer the remediation material off-site, in addition to any notifications and certifications required under section 63.7936, a statement that the shipped material was generated by a site remediation activity subject to the conditions specified for the 30-day exemption. The statement must include the date on which you initiated the site remediation activity generating the shipped remediation materials and the date 30 calendar days following your initiation date.

D. Point of Determination of Remediation Material VOHAP Concentration

Subpart GGGGG of 40 CFR part 63 applies the air emission control requirements for remediation material management units (*i.e.*, tanks, surface impoundments, containers, oil/water separators, organic/water separators and transfer systems) to those units that manage remediation material with an average VOHAP concentration equal to or greater than 500 ppmw. The final rule revises the applicable regulatory language in subpart GGGGG referring to the point at which the facility owner or operator determines the average VOHAP concentration of a remediation material. The final rule implements our original intended VOHAP determination procedure by reinstating the regulatory language and terminology we originally proposed for rule, and removing the term "point-of-extraction" from the rule.

Under the amended 40 CFR part 63, subpart GGGGG, you are required to determine the average total VOHAP concentration of the remediation material at a point prior to or within a remediation material management unit. Thus, once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination that manage this material are no longer required to meet the air emission control requirements in subpart GGGGG unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material increases to 500 ppmw or more. The amended regulatory language also clarifies that any free product returned to a manufacturing process is no longer subject to the air emission control requirements in subpart GGGGG.

E. Requirements for Equipment Leaks

The final rule adds a compliance option to 40 CFR part 63, subpart GGGGG, air emission control requirements for those affected equipment leak sources already using air pollution controls or work practices to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. Under this option, the affected source is in compliance with subpart GGGGG if the HAP emissions from the affected equipment leak source are controlled in compliance with the applicable standards specified in the other subpart in part 61 or 63 that the affected source is subject. This final rule extends the same compliance option that subpart GGGGG already allows for process vents and remediation material management units to equipment leak sources.

If you choose to comply with this option, you must comply with all of the applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you implement leak detection and control measures to reduce HAP emissions as specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

F. Other Rule Corrections

For purposes of implementing the requirements of subpart GGGGG, Table 1 in the rule lists the specific organic chemical compounds, isomers, and mixtures that are HAP. The final rule updates this table to be consistent with EPA's current HAP list. The final rule removes from Table 1 the listings for 1,1-dimethyl hydrazine and methyl ethyl ketone. Both of these organic chemical compounds have been delisted as HAP.

Provisions in 40 CFR part 63, subpart GGGGG related to startup, shutdown, and malfunction plan requirements have been revised, as appropriate, to be consistent with the amendments to the General Provisions under subpart A to 40 CFR part 63 that we promulgated on April 20, 2006 (71 FR 20446).

The final rule includes changes to the cross-reference citations in §§ 63.7938(b)(2), 63.7938(d)(2), 63.7938(d)(3), 63.7941(h), 63.7950(c), 63.7884(b)(2), and Table 3 of the rule to cite the correct provision in 40 CFR part 63, subpart GGGGG that we had intended to be referenced. Also, the final amendments correct terminology, typographical, and grammatical errors in specific provisions of subpart GGGGG that have been identified since the rule was originally promulgated. The final rule replaces the rule language with the correct cross-reference citation, term, or wording, but do not change any of the technical or administrative requirements of the rule.

III. 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 rule results in no changes to the information collection requirements of the existing rule. OMB has previously approved the information collection requirements contained in 40 CFR part 63, subpart GGGGG, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0534, EPA ICR number 2062.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby; Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW.; Washington, DC 20460 or by calling (202) 566–1672.

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.

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 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 the purposes of assessing the impacts of the final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 the 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 that may be directly regulated by the rule include small businesses and small governmental jurisdictions. We have determined that there is little or no impact on any affected small entities because the final rule amends existing regulations to clarify specific provisions and to correct technical omissions and editorial errors.

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 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, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments, because they contain 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. 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. The final rule does not add any new requirements to the current rule, they only clarify our intent and correct errors. Thus, Executive Order 13132 does not apply to the final amendments.

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." The final rule does not have tribal implications, as specified in Executive Order 13175. This action does 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 the final 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 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. The final rule is not subject to the Executive Order because 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

This action 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 because it only clarifies our intent and corrects errors in the existing rule. Further, we have concluded that the final rule is 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 of 1995 (NTTAA), Public Law No. 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 one or more VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of VCS is not relevant to this action.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the 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). These final amendments are effective on November 29, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: November 22, 2006.

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.*

Subpart GGGGG—[Amended]

■ 2. Section 63.7881 is amended by revising paragraphs (a)(3) and (c) to read as follows:

§ 63.7881 Am I subject to this subpart?

(a) * * *

(3) Your facility is a major source of HAP as defined in § 63.2, except as specified in paragraph (a)(3)(i) or (ii) of this section. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(i) For production field facilities, as defined in § 63.761, only the HAP emissions from the glycol dehydration units and storage vessels with the potential for flash emissions (both as defined in § 63.761) shall be aggregated with the HAP emissions from the site remediation activities at the facility for a major source determination.

(ii) For natural gas transmission and storage facilities, HAP emissions shall be aggregated in accordance with the definition of major source in § 63.1271 for a major source determination.

* * * * *

(c) Your site remediation activities are not subject to the requirements of this subpart, except for the recordkeeping requirements in this paragraph, provided that you meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) You determine that the total quantity of the HAP listed in Table 1 to this subpart that is contained in the remediation material excavated, extracted, pumped, or otherwise removed during all of the site remediations conducted at your facility is less than 1 megagram (Mg) annually. This exemption applies the 1 Mg limit on a facility-wide, annual basis, and there is no restriction to the number of site remediations that can be conducted during this period.

(2) You must prepare and maintain at your facility written documentation to support your determination that the total HAP quantity in your remediation materials for the year is less than 1 Mg. The documentation must include a description of your methodology and data used for determining the total HAP content of the remediation material.

(3) Your Title V permit does not have to be reopened or revised solely to include the recordkeeping requirement specified in paragraph (c)(2) of this section. However, the requirement must be included in your permit the next time the permit is renewed, reopened, or revised for another reason.

* * * * *

■ 3. Section 63.7884 is revised to read as follows:

§ 63.7884 What are the general standards I must meet for each site remediation with affected sources?

(a) For each site remediation with an affected source designated under § 63.7882, you must meet the standards specified in §§ 63.7885 through 63.7955, as applicable to your affected source, unless your site remediation meets the requirements for an exemption under paragraph (b) of this section.

(b) A site remediation that is completed within 30 consecutive calendar days according to the conditions in paragraphs (b)(1) through (3) of this section is not subject to the standards under paragraph (a) of this section. This exemption cannot be used for a site remediation involving the staged or intermittent cleanup of remediation material whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals, with durations less than 30-days per interval, when the time period from the beginning of the first interval to the end of the last interval exceeds 30 days.

(1) The 30 consecutive calendar day period for a site remediation that qualifies for this exemption is determined according to actions taken by you as defined in paragraphs (b)(1)(i) through (iii) of this section.

(i) The first day of the 30-day period is defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the

remediation materials. The following activities, when completed before beginning this initial action, are not counted as part of the 30-day period: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

(ii) The last day of the 30-day period is defined as the day on which treatment or disposal of all of the remediation materials generated by the cleanup is completed such that the organic constituents in these materials no longer have a reasonable potential for volatilizing and being released to the atmosphere.

(iii) If treatment or disposal of the remediation materials is conducted at an off-site facility where the final treatment or disposal of the material cannot, or may not, be completed within the 30-day exemption period, then the shipment of all of the remediation material generated from your cleanup that is transferred to another party, or shipped to another facility, within the 30-day period, must be performed according to the applicable requirements specified in § 63.7936.

(2) For the purpose of complying with paragraph (b)(1) of this section, if you ship or otherwise transfer the remediation material off-site you must include in the applicable shipping documentation, in addition to any notifications and certifications required under § 63.7936, a statement that the shipped material was generated by a site remediation activity subject to the conditions of this exemption. The statement must include the date on which you initiated the site remediation activity generating the shipped remediation materials, as specified in paragraph (b)(1)(i) of this section, and the date 30 calendar days following your initiation date.

(3) You must prepare and maintain at your facility written documentation describing the exempted site remediation, and listing the initiation and completion dates for the site remediation.

■ 4. Section 63.7886 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7886 What are the general standards I must meet for my affected remediation material management units?

* * * * *

(b) * * *

(2) You determine that the average total VOHAP concentration, as defined in § 63.7957, of the remediation material managed in the remediation material management unit material is less than 500 ppmw. You must follow the requirements in § 63.7943 to demonstrate that the VOHAP concentration of the remediation material is less than 500 ppmw. Once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination managing this material meet the requirements of this paragraph unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material could increase. Any free product returned to the manufacturing process (*e.g.*, recovered oil returned to a storage tank at a refinery) is no longer subject to this subpart.

* * * * *

■ 5. Section 63.7887 is revised to read as follows:

§ 63.7887 What are the general standards I must meet for my affected equipment leak sources?

(a) You must control HAP emissions from equipment leaks from each equipment component that is part of the affected source by implementing leak detection and control measures according to the standards specified in §§ 63.7920 through 63.7922 unless you elect to meet the requirements in paragraph (b) of this section.

(b) If the affected equipment leak source is also subject to another subpart in 40 CFR part 61 or 40 CFR part 63, you may control emissions of the HAP listed in Table 1 to this subpart from the affected equipment leak source in compliance with the standards specified in the other applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you implement leak detection and control measures to reduce HAP emissions as specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

■ 6. Section 63.7890 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7890 What emissions limitations and work practice standards must I meet for process vents?

* * * * *

(b) * * *

(2) Reduce from all affected process vents the emissions of total organic compounds (TOC) (minus methane and ethane) to a level below 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy); or

* * * * *

■ 7. Section 63.7893 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.7893 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for process vents?

* * * * *

(b) You must maintain emission levels from all of your affected process vents to meet the facilitywide emission limits in § 63.7890(b) that apply to you, as specified in paragraphs (b)(1) through (4) of this section.

* * * * *

■ 8. Section 63.7896 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(b) * * *

(2) You have determined, according to the procedures in § 63.7944, and recorded the maximum HAP vapor pressure of the remediation material placed in each affected tank subject to § 63.7886(b)(1)(i) that does not use Tank Level 2 controls.

* * * * *

■ 9. Section 63.7898 is amended by revising paragraph (e)(2) to read as follows:

§ 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(e) * * *

(2) Visually inspecting the external floating roof according to the requirements in § 63.1063(d)(1) and inspecting the seals according to the requirements in § 63.1063(d)(2) and (3).

* * * * *

■ 10. Section 63.7913 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

* * * * *

(c) You must demonstrate continuous compliance for each separator using a fixed roof vented through a closed vent system to a control device according to § 63.7910(b)(2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

* * * * *

■ 11. Section 63.7915 is amended by revising paragraph (c)(2) to read as follows:

§ 63.7915 What emissions limitations and work practice standards must I meet for transfer systems?

* * * * *

(c) * * *

(2) A transfer system that consists of continuous hard piping. All joints or seams between the pipe sections must be permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

* * * * *

■ 12. Section 63.7917 is amended by revising paragraph (c) to read as follows:

§ 63.7917 What are my inspection and monitoring requirements for transfer systems?

* * * * *

(c) If you operate a transfer system consisting of hard piping according to § 63.7915(c)(2), you must annually inspect the unburied portion of pipeline and all joints for leaks and other defects. In the event that a defect is detected, you must repair the leak or defect according to the requirements of paragraph (e) of this section.

* * * * *

■ 13. Section 63.7918 is amended by revising paragraphs (d) and (e) introductory text to read as follows:

§ 63.7918 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for transfer systems?

* * * * *

(d) You must demonstrate continuous compliance for each transfer system that consists of hard piping according to § 63.7915(c)(2) by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Operating and maintaining the pipeline to ensure that all joints or seams between the pipe sections remain permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(2) Inspecting the pipeline for defects at least annually according to the requirements in § 63.7917(c).

(3) Repairing defects according to the requirements in § 63.7917(e).

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each transfer system that is enclosed and vented to a control device according to § 63.7915(c)(3) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

* * * * *

■ 14. Section 63.7927 is amended by revising paragraph (b)(3) to read as follows:

§ 63.7927 What are my inspection and monitoring requirements for closed vent systems and control devices?

* * * * *

(b) * * *

(3) Use a CPMS to measure and record the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle).

* * * * *

■ 15. Section 63.7928 is amended by revising paragraphs (b)(6) and (7) and (c) introductory text to read as follows:

§ 63.7928 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for closed vent systems and control devices?

* * * * *

(b) * * *

(6) If the closed vent system is equipped with a flow indicator, recording the information in § 63.693(c)(2)(i).

(7) If the closed vent system is equipped with a seal or locking device, visually inspecting the seal or closure mechanism at least monthly according to the requirements in § 63.693(c)(2)(ii), and recording the results of each inspection.

(c) You must demonstrate continuous compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) by meeting the requirements in paragraph (c)(1) or (2) of this section.

* * * * *

■ 16. Section 63.7935 is amended by revising paragraphs (c) and (f) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

* * * * *

■ 17. Section 63.7937 is amended by revising paragraphs (c)(2) and (c)(4)(ii) to read as follows:

§ 63.7937 How do I demonstrate initial compliance with the general standards?

* * * * *

(c) * * *

(2) If the remediation material managed in the affected remediation material management unit has an average total VOHAP concentration less than 500 ppmw according to § 63.7886(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures in § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

* * * * *

(4) * * *

(ii) You will monitor the biological treatment process conducted in each unit according to the requirements in § 63.684(e)(4).

* * * * *

■ 18. Section 63.7938 is amended by revising paragraphs (b)(2) and (c)(4)(ii) to read as follows:

63.7938 How do I demonstrate continuous compliance with the general standards?

* * * * *

(b) * * *

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(c)(1), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7885(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 10 ppmw.

(c) * * *

(4) * * *

(ii) Monitoring the biological treatment process conducted in each

unit according to the requirements in § 63.7886(4)(i).

* * * * *

■ 19. Section 63.7940 is amended by revising paragraph (c) to read as follows:

§ 63.7940 By what date must I conduct performance tests or other initial compliance demonstrations?

* * * * *

(c) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2).

■ 20. Section 63.7941 is amended as follows:

■ a. By revising paragraph (c);

■ b. By revising paragraph (g); and

■ c. By removing and reserving paragraph (h):

§ 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

* * * * *

(c) If you use a carbon adsorption system, condenser, vapor incinerator, boiler, or process heater to meet an emission limit in this subpart, you may choose to perform a design evaluation to demonstrate initial compliance instead of a performance test. You must perform a design evaluation according to the general requirements in § 63.693(b)(8) and the specific requirements in § 63.693(d)(2)(ii) for a carbon adsorption system (including establishing carbon replacement schedules and associated requirements), § 63.693(e)(2)(ii) for a condenser, § 63.693(f)(2)(ii) for a vapor incinerator, or § 63.693(g)(2)(i)(B) for a boiler or process heater.

* * * * *

(g) If you are required to conduct a visual inspection of an affected source, you must conduct the inspection according to the procedures in § 63.906(a)(1) for Tank Level 1 controls, § 63.1063(d) for Tank Level 2 controls, § 63.926(a) for Container Level 1 controls, § 63.946(a) for a surface impoundment equipped with a floating membrane cover, § 63.946(b) for a surface impoundment equipped with a cover and vented to a control device, § 63.1047(a) for a separator with a fixed roof, § 63.1047(c) for a separator equipped with a fixed roof and vented to a control device, § 63.695(c)(1)(i) or (c)(2)(i) for a closed vent system, and § 63.964(a) for individual drain systems.

* * * * *

(h) [Reserved]

* * * * *

■ 21. Section 63.7943 is amended as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b) introductory text;

■ c. By revising paragraphs (b)(1) introductory text and (b)(3); and

■ d. By revising paragraph (c) introductory text.

§ 63.7943 How do I determine the average VOHAP concentration of my remediation material?

(a) General requirements. You must determine the average total VOHAP concentration of a remediation material using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section. These methods may be used to determine the average VOHAP concentration of any material listed in (a)(1) through (3) of this section.

(1) A single remediation material stream; or

(2) Two or more remediation material streams that are combined prior to, or within, a remediation material management unit or treatment process; or

(3) Remediation material that is combined with one or more non-remediation material streams prior to, or within, a remediation material management unit or treatment process.

(b) Direct measurement. To determine the average total VOHAP concentration of a remediation material using direct measurement, you must use the procedures in paragraphs (b)(1) through (3) of this section.

(1) Sampling. Samples of each material stream must be collected from the container, pipeline, or other device used to deliver each material stream prior to entering the remediation material management unit or treatment process in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

* * * * *

(3) Calculations. The average total VOHAP concentration ($\bar{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed according to paragraph (b)(2) of this section and Equation 1 of this section as follows:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i) \qquad \text{(Eq. 1)}$$

Where:

$\bar{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i = Individual sample "i" of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample "i" as determined according to the requirements of paragraph (b)(2) of this section, ppmw.

(c) Knowledge of the material. To determine the average total VOHAP concentration of a remediation material using knowledge, you must use the procedures in paragraphs (c)(1) through (3) of this section.

* * * * *

■ 22. Section 63.7950 is amended by revising paragraph (c) to read as follows:

§ 63.7950 What notifications must I submit and when?

* * * * *

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification no later than 120 calendar days after initial startup.

* * * * *

■ 23. Section 63.7956 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7956 Who implements and enforces this subpart?

* * * * *

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

* * * * *

■ 24. Section 63.7957 is amended by removing the definition of "Point-of-extraction" and revising the definitions of "deviation" and "transfer system" to read as follows:

§ 63.7957 What definitions apply to this subpart?

* * * * *

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 (including any operating limit), 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, (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

* * * * *

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within a waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined for this subpart) or a self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

* * * * *

■ 25. Table 1 to Subpart GGGGG of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS

CAS No.[a]	Compound name	$F_{m\,305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	B1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethylether)	0.757
542756	1,3-Dichloropropene	1.000
64675	Diethyl sulfate	0.0025
79447	Dimethyl carbamoyl chloride[c]	0.150
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law Constant value equal to or greater than 0.01 Y/X(1.8×10^{-6} atm/gm-mole/m^3) at 25°C.	[e]
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound name	$F_{m\,305}$
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyltrichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.0108
88062	2,4,6-Trichlorophenol	0.0132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:
$F_{m\,305}$ Fraction measure factor in Method 305, 40 CFR 305 part 63, appendix A.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The $F_{m\,305}$ factors for some of the more common glycol 305 ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

■ 26. Table 3 is amended by revising the entries for "63.7(c)", "63.8(c)(1)(i)", and "63.8(c)(6)" 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
*	*	*	*
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	Keep parts for routine repairs available; reporting requirements for SSM when action is described in SSM plan.	Yes.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
*	*	*	*
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	Yes. However requirements for CPMS are addressed in § 63.7927.
*	*	*	*

[FR Doc. E6–20119 Filed 11–28–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2003–0090; FRL–8249–4]

RIN 2060–AN90

Final Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts until September 30, 2005. On August 29, 2005, EPA deferred the nonattainment designation for these areas a second time until December 31, 2006. The EPA is now extending the deferred effective date of the nonattainment designation for 13 Early Action Compact areas until April 15, 2008, and for the Denver Early Action Compact area until July 1, 2007.

EFFECTIVE DATE: This final rule is effective on December 29, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID no. EPA–HQ–OAR–2003–0090. 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, *i.e.*, Confidential Business Information (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 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., Northwest, 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 Office of Air and Radiation Docket is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials relevant to Early Action Compact areas on EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–05, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Does This Action Apply to Me?

This action applies only to the 14 areas that entered into Early Action compacts and for which the effective date of the nonattainment designation was deferred. A list of these areas is included in Table 1.

The information presented in this preamble is organized as follows:

Outline

I. General Information
Does this Action Apply to Me?
II. What Is the Purpose of This Document?
III. What Action has EPA Taken to Date for Early Action Compact Areas?
A. What progress are compact areas making toward completing their milestones?
B. What is this final action for compact areas?
C. What is EPA's schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?
D. What comments did EPA receive on the August 3, 2006 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?
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 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

Dated: October 6, 2006.

A. Stanley Meiburg,

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 RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for "Carbon Monoxide Second 10–Year Maintenance Plan for the Memphis/Shelby County Area" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Carbon Monoxide Second 10-Year Maintenance Plan for the Memphis/Shelby County Area.	Memphis/Shelby	5/10/2006	10/25/2006 [Insert first page of publication].	

[FR Doc. E6–17854 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8233–9]

RIN 2050–AG33

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors (Amendment)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste. EPA promulgated this standard as part of the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors that were issued on October 12, 2005, under section 112 of the Clean Air Act. EPA agreed to reconsider the standard and proposed to change it on March 23, 2006 (71 FR 14665). This amendment suspends the obligation of new cement kilns to comply with the particulate matter standard until EPA takes final action on this proposal. This amendment does not affect other standards applicable to new or existing hazardous waste burning cement kilns.

DATES: The final rule is effective on October 25, 2006.

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 *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 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 in *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 B–102, 1301 Constitution Ave., NW., Washington, DC 20004 (See note below). 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, 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: *Regulated Entities.* The regulated categories and entities affected by the NESHAP include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	327310	3241	Cement manufacturing, clinker production.
Federal government	.....	.....	Not affected.
State/local/tribal government	.....	.....	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. 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.

Worldwide Web (www). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the www at *http://www.epa.gov/hwcmact.*

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

Organization of This Document. The information presented in this preamble is organized as follows:

I. Summary of Final Rule
II. Background
III. Basis for Amended Effective Date
IV. Good Cause Findings
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 of 1995
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. Congressional Review

I. Summary of Final Rule

EPA is issuing a final rule to amend the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste. The effect of this action is to suspend the obligation of new cement kilns to comply with the particulate matter standard that was issued on October 12, 2005 (70 FR 59402), under section 112 of the CAA, and set forth in § 63.1220(b)(7)(i). EPA is codifying this amendment by amending §§ 63.1206(a)(1)(ii)(B) and 63.1220(b)(7)(i).

Under this amended rule, cement kilns that were constructed or reconstructed after April 20, 2004, are temporarily relieved of the obligation to comply with the replacement particulate matter standard of 0.0023 gr/dscf, corrected to 7 percent oxygen, under § 63.1220(b)(7)(i).[1] However, such sources instead must comply with a particulate matter standard of 0.15 kg/Mg dry feed, which was the standard applicable to new cement kilns prior to the promulgation of the replacement standard (*i.e.*, the standard set forth in § 63.1220(b)(7)(i) as promulgated in the October, 2005 rule). This action does not affect any other standards applicable to new (or existing) cement kilns. It also does not affect the standards for other hazardous waste combustor source categories.

This amendment of the effective date shall take effect immediately upon publication in the **Federal Register**, and will remain in effect until EPA takes final action on the proposal to revise the particulate matter standard under § 63.1220(b)(7)(i). After EPA takes final action on the particulate matter standard, a cement kiln constructed or reconstructed after April 20, 2004, will be subject to the particulate matter standard set forth in § 63.1220(b)(7)(i).

II. Background

The final maximum achievable control technology (MACT) standards for hazardous waste combustors, implementing section 112(d) of the Clean Air Act, were published on October 12, 2005 (70 FR 59402). They are codified at 40 CFR part 63, subpart EEE. These standards include limits for particulate matter, which is a surrogate for certain hazardous air pollutant (HAP) metals. The particulate matter standard for new hazardous waste burning cement kilns is 0.0023 gr/dscf.[2]

Following promulgation of the hazardous waste combustor final rule, the Administrator received petitions for reconsideration of this standard pursuant to section 307(d)(7)(B) of the CAA from Ash Grove Cement Company (AGCC) and the Cement Kiln Recycling Coalition (CKRC).[3] Under this section of the CAA, the Administrator shall initiate reconsideration proceedings if the petitioner can show 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.

Petitioners AGCC and CKRC requested that EPA reconsider the particulate matter standard for new cement kilns. They stated that the final standard of 0.0023 gr/dscf was not properly noticed and was derived using unrepresentative test data from the Ash Grove Cement Chanute (AGCC Chanute) plant, resulting in an unachievable standard. To support their position, the petitioners provided additional performance data from the AGCC Chanute plant, the cement kiln whose performance was the basis for the standard. On March 23, 2006, we published a proposed rule granting reconsideration of the particulate matter standard for new cement kilns and proposed a revised standard. See 71 FR 14665. In the proposal we agreed that there was legitimate confusion regarding whether we would base the new source standard on emissions data from the Ash Grove Cement Chanute plant, and that also, there was no practical opportunity for commenters to address this issue during the public comment period. We also 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. Therefore, we proposed a revised particulate matter standard for new cement kilns of 0.0069 gr/dscf. Eleven public comment letters were submitted in response to the proposal, including a request to extend the comment period by two weeks that was granted in a subsequent notice on April 13, 2006 (71 FR 19155).

Pursuant to section 307(d)(7)(B) of the CAA, EPA also issued an administrative stay of the 0.0023 gr/dscf standard on March 23, 2006 (71 FR 14655). The administrative stay was in effect for three months, the maximum allowable under this section of the CAA, from March 23, 2006 to June 23, 2006. The administrative stay was based on our initial determination that the petitions for reconsideration (for the particulate matter standard for new cement kilns) appear to have merit and that there is a potential environmental detriment associated with requiring immediate compliance with the current standard of 0.0023 gr/dscf (71 FR at 14655).

III. Basis for Amended Effective Date

Although we proposed to revise the particulate matter standard for new cement kilns to 0.0069 gr/dscf from 0.0023 gr/dscf in response to the petitions for reconsideration, the

[1] In this notice all concentration-based standards with units of gr/dscf are corrected to 7% oxygen.

[2] The particulate matter standard is used as a surrogate to control five HAP metals including antimony, cobalt, manganese, nickel, and selenium. In addition, the particulate matter standard is a surrogate control for all non-mercury HAP metals in the raw materials and auxiliary fuels. 69 FR at 21221.

[3] AGCC's petition for reconsideration is docket item EPA–HQ–OAR–2004–0022–0516 and the petition of CKRC is docket item EPA–HQ–OAR–2004–0022–0520.

October 12, 2005 final rule provides that the promulgated particulate matter standard of 0.0023 gr/dscf takes effect upon publication. Without today's amendment of this provision, all cement kilns that were constructed or reconstructed after April 20, 2004, would have been required to comply immediately with the 0.0023 gr/dscf emission standard. While there are no cement kilns operating that were constructed or reconstructed after April 20, 2004 (and thus already complying with the 0.0023 gr/dscf standard) currently, there are a number of cement plants that are in various stages of constructing new, lower emitting and more energy-efficient kilns to replace older cement kilns. Comments submitted by these cement companies affirm that the promulgated particulate matter standard of 0.0023 gr/dscf, if left in effect during the reconsideration proceedings, could adversely affect the construction of these new kilns. As discussed in Section IV below, we have found that such delays, if they were to occur, would result in adverse environmental and energy impacts (*e.g.*, increased emissions of particulate matter and increased consumption of fossil fuels such as coal). Therefore, we conclude it is appropriate to amend the effective date of the particulate matter standard for new cement kilns until we conclude the reconsideration proceedings.

We are mindful that there would be no need to amend the effective date of the new source particulate matter standard for cement kilns if it seemed likely that we would affirm the promulgated standard of 0.0023 gr/dscf at the conclusion of the reconsideration process. Based on a preliminary, non-cursory evaluation of public comments submitted in response to the proposed rule to revise the particulate matter standard, we continue to believe that a MACT floor level of 0.0023 gr/dscf is not representative of the performance of any single best performing cement kiln source in our emissions data base, properly taking normal operating variability into account. Therefore, while not a final determination, our preliminary review of public comments provided during the reconsideration proceedings has not persuaded us that a revision of the particulate matter standard for new cement kilns is unnecessary. We will, of course, consider objectively all information submitted during the reconsideration process and make a final determination in the near future as to the need to revise this standard.

Our preliminary view is that an emissions standard of 0.0023 gr/dscf for particulate matter is not an appropriate standard for new cement kilns either as a MACT floor or as a beyond-the-floor standard.[4] First, a level of 0.0023 gr/dscf does not appear to be an achievable MACT floor level based on available particulate matter emissions data from the AGCC Chanute plant, the cement kiln on whose performance that standard was based. Available performance data for AGCC Chanute include emissions data from 2001–2002 (the basis of the promulgated MACT floor of 0.0023 gr/dscf) and additional emissions data from 2003–2005 submitted by petitioner AGCC during reconsideration proceedings (the basis for identifying another cement plant as the single best performing source in the reconsideration proposed rule that led EPA to propose a MACT floor of 0.0069 gr/dscf). As discussed below, it is our view that these emissions data show that the AGCC Chanute source does not routinely achieve a standard of 0.0023 gr/dscf. In fact, our review of the AGCC Chanute data led us to identify another cement plant as the single best performing source in the March 23, 2006 reconsideration proposed rule.

One commenter to the March 23, 2006 proposed rule stated that the emissions data of AGCC Chanute from 2003–2005 reflect unnecessary bag leakage and ineffective maintenance, and, therefore, the test data submitted during reconsideration proceedings for AGCC Chanute should not be accepted as representative of routine performance. The commenter also states that a standard of 0.0023 gr/dscf would be readily achievable by AGCC Chanute (and other cement kilns) through, among other things, an effective preventative maintenance program that includes the use of bag leak detection systems to identify and correct bag leaks when they first occur.[5] However, the commenter provides no evidence that an ineffective preventative maintenance program is responsible for the variability seen in the additional emissions data from 2003–2005 as compared to the 2001–2002 data. Without a basis to exclude the data, we tentatively believe these additional data must not be excluded from the MACT floor analysis because they reflect the normal variability of the source over time. As discussed in the reconsideration proposed rule, if these data are considered, then AGCC Chanute's performance clearly shows that an emission level of 0.0023 gr/dscf is not an appropriate MACT floor for new cement kilns because it does not fully reflect the source's emission variability (71 FR at 14669). We also tentatively reject the commenter's argument that AGCC Chanute could routinely achieve a MACT floor of 0.0023 gr/dscf if its baghouse (fabric filter) were better maintained by monitoring emissions with a bag leak detection system. The argument suggests that AGCC Chanute could have maintained the performance achieved in 2001–2002 through improved monitoring and a better preventative maintenance program. We disagree that the commenter's argument is even relevant when identifying a MACT floor because whether AGCC Chanute could operate better (achieve lower emissions over time) with different equipment, such as a bag leak detection system, is a beyond-the-floor issue. As the commenter acknowledges, AGCC Chanute is not equipped with a bag leak detection system. For purposes of a MACT floor, we must identify the single best performing source and identify an emission level that reflects "the emission control that is achieved in practice by the best controlled source." Section 112(d)(3). Therefore, a MACT floor of 0.0023 gr/dscf for particulate matter would not be justifiable based on theoretical performance of a differently-equipped AGCC Chanute plant.

Second, a level of 0.0023 gr/dscf does not appear to be an achievable MACT floor level based on available particulate matter emissions data from any other cement kiln source in our emissions data base. As presented in the support document to the reconsideration proposed rule, we are not in possession of any emissions data from a cement kiln achieving this level, accounting for normal performance variability.[6]

Finally, an emissions standard of 0.0023 gr/dscf for particulate matter is not likely an appropriate beyond-the-floor standard for new cement kilns. In

[4] See the notice of proposed rulemaking for a discussion of how we selected representative data for each source so that the single best performing source could be identified and how we calculated the MACT floor levels for particulate matter. 69 FR at 21223–233 (April 20, 2004). The proposed rule also describes how emissions variability was accounted for, including the use of a "universal variability factor" that was used only for the particulate matter standard to address long-term variability in particulate matter emissions of sources using fabric filters. See also 70 FR at 59436–450. In developing MACT standards, we must also consider beyond-the-floor control options that are more stringent than the floor level taking into consideration not only emission performance but also the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements. CAA section 112(d)(2).

[5] See docket item EPA–HQ–OAR–2004–0022–0542.01, page 2.

[6] USEPA, "Draft Technical Support Document for HWC MACT Standards, Reconsideration of the New Source Particulate Matter Standards for Cement Kilns," March 2006, Table 4.

the reconsideration proposal, we evaluated a beyond-the-floor standard of 0.0035 gr/dscf and proposed that such a standard would not be justified.[7] This analysis was based on improved baghouse performance that evaluates improved bag material and a lower gas to cloth ratio. We also reached that conclusion in the final rule whereby we rejected adopting a beyond-the-floor standard of 0.0012 gr/dscf.[8] While we are not able to quantify the costs here (because the MACT floor level has yet to be determined), the previous analyses indicate that a beyond-the-floor standard of 0.0023 gr/dscf is not likely to be warranted. We will, of course, make a final determination as to the appropriateness of a beyond-the-floor standard for new cement kilns during the reconsideration process in the near future.

IV. Good Cause Findings

Section 553(b) of the Administrative Procedure Act (APA) (which applies to this action pursuant to the final sentence of CAA section 307(d)(1)) provides that, when any 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. Similarly, under section 553(d) of the APA, an agency may find that there is good cause to make the rule effective upon publication in the **Federal Register**.

We have determined that there is good cause for making today's amendment final without prior proposal and opportunity for public comment for several reasons. First, this amendment removes potential impediments to significant environmental and energy savings by allowing continued construction of new cement kilns that burn hazardous waste. As noted in the petitions for reconsideration of AGCC and CKRC, at least three companies are in various stages of constructing new, lower emitting and more energy-efficient kilns to replace older cement kilns.[9] Declarations made by representatives of these companies are that the companies could choose not to burn hazardous waste at these kilns and instead comply with the more lenient standards for particulate matter applicable to non-waste burning kilns, should the current particulate matter standard of 0.0023 gr/dscf be included in a permit.[10] Using the AGCC's Foreman plant as an example, we estimate that emissions of particulate matter would increase by approximately 77 tons per year at the Foreman plant should AGCC decide to abandon plans to burn hazardous waste at the new preheater/precalciner kiln.[11] Continental Cement Company and Keystone Cement Company also are planning to construct new cement kilns. If all three companies abandoned plans to build the new lower-emitting cement kilns, then particulate matter emissions would potentially increase by over 200 tons per year.

There also may be environmental detriment if the amendment is not issued because the companies building new cement kilns could experience construction and permitting delays. This detriment would result because the existing higher-emitting and less efficient cement kilns would (assuming delay) continue to operate for a longer period of time (i.e., operation of the new cement kilns replacing the older kilns would be postponed). We estimate that emissions of particulate matter would increase by approximately 60 tons at the Foreman plant should AGCC experience a 1-year delay in initiating operation of their new preheater/precalciner kiln.[12] Delays at Continental Cement Company and Keystone Cement Company would result in annual increases in particulate matter emissions of 27 tons and 30 tons, respectively. Thus, if all three companies experienced a one-year delay in building the new lower-emitting cement kilns, then particulate matter emissions would increase by approximately 117 tons.

We also find that amending the rule's effective date yields substantial energy savings. A typical wet process cement kiln requires approximately 5–6 million Btu of energy to make one ton of clinker product, while the more thermally-efficient preheater/precalciner kilns require 3 million Btu of energy. One wet process cement kiln annually producing 500,000 tons of clinker would consume approximately 105,000 tons of coal (assumes that all energy is derived from coal). However, a more thermally-efficient preheater/precalciner kiln would require 57,000 tons of coal per year, which equates to an annual energy savings of nearly 50,000 tons of coal per kiln as compared to a wet process kiln. Thus, a delay in the start-up of the new kilns or outright abandonment of its construction would result in the increased use of several hundred thousand tons of coal per year.

It is also important to note that while this amendment temporarily relieves newly constructed or reconstructed cement kilns of the obligation to comply with the replacement standard of 0.0023 gr/dscf, there are no cement kilns currently in operation that are subject to the replacement standard. That is, there are no new cement kilns that are currently complying with the replacement standard of 0.0023 gr/dscf for particulate matter, and thus no kilns that will actually emit particulate matter at higher levels. Thus, although the less stringent particulate matter standard that was applicable to new cement kilns prior to the promulgation of the replacement standards will be in effect as a result of today's amendment, this will not lead to an actual increase in particulate matter emissions.

We also note that the issue of the rule's effective date has essentially already been subject to robust public comment through the grant of reconsideration and proposal to amend the rule. Thus, this is not a situation where the public is presented with a final rule without having opportunity to address the issues involved in the action.

Finally, we note that we expect this amendment to be in effect for only a short time. We estimate that the amendment will remain in effect for less than 1-year while the rulemaking to revise the particulate matter standard for new cement kilns is concluded. We intend to take final action on

[7] USEPA, "Draft Technical Support Document for HWC MACT Standards, Reconsideration of the New Source Particulate Matter Standards for Cement Kilns," March 2006, Section 4.1.2.

[8] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 11.3.4.

[9] For example, AGCC is replacing its three older wet process cement kilns at its Foreman, Arkansas plant with a new preheater/precalciner kiln. See docket item EPA-HQ-OAR-2004-0022-0523, page 3. Information related to plans of Continental Cement Company and Keystone Cement Company to build new cement kilns can be found in docket item EPA-HQ-OAR-2004-0022-0521, Appendices F and G, respectively.

[10] Declarations made by representatives of AGCC, Continental Cement Company, and Keystone Cement Company are available in the docket. See docket item EPA-HQ-OAR-2004-0022-0521, Appendices F, G, and H.

[11] For purposes of this estimate, it was assumed that the new preheater/precalciner kiln would be designed to 0.0034 gr/dscf, which is the design level for the standard that we proposed for new hazardous waste burning cement kilns on March 23, 2006 (71 FR 14665). The particulate matter standard for new cement kilns that do not burn hazardous waste is 0.15 kg/Mg dry feed, which equates to approximately 0.04 gr/dscf, corrected to 7% oxygen, for a preheater/precalciner kiln. Section 63.1343(b)(1).

[12] We estimate emissions of particulate matter from Ash Grove Cement's three wet process kilns at 85 tons per year. See USEPA, "Technical Support Document for HWC MACT Replacement Standards, Volume V: Emissions Estimates and Engineering Costs," September 2005, Appendix C. For purposes of this estimation, we assumed that the new preheater/precalciner kiln would be designed to 0.0034 gr/dscf, which is the design level for the standard that we proposed for new hazardous waste burning cement kilns on March 23, 2006.

reconsideration of the particulate matter standard for new cement kilns as expeditiously as possible. When that work is completed, the kilns currently under construction will be responsible for meeting the standard in the revised rule prior to commencing operation. We do not anticipate that any of those new kilns will ever operate subject to the previous replacement standard.

Given the possibility of environmental detriment, the lack of environmental prejudice, the previous opportunity for public comment on the issues involved, and the likely short duration of this amendment, we find that there is good cause to amend the rule's effective date under 5 U.S.C. 553(b)(B) without prior notice or opportunity to comment. We also find, for the same reasons, that good cause exists under APA section 553(d)(3) to make this amendment effective upon publication in the **Federal Register** rather than 30 days later.

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. Consequently, this action was not submitted to the Office of Management and Budget for review under EO 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule (70 FR 59402, October 12, 2005) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control number 2050–0171. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1773.08) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (ME–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr*.

Today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because there is no additional burden on the industry as a result of the final rule amendments, the ICR has not been revised.

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.

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 final rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in cement manufacturing as defined by NAIC code 327310 with less than 750 employees (for the entire corporation); (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 the 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. This final rule will not impose any new, more stringent requirements on new source, small cement manufacturing entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 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 the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Furthermore, section 202 does not apply to rules for which EPA invokes an exemption under section 553(b)(1)(B) of the Administrative Procedure Act, as is being done in this action. Thus, today's action is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are not

subject to the requirements of section 203 of the UMRA no new enforceable duty on any State, local or tribal governments or the private sector.

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. 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. This action contains no requirements that are more stringent than in the October 2005 final 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

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

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The rule simply amends the effective date of a standard while EPA takes final action on the proposed rule (71 FR 14665 (March 23, 2006)).

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 an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule (69 FR 21198), Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As discussed in Section IV above, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of October 25, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subject in 40 CFR Part 63

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

Dated: October 19, 2006.

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 by revising paragraph (a)(1)(ii)(B)(*1*) and adding new paragraph (a)(1)(ii)(B)(*3*) to read as follows:

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

(a) * * *

(1) * * *

(ii) * * *

(B) * * * (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§ 63.1219, 63.1220, and 63.1221 and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraphs (a)(1)(ii)(B)(*2*) and (a)(1)(ii)(B)(*3*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

(3) *Temporary particulate matter standard under § 63.1220 for new*

cement kilns. You are not required to comply with the particulate matter standard specified under § 63.1220(b)(7)(i) until EPA takes final action with regard to the particulate matter standard pursuant to reconsideration proceedings. If you start up a new or reconstructed hazardous waste burning cement kiln as defined by this subpart, you must not emit particulate matter in excess of 0.15 kg/Mg dry feed, as determined according to the requirements under § 63.1204(b)(7)(i) through (iii).

* * * * *

■ 3. Section 63.1220 is amended by revising paragraph (b)(7)(i) to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

* * * * *

(b) * * *

(7) * * *

(i) Except as provided by § 63.1206(a)(1)(ii)(B)(*3*) and paragraph (b)(7)(iii) of this section, particulate matter emissions in excess of 0.0023 gr/dscf corrected to 7 percent oxygen.

* * * * *

[FR Doc. E6–17897 Filed 10–24–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[Docket No. OST–2005–22602]

RIN 2105–AD46

Debarment and Suspension (Nonprocurement) Requirements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Transportation's regulations implementing the governmentwide nonprocurement debarment and suspension requirements. Specifically, this rule adopts the optional lower tier coverage prohibiting excluded persons from participating in subcontracts at tiers lower than the first tier below a covered nonprocurement transaction.

DATES: *Effective Date:* This final rule is in effect November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Shields, Office of the Senior Procurement Executive, Office of Administration (M–61), (202) 366–4268, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve previously filed comments online through the Document Management System (DMS) at *http://dmses.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On November 26, 2003, the Department of Transportation (DOT), along with twenty-nine other agencies, published its final rule implementing changes to the governmentwide debarment and suspension common rule (68 FR 66533). These regulations were intended to resolve unnecessary technical differences between the procurement and nonprocurement systems, revise the existing governmentwide debarment and suspension regulations in a plain language style and format, and make other improvements consistent with the purpose of the debarment and suspension system. One of the changes made to the regulations included limiting the mandatory down-tier application of an exclusion to only the first procurement level. Under the previous governmentwide regulations, all executive agencies applied suspensions and debarments to all procurement levels. However, in the revised governmentwide regulations, each agency was given the option of applying an exclusion to levels below the first procurement level. This final rule adopts the optional lower tier coverage to make the debarment and suspension regulations applicable to levels below the first procurement level. Many of the DOT programs involve billions of dollars in grants that are obligated to construction projects by States, localities and other recipients. For instance, on August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59. This Act authorizes funding for highways, highway safety, and public transportation totaling $244.1 billion over five years (2005–2009) and is the largest surface transportation investment in our Nation's history. Of this $244.1 billion, a substantial portion of these funds will be used by States and other grantees to procure construction contracts. These construction contracts could involve multiple subcontracts that would be vulnerable to misconduct and poor performance if suspended or debarred contractors are allowed to participate in these transactions.

Discussion of Comments

On October 5, 2005, the Office of the Secretary (OST) in the DOT published a notice of proposed rulemaking (NRPM) and requested comment on whether the DOT should adopt the lower tier coverage. In response to the NPRM, OST received two comments. These comments were submitted by the American Road and Transportation Builders Association (ARTBA) and the Wisconsin Department of Transportation (WisDOT).

ARTBA commented that the transportation construction industry has a well-deserved reputation of being comprised of highly ethical firms. However, despite this reputation, some firms betray the integrity of the whole. In these situations, ARTBA acknowledged that suspension or debarment may be appropriate. Additionally, ARTBA commented on the importance of maintaining the contractor's due process rights. ARTBA stated that the basis of due process is that everyone is deemed innocent until proven guilty and that due process is not served if contractors are suspended or debarred before being afforded an opportunity to be heard. ARTBA noted that debarment and suspension cannot be taken lightly because of the interruption in the firm's ability to work and, as such, the DOT needs to ensure that the debarment and suspension process is fair.

The DOT agrees with ARTBA that the transportation construction industry does indeed have a well-deserved reputation of being comprised of highly ethical firms. However, as ARTBA acknowledges, there are some firms within the industry that betray this reputation. The participation of these irresponsible firms and individuals in the transportation program could result in millions of dollars being wasted due to fraud. These are funds that could be used on construct more transportation projects. Also, the DOT agrees with

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0178; FRL–8227–5]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates amendments to the national emission standards for hazardous air pollutants for miscellaneous coating manufacturing. The amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. The amendments extend the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit. The amendments also clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt. These changes clarify applicability of the rule and minimize the compliance burden.

EFFECTIVE DATE: October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0178. 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, Docket ID No. EPA–HQ–OAR–2003–0178, EPA/DC, EPA West Building, Room B–102, 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS Code*	Examples of regulated entities
Industry ..	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of subpart HHHHH (national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing), as well as in today's amendment to the definitions section. If you have questions regarding the applicability of the amendments 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).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the 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 policy and guidance page for newly proposed or promulgated rules at *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 the final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 4, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments 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, 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 20004.

Organization of this Document. The information presented in this preamble is organized as follows:

I. Background
II. Response to Comments
  A. Compliance Date
  B. Affiliated Operations
III. 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. Congressional Review Act

I. Background

On December 11, 2003, we promulgated NESHAP for miscellaneous coating manufacturing as subpart HHHHH of 40 CFR part 63 (68 FR 69164). Subpart HHHHH applies to the facilitywide collection of equipment used to manufacture coatings. On May 17, 2006 (71 FR 28639), we proposed amendments to the: (1) Definition of the term "coating," (2) compliance date for shared equipment that is part of a process unit group (PUG) developed under the miscellaneous organic chemical manufacturing NESHAP (MON) (40 CFR part 63, subpart FFFF), and (3) exemptions for operations by end users that are related to the application of a pre-manufactured coating.

All equipment that is used to manufacture coatings is subject to 40 CFR part 63, subpart HHHHH. Because the definition of coating at 40 CFR 63.8105 in subpart HHHHH does not specify that coatings are produced only by blending, mixing, diluting, and related formulation operations without chemical synthesis or separation, some products of synthetic organic chemical manufacturing could be considered coatings. This overly broad definition of "coating" expands the applicability of 40 CFR part 63, subpart HHHHH to equipment intended to by covered by 40 CFR part 63, subpart FFFF. The proposed amendments to the definition of coating clarify that products of reaction and separation, such as polymers, resins, and synthetic organic chemicals are not coatings and are not covered by the final rule. In addition, the proposed amendments to the definition of coating clarify that 40 CFR part 63, subpart HHHHH also does not apply to the production of formulation components by chemical synthesis or separation activity if those components are not stored prior to formulation. We proposed these revisions so that the applicability of the final rule accurately and appropriately reflects the coating manufacturing industry and the basis for the maximum achievable control technology (MACT) floor.

The recent extension of the compliance date for 40 CFR part 63, subpart FFFF (see 71 FR 10439, March 1, 2006) raises a timing issue with respect to 40 CFR part 63, subpart FFFF and 40 CFR part 63, subpart HHHHH overlap. The extension for the compliance date for 40 CFR part 63, subpart FFFF results in the compliance date for 40 CFR part 63, subpart HHHHH occurring before the MON compliance date, thus creating a problem for plants with equipment subject to both subparts FFFF and HHHHH of 40 CFR part 63 who opt to develop a PUG. Because we have extended the compliance date for 40 CFR part 63, subpart FFFF, a source that primarily manufactures organic chemicals, but also produces a coating product in the same equipment, would not be able to comply with subparts FFFF and HHHHH of 40 CFR part 63 as EPA intended during the period between the compliance date for 40 CFR part 63, subpart HHHHH (December 11, 2006) and 40 CFR part 63, subpart FFFF (May 10, 2008). Due to the significant amendments to 40 CFR part 63, subpart FFFF, it is unlikely that sources will be able to comply with the revised 40 CFR part 63, subpart FFFF by the compliance date for 40 CFR part 63, subpart HHHHH. Alternatively, if the source was planning to comply with subpart HHHHH by referencing 40 CFR 63.2535(l)(3)(i), it is also unlikely the source would have enough time to design and install interim controls for the coating operations so as to comply with 40 CFR part 63, subpart HHHHH between December 11, 2006 and May 10, 2008. Thus, relying on the presumption that equipment should be regulated according to the standard that effectively applies for a majority of products produced, we proposed amending the final rule to reference 40 CFR part 63, subpart FFFF requirements for a PUG which produces primarily 40 CFR part 63, subpart FFFF products. The proposed amendments also clarify that if the source so chooses, equipment that is part of a PUG in which a MON product is the primary product must comply with the MON by the MON compliance date, not 40 CFR part 63, subpart HHHHH by the subpart HHHHH compliance date.

In section IV.A of the preamble to the final rule, we stated "the final rule does not apply to activities conducted by end users of coating products in preparation for application" (68 FR 69164, December 11, 2003). Although the final rule exempts "affiliated operations" at sources that are subject to surface coating rules, it does not specifically exempt operations at sources that are not subject to another subpart of 40 CFR part 63. Therefore, we proposed adding an exemption in 40 CFR 63.7985(d)(5) for operations by end users who modify a purchased coating prior to application at the same facility. This exemption applies only if the purchased product is already a coating that an end user could apply as purchased, and the modified coating must be applied at the same facility where the modification is conducted.

Two trade associations and three coatings manufacturing companies provided comments on the proposed amendments to the rule. In general, the commenters supported the proposed changes. One commenter also requested changes to the compliance date and the exemption for affiliated operations at sources that are subject to surface coating MACT rules. After consideration of the comments, we are promulgating the amendments as proposed.

II. Response to Comments

A. Compliance Date

Comment: One commenter supported the amendment to clarify the definition of "coating" but also expressed concern that this change could have unanticipated impacts that would make it difficult to achieve compliance by December 11, 2006. According to the commenter, the change is a major modification of the rule because it could affect applicability determinations for some facilities. For example, the commenter suggested the possibility that some facilities currently thinking they are subject to the MON may realize that they have to comply with the Miscellaneous Coating Manufacturing NESHAP. To ensure that facilities have time to review the amendments and make appropriate changes to their compliance plans, the commenter requested that the compliance date for all existing sources under 40 CFR part 63, subpart HHHHH be extended to May 10, 2008.

Response: As noted in the preamble to the proposed amendments, concerns with the definition of "coating" in the final rule were that it was too expansive. It included all materials that are intended to be applied to a substrate, regardless of the production process. The amended definition narrows the scope of the definition, which may reduce the number of operations that are subject to the MON. Any operations that are excluded from the amended Miscellaneous Coating Manufacturing NESHAP will be subject to the MON. Facilities with such operations will have until May 10, 2008, to comply with the Miscellaneous Organic Chemical Manufacturing NESHAP. We are unaware of any materials that are coatings under the amended definition

that would not have been coatings under the definition in the final rule. Thus, we have determined that there is no need to extend the compliance date for existing sources that are subject to the Miscellaneous Coating Manufacturing NESHAP, except for operations that are part of a PUG under the MON as discussed in section I of this preamble.

B. Affiliated Operations

Comment: One commenter supports our position, as stated in the preamble to the proposed amendments, that 40 CFR part 63, subpart HHHHH does not apply to activities conducted by end users of coating products in preparation for application. According to the commenter, these activities cannot be regulated under 40 CFR part 63, subpart HHHHH because they are not coating manufacturing operations and were not part of the MACT analysis for 40 CFR part 63, subpart HHHHH. For the rule to be consistent with this position, the commenter believes 40 CFR 63.7985(d)(2) should exempt "affiliated operations" at all surface coating facilities, not just those at sources that are subject to the surface coating rules in subparts GG, KK, JJJJ, MMMM, and SSSS of 40 CFR part 63. The commenter suggested listing each surface coating category in 40 CFR 63.7985(d)(2).

Response: We decided not to adopt the changes suggested by the commenter. Listing all surface coating categories in 40 CFR 63.7985(d)(2) is unnecessary and impractical. There are three categories of end users to consider: Sources that are subject to 40 CFR part 63 surface coating rules that do not include "affiliated operations" in the affected source, sources that are subject to 40 CFR part 63 surface coating rules that do include "affiliated operations" in the affected source, and sources that are not subject to a 40 CFR part 63 surface coating rule. Operations at end user facilities in two categories are exempted by existing provisions in the rule, and operations at end user facilities in the third category are exempted by the proposed amendments.

First, as the commenter noted, explicit exemptions for affiliated operations, as defined in 40 CFR 63.7985(d)(2), apply to affiliated operations that are located at affected sources under subparts GG, KK, JJJJ, MMMM, and SSSS of 40 CFR part 63. All of these rules lack requirements for affiliated operations, but affiliated operations were considered during development of the rules. Therefore, an exemption was needed in the Miscellaneous Coating Manufacturing NESHAP to avoid a conflict between the decisions made in the development of the five surface coating rules and the applicability of 40 CFR part 63, subpart HHHHH.

Facilities in the second group of end users are also subject to surface coating rules, but the affiliated operations at these facilities are part of the affected sources under the applicable surface coating rule. These affiliated operations are exempt from 40 CFR part 63, subpart HHHHH by 40 CFR 63.7985(a)(4), which specifies that operations are miscellaneous coating manufacturing operations and subject to 40 CFR part 63, subpart HHHHH only if they are not part of an affected source under another subpart of 40 CFR part 63. Therefore, exempting these source categories by listing them in 40 CFR 63.7985(d)(2) would be redundant.

The third group of end users includes all facilities that are not part of a source category that is subject to a surface coating NESHAP. Listing all of these surface coating categories in 40 CFR 63.7985(d)(2) would be impractical because there is no way of knowing all possible categories. Therefore, the proposed exemption in new paragraph (d)(5) of 40 CFR 63.7985 provides a general exemption for all facilities in this group. This new provision exempts operations that modify a purchased coating prior to application at the purchasing facility. Therefore, we have decided to promulgate this proposed amendment without changes.

III. 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 final rule amendments impose no new information collection requirements on the industry. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor reductions in the information collection burden. Therefore, the Information Collection Request (ICR) has not been revised.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart HHHHH) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0535 (EPA ICR number 2115.01). A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental Information, 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. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 that is independently owned and operated and is not dominant in its field.

For sources subject to the final rule amendments, the relevant NAICS and associated employee sizes are listed below:

NAICS 32551—Paint and Coatings Manufacturing—500 employees or fewer.
NAICS 32552—Adhesives and Sealants Manufacturing—500 employees or fewer.
NAICS 32591—Printing Ink Manufacturing—500 employees or fewer.

After considering the economic impacts of the final rule amendments on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor burden reductions for small entities.

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 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.

The EPA has determined that the final rule amendments 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 1 year. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of 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" 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."

The final rule amendments 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Therefore, the final rule 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 the final rule amendments.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to the Executive Order 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 final rule amendments do not constitute 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. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Further, we have concluded that the final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 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. 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 decides not to use available and applicable VCS.

During the rulemaking, the EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA–HQ–OAR–2003–0178). The final rule amendments do not require the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the final rule amendments.

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 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). The final rule amendments are effective on October 4, 2006.

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: September 28, 2006.

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.*

Subpart HHHHH—[Amended]

■ 2. Section 63.7985 is amended by revising paragraph (d) introductory text and adding paragraph (d)(5) to read as follows:

§ 63.7985 Am I subject to the requirements of this subpart?

* * * * *

(d) The requirements for miscellaneous coating manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (5) of this section.

* * * * *

(5) Modifying a purchased coating in preparation for application at the purchasing facility.

■ 3. Section 63.7995 is amended by adding introductory text to read as follows:

§ 63.7995 When do I have to comply with this subpart?

Except as specified in § 63.8090, you must comply with this subpart according to the requirements of this section.

* * * * *

■ 4. Section 63.8090 is amended by adding paragraph (c) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(c) *Compliance with 40 CFR part 63, subpart FFFF.*

After the compliance dates specified in § 63.7995, an affected source under this subpart HHHHH that includes equipment that is also part of an affected source under 40 CFR part 63, subpart FFFF is deemed in compliance with this subpart HHHHH if all of the conditions specified in paragraphs (c)(1) through (5) of this section are met.

(1) Equipment used for both miscellaneous coating manufacturing operations and as part of a miscellaneous organic chemical manufacturing process unit (MCPU), as defined in § 63.2435, must be part of a process unit group developed in accordance with the provisions in § 63.2535(l).

(2) For the purposes of complying with § 63.2535(l), a miscellaneous coating manufacturing "process unit" consists of all coating manufacturing equipment that is also part of an MCPU in the process unit group. All miscellaneous coating manufacturing operations that are not part of a process unit group must comply with the requirements of this subpart HHHHH.

(3) The primary product for a process unit group that includes miscellaneous coating manufacturing equipment must be organic chemicals as described in § 63.2435(b)(1).

(4) The process unit group must be in compliance with the requirements in 40 CFR part 63, subpart FFFF as specified in § 63.2535(l)(3)(i) no later than the applicable compliance dates specified in § 63.2445.

(5) You must include in the notification of compliance status report required in § 63.8070(d) the records as specified in § 63.2535(l)(1) through (3).

5. Section 63.8105 is amended by revising the definition of the term "coating" in paragraph (g) to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Coating means a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating,

where the synthesized or separated component is not stored prior to formulation. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.

* * * * *

[FR Doc. E6–16407 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–0158; FRL–8227–4]

RIN 2060–AN29

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2006. Essential use allowances enable a person to obtain controlled class I ODSs as part of an exemption from the regulatory ban on the production and import of these chemicals that became effective as of January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODSs solely for the designated essential purpose. The allocations in this action total 1,002.40 metric tons (MT) of chlorofluorocarbons (CFCs) for use in metered dose inhalers for 2006.

DATES: *Effective Date:* This final rule is effective October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006–0158. 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 Air Docket, EPA/DC, EPA West, Room B102, 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 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: Kirsten Cappel of the Office of Air and Radiation, Stratospheric Protection Division by regular mail at the Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (6205J) Washington DC 20460; telephone number: 202–343–9556; fax number: 202–343–2338; e-mail address: *cappel.kirsten@epa.gov.*

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I. Basis for Allocating Essential Use Allowances

A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting substances (ODSs) in the U.S. for purposes that have been deemed "essential" by the U.S. Government and by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The Montreal Protocol is an international agreement aimed at reducing and eliminating the production and consumption [1] of ODSs. The elimination of production and consumption of class I ODSs is accomplished through adherence to phaseout schedules for specific class I ODSs,[2] which include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Montreal Protocol and the Clean Air Act provide exemptions that allow for the continued import and/or production of class I ODSs for specific uses. Under the Montreal Protocol, exemptions may be granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

"(a) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (see section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR part 82 subpart A, appendix A.

Corrections

Federal Register
Vol. 71, No. 183
Thursday, September 21, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Performance Review Board Members

Correction

In notice document E6–15200 beginning on page 53666 in the issue of Tuesday, September 12, 2006, make the following correction:

On page 53667, in the first column, in numbered paragraph 5., in the second line, "Executive Secretary" should read "At–Large".

[FR Doc. Z6–15200 Filed 9–20–06; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0155; FRL–8200–2]

RIN 2060-AK18

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Correction

In rule document 06–6447 beginning on page 42724 in the issue of Thursday, July 27, 2006, make the following correction:

§63.323 [Corrected]

On page 42745, in the third column, in §63.323(b)(1), in the fifth line, "25 parts per million " should read "± 25 parts per million".

[FR Doc. C6–6447 Filed 9–20–06; 8:45 am]
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Federal Register

Friday,
July 28, 2006

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0138; FRL–8202–4]

RIN 2060–AM77

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline) (OLD NESHAP), which EPA promulgated on February 3, 2004. After promulgation of the final OLD NESHAP, the Administrator received petitions for administrative reconsideration of the promulgated rule, and several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. On November 14, 2005, pursuant to a settlement agreement between some of the parties to the litigation, EPA published a notice of proposed amendments to address some of the concerns raised in the petitions and requested comments on the proposed amendments. In this action, EPA is promulgating those amendments, adding additional vapor balancing options, and making technical corrections to the final rule.

DATES: The final rule amendments are effective on July 28, 2006. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of July 28, 2006.

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 either on the *www.regulations.gov* Web site or in the legacy docket, A–98–13. 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 Air and Radiation Docket, EPA/DC, EPA West, Room B–102, 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.

At this time, the EPA/DC's Public Reading Room is closed until further notice due to flooding. Fax numbers for Docket offices in the EPA/DC are temporarily unavailable. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Shine, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; e-mail address: *shine.brenda@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. 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.
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 action. 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 action to a particular entity, consult the individual described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments to the OLD NESHAP is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 26, 2006. Only those objections that were raised with reasonably specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule amendments may not be challenged later in 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, 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 20004.

Organization of this document: The information presented in this preamble is organized as follows:

I. What Is the Statutory Authority for the Final Rule?
II. Background
III. What Revisions Were Made as a Result of Comments Received on the Proposed Amendments?
IV. What Are the Responses to Significant Comments?
A. Compliance Date Extension for All Storage Tanks
B. Vapor Balancing
C. Recordkeeping and Reporting for Emissions Sources That Do Not Require Control
D. Technical Corrections
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 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. Congressional Review Act

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

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. OLD was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit at least 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the 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 (November 14, 2005, 70 FR 69210) to subpart EEEE. EPA received comments from four entities. The final notice presents EPA's responses to those comments and promulgates amendments to subpart EEEE in response to the petitions and public comments.

As noted in the November 14, 2005, **Federal Register** notice, EPA will be taking separate action to address an administrative petition for reconsideration and a petition for judicial review concerning wastewater sources that were not addressed in the settlement agreement that gave rise to the November 14, 2005, proposal.

III. What Revisions Were Made as a Result of Comments Received on the Proposed Amendments?

Based on consideration of the comments received on the proposed amendments, EPA is revising the OLD rule provisions addressing vapor balancing for transfer racks by providing an additional, equivalent control option that allows routing of displaced HAP vapors to a storage tank with a common header. In addition, EPA is adding an option to allow vapor balancing back to the transport vehicle for storage tanks when they are being filled with organic liquids. EPA is withdrawing the proposed amendment that would have allowed vapor balancing transfer rack emissions to a process unit because this option is already available through other language. EPA is making additional changes, which are either technical corrections or clarifications.

IV. What Are the Responses to Significant Comments?

EPA received four public comment letters on the proposed amendments. Most of the comments from three of the commenters were supportive of the proposed amendments, and EPA thanks the commenters for that support. The following summarizes the comments that sought changes to the proposed amendments and EPA's response to those comments.

A. Compliance Date Extension for All Storage Tanks

Comment: One commenter noted that 40 CFR 63.2342(b)(2) allows owners and operators of storage tanks with floating roofs up to 10 years or after the next degassing and cleaning activities to comply with the regulations for such storage tanks. The commenter requested that this compliance provision be extended to all storage tanks, because, in their opinion, the emissions produced by emptying and degassing a tank in order to perform the required alterations would exceed the cumulative reduction in emissions occurring in the years following alteration of the tank.

Response: EPA notes that this comment does not pertain to the proposed amendments to subpart EEEE in the November 14, 2005, **Federal Register** notice. Nevertheless, EPA is responding to this request because it is important to clarify this issue. This provision (40 CFR 63.2342(b)(2)) is only applicable to storage tanks with floating roofs and is not applicable to other types of storage tanks (i.e., fixed roof storage tanks). The compliance date provisions for floating roof tanks are consistent with similar rules such as the Hazardous Organic NESHAP (HON). The rationale for allowing extended compliance time for floating roof tanks (up to 10 years) that must upgrade fittings to comply with this rule was that the incremental reductions associated with upgrading controls generally would not exceed the emissions generated as a result of emptying and degassing. However, this is not the case for fixed roof tanks that are essentially uncontrolled. Further, the commenter did not provide substantive information regarding emission potentials and offsetting cleaning and degassing emission potentials for fixed roof tanks. Thus, the technical basis for the compliance date provision is only applicable to storage tanks with floating roofs and not to storage tanks with fixed roofs. Therefore, EPA is not changing this provision as requested by the commenter.

B. Vapor Balancing

Comment: Two commenters requested that 40 CFR 63.2346(b)(3)(i) and (ii) be revised to allow organic HAP vapors

displaced during loading to be vented to another storage tank connected by common header in addition to the tank from which the organic HAP vapor originated or to a process unit, as currently allowed. The commenters stated that this would afford the same flexibility afforded in the HON and the Miscellaneous Organic NESHAP.

Response: EPA agrees that the alternative proposed by the commenters is both appropriate and applicable to the OLD source category. The option provides owners and operators flexibility in meeting the requirements of 40 CFR part 63, subpart EEEE, without sacrificing the level of emission reductions being achieved. Further, making this change would provide consistency between similar emission sources being controlled under similar rules. Therefore, EPA has revised the rule to incorporate this option for vapor balancing for transfer racks.

In addition, other rules (e.g., see 40 CFR 63.119(g) of the HON) allow an owner or operator to route emissions from the filing of storage tanks back to the transport vehicle from which the organic liquid originates. EPA has determined that, like vapor balancing through a common header, the inclusion of this vapor balancing option for storage tanks when they are being filled provides both consistency between the OLD rule and other similar subparts and flexibility to owners and operators without sacrificing emission reduction. Further, because some of the transport vehicles to which vapors are returned are refilled offsite, EPA has included requirements for such offsite facilities. Therefore, EPA has added this provision, along with the necessary requirements for initial and continuous compliance and for keeping records.

Finally, EPA is withdrawing the proposed amendment that would have allowed vapor balancing transfer rack emissions back to a process unit. In the final rule, transfer racks may be routed back to a process (see 40 CFR 63.2346(b)(2)). As part of the proposed amendments (see 40 CFR 63.2346(b)(3)(i) and 40 CFR 63.2346(b)(3)(ii)), vapor balancing these emissions back to a process unit was proposed. Upon further consideration, both options essentially describe one single practice, and therefore, EPA recognizes that it is not necessary for the final rule to contain both options; that 40 CFR 63.2346(b)(2) of the final rule is sufficient. Therefore, EPA is withdrawing the proposed vapor balancing of transfer racks back to a process unit. No changes have been made concerning the use of vapor balancing transfer rack emissions back to the storage tank from which the liquid originated.

We also would like to address the provisions of 40 CFR 63.2378(d), which allow emissions bypasses of fuel gas systems or the process for up to 240 hours per year. These provisions allow bypassing that is necessary for valid safety or operational reasons but are only applicable if emissions are routinely physically vented to fuel gas systems or the process. This means that the owner or operator can not use the language of 40 CFR 63.2378(d) to exempt a transfer rack that is used for less than 240 hours per year from control requirements.

C. Recordkeeping and Reporting for Emissions Sources That Do Not Require Control

Comment: One commenter requested that the recordkeeping requirements proposed in 40 CFR 63.2343(a) for tanks under 5,000 gallons capacity and for transfer racks that only unload organic liquids be eliminated in their entirety. The commenter stated that such recordkeeping and reporting requirements for these sources impose unnecessary administrative requirements on facilities. The commenter fails to see the benefit in keeping records for tanks that physically cannot change in size or for unloading racks that only unload certain materials.

Response: Addressing storage tanks first, EPA points out that owners and operators of facilities subject to 40 CFR part 63, subpart EEEE will have to make a determination as to which storage tanks are storing organic liquids subject to subpart EEEE and which are not. If a storage tank is storing an organic liquid subject to subpart EEEE, the tank is subject to subpart EEEE. For storage tanks subject to subpart EEEE, the owner or operator would then identify the capacity of each tank in order to identify those that are less than 5,000 gallons in capacity and which do not require control. Proposed 40 CFR 63.2343(a) only applies to those tanks that are storing an organic liquid subject to subpart EEEE and with capacities of less than 5,000 gallons. This applicability is stated clearly in proposed 40 CFR 63.2343(a) (emphasis added):

> (a) For each storage tank *subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons)* and for each transfer rack subject to this subpart that only unloads organic liquids (i.e., no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled.

Proposed 40 CFR 63.2343(a) requires only that the owner or operator keep a record of the size determination; that is, by virtue of having a capacity of less than 5,000 gallons, the storage tank is not required to be controlled. The proposed paragraph does not apply to: (1) Storage tanks storing a liquid that is not an organic liquid and (2) storage tanks storing an organic liquid that is not subject to 40 CFR part 63, subpart EEEE.

As correctly pointed out by the commenter, storage tanks do not change in size. Therefore, there would be no further effort required on the part of the owner or operator to document that the storage tank is not subject to control; that is, the original determination is sufficient.

Proposed 40 CFR 63.2343(a) also required that the documentation by kept up-to-date:

> The documentation must be kept up-to-date (i.e., all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

EPA points out that in explaining what is meant by "up-to-date," the phrase "all such emission sources at a facility" is used. Within the context of the entire paragraph, this phrase unambiguously refers back to those storage tanks for which the documentation under 40 CFR 63.2343(a)(1) is being requested; that is, storage tanks subject to 40 CFR part 63, subpart EEEE, which are storage tanks storing organic liquids subject to subpart EEEE. EPA does not believe it necessary to revise the regulatory text to further clarify the phrase "all such emission sources at a facility." This phrase does not apply to either storage tanks storing liquids that are not organic liquids or to storage tanks storing organic liquids that are not subject to subpart EEEE. To better identify the type of documentation that is acceptable, EPA has revised 40 CFR 63.2343(a) to allow the use of piping and instrumentation diagrams (P&ID) to identify tanks (and transfer racks) subject to 40 CFR 63.2343(a).

EPA reemphasizes that proposed 40 CFR 63.2343(a) only applies to storage tanks storing an organic liquid subject to 40 CFR part 63, subpart EEEE. If a facility has storage tanks of less than 5,000 gallon capacity, but those storage tanks do not store organic liquids (as defined in subpart EEEE), then there are no recordkeeping requirements for those tanks under 40 CFR 63.2343(a)(1) or

under any other part of subpart EEEE. Furthermore, there are no recordkeeping requirements under subpart EEEE for storage tanks of any size that either do not store and organic liquid or for storage tanks storing organic liquids that are not subject to subpart EEEE.

EPA further points out that 40 CFR 63.10(b)(3) of subpart A (the General Provisions) does not impose any recordkeeping requirements under the OLD maximum achievable control technology (MACT) for storage tanks that are not storing organic liquids and, therefore, not part of the OLD source category. The determination of applicability of 40 CFR 63.10(b)(3) applies to stationary sources that are part of the source category, but that are not subject to the relevant standard, in this case 40 CFR part 63, subpart EEEE, based on either the source's potential to emit or a specific exclusion in the subpart. In the case of the commenter, their OLD operation is located at a major source of HAP and there are no exclusions in subpart EEEE applicable to it; therefore, their OLD operation is an affected source subject to subpart EEEE. Once this determination is made, there is no applicability of 40 CFR 63.10(b)(3) to the OLD affected source.

For other storage tanks located at their plant site that do not store organic liquids and, therefore, are not part of the OLD affected source, 40 CFR 63.10(b)(3) imposes no recordkeeping requirements, for the purposes of the OLD rule, on those storage tanks or the source to which they belong.

EPA clarified this in the preamble to the March 23, 2001, proposed amendments to the General Provisions at 66 FR 16330. We state

> The current General Provisions include a requirement at 63.10(b)(3) for a source both to determine applicability and to keep a record of their determination if the source determines that it is not an affected source for a relevant standard. [A]n unintended interpretation of the General Provisions could be to require owners and operators of any source, including facilities not in the source category being regulated, to perform applicability determinations each time any NESHAP are promulgated. It was not our intent that the General Provisions require owners and operators to make a determination that they are not subject to every NESHAP that is issued.

For transfer racks, a situation similar to storage tanks exists. Only transfer racks loading or unloading organic liquids that are subject to 40 CFR part 63, subpart EEEE are affected; loading racks that load or unload only non-organic liquids (or organic liquids not subject to subpart EEEE) are not affected. For those racks that only unload organic liquids subject to subpart EEEE, owners and operators must make the initial determination that the rack only unloads such organic liquids, and then must keep a record of that determination. As long as such racks do not begin to load organic liquids subject to subpart EEEE, no further effort, beyond keeping the record readily available and up-to-date, is required on the part of the owner or operator to document that the transfer rack only unloads organic liquids subject to subpart EEEE.

Finally, EPA believes that maintaining these basic determinations in the form of a record, both for storage tanks with capacities of less than 5,000 gallons and for transfer racks that only unload organic liquids, will facilitate the time and effort an inspector would expend during an inspection of a facility and the time and effort the source would expend recreating these determinations each time they were asked.

For these reasons, EPA has not revised the proposed rule language associated with these storage tanks and transfer racks, except for the allowance of P&ID to identify such storage tanks and transfer racks.

Comment: One commenter requested that the recordkeeping and reporting requirements proposed in 40 CFR 63.2343 for storage tanks with capacities equal to or greater than 5,000 gallons that do not require control be eliminated. The commenter stated that such requirements impose an administrative burden with no environmental benefit. The commenter suggested that the more appropriate way to address these tanks is to require the owner or operator of such tanks to notify the State permitting authority at the point in time when such tanks trigger control requirements under Table 2 of 40 CFR part 63, subpart EEEE. The commenter recommended that EPA apply the same approach used in the Engine Testing MACT (40 CFR 63.9290). In the Engine Testing MACT, a source that is exclusively used for testing internal combustion engines of less than 25 horsepower is required only to submit an initial notification, meeting the requirements in the General Provisions. The initial notification for these sources also must state that the source has no additional requirements, including a brief explanation of the basis of the exclusion. No other reporting, recordkeeping, or notification requirements, including submission of startup, shutdown, and malfunction plans and compliance demonstrations, apply to sources that do not have to comply with emission limitations. According to the commenter, EPA should apply this same approach to sources that are not subject to controls under subpart EEEE.

Response: As noted in the previous response, the requirements in proposed 40 CFR 63.2343(b) only apply to storage tanks storing organic liquids subject to 40 CFR part 63, subpart EEEE. Further, an owner or operator would have to make an initial determination as to whether these larger storage tanks contain organic liquids with vapor pressures that trigger the control requirements. As long as the liquid in the tank did not change, no further action is required on the part of the owner or operator, beyond keeping the record readily available and up-to-date. If the owner or operator changes the liquids stored in such tanks, however, the owner or operator is required to make a determination as to whether or not the vapor pressure of the new liquid being stored is sufficient to require control and maintain a record of that determination, even if control is still not required.

EPA continues to believe that keeping a record of such information is important to allow an inspector to determine compliance with the OLD rule. Therefore, EPA has not revised this requirement in the final rule.

D. Technical Corrections and Clarifying Changes

EPA is making the following technical corrections and clarifications to the final rule:

1. The cross-reference to 40 CFR 63.2382(b) found in 40 CFR 63.2370(c) is incorrect. The correct cross-reference is 40 CFR 63.2382(d).

2. Item 1.b in Table 5 to 40 CFR part 63, subpart EEEE references the emission limit of "at least 95 weight percent." This limit is applicable to storage tanks only. The applicable limit for transfer racks (both low throughput and high throughput racks) is "at least 98 weight percent." EPA has revised the final rule to reflect accordingly.

3. In table 12 to 40 CFR part 63, subpart EEEE, 40 CFR 63.6(h)(1) through (7) are indicated as being not applicable to subpart EEEE, while 40 CFR 63.6(h)(8) and CFR 63.6(h)(9) are indicated as being applicable. 40 CFR 63.6(h) applies to opacity and visible emission standards. Upon closer examination of this apparent inconsistency, EPA has determined that all of 40 CFR 63.6(h) is not applicable, except to the extent that Method 22 observations are required as part of a flare compliance assessment. Therefore, EPA has revised the applicability of 40 CFR 63.6(h) to read as follows:

"No; except only as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment."

4. We are deleting methyl ethyl ketone (MEK) from Table 1 because MEK has been delisted by the Agency as a HAP.

5. We are correcting the cross-reference in 40 CFR 63.2346(a) for storage tanks meeting the tank capacity and liquid vapor pressure criteria for control in Table 2, item 6. The final rule referenced compliance with paragraph (a)(1) when it should have referenced compliance with either paragraphs (a)(1) or (a)(2).

6. We are revising the phrasing in 40 CFR 63.2354(a)(3) to clarify that performance evaluations for continuous monitoring systems (CMS) are only currently required for continuous emission monitoring systems. The requirements of 40 CFR 63.8 only apply if there are promulgated performance specifications for CMS, including continuous parameter monitoring systems. Currently, there are no performance specifications for the continuous parameter monitoring systems that are identified in 40 CFR part 63, subpart SS, which this subpart references. However, performance specifications for parameter monitoring systems are expected to be proposed in the future. When developing these performance specifications, the Agency will consider their application to OLD and other similar rules. For consistency, we have also clarified the applicability of CMS provisions contained in the General Provisions, 40 CFR 63.8(c)(6)–(8), (d), and (f).

7. We have added a new paragraph, 40 CFR 63.2396(e)(2), to clarify the relationship between the recordkeeping and reporting requirements of this subpart and the recordkeeping and reporting requirements for equipment leak components associated with unloading racks under other subparts. The new paragraph clarifies that such equipment leak components must be in compliance with this subpart EEEE. However, if the recordkeeping and reporting requirements of the other 40 CFR part 63 subpart are equivalent to those required by this subpart EEEE, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements under which they are currently being controlled and be considered in compliance with this subpart EEEE. This new paragraph parallels the similar relationship in the final rule provided for monitoring, recordkeeping, and reporting for control devices.

8. We have revised the definition of "annual average true vapor pressure" to clarify that the vapor pressure is to be based on organic HAP that are listed in Table 1 to this subpart EEEE.

9. We have corrected an incorrect cross-reference in the second column of Item 8 in Table 3 of this subpart EEEE. The incorrect cross-reference, 40 CFR 63.2366(c), does not exist. The correct cross-reference is 40 CFR 63.2366(b).

10. We corrected the last column of item 1.b in Table 5 and the third column of items 1 and 2 of Table 6 of this subpart EEEE by adding the phrase "for nonflare combustion devices" to the option of 20 parts per million by volume exhaust concentration. This phrase was inadvertently omitted and makes these items consistent with item 1.a.i.(5)(A)(ii) in Table 5 of this subpart EEEE.

11. We are making the description in item 2 in Table 11 of this subpart EEEE consistent with the General Provisions' language that requires an immediate notification when an exceedance of an applicable emission standard occurs during a startup, shutdown, or malfunction episode. The language in the rule as promulgated did not reference the exceedance of an applicable emission standard for determining when an immediate notification was required.

12. We are correcting in Table 12 of this subpart EEEE how 40 CFR 63.9(j) applies to this subpart EEEE. The types of changes that 40 CFR 63.9(j) requires to be reported are covered in subpart EEEE in 40 CFR 63.2386(c) and (d). In these paragraphs, these changes would be submitted with the next compliance report. Thus, the requirement to submit these changes within 15 days after the change is not applicable to this subpart EEEE. The change in Table 12 reflects this.

13. We are revising § 63.2350(c) to be consistent with 40 CFR 63.6(e)(3), which requires the development of a startup, shutdown, and malfunction plan. The revised language, therefore, drops the phrase "and implement." An owner or operator is still required, under 40 CFR 63.6(e)(1), to minimize emissions during a period of startup, shutdown, or malfunction; thus there is no change in the stringency of the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule required owners and operators to list sources not subject to control in the first and subsequent compliance reports and to keep appropriate documentation. The final rule applied these requirements across-the-board for all emission sources not requiring control and, in general, was not specific as to what recordkeeping is required. Under the final rule amendments, we clarify how these provisions would apply to those emission sources for which control would never be required and to those emission sources for which control could be required, but is not currently required. In addition, we identify the specific circumstances under which listing in subsequent compliance reports would be required for sources for which control is not required rather than requiring all previously identified sources to be re-listed. Further, we narrow the applicability of certain sections of the General Provisions for sources for which control is not required because the proposed amendments make such application of those sections in the General Provisions unnecessary. Thus, in sum, the final rule amendments are

not adding new information collection burden. However, 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, EPA Information Collection Request (ICR) number 1963.02. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's 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 the final rule amendments on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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.

The final rule amendments will not impose any new requirements on small entities, and will reduce some of the burden established under the promulgated rule. The final rule amendments will relieve regulatory burden by, for example, exempting all emission sources in the affected source not requiring control under the OLD NESHAP from notification, recordkeeping, and reporting requirements, except as otherwise specified for all affected small entities; excluding from the affected source storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used in special operations and to conduct maintenance activities; and allowing owners or operators of existing sources to request a compliance extension of up to 1 year if the additional time is necessary for the installation of controls. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

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 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 rule amendments 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 1 year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of 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" 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."

The final rule amendments do not have federalism implications. They will not have new 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. They correct typographical errors, clarify provisions, or eliminate unnecessary recordkeeping and reporting requirements for emission sources for which there are no control requirements. 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 the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments 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. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

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

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

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

The final rule amendments are 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 they are 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

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule amendments involve a technical standard. EPA has decided to use ASTM D6420–99 (reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, as an alternative to Method 18. This method allows the use of ASTM D6420–99 (Reapproved 2004) as an alternative to Method 18 to determine compliance with the organic HAP or total organic compounds emission limit under certain circumstances.

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 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 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). The final rule will be effective on July 28, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: July 18, 2006.

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.*

■ 2. Section 63.14 is amended by revising paragraph (b)(28) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(28) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§ 63.2354(b)(3)(i), 63.2354(b)(3)(ii), 63.2354(b)(3)(ii)(A), and 63.2354(b)(3)(ii)(B).

* * * * *

Subpart EEEE—[Amended]

■ 3. Section 63.2338 is amended by:

■ a. Revising paragraphs (b)(3) and (b)(4);

■ b. Adding a new paragraph (b)(5);

■ c. Revising paragraph (c)(1);

■ d. Removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as (c)(2) and (c)(3), respectively; and

■ e. Revising newly designated paragraphs (c)(2) and (c)(3) to read as follows:

§ 63.2338 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(3) All equipment leak components in organic liquids service that are associated with:

(i) Storage tanks storing organic liquids;

(ii) Transfer racks loading or unloading organic liquids;

(iii) Pipelines that transfer organic liquids directly between two storage tanks that are subject to this subpart;

(iv) Pipelines that transfer organic liquids directly between a storage tank subject to this subpart and a transfer rack subject to this subpart; and

(v) Pipelines that transfer organic liquids directly between two transfer racks that are subject to this subpart.

(4) All transport vehicles while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(5) All containers while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(c) * * *

(1) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components that are part of an affected source under another 40 CFR part 63 national emission standards for hazardous air pollutants (NESHAP).

(2) Non-permanent storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used in special situation distribution loading and unloading operations (such as maintenance or upset liquids management).

(3) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used to conduct maintenance activities, such as stormwater management, liquid removal from tanks for inspections and maintenance, or changeovers to a different liquid stored in a storage tank.

* * * * *

■ 4. Section 63.2342 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding paragraph (a)(3);

■ c. Revising paragraph (b)(1);

■ d. Adding paragraph (b)(3); and

■ e. Revising paragraph (d) to read as follows:

§ 63.2342 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable.

* * * * *

(3) If, after startup of a new affected source, the total actual annual facility-level organic liquid loading volume at that source exceeds the criteria for control in Table 2 to this subpart, items 9 and 10, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(b)(1) If you have an existing affected source, you must comply with the emission limitations, operating limits, and work practice standards for existing affected sources no later than February 5, 2007, except as provided in paragraphs (b)(2) and (3) of this section.

* * * * *

(3)(i) If an addition or change other than reconstruction as defined in § 63.2 is made to an existing affected facility that causes the total actual annual facility-level organic liquid loading volume to exceed the criteria for control in Table 2 to this subpart, items 7 and 8, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(ii) If the owner or operator believes that compliance with the transfer rack emission limits cannot be achieved immediately, as specified in paragraph (b)(3)(i) of this section, the owner or operator may submit a request for a compliance extension, as specified in paragraphs (b)(3)(ii)(A) through (I) of this section. Subject to paragraph (b)(3)(ii)(B) of this section, until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph (b)(3)(ii), the owner or operator of the transfer rack subject to the requirements of this section shall comply with all applicable requirements of this subpart. Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(A) *Submittal.* The owner or operator shall submit a request for a compliance extension to the Administrator (or a State, when the State has an approved 40 CFR part 70 permit program and the source is required to obtain a 40 CFR part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) seeking an extension allowing the source up to 1 additional year to comply with the transfer rack standard, if such additional period is necessary for the installation of controls. The owner or operator of the affected source who has requested an extension of compliance under this paragraph (b)(3)(ii)(A) and who is otherwise required to obtain a title V permit shall apply for such permit, or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph (b)(3)(ii)(A) will be incorporated into the affected source's title V permit according to the provisions of 40 CFR part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) *When to submit.* (*1*) Any request submitted under paragraph (b)(3)(ii)(A) of this section must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraph (b)(3)(i) of this section), except as provided for in paragraph (b)(3)(ii)(B)(*2*) of this section. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*1*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial.

(*2*) An owner or operator may submit a compliance extension request after the date specified in paragraph (b)(3)(ii)(B)(*1*) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (b)(3)(ii)(C) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*2*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(C) *Information required.* The request for a compliance extension under paragraph (b)(3)(ii)(A) of this section shall include the following information:

(*1*) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(*2*) The name, address, and telephone number of a contact person for further information;

(*3*) An identification of the organic liquid distribution operation and of the

specific equipment for which additional compliance time is required;

(*4*) A description of the controls to be installed to comply with the standard;

(*5*) Justification for the length of time being requested; and

(*6*) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*i*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated;

(*ii*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*iii*) The date by which final compliance is to be achieved.

(D) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (b)(3)(ii)(C) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with the transfer rack emission standard, as specified in paragraph (b)(3)(ii) of this section. The extension will be in writing and will—

(*1*) Identify each affected source covered by the extension;

(*2*) Specify the termination date of the extension;

(*3*) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(*4*) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests);

(*5*) Specify the contents of the progress reports to be submitted and the dates by which such reports are to be submitted, if required pursuant to paragraph (b)(3)(ii)(E) of this section.

(*6*) Under paragraph (b)(3)(ii) of this section, specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period.

(E) *Progress reports.* The owner or operator of an existing source that has been granted an extension of compliance under paragraph (b)(3)(ii)(D) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached.

(F) *Notification of approval or intention to deny.*

(*1*) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (b)(3)(ii) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application; that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. Failure by the Administrator to act within 30 calendar days to approve or disapprove a request submitted under paragraph (b)(3)(ii) of this section does not constitute automatic approval of the request.

(*2*) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(*3*) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with:

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

(*ii*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(*4*) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(G) *Termination of extension of compliance.* The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (b)(3)(ii)(D)(*3*) or paragraph (b)(3)(ii)(D)(*4*) of this section is not met. Upon a determination to terminate, the Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(*1*) Notice of the reason for termination; and

(*2*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(*3*) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(H) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the CAA.

(I) *Limitation on use of compliance extension.* The owner or operator may request an extension of compliance under the provisions specified in paragraph (b)(3)(ii) of this section only once for each facility.

* * * * *

(d) You must meet the notification requirements in §§ 63.2343 and 63.2382(a), as applicable, according to the schedules in § 63.2382(a) and (b)(1) through (3) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

■ 5. Section 63.2343 is added to subpart EEEE to read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

This section establishes the notification, recordkeeping, and reporting requirements for emission sources identified in § 63.2338 that do not require control under this subpart (i.e., under paragraphs (a) through (e) of § 63.2346). Such emission sources are not subject to any other notification, recordkeeping, or reporting sections in this subpart, including § 63.2350(c), except as indicated in paragraphs (a) through (d) of this section.

(a) For each storage tank subject to this subpart having a capacity of less

than 18.9 cubic meters (5,000 gallons) and for each transfer rack subject to this subpart that only unloads organic liquids (i.e., no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled. The documentation must be kept up-to-date (i.e., all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location. The documentation may consist of identification of the tanks and transfer racks identified in paragraph (a) of this section on a plant site plan or process and instrumentation diagram (P&ID).

(b) For each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6, you must comply with the requirements specified in paragraphs (b)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (2), (3), and (10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or in your first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your Notification of Compliance Status, the Notification of Compliance Status must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your Notification of Compliance Status.

(B) If you submit your Notification of Compliance Status before your first Compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the Notification of Compliance Status.

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single Notification of Compliance Status or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each storage tank that meets the conditions identified in paragraph (b) of this section, you must keep documentation, including a record of the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid, that verifies the storage tank is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(c) For each transfer rack subject to this subpart that loads organic liquids but is not subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with the requirements specified in paragraphs (c)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (2), (3), and (10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or a first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your Notification of Compliance Status, the Notification of Compliance Status must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your Notification of Compliance Status.

(B) If you submit your Notification of Compliance Status before your first Compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the Notification of Compliance Status.

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each transfer rack that meets the conditions identified in paragraph (b) of this section (i.e., a single Notification of Compliance Status or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each transfer rack that meets the conditions identified in paragraph (c) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each transfer rack that meets the conditions identified in paragraph (c) of this section, you must keep documentation, including the records specified in § 63.2390(d), that verifies the transfer rack is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(d) If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(3) and (c)(3) of this section.

(1) Any storage tank or transfer rack became subject to control under this subpart EEEE; or

(2) Any storage tank equal to or greater than 18.9 cubic meters (5,000

gallons) became part of the affected source but is not subject to any of the emission limitations, operating limits, or work practice standards of this subpart; or

(3) Any transfer rack (except those racks at which only unloading of organic liquids occurs) became part of the affected source; or

(4) Any of the information required in § 63.2386(c)(1), § 63.2386(c)(2), or § 63.2386(c)(3) has changed.

■ 6. Section 63.2346 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(2);
■ c. Adding a new paragraph (a)(4);
■ d. Revising paragraph (b) introductory text;
■ e. Revising paragraph (b)(2);
■ f. Revising paragraph (b)(3);
■ g. Revising paragraph (d) introductory text;
■ h. Revising paragraph (e); and
■ i. Removing and reserving paragraph (h) to read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1), (a)(2), or (a)(4) of this section.

* * * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

* * * * *

(4) Use a vapor balancing system that complies with the requirements specified in paragraphs (a)(4)(i) through (vii) of this section and with the recordkeeping requirements specified in § 63.2390(e).

(i) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the transport vehicle from which the storage tank is filled.

(ii) Transport vehicles must have a current certification in accordance with the United States Department of Transportation (U.S. DOT) pressure test requirements of 49 CFR part 180 for cargo tanks and 49 CFR 173.31 for tank cars.

(iii) Organic liquids must only be unloaded from cargo tanks or tank cars when vapor collection systems are connected to the storage tank's vapor collection system.

(iv) No pressure relief device on the storage tank, or on the cargo tank or tank car, shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices must be set to no less than 2.5 pounds per square inch guage (psig) at all times to prevent breathing losses. Pressure relief devices may be set at values less than 2.5 psig if the owner or operator provides rationale in the notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times. The owner or operator shall comply with paragraphs (a)(4)(iv)(A) through (C) of this section for each pressure relief valve.

(A) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(B) An instrument reading of 500 parts per million by volume (ppmv) or greater defines a leak.

(C) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.181(d)(1) through (4).

(vi) Cargo tanks and tank cars that deliver organic liquids to a storage tank must be reloaded or cleaned at a facility that utilizes the control techniques specified in paragraph (a)(4)(vi)(A) or (a)(4)(vi)(B) of this section.

(A) The cargo tank or tank car must be connected to a closed-vent system with a control device that reduces inlet emissions of total organic HAP by 95 percent by weight or greater or to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air.

(B) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the cargo tank or tank car during reloading must be used to route the collected vapor to the storage tank from which the liquid being transferred originated or to another storage tank connected to a common header.

(vii) The owner or operator of the facility where the cargo tank or tank car is reloaded or cleaned must comply with paragraphs (a)(4)(vii)(A) through (D) of this section.

(A) Submit to the owner or operator of the storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of paragraph (a)(4)(vii)(A) through (C) of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph (a)(4)(vii) of this section.

(B) If complying with paragraph (a)(4)(vi)(A) of this section, comply with the requirements for a closed vent system and control device as specified in this subpart EEEE. The notification requirements in § 63.2382 and the reporting requirements in § 63.2386 do not apply to the owner or operator of the offsite cleaning or reloading facility.

(C) If complying with paragraph (a)(4)(vi)(B) of this section, keep the records specified in § 63.2390(e)(3) or equivalent recordkeeping approved by the Administrator.

(D) After the compliance dates specified in § 63.2342, at an offsite reloading or cleaning facility subject to § 63.2346(a)(4), compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 that has monitoring, recordkeeping, and reporting provisions constitutes compliance with the monitoring, recordkeeping and reporting provisions of § 63.2346(a)(4)(vii)(B) or § 63.2346(a)(4)(vii)(C). You must identify in your notification of compliance status report required by § 63.2382(d) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

(b) *Transfer racks.* For each transfer rack that is part of the collection of transfer racks that meets the total actual annual facility-level organic liquid loading volume criterion for control in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (b)(1), (b)(2), or (b)(3) of this section for each arm in the transfer rack loading an organic liquid whose organic HAP content meets the organic HAP criterion for control in Table 2 to this subpart, items 7 through 10. For existing affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section during the loading of organic liquids into transport vehicles. For new affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section during the loading of organic liquids into transport vehicles and containers. If the total actual annual facility-level organic liquid loading volume at any affected source is equal to or greater than the loading volume criteria for control in

Table 2 to this subpart, but at a later date is less than the loading volume criteria for control, compliance with paragraph (b)(1), (b)(2), or (b)(3) of this section is no longer required. For new sources and reconstructed sources, as defined in § 63.2338(d) and (e), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section immediately, as specified in § 63.2342(a)(3). For existing sources, as defined in § 63.2338(f), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section immediately, as specified in § 63.2342(b)(3)(i), unless an alternative compliance schedule has been approved under § 63.2342(b)(3)(ii) and subject to the use limitation specified in § 63.2342(b)(3)(ii)(I).

* * * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

(3)(i) Use a vapor balancing system that routes organic HAP vapors displaced from the loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.

(ii) Use a vapor balancing system that routes the organic HAP vapors displaced from the loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.

* * * * *

(d) *Transport vehicles.* For each transport vehicle equipped with vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(1) of this section. For each transport vehicle without vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(2) of this section.

* * * * *

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from the loading of organic liquids are routed to the control device. For each storage tank and low throughput transfer rack, you must comply with the requirements for monitored parameters as specified in subpart SS of this part for storage vessels and, during the loading of organic liquids, for low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

* * * * *

■ 7. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) Except for emission sources not required to be controlled as specified in § 63.2343, you must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

■ 8. Section 63.2354 is amended by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a)(1) * * *

(3) For each performance evaluation of a continuous emission monitoring system (CEMS) you conduct, you must follow the requirements in § 63.8(e).

(b)(1) * * *

(3)(i) In addition to EPA Method 25 or 25A of 40 CFR part 60, appendix A, to determine compliance with the organic HAP or TOC emission limit, you may use EPA Method 18 of 40 CFR part 60, appendix A, as specified in paragraph (b)(3)(i) of this section. As an alternative to EPA Method 18, you may use ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), under the conditions specified in paragraph (b)(3)(ii) of this section.

(A) If you use EPA Method 18 to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (i.e., uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, you must analyze samples collected as specified in EPA Method 18, simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(B) If you use EPA Method 18 of 40 CFR part 60, appendix A, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, analyze samples collected as specified in EPA Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(ii) You may use ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), as an alternative to EPA Method 18 if the target concentration is between 150 parts per billion by volume and 100 ppmv and either of the conditions specified in paragraph (b)(2)(ii)(A) or (B) of this section exists. For target compounds not listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004) and not amenable to detection by mass spectrometry, you may not use ASTM D6420–99 (Reapproved 2004).

(A) The target compounds are those listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14),; or

(B) For target compounds not listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in ASTM D6420–99 (Reapproved 2004), Section 10.5.3, must be followed, met, documented, and submitted with the data report, even if there is no moisture

condenser used or the compound is not considered water-soluble.

* * * * *

■ 9. Section 63.2362 is amended by revising paragraph (b)(1) to read as follows:

§ 63.2362 When must I conduct subsequent performance tests?

* * * * *

(b)(1) For each transport vehicle that you own that is equipped with vapor collection equipment and that is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must perform the vapor tightness testing required in Table 5 to this subpart, item 2, on that transport vehicle at least once per year.

* * * * *

■ 10. Section 63.2370 is amended by revising paragraph (c) to read as follows:

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

* * * * *

(c) You must submit the results of the initial compliance determination in the Notification of Compliance Status according to the requirements in § 63.2382(d).

■ 11. Section 63.2382 is amended by revising paragraphs (d)(2)(iv), (v), (vi), (vii), and (viii) to read as follows:

§ 63.2382 What notifications must I submit and when and what information should be submitted?

* * * * *

(d) * * *

(2) * * *

(iv) Descriptions of worst-case operating and/or testing conditions for the control device(s).

(v) Identification of emission sources subject to overlapping requirements described in § 63.2396 and the authority under which you will comply.

(vi) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4.

(vii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 3.a, include a statement to that effect and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 psig.

(viii) The information specified in § 63.2386(c)(10)(i), unless the information has already been submitted with the first Compliance report. If the information specified in § 63.2386(c)(10)(i) has already been submitted with the first Compliance report, the information specified in § 63.2386(d)(3) and (4), as applicable, shall be submitted instead.

■ 12. Section 63.2386 is amended by:

■ a. Revising paragraph (b)(3);

■ b. Revising paragraph (c)(4);

■ c. Revising paragraphs (c)(9) and (c)(10);

■ d. Revising paragraph (d) introductory text;

■ e. Removing paragraph (d)(3); and

■ f. Adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

* * * * *

(b) * * *

(3) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) and (2) of this section.

(c) * * *

(4) Any changes to the information listed in § 63.2382(d)(2) that have occurred since the submittal of the Notification of Compliance Status.

* * * * *

(9) A listing of all transport vehicles into which organic liquids were loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, during the previous 6 months for which vapor tightness documentation as required in § 63.2390(c) was not on file at the facility.

(10)(i) A listing of all transfer racks (except those racks at which only unloading of organic liquids occurs) and of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart.

(ii) If the information specified in paragraph (c)(10)(i) of this section has already been submitted with the Notification of Compliance Status, the information specified in paragraphs (d)(3) and (4) of this section, as applicable, shall be submitted instead.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (9) of this section and, where applicable, the information in paragraphs (d)(1) through (4) of this section.

* * * * *

(3)(i) A listing of any storage tank that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 1 through 6, since the filing of the last Compliance report.

(ii) A listing of any transfer rack that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 7 through 10, since the filing of the last Compliance report.

(4)(i) A listing of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

(ii) A listing of all transfer racks (except those racks at which only the unloading of organic liquids occurs) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

* * * * *

■ 13. Section 63.2390 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Revising paragraph (c) introductory text;

■ c. Redesignating paragraph (c)(3) as paragraph (d);

■ d. Adding a new paragraph (c)(3);

■ e. Revising newly designated paragraph (d); and

■ f. Adding a new paragraph (e) to read as follows:

§ 63.2390 What records must I keep?

(a) For each emission source identified in § 63.2338 that does not require control under this subpart, you must keep all records identified in § 63.2343.

(b) For each emission source identified in § 63.2338 that does require control under this subpart:

(1) You must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans; and

(2) You must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you.

(c) For each transport vehicle into which organic liquids are loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must keep the applicable records in paragraphs (c)(1) and (2) of this section or alternatively the verification records in paragraph (c)(3) of this section.

* * * * *

(3) In lieu of keeping the records specified in paragraph (c)(1) or (2) of this section, as applicable, the owner or operator shall record that the verification of U.S. DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing, required in Table 5 to this subpart, item 2, has been performed. Various methods for the record of verification can be used, such as: A check-off on a log sheet, a list of U.S. DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(d) You must keep records of the total actual annual facility-level organic liquid loading volume as defined in § 63.2406 through transfer racks to document the applicability, or lack thereof, of the emission limitations in Table 2 to this subpart, items 7 through 10.

(e) An owner or operator who elects to comply with § 63.2346(a)(4) shall keep the records specified in paragraphs (e)(1) through (3) of this section.

(1) A record of the U.S. DOT certification required by § 63.2346(a)(4)(ii).

(2) A record of the pressure relief vent setting specified in § 63.2348(a)(4)(v).

(3) If complying with § 63.2348(a)(4)(vi)(B), keep the records specified in paragraphs (e)(3)(i) and (ii) of this section.

(i) A record of the equipment to be used and the procedures to be followed when reloading the cargo tank or tank car and displacing vapors to the storage tank from which the liquid originates.

(ii) A record of each time the vapor balancing system is used to comply with § 63.2348(a)(4)(vi)(B).

■ 14. Section 63.2394 is amended by revising paragraph (a) to read as follows:

§ 63.2394 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form at a separate location.

* * * * *

■ 15. Section 63.2396 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other regulations for storage tanks.*

(1) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank that is assigned to the OLD affected source and that is both controlled with a floating roof and is in compliance with the provisions of either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that records shall be kept for 5 years rather than 2 years for storage tanks that are assigned to the OLD affected source.

(2) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank with a fixed roof that is assigned to the OLD affected source and that is both controlled with a closed vent system and control device and is in compliance with either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart.

(3) As an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to the OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks meeting the applicability criteria for control in Table 2 to this subpart.

(b) *Compliance with other regulations for transfer racks.* After the compliance dates specified in § 63.2342, if you have a transfer rack that is subject to 40 CFR part 61, subpart BB, and that transfer rack is in OLD operation, you must meet all of the requirements of this subpart for that transfer rack when the transfer rack is in OLD operation during the loading of organic liquids.

* * * * *

(e) *Overlap with other regulations for monitoring, recordkeeping, and reporting.*

(1) *Control devices.* After the compliance dates specified in § 63.2342, if any control device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements of another 40 CFR part 63 subpart, the owner or operator must be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart EEEE. If complying with the monitoring, recordkeeping, and reporting requirements of the other subpart satisfies the monitoring, recordkeeping, and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the monitoring, recordkeeping, and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

(2) *Equipment leak components.* After the compliance dates specified in § 63.2342, if you are applying the applicable recordkeeping and reporting requirements of another 40 CFR part 63 subpart to the valves, pumps, and sampling connection systems associated with a transfer rack subject to this subpart that only unloads organic liquids directly to or via pipeline to a non-tank process unit component or to a storage tank subject to the other 40 CFR part 63 subpart, the owner or operator must be in compliance with the recordkeeping and reporting requirements of this subpart EEEE. If complying with the recordkeeping and reporting requirements of the other subpart satisfies the recordkeeping and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the recordkeeping and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

■ 16. Section 63.2402 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 63.2402 Who implements and enforces this subpart?

* * * * *

(b) * * *

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

■ 17. Section 63.2406 is amended by:

■ a. Revising the introductory text;

■ b. Revising the definitions of "Annual average true vapor pressure," "Shutdown," "Startup," paragraph (3) in the definition of "Storage tank," "Transfer rack," "Vapor balancing system," and "Vapor collection system;" and

■ c. Adding in alphabetical order definitions for "Bottoms receiver," "High throughput transfer rack," "Low throughput transfer rack," "Surge control vessel," and "Total actual annual facility-level organic liquid loading volume" to read as follows:

§ 63.2406 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, 40 CFR part 63, subparts H, PP, SS, TT, UU, and WW, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart. Notwithstanding the introductory language in § 63.921, the terms "container" and "safety device" shall have the meaning found in this subpart and not in § 63.921.

* * * * *

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total Table 1 organic HAP in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using standard conditions of 77 degrees F and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2, items 1 through 6, to this subpart, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss from External Floating-Roof Tanks (incorporated by reference, see § 63.14);

(2) Using standard reference texts;

(3) By the American Society for Testing and Materials Method D2879–83, 96 (incorporated by reference, see § 63.14); or

(4) Using any other method that the EPA approves.

* * * * *

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further processing downstream.

* * * * *

High throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) a total of 11.8 million liters per year or greater of organic liquids.

* * * * *

Low throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) less than 11.8 million liters per year of organic liquids.

* * * * *

Shutdown means the cessation of operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), including equipment required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.

Startup means the setting in operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.

Storage tank * * *

(3) Bottoms receivers;

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within chemical manufacturing processes when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

Total actual annual facility-level organic liquid loading volume means the total facility-level actual volume of organic liquid loaded for transport within or out of the facility through transfer racks that are part of the affected source into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) based on a 3-year rolling average, calculated annually.

(1) For existing affected sources, each 3-year rolling average is based on actual facility-level loading volume during each calendar year (January 1 through December 31) in the 3-year period. For calendar year 2004 only (the first year of the initial 3-year rolling average), if an owner or operator of an affected source does not have actual loading volume data for the time period from January 1, 2004, through February 2, 2004 (the time period prior to the effective date of the OLD NESHAP), the owner or operator shall compute a facility-level loading volume for this time period as follows: At the end of the 2004 calendar year, the owner or operator shall calculate a daily average facility-level loading volume (based on the actual loading volume for February 3, 2004, through December 31, 2004) and use that daily average to estimate the facility-level loading volume for the period of time from January 1, 2004, through February 2, 2004. The owner or operator shall then sum the estimated facility-level loading volume from January 1, 2004, through February 2, 2004, and the actual facility-level loading volume from February 3, 2004, through December 31, 2004, to calculate the annual facility-level loading volume for calendar year 2004.

(2)(i) For new affected sources, the 3-year rolling average is calculated as an average of three 12-month periods. An owner or operator must select as the beginning calculation date with which to start the calculations as either the initial startup date of the new affected source or the first day of the calendar month following the month in which startup occurs. Once selected, the date with which the calculations begin cannot be changed.

(ii) The initial 3-year rolling average is based on the projected maximum facility-level annual loading volume for each of the 3 years following the selected beginning calculation date. The second 3-year rolling average is based on actual facility-level loading volume for the first year of operation plus a new projected maximum facility-level annual loading volume for second and third years following the selected beginning calculation date. The third 3-year rolling average is based on actual facility-level loading volume for the first 2 years of operation plus a new projected maximum annual facility-level loading volume for the third year following the beginning calculation date. Subsequent 3-year rolling averages are based on actual facility-level loading volume for each year in the 3-year rolling average.

* * * * *

Transfer rack means a single system used to load organic liquids into, or unload organic liquids out of, transport vehicles or containers. It includes all loading and unloading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (i.e., do not share

common piping, valves, and other equipment) are considered to be separate transfer racks.

* * * * *

Vapor balancing system means: (1) A piping system that collects organic HAP vapors displaced from transport vehicles or containers during loading and routes the collected vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. For containers, the piping system must route the displaced vapors directly to the appropriate storage tank or to another storage tank connected to a common header in order to qualify as a vapor balancing system; or (2) a piping system that collects organic HAP vapors displaced from the loading of a storage tank and routes the collected vapors to the transport vehicle from which the storage tank is filled.

Vapor collection system means any equipment located at the source (i.e., at the OLD operation) that is not open to the atmosphere; that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for:

(1) Containing and conveying vapors displaced during the loading of transport vehicles to a control device;

(2) Containing and directly conveying vapors displaced during the loading of containers; or

(3) Vapor balancing. This does not include any of the vapor collection equipment that is installed on the transport vehicle.

* * * * *

■ 18. Table 1 to subpart EEEE of part 63 is amended by removing the entry for methyl ethyl ketone (2-Butanone) (MEK).

■ 19. Table 2 to subpart EEEE of part 63 is amended by revising entries 1, 6, 7, 8, 9, and 10 to read as follows:

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

* * * * * * *

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil	i. See the requirement in item 1.a.i or 1.a.ii of this table.
* *	* * *	* *
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2 of this subpart, items 1 through 5.	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.a, for tanks storing the liquids described in that table.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons and less than 10 million gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 98 percent by weight and is being loaded into a transport vehicle.	i. For all such loading arms at the rack, reduce emissions of total organic HAP (or, upon approval, TOC) from the loading of organic liquids either by venting the emissions that occur during loading through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS, achieving at least 98 weight-percent HAP reduction, OR, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3 of Table 4 to this subpart.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is ≥10 million gallons..	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

■ 20. Table 3 to subpart EEEE of part 63 is amended by revising entries 3, 5, 6, and 8 to read as follows:

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit. a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
* * * * * * *	
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b), and monitor the control device in accordance with that plan.

■ 21. Table 4 to subpart EEEE to part 63 is revised to read as follows:

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS

[As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .]

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2) requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5; OR b. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; OR c. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
2. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, item 6.	a. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; OR b. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
3. Transfer rack subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. If the option of a vapor balancing system is selected, install and, during the loading of organic liquids, operate a system that meets the requirements in Table 7 to this subpart, item 3.b.i and item 3.b.ii, as applicable; OR b. Comply with the requirements of § 63.984 during the loading of organic liquids, for routing emissions to a fuel gas system or back to a process.
4. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
5. Transport vehicles equipped with vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS—Continued

[As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .]

For each . . .	You must . . .
6. Transport vehicles equipped without vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR 180 (cargo tanks) or 49 CFR 173.31 (tank cars).

■ 22. Table 5 to subpart EEEE of part 63 is revised to read as follows:

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) The outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(3) EPA Method 3 or 3B in appendix A of 40 CFR part 60, as appropriate.	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(4) EPA Method 4 in appendix A of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(5) EPA Method 18, 25, or 25A in appendix A of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
		b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device..	§63.985(b)(1)(i).	.....	During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own that is equipped with vapor collection equipment and is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test..	.....	EPA Method 27 in appendix A of 40 CFR part 60.	Vapor tightness	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

■ 23. The text of the table in Table 6 to subpart EEEE of part 63 is revised to read as follows:

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

* * * * * * *

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option for nonflare combustion devices to an exhaust concentration ≤20 ppmv.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	Reduce total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids by at least 98 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.

■ 24. Table 7 to subpart EEEE of part 63 is revised to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perofrm seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. You meet the requirements in § 3.2346(a)(4).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the priamry and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. See item 1.c.i of this table.
3. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 5 and item 6.	i. You comply with the provisions specified in Table 4 to this subpart, item 5 or item 6, as applicable.

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. ii. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.
	c. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 4.a.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

■ 25. Table 8 to subpart EEEE of part 63 is revised to read as follows:

TABLE 8 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:]

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Reduce total organic HAP (or, upon approval, TOC) emissions during the loading of organic liquids from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378 during the loading of organic liquids; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit during the loading of organic liquids.

■ 26. Table 9 to subpart EEEE of part 63 is amended by revising entries 2, 3, 4, 5, 6, and 7 to read as follows:

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

* * * * * * *

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test; AND Achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iv. Keeping the applicable records required in § 63.998.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)); AND	i. Continuously operating a device that detects the presence of the pilot flame; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)); AND	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)); AND EITHER	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.
	d.1. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(7) and (8) and with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii); OR	i. Operating the flare within the applicable exit velocity limits; AND ii. Operating the flare with the gas heating value greater than the applicable minimum value; AND iii. Keeping the applicable records required in § 63.998.
	d.2. Adhere to the requirements in § 63.11(b)(6)(i).	i. Operating the flare within the applicable limits in 63.11(b)(6)(i); AND ii. Keeping the applicable records required in § 63.998.

■ 27. Table 10 to subpart EEEE of part 63 is amended by revising entries 1, 2, 4, 5, and 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 . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR once per year (§ 63.1063(d)(2)); AND ii. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d)(1), and (e)); AND iii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in § 63.1065.
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

* * * * * * *

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container 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.
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b).
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.a of this table.
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. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container 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.

■ 28. Table 11 to subpart EEEE of part 63 is revised to read as follows:

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.2386(a) and (b), you must submit compliance reports and SSM reports according to the following table:]

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report or Periodic Report	a. The information specified in § 63.2386(c), (d), (e). If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i); AND	Semiannually, and it must be postmarked by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections; AND	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c); AND	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: Notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a. of this table.
2. Immediate SSM report if you had a SSM that resulted in an applicable emission standard in the relevant standard being exceeded, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii)	i. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

■ 29. Table 12 to subpart EEEE of part 63 is amended by:

■ (a) Revising entries § 63.6(e)(3), § 63.7(g), § 63.8(c)(6)–(8), § 63.8(d), § 63.8(e), § 63.8(f)(1)–(5), § 63.9(h)(1)–(6), § 63.9(j), and § 63.10(e)(3)(iv)–(v);

■ (b) By removing entries § 63.6(h)(1), § 63.6(h)(2)(i), § 63.6(h)(2)(ii), § 63.6(h)(2)(iii), § 63.6(h)(3), § 63.6(h)(4), § 63.6(h)(5)(i), (iii)–(v), § 63.6(h)(5)(ii), § 63.6(h)(6), § 63.6(h)(7)(i), § 63.6(h)(7)(ii), § 63.6(h)(7)(iii), § 63.6(h)(7)(iv), § 63.6(h)(7)(v), § 63.6(h)(8), and § 63.6(h)(9); and

■ (c) By adding entry § 63.6(h) 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
*	*	*	*
§ 63.6(e)(3)	SSM Plan	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes; however, (1) the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply and (2) § 63.6(e)(3) does not apply to emissions sources not requiring control.
*	*	*	*
§ 63.6(h)	Opacity/Visible Emission Standards.	Requirements for compliance with opacity and visible emission standards.	No; except as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment.
*	*	*	*
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status; keep data for 5 years.	Yes; however, performance test data is to be submitted with the Notification of Compliance Status according to the schedule specified in § 63.9(h)(1)–(6) below.
*	*	*	*
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes, but only applies for CEMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes, but 40 CFR part 63, subpart SS also provides procedures for approval of CPMS.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/visible emissions, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, (1) there are no opacity standards and (2) all initial Notification of Compliance Status, including all performance test data, are to be submitted at the same time, either within 240 days after the compliance date or within 60 days after the last performance test demonstrating compliance has been completed, whichever occurs first.
*	*	*	*
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	No. These changes will be reported in the first and subsequent compliance reports.
*	*	*	*
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports.	Requirement to revert to quarterly submission if there is an excess emissions or parameter monitoring exceedance (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*

[FR Doc. 06–6419 Filed 7–27–06; 8:45 am]
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Federal Register

Thursday,
July 27, 2006

Part II

Environmental Protection Agency

40 CFR Part 63
National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0155; FRL–8200–2]

RIN 2060–AK18

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating revised standards to limit emissions of perchloroethylene (PCE) from existing and new dry cleaning facilities. On September 22, 1993, EPA promulgated technology-based emission standards to control emissions of PCE from dry cleaning facilities. EPA has reviewed these standards and is promulgating revisions to take into account new developments in production practices, processes, and control technologies. In addition, EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is promulgating more stringent standards for major sources in order to protect public health with an ample margin of safety. The final standards are expected to provide further reductions of PCE beyond the 1993 national emission standards for hazardous air pollutants (NESHAP), based on application of equipment and work practice standards and, in certain situations, disallowing the use of PCE at dry cleaning facilities. In addition, EPA is taking this opportunity to make some technical corrections to the 1993 Dry Cleaning NESHAP.

DATES: *Effective Date:* This final rule is effective July 27, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0155. 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 (CBI) 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 *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2005–0155, EPA West Building, Room B–102, 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.

At this time, the EPA/DC's Public Reading Room is closed until further notice due to flooding. Fax numbers for Docket offices in the EPA/DC are temporarily unavailable. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule amendments, contact Mr. Warren Johnson, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–5124; fax number (919) 541–3470; e-mail address: *johnson.warren@epa.gov*. For questions on the residual risk analysis, contact Mr. Neal Fann, EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Benefits Cost Group (C439–02), Research Triangle Park, NC 27711; telephone number (919) 541–0209; fax number (919) 541–0839; e-mail address: *fann.neal@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule are industrial and commercial PCE dry cleaners. The final rule affects the following categories of sources:

Category	NAICS [1] code	Examples of potentially regulated entities
Coin-operated Laundries and Dry Cleaners	812310	Dry-to-dry machines Transfer machines.
Dry Cleaning and Laundry Services (except coin-operated)	812320	Dry-to-dry machines Transfer machines.
Industrial Launderers	812332	Dry-to-dry machines Transfer machines.

[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 regulated by the final rule. To determine whether your facility is regulated by the final rule, you should examine the applicability criteria in 40 CFR 63.320 of subpart M (1993 Dry Cleaning NESHAP). If you have any questions regarding the applicability of the final rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the National PCE Air Emission Standards for Dry Cleaning Facilities (40 CFR part 63, subpart M) is Docket ID No. EPA–HQ–OAR–2005–0155.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted on EPA's Technology Transfer Network (TTN) 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 25, 2006. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final action 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 "only 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 EPA to convene a proceeding for reconsideration, "if the person raising the objection can demonstrate to the EPA that it was impracticable to raise such an 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 the EPA 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 Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

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

I. Background
A. What Is the Statutory Authority for Regulating Hazardous Air Pollutants?
B. What Are PCE Dry Cleaning Facilities?
C. What Are the Health Effects of PCE?
D. What Does the 1993 NESHAP Require?
II. Summary of the Proposed Rule
A. What Were the Proposed Requirements for Major Sources?
B. What Were the Proposed Requirements for Area Sources?
C. What Were the Proposed Requirements for Transfer Machines at Major and Area Sources?
III. Summary of the Final Rule
A. What Are the Requirements for Major Sources?
B. What Are the Requirements for Area Sources?
C. What Are the Requirements for Transfer Machines at Existing Major and Area Sources?
D. What Are the Requirements for Co-residential Sources?
IV. Responses to Significant Comments
A. Statutory Authority
B. Methods Used for the Risk Assessment
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D. Control Requirements for Major Sources
E. Area Sources
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G. Technical Corrections to the 1993 Dry Cleaning NESHAP
V. Impacts
A. Major Sources
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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. Congressional Review Act

I. Background

A. What Is the Statutory Authority for Regulating Hazardous Air Pollutants?

Section 112 of the CAA requires us to regulate hazardous air pollutants (HAP) emitted by categories of stationary sources. For "major" sources of HAP, the CAA directs us to first establish technology-based standards reflecting maximum achievable control technology ("MACT"), and to second establish residual risk standards if such standards are required in order to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. For non-major "area" sources of HAP, the CAA allows us to establish standards reflecting generally available control technology ("GACT"), in lieu of MACT and residual risk standards. The HAP we must regulate are listed at CAA section 112(b). The types of technology-based standards we must promulgate differ based on whether the regulated sources are "major" sources or "area" sources. Under CAA section 112(a)(1), major sources are those that emit or have the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, including fugitive emissions. Section 112(a)(2) of the CAA provides that area sources are all other non-major stationary sources of HAP. For major sources, our initial technology-based standards must reflect maximum achievable control technology (MACT) as set forth in CAA sections 112(d)(2)–(3). For area sources, we may set less stringent standards based on generally available control technology (GACT) under CAA section 112(d)(5). For both MACT and GACT, CAA section 112(h) allows us to establish design, equipment, work practice, or operational standards where we determine it is not feasible to prescribe or enforce an emission standard.

Section 112(f)(2) of the CAA requires us to determine for each category of major sources regulated under CAA section 112(d) whether the MACT standard protects public health with an ample margin of safety, eight years after we promulgate MACT for that source category. Section 112(f)(5) of the CAA provides that we are not required to conduct this review for categories of area sources regulated by GACT standards. 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, we must promulgate "residual risk" standards under CAA section 112(f) for the source category (or subcategory) as necessary to protect public health with an ample margin of safety. We must also adopt more stringent standards if required to prevent an "adverse environmental effect" as defined in CAA section 112(a)(7), after considering costs, energy, safety, and other relevant factors.

We are also required by CAA section 112(d)(6) to periodically review all standards we promulgate under CAA section 112 and to revise them as necessary, taking into account developments in practices, processes and control technologies. The first such review must occur eight years after we promulgate MACT and GACT standards, and can be combined with the residual risk review performed under CAA section 112(f)(2). The section CAA 112(d)(6) review is thereafter to be repeated no less frequently than every eight years.

B. What Are PCE Dry Cleaning Facilities?

Most dry cleaners use PCE in a dry cleaning machine to clean all types of garments, including clothes, gloves, leather garments, blankets, and absorbent materials. There are approximately 34,000 dry cleaning facilities in the United States, approximately 28,000 of which use PCE. Of the 28,000 PCE-using dry cleaners, 12 of the facilities are major sources and the remainder are area sources. As defined in the 1993 Dry Cleaning NESHAP, major source PCE dry cleaners are those that purchase more than 2,100 gallons (gal) of PCE per year (1,800 gal per year if the facility uses transfer machines). In the 1993 Dry Cleaning NESHAP, area sources were defined as either large or small, with large area sources defined as facilities that use between 140 to 2,100 gal of PCE per year (or 140 to 1,800 gal per year if the facility uses transfer machines) and small area sources defined as those facilities using less than 140 gal per year. Some area sources are located in the same buildings where people live. In the 1993 Dry Cleaning NESHAP we did not specifically discuss these sources, but in this notice we refer to them as co-residential dry cleaners. A co-residential dry cleaning facility is located in a building in which people reside. Co-residential facilities are located primarily in urban areas.

In general, PCE dry cleaning facilities can be classified into three types: Commercial, industrial, and leather. Commercial facilities typically clean household items such as suits, dresses, coats, pants, comforters, curtains, and formal wear. Industrial dry cleaners clean heavily-stained articles such as work gloves, uniforms, mechanics' overalls, mops, and shop rags. Leather cleaners mostly clean household leather products like jackets and other leather clothing. The 12 major sources include seven industrial facilities and five commercial facilities. The commercial facilities are each the central plant for a chain of retail storefronts. We do not expect any new PCE dry cleaning facilities constructed in the future to be major sources. Based on the emission rates of current PCE dry cleaning machines and the typical business models used in the industrial and commercial dry cleaning sectors, it is unlikely that any new sources that are constructed will emit PCE at major source levels, or that any existing area sources will become major sources due to business growth.

PCE dry cleaning machines can be classified into two types: Transfer and dry-to-dry. Similar to residential washing machines and dryers, transfer machines have a unit for washing/extracting and another unit for drying. Following the wash cycle, PCE containing articles are manually transferred from the washer/extractor to the dryer. The transfer of wet fabrics is the predominant source of PCE emissions in these systems. Dry-to-dry machines wash, extract, and dry the articles in the same drum in a single machine, so the articles enter and exit the machine dry. Because the transfer step is eliminated, dry-to-dry machines have much lower emissions than transfer machines.

New transfer machines are effectively prohibited at major and area sources due to the 1993 Dry Cleaning NESHAP requirement that new dry cleaning systems eliminate any emissions of PCE while transferring articles from the washer to the dryer. Therefore, transfer machines are no longer sold. Existing transfer machines are becoming an increasingly smaller segment of the dry cleaning population as these machines reach the end of their useful lives and are replaced by dry-to-dry machines. There are approximately 200 transfer machines currently being used, all at area sources.

The primary sources of PCE emissions from dry-to-dry machines are the drying cycle and fugitive emissions from the dry cleaning equipment (including equipment used to recycle PCE and dispose of PCE containing waste). Machines are designed to be either vented or non-vented during the drying cycle. Approximately 200 dry cleaners (1 percent) use vented machines, and the remaining facilities use the lower-polluting, non-vented machines. (For both major and area sources, the 1993 Dry Cleaning NESHAP prohibits new dry cleaning machines that vent to the atmosphere while the dry cleaning drum is rotating.) In vented machines, the majority of emissions from the drying cycle are vented outside the building. In non-vented machines, dryer emissions are released when the door is opened to remove garments. Currently, the largest sources of emissions from dry cleaning are from equipment leaks, which come from leaking valves and seals, and the loading and unloading of garments.

C. What Are the Health Effects of PCE?

The main effects of PCE in humans are neurological, liver, and kidney damage following acute (short-term) and chronic (long-term) inhalation exposure. The results of epidemiological studies evaluating the relative risk of cancer associated with PCE exposure have been mixed; some studies reported an increased incidence of a variety of tumors, while other studies did not report any carcinogenic effects. Animal studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats.

Although PCE has not yet been reassessed under the Agency's recently revised Guidelines for Cancer Risk assessment, it was considered in one review by the EPA's Science Advisory Board to be intermediate between a "probable" and "possible" human carcinogen (Group B/C) when assessed under the previous 1986 Guidelines. Since that time, the U.S. Department of Health and Human Services has concluded that PCE is "reasonably anticipated to be a human carcinogen," and the International Agency for Research on Cancer has concluded that PCE is "probably carcinogenic to humans."

Effects other than cancer associated with long-term inhalation of PCE in worker or animal studies include neurotoxicity, liver and kidney damage, and, at higher levels, developmental effects. To characterize noncancer hazard in lieu of the completed Integrated Risk Information System (IRIS) assessment, which is being revised, we used the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimum Risk Level (MRL). This value is based on a study of neurological effects in workers in dry cleaning shops, and is derived in a manner similar to EPA's method for derivation of reference concentrations, including scientific and public review.

The Agency's IRIS chemical assessment for PCE is currently being revised. A final IRIS determination on PCE is not expected until 2008. Because EPA has not yet issued a final IRIS document for PCE, to estimate cancer risk, we used the California EPA (CalEPA) unit risk estimate (URE) as well as a URE value developed by the EPA's Office of Prevention, Pesticides and Toxics (OPPTS) in 1998. The final IRIS reassessment may result in a URE that is different than these two values. Among the available Acute Reference Levels (ARL), the one-hour California Reference Exposure Level (REL) was considered the most appropriate to use in the assessment because it may be used to characterize acute risk for exposure an exposure duration of one hour. In contrast, the ATSDR acute MRL is appropriate to characterize acute risk for up to 14 days of exposure.

See the risk characterization memorandum in the public docket for additional information regarding the health effects of PCE.

D. What Does the 1993 NESHAP Require?

The 1993 NESHAP prescribes a combination of equipment, work practices, and operational requirements. The requirements for process controls are summarized in table 1 of this preamble. The 1993 Dry Cleaning NESHAP defines major and area sources based on the annual PCE purchases for all machines at a facility. The consumption criterion (which affects the amount of PCE purchased) varies depending on whether the facility has dry-to-dry machines only, transfer machines only, or a combination of both. The affected source is each individual dry cleaning system. Consequently, under the 1993 Dry Cleaning NESHAP, a single dry cleaning facility could be comprised of multiple affected sources, if it has multiple dry cleaning systems onsite. As a result, some of a facility's systems could be subject to "new" source requirements under the NESHAP, and some could be "existing" sources, depending upon when they were placed into service.

TABLE 1.—SUMMARY OF THE 1993 DRY CLEANING NESHAP PROCESS CONTROLS

Sources	Annual PCE purchased	New[1] (installed after 12/9/91)	Existing[2]
Major Sources	Dry-to-dry only > 2,100 gal/yr Transfer only >1,800 gal/yr Dry-to-dry and Transfer > 1,800 gal/yr	Closed-loop, dry-to-dry machines with a refrigerated condenser, and carbon adsorber operated immediately before or as the door is opened.	Dry-to-dry machines: Must have refrigerated condenser.[3] Transfer machines: Must be enclosed in a room exhausting to a dedicated carbon adsorber.
Large Area Sources	Dry-to-dry only 140 to 2,100 gal/yr Transfer only 200 to 1,800 gal/yr Dry-to-dry and Transfer 140 to 1,800 gal/yr	Closed-loop, dry-to-dry machines with a refrigerated condenser..	Dry-to-dry machines: Must have a refrigerated condenser[3] Transfer machines: No controls required.
Small Area Sources	Dry-to-dry ONLY < 140 gal/yr Transfer ONLY < 200 gal/yr Dry-to-dry AND Transfer < 140 gal/yr	Same as large area sources	No controls required.

[1] No new transfer machines are allowed after 9/23/93.
[2] Compliance date = 9/23/96.
[3] Alternatively, carbon adsorber is allowed only if installed before 9/22/93.

In addition, all sources must comply with certain operating requirements, including recording PCE purchases, storing PCE and PCE-containing waste in non-leaking containers, and inspecting for perceptible leaks. Owners or operators are required to operate and maintain the control equipment according to procedures specified in the 1993 Dry Cleaning NESHAP and to use pollution prevention procedures, such as good operation and maintenance, for both dry cleaning machines and auxiliary equipment (such as filter, muck cookers, stills, and solvent tanks) to prevent liquid and vapor leaks of PCE from these sources.

II. Summary of the Proposed Rule

A. What Were the Proposed Requirements for Major Sources?

Under the proposal, the requirements for all new and existing major sources were the same. The proposed requirements included the implementation of an enhanced leak detection and repair (LDAR) program and the use of dry-to-dry machines that do not vent to the atmosphere (closed-loop) during any phase of the dry cleaning cycle. A refrigerated condenser and a secondary carbon adsorber were proposed for all machines.

Under the proposed enhanced LDAR program, the facility owner or operator would be required to use a PCE gas analyzer (photoionization detector, flame ionization detector, or infrared analyzer) and perform leak checks according to EPA Method 21 on a monthly basis. The facility owner or operator would also continue the weekly perceptible leak check according to the requirements of the 1993 Dry Cleaning NESHAP.

B. What Were the Proposed Requirements for Area Sources?

For existing area sources (large and small), the proposed requirements included implementation of an enhanced LDAR program and a prohibition on the use of existing transfer machines. For new area sources (large and small), the proposed requirements included implementation of an enhanced LDAR program and use of a non-vented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber.

The enhanced LDAR program for area sources would require facilities to use a halogenated leak detector (instead of a more costly gas analyzer proposed for major sources) to perform leak checks on a monthly basis. The facility would also continue to inspect for perceptible leaks biweekly for small area sources and weekly for large area sources according to the requirements of the 1993 Dry Cleaning NESHAP.

For co-residential area sources, we proposed two options. The first option would effectively prohibit new PCE sources from locating in residential buildings by requiring that owners or operators eliminate PCE emissions from the dry cleaning process. Existing co-residential sources, under this proposed option, would be subject to the same requirements proposed for all other existing area sources (*i.e.*, enhanced LDAR and elimination of transfer machines). Instead of a prohibition on new co-residential sources, the second option would require that existing and new co-residential sources comply with standards based on those required by New York State Department of Environmental Conservation (NYSDEC) in their Title 6 New York Conservation Rules and Regulations (NYCRR) Part 232 rules, which include using machines equipped with refrigerated condensers and carbon adsorbers, enclosed in a vapor barrier to help prevent exposures to PCE emissions.

C. What Were the Proposed Requirements for Transfer Machines at Major and Area Sources?

The proposed rule included a prohibition on the use of all existing transfer machines 90 days after publication of the final rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. The installation of new transfer machines was prohibited by the 1993 Dry Cleaning NESHAP.

III. Summary of the Final Rule

A. What are the Requirements for Major Sources?

Under the final rule revisions, the requirements for all new and existing major sources are the same. In addition to the previous 1993 NESHAP requirements, the final revisions require the implementation of an enhanced LDAR program. Under the enhanced LDAR program, the facility owner or operator must use a PCE gas analyzer (photoionization detector, flame ionization detector, or infrared analyzer) and perform leak checks according to EPA Method 21 on a monthly basis. The facility owner or operator is also required to continue the weekly perceptible leak check according to the

requirements of the 1993 Dry Cleaning NESHAP.

B. What Are the Requirements for Area Sources?

For existing area sources (large and small), in addition to the previous 1993 NESHAP requirements, the final rule revisions require implementation of an enhanced LDAR program and prohibit the use of existing transfer machines. This requirement and prohibition apply to all types of existing area sources, including co-residential sources (for the remaining time in which the latter are permitted to use PCE at all).

For new area sources (large and small), the final rule revisions add to the previous 1993 NESHAP by requiring implementation of an enhanced LDAR program and use of a non-vented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber. These added requirements do not apply to new co-residential sources since these sources are prohibited from using PCE, as discussed later in this notice. The enhanced LDAR program for new and existing area sources requires facilities to use a halogenated leak detector (instead of a more costly gas analyzer for major sources) to perform leak checks on a monthly basis. The facility is also required to continue to inspect for perceptible leaks biweekly for small area sources and weekly for large area sources according to the requirements of the 1993 Dry Cleaning NESHAP.

C. What Are the Requirements for Transfer Machines at Existing Major and Area Sources?

The final rule prohibits the use of all existing transfer machines two years from the effective date of the final rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. The installation of new transfer machines was prohibited by the 1993 Dry Cleaning NESHAP. We estimate that about 200 transfer machines remain in use within the population of 28,000 PCE dry cleaning sources. Most of these machines are near the end of their useful economic lives. The typical useful life of a dry cleaning machine is 10 to 15 years. By the end of 2008, the newest transfer machines in the industry will be 15 years old.

D. What Are the Requirements for Co-residential Sources?

For co-residential area sources, the final rule effectively prohibits new PCE machines in residential buildings by requiring that owners or operators eliminate PCE emissions from dry cleaning systems that are installed after December 21, 2005. This requirement applies to any newly installed dry cleaning system that is located in a building with a residence, regardless of whether the dry cleaning system is a newly fabricated system or one that is relocated from another facility. In addition, the final rule revisions include a "sunset date" for the use of PCE at currently operating co-residential sources: All existing PCE machines in co-residential facilities are prohibited after December 21, 2020. This sunset date allows owners of existing co-residential sources to operate their machines for their maximum estimated useful life, 15 years, assuming they were first installed no later than the date of the proposed rule. We have concluded that it is reasonable to establish the sunset date at that point to allow such owners to recoup the cost of their investment in their current machines. We also decided not to allow for a later sunset date since on the date of our proposal owners were first placed on notice that we were considering a sunset provision for co-residential sources. This sunset period, during which existing machines will be required to comply with the same revised requirements that apply to other existing area sources, will provide adequate time for source owners and operators to switch to non-PCE equipment or move their PCE equipment to a non-residential location. In the interim before the sunset date, existing co-residential sources are subject to the same requirements that apply to all other existing area sources under the final rule revisions (*i.e.*, enhanced LDAR and elimination of transfer machines).

IV. Responses to Significant Comments

A. Statutory Authority

Comment: Two commenters questioned whether we have the legal authority to impose risk-based standards on area sources that are regulated under GACT. The commenters quoted sections of the Congressional Record (appropriate sections were attached to the comments) concerning this point and provided analysis to demonstrate a legislative intent to exempt area sources, specifically, dry cleaners from residual risk standards.

Response: While we do not concede that the commenter's interpretation of our authority under section 112(f) to impose risk based standards on area sources regulated under GACT is correct, we note that since we are not relying upon CAA section 112(f) as the authority for any of the requirements promulgated in this action for area sources, the commenters' arguments are moot for purposes of this final rulemaking.

Under CAA section 112(d)(6), we are required to conduct a review and, if appropriate, revise the dry cleaning standard as necessary to reflect advances in practices, processes, and control technologies. At proposal, we evaluated the emission reductions that could be achieved under CAA section 112(d)(6). After assessing advances in control technologies and considering the public comments, we have determined that, given the current knowledge of the health effects of PCE, additional requirements we proposed under the combined authorities of CAA sections 112(f)(2) and (d)(6) for area sources are equally supportable under CAA section 112(d)(6) alone. In light of public comments we received regarding possible risks posed by area sources, and EPA's pending IRIS review of PCE, we have determined that we are able to address the risks posed by area sources by revising our standards under the authority of section 112(d)(6). The standards for all area sources in this final rule are promulgated under the authority of CAA section 112(d)(6), and fulfill the Agency's statutory requirements under this authority for these sources.

The Agency's Office of Research and Development is currently re-evaluating the available information on human health effects of PCE as part of a hazard and dose-response assessment for the Agency's IRIS, which may result in revised metrics which are different enough from those used in our current assessment to warrant a re-assessment of risks from these sources. The project schedule for completion of the IRIS assessment is available at *http://cfpub.epa.gov/iristrac/index.cfm*. Also, additional information is needed to accurately estimate chronic and short-term exposures and risks to individuals located next to area sources other than co-residential (*e.g.*, sources co-located with schools and day care centers). While we received some information on measured PCE concentrations at such area sources in public comments, much of these data were collected based on complaints and may not be representative of PCE exposures from sources in compliance with the relevant regulations. EPA is aware of other data collected to support a peer-reviewed article; however, these data represent a very limited number of samples and sampling locations. As the results of the Agency's final PCE health assessment and additional scientifically peer

reviewed data become available, we may choose to further assess PCE risks and may re-evaluate our decision for area sources.

B. Methods Used for the Risk Assessment

Comment: A commenter requested that EPA account for any uncertainty in the ATSDR MRL and the OPPTS provisional Reference Concentration (RfC) by providing a greater margin of (public) safety when selecting a dose-response value for PCE. Two commenters requested EPA to use the New York State Department of Health (NYSDOH) non-cancer reference value. Many commenters questioned the use of the CalEPA and OPPTS URE in the absence of the revised IRIS re-assessment number. Several hundred commenters, using a form letter, questioned the carcinogenicity of PCE and referenced a Nordic study.

Response: The ATSDR MRL and the OPPTS provisional RfC, both based on 1992 occupational studies indicating effects at essentially identical exposure levels, are within a factor of two of each other, which, given the precision of the underlying data, is not a large difference. Additionally, a recent document by the World Health Organization (World Health Organization. 2006. Concise International Chemical Assessment Document 68.TETRACHLOROETHENE Wissenchaftliche Verlagsgesellschaft mbH, Stuttgart, Germany, available on-line at *http://www.who.int/ipcs/publications/cicad/cicad68.pdf*) included the derivation of a noncancer value termed a "tolerable concentration" which falls intermediate between the OPPTS provisional RfC and the ATSDR MRL. With regard to addressing uncertainty in the underlying database, both the ATSDR and OPPTS values (and the WHO value) were derived using similar approaches which rely on the inclusion of uncertainty factors to account for recognized uncertainties in the extrapolations from the experimental data conditions to an estimate appropriate to the assumed human scenario. The method employed by NYSDOH to derive their criterion differs from that employed by ATSDR, which is consistent with EPA methodology.

As the Agency has not yet completed its own cancer assessment for PCE, we have evaluated PCE cancer risk based on consideration of both the CalEPA and OPPTS cancer dose-response assessments, as well as more recently available data. Data are available from the Japanese Industrial Safety Association (1993) for rodent cancer bioassays by inhalation, which were not considered in either the CalEPA or OPPTS assessments. These data were considered in a recent WHO document, which presented a range of inhalation cancer unit risk estimates derived using the various available data sets and default methods for extrapolation to humans. The highest unit risk estimate derived from these data was quite similar to the CalEPA estimate, while the lowest was about an order of magnitude lower, similar to the OPPTS URE. While the Nordic study did not find an association between PCE exposures of the study population and cancer risk, this study needs to be thoroughly evaluated in the context of all epidemiological studies to determine whether or not it will change the weight of evidence evaluation. The EPA IRIS reassessment will include consideration of this study as well. Since the last EPA assessment of PCE carcinogenicity, the United States Department of Health and Human Services has concluded that PCE is "reasonably anticipated to be a human carcinogen" and the International Agency for Research on Cancer has concluded that PCE is "probably carcinogenic to humans."

C. Compliance Dates

1. Two Years for Existing Sources

Comment: Most of the comments received on compliance dates for the regulation were in favor of extending the date to more than 90 days. Some commenters asked for a one year extension, while others asked that the date be extended to three years. The commenters cited references in the CAA that stated that CAA section 112(i)(3)(A) governs the compliance times for CAA section 112, including residual risk standards, and that compliance is required as expeditiously as possible, but in no event later than three years from the effective date of the standard. The commenters added that CAA section 112(f)(4) merely states that EPA may not set a compliance date earlier than 90 days. The commenters believe that the CAA section 112(f)(4)(b) provision for waivers of up to two years would apply only in cases where the rule established a compliance date of more than 90 days but less than two years.

Another commenter, a State representative, recommended that the compliance deadline for area sources that need to purchase new machines should be extended to one year, because State agencies need time to conduct outreach. States do not have lists of area source dry cleaners and will need to collect this information during facility inspections.

Response: As we have recently explained in another rulemaking, the National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry; Proposed Rule, published on June 14, 2006 (71 FR 34422), we have since revisited our prior view regarding which CAA provisions govern compliance dates for residual risk rules. We hereby incorporate that discussion by reference. In response to the commenters, we are adopting different compliance deadlines for the existing source requirements than we proposed. We interpret CAA section 112(i) as providing the comprehensive framework for compliance deadlines for all rules adopted under CAA section 112, even where the provisions of CAA section 112(f)(4) may appear to conflict with those of CAA section 112(i).

As explained in the proposed residual risk rule for the HON source category, for new sources, CAA section 112(i)(1) requires that after the effective date of any standard under subsections (d), (f) or (h), no new source may be constructed or reconstructed except in compliance with the standard, as determined by EPA or the applicable permitting authority under title V of the CAA. A new source, under CAA section 112(a)(4), is any stationary source that commences construction or reconstruction after EPA proposes regulations applicable to the source category under CAA section 112. Sections 112(e)(10) and (f)(3) of the CAA provide that CAA section 112(d)(6) and residual risk standards, respectively, become effective immediately upon promulgation. This means generally that a new source that is constructed after a proposed rule is issued must comply with the final standard, when promulgated, immediately upon the rule's effective date or upon startup, which ever occurs later.

Sections 112(i)(7) and 112(i)(2)(A)–(B) of the CAA provide some exceptions to this general rule. The former provision essentially ensures that new sources that are built in compliance with MACT but before a residual risk rule is proposed will not be forced to undergo modifications to comply with a residual risk rule unreasonably early. The second set of provisions essentially treats new sources as if they are existing sources, where a final standard is more stringent than its proposed version and a source constructs after proposal but before final promulgation: Such sources have three years to comply with the final standard,

provided they comply with the standard as proposed in the meantime.

For existing sources, CAA section 112(i)(3) allows EPA to set compliance deadlines of up to three years for "any emission standard, limitation or regulation promulgated under this section." This up-to-3-year compliance period matches the 3-year period provided under CAA section 112(i)(2), which potentially applies to any standard issued under CAA sections 112(d), (f) or (h). There is also an exception to the 3-year deadline for existing sources: CAA section 112(i)(3)(B) allows EPA or a State title V permitting authority to issue a permit granting an existing source an additional year to comply with standards under subsection (d), if it is necessary for the installation of controls. We believe that this reference to only subsection (d) was accidental on Congress's part and presents a conflict with the rest of the statutory scheme Congress enacted in 1990 to govern compliance deadlines under CAA section 112.

In addition to adding section 112(i) in the 1990 CAA Amendments, the amended CAA section 112 included provisions in section 112(f) left over from the previous version of CAA section 112 that in several ways differ from those in CAA section 112(i). First, CAA section 112(f)(4) includes a requirement that new sources comply immediately with CAA section 112(f) final rules, which is redundant with CAA section 112(i). This provision also fails to account for the allowable exceptions to the immediate compliance requirement in CAA section 112(i) and fails to refer to the new title V implementation mechanism added in the 1990 CAA Amendments. In light of the overall statutory scheme regarding compliance deadlines for new sources reflected in CAA section 112(i), we believe that where those provisions conflict with the provisions of CAA section 112(f)(4), the most reasonable approach is to view CAA section 112(i) as controlling.

In addition, for existing sources, CAA section 112(f)(4)(A) imposes a 90-day compliance deadline following promulgation of residual risk rules. Section 112(f)(4)(B) of the CAA then states that EPA, without reference to a title V permitting authority, may grant a waiver for up to two years if such period is necessary for the installation of controls. Both of these provisions conflict with CAA section 112(i). The 90-day deadline conflicts with the up-to-3-year deadline available for existing sources under "any" rule adopted under CAA section 112 and has the result of imposing a shorter deadline on existing sources than may apply for new sources under CAA section 112(i)(2). The CAA section 112(f)(4)(B) waiver provision also fails to rely upon the new title V implementation mechanism, even though, of course, residual risk rules are required to be reflected in title V permits to the same extent as MACT rules to which CAA section 112(i)(3) clearly applies.

Notwithstanding CAA section 112(i)(3)(B)'s limited reference to standards adopted under subsection (d), we interpret CAA section 112(i)(3) as applying to "any" standards promulgated under CAA section 112, including those under CAA section 112(f), since CAA section 112(i)(3)(A) uses the term "any" without limitation. Moreover, it is clear that Congress intended the CAA section 112(i) provisions applicable to new sources to govern compliance under CAA section 112(f) standards, notwithstanding the language of CAA section 112(f)(4), based on their explicit reference to such standards. Reading CAA section 112(i)(3)(B) as reaching only subsection (d) standards, conversely, with CAA section 112(f)(4)(B) governing subsection (f) standards, would leave unanswered the question of which provision applies to subsection (h) standards, which may also require the installation of controls. A narrow reading of the scope of CAA section 112(i)(3) would also ignore the fact that in many cases, including this rule, the enabling authority will be both CAA sections 112(f)(2) and 112(d)(6). We conclude that the only reasonable way to avoid a conflict in the provisions addressing compliance deadlines for existing sources in these situations is to read the more specific and comprehensive set of provisions in CAA section 112(i) as govern both the CAA section 112(d) and CAA section 112(f) aspects of the regulation.

In our proposed rule, we asked for comments on the issue of whether a 90-day compliance deadline was sufficient for our proposed elimination of transfer machines. In response to this, and in response to our proposed deadlines for other requirements for existing sources, we received significant comments on this compliance deadline issue generally. Therefore, we believe that our approach promulgated in this action is a logical outgrowth of our proposed rule. In anticipation of an objection claiming that our resolution of the conflict between CAA sections 112(i) and 112(f)(4) was not adequately noticed in our proposal, we note that the same 2-year compliance deadline we are adopting for existing sources in the final rule is also fully supported under an alternative interpretation that CAA section 112(f)(4)(A)–(B) controls. This is because CAA section 112(f)(4) would allow us to grant a 2-year extension of the compliance deadline for existing sources, on top of the 90-day compliance deadline otherwise required. Since we find that the 2-year total compliance deadline is necessary for the installation of controls at existing dry cleaners that would have to replace transfer machines with equipment compliant with new source standards (as further discussed below), and as the total 2-year compliance deadline falls within the 2-year plus 90-day period that would be allowed under CAA section 112(f)(4)(A)–(B), the final rule deadline is within the permissible range of CAA section 112(f)(4), if it applies. In addition, since we explicitly asked for comment on the 90-day deadline proposed under CAA section 112(f)(4) for eliminating transfer machines and received substantial comments on this issue and on the compliance deadline issue in general, our final decision, to the extent it must rely on the authority of CAA section 112(f)(4), is also a logical outgrowth of our proposal.

We agree with the commenters that existing sources will need more than 90 days to fully implement the requirements of the rule. Existing area sources will require up to two years to comply with the revised standards. Approximately 200 facilities will need to replace their transfer machines with dry-to-dry machines. These facilities generally are small proprietorships that will need a sufficient amount of time to save the money to purchase new machines. Also, due to the large number of area sources in the U.S., time is needed for outreach to inform these facilities about the rule changes. Moreover, there could be a supply shortage if 28,000 area sources were required to obtain a leak detection instruments within 90 days of promulgation. Similarly, major sources will need additional time to obtain leak detection equipment and fully implement enhanced LDAR requirements.

2. Clarification of New Source Requirements

Comment: One commenter requested clarification on whether the proposed revisions for new sources apply to those constructed after the proposal date of the original NESHAP or of the date of the current proposal.

Response: The revised requirements for new sources apply only to new dry cleaning machines that are constructed or reconstructed after December 21,

2005. Under the general provisions, a new source is any affected source that commences construction or reconstruction after the date that a relevant emission standard is proposed in the **Federal Register**. Therefore, new dry cleaning machines build after the proposal date of the original rule but before December 21, 2005, are subject to the new source requirements of the original rule, and to any additional requirements of the revised rule that would apply to existing sources. New machines built after December 21, 2005, are subject to the requirements of the rule as revised upon the effective date of the final rule or upon their startup, whichever occurs later.

D. Control Requirements for Major Sources

Comment: Most comments received about the requirements for major sources supported EPA's proposed requirements of non-venting machines with refrigerated condenser, secondary carbon adsorber, and an enhanced LDAR program. Most major sources were estimated to incur an annual cost savings by implementing these requirements. We received a few comments that asked us to require more stringent requirements. These commenters asked us to require all major sources to upgrade their machines with a PCE analyzer and lockout and another asked to ban new PCE machines at major sources, require PCE sensor and lockout equipment for existing machines, and adopt an equipment standard that prohibits the use of PCE machines more than 15 years old. One commenter, a major source stated that they would face substantial negative economic impacts if required to replace their existing equipment with closed-loop systems with refrigerated condensers and carbon adsorbers as proposed.

Response: Since proposal, 3 major source facilities, including the proposal MIR facility, have been removed from our risk analysis, which has affected our risk estimates for existing major sources. The MIR facility ceased operation due to a change in ownership to a company that does not use PCE in the cleaning process. One additional facility ceased operation, and another was determined to have been an area source prior to the compliance date for the original NESHAP, and is therefore not subject to major source requirements. The resulting cancer risks at baseline for the remaining facilities range between 50 and 400 in-1-million.

In assessing the appropriate level of control to address these risks, we revisited the proposal level of control, which included enhanced LDAR, along with the requirements to use dry-to-dry machines that do not vent to the atmosphere (closed loop) during any phase of the dry cleaning cycle, and to have refrigerated condensers and secondary carbon adsorbers to control the PCE emissions during the final stage of the dry cleaning cycle immediately before and as the drum door is opened. Enhanced LDAR alone, which will require owners and operators to use a PCE gas analyzer and perform leak checks according to EPA Method 21 on a monthly basis (as well as continue weekly perceptible leak checks), is expected to reduce MIR from existing major sources to between 20 and 200 in-a-million. We have determined that this range of MIR levels is acceptable within the meaning of the Benzene NESHAP decision framework. In arriving at this determination we considered the MIR levels and other factors in making our determination of acceptability, as directed by the 1989 Benzene NESHAP. Nearly all of the population living within 10 km of each remaining major source facility is estimated to be exposed at risk levels of less than 1-in-1 million at this level of control. Considering the very small number of individuals that are estimated to be exposed at risk levels greater than 100-in-1 million cancer risk coupled with the exposure and dose response assessment methodology that was conservatively health protective, it is likely that no actual persons are exposed to PCE emissions from major sources causing cancer risk levels above 100-in-1 million. Among the exposed population of 9 million individuals, a maximum of 2 people are estimated to be exposed at risk levels of more than 100-in-1 million. In addition, no significant non-cancer health effects are predicted. The maximum HQ would be reduced from 0.3 to 0.06, and no adverse ecological impacts are predicted from exposure to emissions at this level of control. We expect that PCE usage will continue to drop as has been the trend over the past 10 years. This trend has been caused by the greater use of alternative solvents, older machines at the end of their useful lives being replaced with newer, lower emitting dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers, and State and industry programs that improve machine efficiency and reduce PCE consumption. All of these factors will cause risks to continue to decrease in the future in the absence of further Federal regulatory requirements. Therefore, we have determined that the risks associated with enhanced LDAR at existing major sources are acceptable after considering MIR, the population exposed at different risk levels, and the projected decline in PCE usage. While not relevant in the analysis of acceptable level of risks, the costs for this option include a capital cost of approximately $30,000, and an annual cost savings of approximately $250,000.

In the second step of the residual risk process, we determined whether a standard more stringent than enhanced LDAR is warranted to protect public health with an ample margin of safety. We considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP. The requirements to use closed loop dry-to-dry machines and for machines to be controlled with refrigerated condensers and carbon adsorbers as proposed would further reduce MIR to between 10 and 100 in-a-million. However, the additional costs and associated impacts from application of these controls at existing major sources do not warrant the level of incremental risk reductions this option would achieve, especially when considering the distribution of costs, emissions and risk reductions among the affected facilities. For example, of the seven existing facilities with major sources that would be impacted by this additional level of control, the bulk of the costs are incurred by one facility, and would result in minimal risk reductions from the facility. This facility would incur costs of approximately $2 million to replace equipment which could not be retrofitted to meet this level of control. Annual costs for this facility would be approximately $200,000. The risk range associated with this facility upon implementation of enhanced LDAR is estimated to be between 5 and 50 in-1 million. The risk range with the additional level of controls of closed loop dry-to-dry machines and refrigerated condenser and carbon adsorber would be between 2 and 20-in-1 million. While two of the remaining six facilities would achieve somewhat higher risk reductions that would be realized from the example facility, the remaining four are expected to only achieve minimal risk reductions, as represented by the range of incremental emissions reductions from the added layer of control (between 0 and 4 tons per year). The capital costs to achieve these emissions and risk

reductions would be $2.3 million, with annual costs of $53,000. Consequently, we have determined that the risks associated with enhanced LDAR at existing major sources represent an ample margin of safety after considering costs, remaining risks and population cancer risk.

As proposed, new major sources would be required to perform enhanced LDAR in addition to the 1993 NESHAP requirement of closed-loop, dry-to-dry systems with refrigerated condensers and carbon adsorbers. As explained in the proposal, we do not expect that any new major sources will be built, or that any existing area sources will increase PCE usage to major source levels. However, if this situation occurs, the additional LDAR requirements will continue to reduce emissions from equipment leaks. The risks posed by major sources do not warrant further control given the costs and the relatively low levels of emission and risk reduction that would be achieved by these additional controls. The available data indicated that closed-loop systems with refrigerated condensers and carbon adsorbers, as well as PCE analyzer and lockout costs were unreasonably high considering the range of impacts across facilities. Consequently, we determined that requiring these additional controls was not a reasonable or economically feasible option for all major sources. The costs to eliminate PCE usage at major sources would require a capital cost to the industry of approximately $8.2 million. This estimate was based on the total costs of replacing all PCE machines with machines using hydrocarbon solvent, the most common and lowest cost alternative in large-scale operations.

1. Risks From Major Sources

Comment: One commenter stated that the risk assessment is biased and does not represent all sources. Data regarding the performance of pollution control equipment used at each facility is critical. The commenter stated that the control technology at their facility is unlike that at any other facility. They believe the risk assessment for the group of major sources is invalid because it depended heavily on the risk of one outlier facility, ALAC, which recently closed. Therefore, they contend ALAC greatly increased the MIR for all major sources.

Response: We disagree with the commenter that the risk assessment is biased and is driven by the results of the assessment for a single facility. While we did use this facility's MIR at the time of proposal, we assessed risks using data from major source facilities that we concluded were representative of all major sources. Our final regulatory decision is based on a revised MIR for major sources, which ranges between 50-in-1 million and 400-in-1 million, after excluding data from sources that have ceased operation, such as the ALAC facility. This revised MIR supports our decision for major source under both sections 112(f) and 112(d)(6) of the CAA.

For the risk assessment, major sources were subdivided into three cleaning specializations-commercial, industrial and leather. EPA collected site-specific information from 10 of the 15 facilities (9 surveys and 1 site visit) to develop a cross-section of the three specializations within the source category. Facilities within each specialization tend to be homogenous with respect to factors that affect the emissions, pollutant dispersion, and population size in the modeling radius, allowing EPA to extrapolate risks from the facilities it modeled to those it did not.

The information EPA collected included:

- Source locations and emission points,
- Building dimensions,
- PCE consumption,
- Annual disposal of PCE in sludge or residual waste (still bottoms),
- Annual facility operating hours, and
- Locations of sensitive receptors, including neighboring houses.

Based on these survey and site-visit data, we estimated annual and hourly emissions by performing a mass balance calculation on PCE concentrations. Using this mass balance data, we then estimated annual average emission rates. Finally, we estimated maximum one-hour emissions by dividing the total emissions level by the total number of operational hours at that facility and then accounting for hourly variation in these emissions.

Comment: One commenter stated that EPA should have informed the public that two major sources recently ceased operations.

Response: The largest major source ceased operations in June 2005. One other source ceased dry cleaning operations and another source was determined to have been an area source. By the time we learned of the closures, the proposed rule package was at the later stages of senior-level Agency review. Since proposal, we re-evaluated the risk assessment without these sources. The baseline estimate for MIR eliminating the sources that ceased operation ranges between 50 in-one-million to 400 in-one-million. The MIR at the level of control promulgated in this final rule is between 20 in-one-million and about 200 in-one-million.

2. Site Specific Risk Assessment

Comment: Two commenters supported the concept of incorporating a site-specific risk assessment (SSRA) for both major and area sources. The commenters believe that substantial flexibility is needed to improve the cost-effectiveness of the rules and to avoid potentially adverse impacts on specific sources. They believe that EPA has published adequate guidance on conducting an SSRA. The commenters believe that the SSRA should be used both to demonstrate equivalence to specific emission reduction requirements and to determine applicability to the residual risk requirements. The commenters believe that the CAA allows EPA to focus the applicability of the residual risk requirements only on those sources whose remaining risks after application of MACT do not provide an ample margin of safety (citing Senate Report language to support their case).

Response: We have decided not to adopt an SSRA option for major or area sources as part of this action. As a result of the revised risk analysis for major source given the elimination of 3 sources from the analysis, including the MIR facility, baseline risks from major sources are much lower than estimated for proposal, and the associated risk reduction measures are less stringent than originally proposed. Major sources are required to perform enhanced LDAR, which is expected to reduce MIR from between 50 and 400 in a million, to between 20 and 200 in a million, which the Agency has determined meets ample margin of safety considering cost, population cancer risk at different control levels and other factors. Furthermore, an annual cost savings of about $250,000 is estimated for major sources from implementing enhanced LDAR. Similarly, an annual cost savings of about $2.7 million is estimated for area sources from implementing enhanced LDAR programs and eliminating existing transfer machines. We believe these requirements will be cost-effective. Therefore, we have determined that an option for major or area sources to perform an SSRA is not necessary.

For co-residential sources, we are promulgating a ban on new sources and a sunset date for existing sources. An option for co-residential sources to perform an SSRA to determine low risk and avoid these requirements is not feasible as part of this action. There is no established protocol for self assessment for co-residential sources

which would account for exposures inside of co-located apartments. Traditional methods of dispersion modeling of emissions would not accurately assess risks in this exposure scenario, as no modeling methodology exists that could determine dispersion patterns throughout buildings. Also, there may be practical difficulties for these small businesses to pay for, perform or obtain monitored samples of PCE concentrations in private residences, to be used as part of an SSRA in the absence of a modeling methodology. Therefore, an option for an SSRA is not included in this action.

3. PCE Analyzer and Lockout

Comment: Six commenters recommended that EPA require major sources to install a PCE sensor and lockout to further reduce health risk. Among the six commenters, two commenters suggested that if EPA receives additional information they should revisit the cost-effectiveness analysis. Another commenter stated that 40 tons per year of PCE removed by this control option at cost of $17,000 per ton would be worthwhile. One commenter stated that the sensor and lockout will help to reduce the PCE emissions from operator error, which is, along with poorly maintained older machines, the cause of the majority of emissions.

One commenter, a vendor of dry cleaning machines, advised EPA to be cautious regarding the use PCE analyzers inside the drum because of their high sensitivity to humidity, heat, and vibration which necessitates frequent recalibration. Another commenter, a major source, noted that a lockout system would increase cycle times significantly thereby increasing operating costs.

Response: Based on the revised risk assessment for major sources post proposal and the resulting cancer and non-cancer risk estimates, we have determined that the requirement for enhanced LDAR in addition to the existing requirements in the 1993 NESHAP are sufficient to protect public health with an ample margin of safety. We considered a variety of other factors in making our determination, as directed by the 1989 Benzene NESHAP (described above). Consequently, we believe that the additional costs of further controls are not warranted.

We agree with the commenter about the effect of operator error on emissions. Because our estimated emission reductions are based on subjective estimates by industry experts of typical performance over time, variations in operations have been taken into account in the emissions estimate. We also agree with the comment about the potential for unreliable readings from improperly calibrated PCE analyzers. While PCE analyzers are sometimes employed as PCE sensors, PCE analyzers are typically more advanced than sensors, as the analyzers typically employ technologies such as single-beam infrared photometers, and tend to be more sensitive instruments than those used as sensors. We did not take into account any additional costs associated with performing periodic calibration tests. As a result, the cost of the technology may be more than what we estimated. Due to the interlock, a high reading from a PCE analyzer can unnecessarily prevent the completion of a load. In a high-throughput operation, such increases in cycle time can impose a considerable decrease in production.

4. Economic Analysis

Comment: One major source commenter stated that financial impacts for his facility are much higher than what EPA estimated. The commenter contends that the Economic Impact Analysis is based on underestimated costs and revenue that is more than double the company's actual revenue. The commenter also contends that his company's machines cannot be retrofitted with a refrigerated condenser and would need to be replaced, that the cost to replace the machines has been estimated by EPA to be $1.9 million, that substantial lost revenue while machines are under construction was not considered, and that estimated financing and permitting costs were also not considered. This commenter strenuously disagreed with the conclusion of the Economic Impact Analysis that no negative impact would be incurred by major sources, and contends that EPA used incorrect revenue estimates. According to this commenter, the requirements of the proposed rule, if implemented within 90 days of promulgation, would result in the closure of this facility and the loss of 120 jobs in economically desolate Detroit, Michigan.

Response: Our economic analysis of the impacts associated with the proposed level of control for major sources from implementing the rule is based on comparing the estimated annualized compliance costs to the estimated revenues for the parent firm. The estimate for the rule is annualized compliance costs of 0.4 percent of the firm's sales (or cost per sales hereafter). This estimate is contingent on the accuracy of the compliance costs and the revenue estimate for the firm. Our revenue estimate is from 2002 fiscal year data collected for the firm. We collected this data for 2002 to be consistent with the year for which the costs are estimated. This is consistent with how EPA has estimated economic impacts in a variety of recent rulemakings for residual risk and other standards. Thus, the comment that the revenue estimate is incorrect is not accurate. If we were to recalculate the compliance costs for this facility assuming that all of their machines would need to be replaced, then the cost per sales will be 1.65 percent given the annualized costs of about $240,000 for the rule.

We have also adopted a 2-year compliance schedule in the final rule. This compliance schedule should provide adequate time for this facility fully implement requirements for enhanced LDAR.

We have not concluded that there is no negative economic impact on major sources resulting from the final rule. Rather, we have stated that there is not a significant economic impact to a substantial number of small entities (or SISNOSE). The commenter's facility is not a small business according to the SBA definition. While estimated cost savings are expected for a number of firms that are major dry cleaning sources, some firms are likely to experience some negative economic impacts. The Agency does not believe that such impacts are likely to be unreasonable for the affected major source-owning firms, however. This statement is based on our impact estimates that most of the affected major source-owning firms have annualized compliance cost to sales of less than 1 percent. These estimates can be found in the economic impact analysis for this final rule.

5. Performance-Based Standard for Existing Major Sources

Comment: One commenter supported incorporating a performance-based standard for major sources in the final rule. They believe a performance-based standard provides an incentive for sources to convert to safer alternatives for some or all of the articles handled by a source. Other commenters supported the alternative compliance option (facility-wide PCE usage or other metrics) for existing major sources to provide the maximum compliance flexibility possible.

Response: We appreciate the supportive comments regarding this concept, however a performance-based option has not been incorporated in the rule in part because we did not receive any indication from any of the major sources to which this option would have applied that they would have

found it useful. None of the major sources responded with comments supporting the need for a performance-based option, which suggests to us that their preferred compliance option would be to meet the required standards. Therefore, it is not necessary for us to further pursue a performance-based option for this specific industry.

E. Area Sources

Most comments received about the requirements for typical area sources supported EPA's proposed requirements of banning transfer machines, requiring existing facilities to implement an enhanced LDAR program, and requiring new sources to install a closed-loop dry-to-dry machine with refrigerated condenser and carbon adsorber. A few commenters opposed the ban on transfer machines based on the cost of the machine replacement. We received a few comments requesting more stringent requirements. These commenters asked EPA to require all typical area sources to upgrade their machines with a secondary carbon adsorber.

Based on our review of the advances in technology since the 1993 rule, we have determined that adopting the rule revisions for area sources as proposed satisfies the requirements of CAA section 112(d)(6). The preponderance of comments supported the proposed rule, and we received very few negative comments. Existing sources were estimated to incur a cost savings because both replacement of transfer machines and enhanced LDAR will reduce annual PCE consumption. The reduction in annual PCE consumption at the 200 businesses that would replace transfer machines is more than sufficient to offset the annualized cost of the new equipment. In particular, we believe most of the transfer machines are at the end of their useful life and it would be economically beneficial for the facilities to replace the transfer machines with dry-to-dry machines. Thus, we believe the economic impacts to the affected businesses and facilities are negligible. Finally, these costs and risk estimates do not consider the impacts of future trends of declining PCE usage. Therefore, consistent with our analysis at proposal, we are not requiring a secondary carbon adsorber on existing area sources because the emission and risk reduction would be relatively minor and the costs would impose unnecessary adverse economic impacts on a number of small businesses.

1. LDAR Program

Comment: One commenter believes the proposed LDAR requirements are not necessary, explaining that most States now require the PCE dry cleaners to inspect their equipment on a regular basis and State inspectors make periodic inspections.

Response: EPA disagrees. Most States do not have requirements beyond the 1993 NESHAP and do not inspect dry cleaners more than once every few years. Sensory methods are ineffective in identifying leaks early. Substantial PCE emissions occur between the point when failure begins and the leak can be detected by sensory methods. An instrument will enable earlier detection.

Comment: One commenter, a vendor of dry cleaning equipment, disagreed with the EPA's conclusion that leaks are the largest source of emissions. Leak inspections are a waste of time because serious leaks are repaired immediately without need for an inspection. More significant sources of emissions are:

1. Unloading incompletely-dried garments.
2. Routine maintenance.
3. Cleaning distillation units.
4. Receipt of new PCE.

Response: Our analysis has shown that the filling of PCE tanks is not a significant source of emissions. We agree that the first three sources named can be significant if dry cleaning systems are not operated properly. Under the General Provisions of 40 CFR 63, all regulated sources have a general duty to operate systems and control devices according to good air pollution control practices for minimizing emissions. This requirement includes following manufacturer's specifications for operation and maintenance of the system. We have concluded that it is not necessary at this time to specify in the rule additional operating and maintenance procedures. Leaks, however, are an important source of emissions, and controlling them is an integral part of an effective pollution prevention program. Leaks can be detected and controlled at a reasonable cost using an enhanced LDAR program. In a study by the South Coast Air Quality Management District, over half of the dry cleaning machines tested had leaky gaskets, which are replaceable parts that can cause significant PCE emissions. The enhanced LDAR program requirement is expected to result in earlier leak detection from these types of emission points, and is the best method to determine when gaskets need replacing and when they do not.

2. Banning PCE

Comment: Two commenters, a state agency and a manufacturer of PCE alternative solvent dry cleaning machines, stated that EPA failed to adequately assess the feasibility of alternative solvents because the negative impacts of alternative solvent technologies were not sufficiently considered. Any action that would result in the ban of PCE at some or all facilities requires the use of an alternative solvent.

Response: We concur with the commenter that each of the alternative solvents that are currently available have certain trade-offs or limitations relative to PCE. Depending on the system, these limitations may involve cost, cleaning ability, ease of use, applicability to certain fabrics, safety, or others. No single alternative offers all of the business advantages of PCE. Given these factors and the current degree of use of alternative solvents in the industry, we did not consider it appropriate to mandate the use of alternative solvents as part of the CAA section 112(d)(6) review, except in the context of co-residential area source settings as discussed below. For area sources, the 1993 NESHAP was based on the use of GACT. In our review of this standard under CAA section 112(d)(6), we considered PCE emission controls that are in widespread use by the industry. We concluded that, based on the current information before the agency, we are not prepared to require a ban of PCE at typical area sources (*i.e.*, area sources other than co-residential) under CAA section 112(d)(6). However, we interpret CAA section 112(d)(6) as allowing us to consider a broad range of factors in determining what changes to standards are "necessary," after taking into account developments in practices, processes, and control technologies. This interpretation is consistent with those regarding other provisions of the CAA that direct us to find the "best balance" of emissions control, costs of control, safety, and other factors. Such factors may include whether sources' emissions present different degrees of risk. Due to the potential for high risks posed by co-residential area source dry cleaners, and in light of the availability of non-PCE dry cleaning technologies in the market, we determined that it is necessary under CAA section 112(d)(6) to treat this component of the area source sector differently than we are treating other area sources dry cleaners, whose emissions present significantly smaller risks.

3. Transfer Machines and Vented Machines

Comment: One industry association opposed the ban on transfer machines because such a ban would result in a significant economic impact to these

economically marginal businesses. To require the replacement of transfer machines in 90 days would result in the closure of each of these small plants.

Response: The economic impact analysis shows that there is an economic impact on owners of transfer machines from a ban on their operation, but not a significant one. The results of the analysis show impacts of compliance costs of just under two percent of sales. Given that these transfer machines are all at least 13 years old due to the ban on new transfer machines applied under the dry cleaning NESHAP, these machines are very likely close to or beyond their expected equipment life of 15 years. Thus, owners of these machines are likely to consider replacing them in the near future in any event without any additional regulatory driver.

Comment: Two dry cleaners owning transfer machines stated that transfer machines should not be prohibited because such a requirement would force them to close because they cannot afford a new machine. One of these commenters stated he used the same amount of PCE as dry cleaners using third generation machines. The other commenter requested that EPA phase out transfer machines over 10 to 15 years and that EPA examine each dry cleaner operating a transfer machine individually.

Response: EPA's cost and economic impact analyses for this rule shows that firms owning transfer machines will have to pay $35,600 to purchase a new dry cleaning machine with secondary controls (refrigerated condenser and carbon adsorber). The annualized compliance costs are estimated at just over one percent of the sales for an average dry cleaning firm. We believe these impacts are not significant overall, but we recognize that individual firms, especially small firms, may experience greater impacts than the average. To provide an adequate opportunity to raise capital and in response to comments, we are promulgating a compliance period of two years, rather than the 90 days that would have been allowed under the proposal.

Comment: Two State representatives, a vendor of dry cleaning equipment, and an environmental group recommended that EPA prohibit the use of vented machines because their emissions are considerably greater than closed-loop machines. One commenter added that, if a carbon adsorber for a vented machine does not get frequent maintenance, its emissions increase considerably. The two State representatives said that their states have already banned vented machines without encountering appreciable resistance from the dry cleaning industry. One commenter noted that according to EPA's cost estimates, dry cleaners replacing a vented machine with a fourth generation machine would reduce their net cost because of reduced usage of PCE. This commenter added that vented machines are at the end of their useful life.

Response: The final rule will not prohibit the use of vented machines. We have reviewed developments in processes and control technology and determined that an LDAR program will be required on a monthly basis with a leak detection instrument. These requirements satisfy the requirements of CAA section 112(d)(6). We did not find any control technologies that could be retrofitted at a reasonable cost on these machines. We concluded that forced replacement of these machines at typical area sources is not warranted given the costs and the relatively low levels of emission and risk reduction that would be achieved.

4. Co-Commercial Sources

Comment: One commenter, a State representative, strongly disagreed with the statement in the proposed rule indicating that the existing NESHAP level of control would result in an acceptable level of risk for area sources for co-commercial sources. The commenter presented a summary of results from complaint-based sampling of facilities in strip malls that demonstrate where PCE concentrations ranged from 8 to 50,400 micrograms per cubic meter (ug/m^3), including a day care facility with a mean concentration of 2,100 ug/m^3. Also, PCE concentrations during the first hour of operation are roughly four times the average because vapor accumulates in the drum of the machine overnight.

Response: While these measured concentration results are high (relative to what we would expect from the type of dry cleaning equipment likely to be in use at co-commercial sources), the fact that they were measured as the result of complaints may indicate that the reason behind the elevated levels may be lack of compliance with the 1993 NESHAP. This being the case, we cannot confidently conclude that these data as represent exposure levels that reflect compliance with the NESHAP. Therefore, we are choosing to not use them to evaluate the success or failure of the NESHAP level of control. In the future, studies of PCE exposures should be conducted to include a representative sampling of facilities and indicate the actual level of control being utilized and achieved by each facility in question.

Comment: Several commenters recommended additional controls should be required at co-commercial sources. A State representative recommended the following requirements for co-commercial sources:

1. Secondary carbon,
2. Vapor barriers,
3. Weekly leak inspections,
4. Annual third party inspections, and
5. Operator certification by an approved training program.

Without these measures, the revised NESHAP cannot achieve reductions in PCE levels comparable to those achieved by NYCRR Part 232.

Response: Additional information is needed to accurately estimate exposures and risks to individuals located next to co-commercial sources (including, for example, sources co-located with schools and day care centers). Without valid information that co-commercial sources pose greater risks than typical area sources, we are not prepared to determine that the cost of additional controls for co-commercial sources is justified under CAA section 112(d)(6).

In their remarks, some commenters quoted relatively high exposure concentrations that are attributed to co-commercial sources. However, only one study was referenced with the comments. This study has not been peer reviewed and has not had the opportunity for public comment. The study was completed on one co-commercial facility and without documentation of the study, we cannot analyze the methods of data collection, the type of facilities sampled, the dry cleaning systems used, or the conditions under which the data were collected. Accordingly, we do not know if these reported measurements are valid or, if so, whether these exposures are representative of all co-commercial facilities or only particular configurations. In absence of these data, we have no technical basis for requiring additional control on these facilities. Until more research is available on PCE exposures at co-commercial sources, we have determined to subject co-commercial sources to the same control requirements as typical area sources that are not collocated in the same buildings with residences.

5. Economic Impacts

Comment: Two trade associations stated that EPA has significantly underestimated median revenue of dry cleaners. According to the 2002 Economic Census, 87 percent of all dry cleaning establishments had less revenue than the median revenue used by EPA. Further, one third of all dry cleaners are so small that they have no

payment to report and are not reflected in census data.

Response: EPA's economic analysis of the impacts to affected dry cleaners is based on comparing the estimated annualized compliance costs to the estimated revenues for the parent firm. This estimate is contingent on the accuracy of the compliance costs and the revenue estimate for the firm. The Agency chose to use the industry revenue average for 1997 instead of the data from the 2002 Census because it was readily available to the model EPA chose to employ for generating the economic impact results at the time of the analysis. The value used by EPA from the Census reflects the average revenue per firm and applying this value is consistent with revenue estimates used in economic impact analyses that accompanied recent agency rulemakings. This approach is consistent with how EPA has estimated economic impacts in a variety of recent rulemakings for residual risk and other standards. A review of average revenue for firms in the dry cleaning industry from the 2002 Economic Census showed that this average revenue was 10 percent higher than the value from the 1997 Economic Census. Hence, our economic impact estimates will be lower using average revenues per firm from the 2002 Census as compared to the revenues used in the current economic impact analysis.

The commenter's point about the lack of revenue data from many dry cleaners that do not report payroll is a useful point. Having such a lack of data means some caution in applying Census revenue data for these firms is appropriate. However, collecting revenue data from these firms or estimating their revenues by some other means is highly problematic and impossible to incorporate in the current economic impact analysis. The commenter's assertions of the "over saturation of the industry with too many plants" and that many "plants" are having difficulty paying bills are ones for which no data is provided. The Agency's current estimate of the number of dry cleaning facilities is about 34,000. This estimate is extremely close to the estimate of 33,863 provided by the Agency in its "Dry Cleaning Sector Notebook Project" report published in September 1995, which was before full implementation of the dry cleaning NESHAP took place. In addition, low profit margins are typical for dry cleaning operations; the "Dry Cleaning Sector Notebooks Project" published by the Agency over 10 years ago mentions that "Commercial dry cleaning is not a high profit business, and many dry cleaners are barely able to stay in business." The fact that the number of facilities in this industry are about the same over a ten year periods leads to skepticism as to whether the industry was oversaturated at the current time and whether firms in the industry are having more difficulty staying in business now than in the past.

F. Co-Residential Sources

Comment: We received several hundred comments on the two proposed options for co-residential sources. Comments from the industry and one mass-mailing campaign supported the technology-based option for co-residential sources similar to the technology requirements of New York's Part 232 regulations. Comments from States, environmental groups, and another mass-mailing campaign supported the ban of PCE at co-residential facilities with either an immediate ban or a phase-out over time. These commenters wanted dry cleaners to switch to alternative dry cleaning solvents. Some commenters supported the eventual phase-out of PCE and the interim imposition of technology requirements like New York's Part 232 regulations for all existing co-residential machines.

Response: Current technology controls to reduce PCE emissions from co-residential dry cleaning units—such as those embodied in the NY Part 232 requirements—have been generally effective in reducing exposures. Nevertheless, empirical evidence indicates that in certain cases PCE exposures may remain relatively high. We believe that further reductions are warranted to reduce potential exposure levels, but at the same time we believe that more stringent requirements should in part be based on considerations of cost, technical feasibility, and the availability of alternative technologies. Therefore, we are requiring existing sources to discontinue the use of PCE machines no later than December 21, 2020. In addition, our consideration of the relevant factors leads us to prohibit additional PCE-using machines from being installed.

We recognize that the industry has made great strides in technology that reduces PCE emissions since the 1993 NESHAP was established. If the development of future technologies produces one that is demonstrated to adequately reduce PCE emissions and related exposures to residents of apartments co-located in buildings with dry cleaners, we would consider revisiting the necessity of the ban and phase-out of PCE in co-residential settings. Such a review could, for example, occur in the next round of our review of the developments in control technologies, processes and practices under section 112(d)(6) for this NESHAP.

Some commenters suggest an immediate elimination of PCE in co-residential settings and others suggested phasing out PCE use over the natural life of the equipment. An immediate ban would impose significant adverse impacts on owners and operators of existing sources, as would a ban falling within the three-year compliance window we have traditionally allowed for existing sources. For these small businesses, which have substantial investments in their current equipment, we have concluded that it is appropriate to allow them sufficient time to recover the investment over the useful life of the equipment and raise the needed capital to fund alternative solvent systems.

The economic life of a PCE dry cleaning system is typically 15 years. One State commenter suggested that to set a phase-out of existing sources based on the purchase date of each machine would be impracticable and a burden for States to implement. This commenter suggested picking a single date by which all current systems would need to be converted. Considering these factors, the final rule establishes a date 15 years from the date of the proposed rule, after which time all existing PCE systems at co-residential sources are prohibited. We selected this date since it corresponds to the date when we first publicly proposed the potential requirements for PCE dry cleaners in co-residential settings. This amount of time is necessary in order to phase out PCE use in co-residential settings without causing unacceptable adverse economic impacts, which would be the result if we imposed a 3-year compliance deadline.

In addition, although it is unlikely that any additional co-residential PCE-using sources came on-line between the date of publication of the proposed rule and the date the Administrator signed the final rule (July 13, 2006), in this rulemaking we are treating such sources that commenced construction between December 21, 2005, and July 13, 2006 (if any exist), slightly differently than the way we are treating either existing sources discussed above or other new sources (which are required to comply with the PCE ban immediately upon startup or the effective date of the final rule, whichever is later). This is because the requirements we have adopted in the final rule for new co-residential sources are more stringent than one of the two options we proposed. Under CAA section 112(i)(2)(A)–(B), these

uniquely situated new sources will also be required to eliminate PCE use, but not until three years after the effective date of the final rule. In the interim, they are required to comply with the second option we proposed for new co-residential sources and use refrigerated condensers and secondary carbon adsorbers, with equipment housed inside a vapor barrier with general ventilation to the outside air, as required by NYSDEC title 6 NYCRR Part 232 rules. These facilities will also have to conduct weekly leak inspections using a leak detection device such as a halogenated hydrocarbon detector. To require these sources, which may have installed equipment compliant with New York controls in reliance on our co-proposal of that option, to dismantle their PCE equipment immediately could impose severe economic hardship for these sources, contrary to the efforts we have taken in the rest of the rulemaking to avoid causing significant adverse impacts on small businesses.

We anticipate that most existing systems will be relocated to nonresidential buildings or converted to alternative solvents prior to this date, given the range of ages of current co-residential sources. In the meantime, existing co-residential sources must also meet the additional control requirements in the final rule revisions for other area sources (i.e., eliminate transfer machines and use enhanced LDAR). We have decided not to impose additional control requirements on existing co-residential sources pending the phase-out of PCE use, such as the NYCRR Part 232 controls contained in our second proposed option addressing co-residential sources. While the NYCRR Part 232 controls are currently the most stringent technological controls required in the U.S., there is uncertainty about the precise effect of the NYCRR Part 232 controls on risk. Industry commenters claim that the high risks are not representative, and that dry cleaning systems using this technology do not pose high risks. Others point out that high risks measured in New York buildings have been assessed as being caused by poor control equipment design, malfunctions of control equipment, poor ventilation designs, operator error, and other unregulated activities. We do not consider it necessary or appropriate to impose the costs of the NYCRR Part 232 controls in the interim before PCE use at co-residential sources is eliminated entirely. Moreover, our economic analysis indicates that imposing the New York requirements on existing sources elsewhere in the country, pending the PCE phase out, would cause a significant adverse economic impact on small businesses.

The health risks from co-residential sources that we are concerned about are from chronic exposures, not acute. Thus, while short-term exposures from some sources will not be immediately reduced, this is not expected to result in adverse health effects. Further, although the full benefit of the ban (complete removal of sources and their associated risks from residential buildings) would not be realized until year 15, we expect that most sources would not wait until the 15th year to retire their equipment since many of these sources are nearing the end of their useful lives. Thus, over the next 15 years, the final rule will systematically reduce exposures and risks from current levels as old equipment is retired and existing co-residential shops are either relocated or converted to alternative solvents, ultimately resulting in the elimination of these chronic health risks.

About 80 percent of the co-residential sources already have installed controls similar to NYCRR Part 232 controls. Imposing additional capital costs on the approximately 250 remaining co-residential sources is not reasonable given the significant costs of the controls and the fact that even they would be prohibited upon machine replacement or the arrival of the sunset date. For many of these shops, the remaining useful life of the machine would not allow full amortization of the capital investment before the system would have to be replaced. In addition, it is not clear how much additional risk protection would be achieved by the controls and what would be the significance of the emissions reduction, which would be realized only over the remaining useful life of each machine. For shops with PCE equipment that would be replaced within a few years, the health benefits would be limited and the capital costs would not be well spent. Therefore, temporarily imposing this control technology is not necessary under section 112(d)(6).

1. Risk Assessment Data

Comment: Industry commenters claimed that the New York City data that EPA used to assess co-residential exposures were biased and these measured exposures are not representative of typical exposure. The sources of bias noted by the commenter were that: Residences sampled were selected based on complaints; sampled facilities may not have been in full compliance with NYCRR Part 232 rules; some samples taken soon after compliance with Part 232 and PCE would not have had time to dissipate to routine levels characteristic of the controls installed.

Response: The NYC study, as described in McDermott (2005), states that "indoor air perc levels in most apartments in dry cleaner buildings sampled were below, or only slightly above, the NYSDOH residential air guideline of 100 $\mu g/m^3$. Higher levels were found in dry cleaner buildings located in low-income, minority neighborhoods and in buildings elsewhere that had been the subject of a residential complaint. Since successful completion of the NYC Perc Project required that as many apartments as possible with elevated PCE levels be identified, the strategy for identifying buildings for inclusion was modified so that buildings located in minority or low-income ZIP code areas and those that had been the subject of complaint were prioritized." The article goes on to state on that the sample "obtained is not truly a random sample of all dry cleaners in the study area. However, socioeconomic characteristics of the census block groups where sampled buildings are located reflect socioeconomic characteristics of their larger ZIP Code area, are equivalent to census block groups where buildings that were not sampled are located, and are correlated with sampled household self-reported socioeconomic characteristics. Thus, conclusions drawn with respect to sampled building neighborhood characteristics and indoor air PCE level are likely to be applicable to other residential buildings matching NYC Perc Project building inclusion criteria (*e.g.*, dry cleaner using PCE on-site; not other sources of VOC)."

While the study authors believe that their results are likely generalizable to co-residential dry cleaners that meet similar criteria with respect to complaints and socioeconomic characteristics, the results cannot be generalized to all co-residential dry cleaners in NYC or across the country. We are not currently able to estimate the extent to which this study provides estimates that are biased. Nevertheless, these empirical results provide a representation of exposure levels that exist in New York City (where the vast majority of co-residential dry cleaners are located) and adequately serve as one basis for this rulemaking.

Our risk assessment has focused on the exposures associated with dry cleaning facilities that are in compliance with the New York Part 232 requirements. We examined the McDermott data, NYSDOH data, and public comments. To identify the compliant facilities, EPA ensured that

the date by which the sample was taken was after the date in which the facility began operating a fourth generation dry cleaning machine and had installed a vapor barrier. While the sampling dates are well documented, the compliance records for certain dry cleaning facilities are somewhat ambiguous; this is due to some limitations in the compliance records provided by NYSDOH. These records are comprised of initial notification letters that facilities have submitted to the NYSDEC as well as third-party inspection reports. EPA used a combination of these data to assess whether a particular facility was in or out of compliance with NYCRR Part 232. The result of this evaluation was a finding that 25 of the 65 sampled apartments were in the 9 buildings with potentially noncompliant dry cleaning systems, while 40 of the apartments were in the 14 buildings with compliant dry cleaning systems, and these were the values used to assess the risks associated with well-controlled dry cleaners. Nevertheless, we were unable to definitively determine the compliance status of one dry cleaner that was associated with high exposure level, as noted in the risk characterization memorandum in the docket. We believe that despite the uncertainty about this particular dry cleaner, our decision for the requirements for co-residential dry cleaners is warranted because it does not hinge on the compliance status of this particular facility.

2. Part 232 Technology Requirements

Comment: Some commenters opposed the use of Title 6 NYCRR Part 232 Technology Requirements for the final rule requirements, because these controls have not been effective in reducing exposure in residences. In addition this option would do nothing to reduce current risks in New York, where the majority of co-residential facilities are located. These commenters supported a ban of PCE because this is the only way to protect the public with an ample margin of safety. These commenters suggested that a phase-out of PCE should be accompanied by a sunset provision for existing machines or else co-residential dry cleaners would have the incentive not to replace their existing equipment. Rather, dry cleaners would continue to use their old, high-emitting equipment well beyond the normal economic life, resulting in continued high exposures to residences.

Response: We have concluded that, based on available data, the NYCRR Part 232 controls have not been demonstrated to be effective in preventing significant exposures to PCE in certain cases.

After reviewing technical developments in the industry, available public health risk information, and the comments received, we have concluded that the option that best satisfies the requirements of CAA section 112(d)(6) for existing co-residential area sources is to phase out the use of PCE. In addition to the potential for co-residential dry cleaners to cause high individual cancer risks (as fully discussed in the proposed rule), we believe that the cancer incidence estimates for these sources also justifies the decision. Estimates of cancer incidence are helpful in characterizing cancer risks, because such estimates account for the full range of exposures that have been captured by the monitoring and provide a metric of the aggregate health impact taking into account the number of people exposed to varying levels of risk. Our estimate of annual cancer incidence for the approximately 1300 co-residential sources currently in operation is in the range of 0.2 to 2 cases per year, which is on par with the estimated annual incidence of 0.4 to 4 cases per year for the approximately 27,000 other area source cleaners. The near-parity of these two estimates, notwithstanding the much smaller number of co-residential vis-à-vis other sources, suggests that co-residential sources pose a disproportionate cancer incidence to their residents. Further, this estimate of total cancer incidence for the co-residential sources is at the high-end of cancer incidence estimates that we have generated for other source categories reviewed by the residual risk program to date.

As we have previously noted, these cancer incidence estimates carry significant uncertainties since they are sensitive to assumptions regarding the number of individuals exposed and the level of exposure borne by residents of un-monitored apartments. However, when viewed in the context of the other risk information and the availability of alternative dry cleaning processes, we believe that the incidence estimates provide additional support for a requirement for new installations at co-residential facilities to adopt a non-PCE solvent.

We have determined that a phase out that takes place too quickly would impose significant adverse impacts on dry cleaners. For these small businesses, which have substantial investments in their current equipment, it is appropriate to allow them sufficient time to recover the investment over the useful life of the equipment and raise the needed capital to fund alternative solvent systems. The final rule establishes a date 15 years from the date of the proposed rule, after which time all PCE systems at co-residential sources are prohibited. We anticipate that most systems will be relocated to nonresidential buildings or converted to alternative solvents prior to this date.

3. Economic Impact of PCE Phase-Out

Comment: Industry commenters opposed the phase-out of new PCE installations because it would cause a significant effect on a substantial number of small businesses. The commenters said that the EPA underestimated the costs of this option because the EPA analysis overestimated dry cleaner revenues, underestimated the cost of hydrocarbon equipment, underestimated the cost of meeting fire codes, and used a 7 percent interest rate, which is unrealistically low. In addition, the commenters maintained that any type of ban on PCE would send a misleading signal that PCE is unsafe and would cause landlords to not renew leases of dry cleaners. This severe economic impact was not accounted for in EPA's economic analysis.

Response: The estimates of impacts provided in the Agency's economic analysis for the rule are in terms of annualized compliance cost per revenues for parent firms. It is not in terms of compliance cost per profits as asserted by the commenter. The commenter states that the impact will be a "substantial" increase in costs and a decrease in profit margin far in excess of the five percent impact on year-to-year profits accepted as a benchmark. The benchmark of at least five percent impact on year-to-year profits as a benchmark for significant impacts is, however, not a benchmark that the Agency has recognized as such in the recent past. The cost-to-sales calculation provided in the economic impact analysis has been an accepted approach for indicating the potential economic impacts to small and other businesses as part of the process to determine the degree of small business impacts associated with a proposed rule.

We chose to use the industry revenue average for 1997 instead of the data from Census for 2002 because it was readily available to the model we chose to employ for generating the economic impact results at the time of the analysis. The value we used from the Census does reflect the average revenue per firm and applying this value is consistent with revenue estimates used in economic impact analyses that accompanied recent Agency rulemakings. A review of average revenue for firms in the dry cleaning

industry from the 2002 Economic Census showed that this average revenue was 10 percent higher than the value from the 1997 Economic Census. Hence, our economic impact estimates will be lower using average revenues per firm from the 2002 Census as compared to the values used in the current economic impact analysis.

It should be noted that use of the average revenue-per-firm estimate suggested by the commenter of $204,000 in the Agency's analysis would lead to higher estimated impacts to small businesses than calculated by EPA but would not lead to any impacts above three percent of sales, a benchmark among others often considered as significant in characterizing small business impacts.

The incremental cost between a PCE and a hydrocarbon machine is a reasonable estimate of the cost of eliminating PCE at a facility because, on balance, the rule revisions will not affect the economic life of a machine. We assume that at the end of the machine's 15-year economic life, the machine has no salvage value. Instead of purchasing a PCE machine, the owner incurs the incremental cost of purchasing a hydrocarbon machine. Some sources may be required by their landlord to retire their PCE machine before the end of its useful life; EPA acknowledges that such premature retirements may create a separate additional burden on owners. Other sources may choose to maintain their machine beyond its normal economic life. Because predicting these effects would be very difficult, we assume that these effects do not change our assumption of a 15 year economic life for these machines. A number of commenters agreed with our estimate of 15 years for the economic life of these machines.

Our cost estimate is a reasonable appraisal of costs. Our estimate that 50 percent of facilities outside New York that install hydrocarbon machines would need a sprinkler system is similar to the commenter's estimate of 66 percent. The chart of fire code geographic applicability provided by the commenter is not a sure indicator of whether a facility would need a sprinkler system because machine vendors are often able to obtain a case-by-case variance if they can demonstrate fire protection features integral to the machine. Regarding the cost per facility outside of New York City, the cost in the docket item cited by the commenter was from a machine vendor. We used a lower estimate provided by a sprinkler contractor. Sprinkler system costs for plants in New York City are particularly difficult to estimate because of the fact that actual costs are unavailable because few if any systems have been built because of their high cost. In addition, by the time PCE machines in co-residential facilities need to be replaced, between now and the sunset date in 2020, it is possible that a less combustible solvent will be available, and sprinkler systems not required for plants that can no longer use PCE.

The use of 7 percent in annualizing costs is consistent with the guidance of OMB Circular A–94. Besides the quote from Circular A–4 listed by the commenter in footnote 56 on page 30, the Circular also recommends that 7 percent be used for annualizing the costs of regulatory analyses. As mentioned in Circular A–4, "As a default position, OMB Circular A–94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB revised Circular A–94 in 1992 after extensive internal review and public comment. In a recent analysis, OMB found that the average rate of return to capital remains near the 7 percent rate estimated in 1992. Circular A–94 also recommends using other discount rates to show the sensitivity of the estimates to the discount rate assumption." In addition to a 7 percent discount rate, we have also analyzed costs using a 3 percent discount rate, consistent with the requirements of Circular A–4.

4. Alternative Solvents

Comment: Some commenters opposed the use of alternative solvents because of the potential negative impacts. These potential impacts include uncertainty about the toxicity of cyclic siloxanes; increased volatile organic compound (VOC) emissions from hydrocarbons; safety hazard of carbon dioxide (CO_2); large quantities of wastewater from wet cleaners; and the fire hazard of hydrocarbons and cyclic siloxanes (D5).

Response: We recognize that each of the alternative processes has potential drawbacks. However, with the variety of choices of alternative systems that are currently available, dry cleaners can find a system that can work for their individual circumstances. The potential concerns brought up by the commenters are addressed below.

A dry cleaner that switches solvents from PCE to a hydrocarbon solvent would increase emissions of VOC, because hydrocarbon solvents are classified as a VOC and PCE is not. Increased VOC emissions could result in an increase in atmospheric ozone at some locations, depending on the mix of ozone precursors in the ambient air locally. Any new hydrocarbon machines would be subject to the new source performance standard (NSPS) for petroleum dry cleaners (40 CFR 60, subpart JJJ). The NSPS limits VOC emissions by requiring application of the best demonstrated control technology. The VOC emissions of a hydrocarbon machine at an average-sized facility are approximately 0.2 tons per year, which is a relatively small quantity for non-HAP VOC. Given the high risks posed by PCE in co-residential settings, we have concluded that the public health benefit of using alternative solvents, even if some of the alternatives are ozone precursors, supports elimination of PCE use in co-residential area sources (considering developments in practices, processes, and control technologies). In cases where VOC emissions from hydrocarbon machines would contribute significantly to ozone formation, the responsible air quality planning agency can require additional emission controls for VOC, as appropriate. Regarding HAP emissions, although benzene was once a significant component of Stoddard solvent alternatives it is now present only in trace amounts. We are unaware that any of the other solvents currently used in dry cleaning contain any of the CAA listed HAP.

EPA is not currently in a position to characterize the potential risks to human health or the environment associated with the use of decamethylcyclopentasiloxane (D5), an odorless, colorless siloxane fluid, as a dry cleaning solvent. In 2003, EPA received from Dow Corning the preliminary results of a two-year chronic toxicity and carcinogenicity study on D5 using rats. Preliminary results suggest that female rats exposed to the highest concentration of D5 exhibited a statistically significant increase of uterine tumors. The final results of the two-year study confirmed the significant increase in uterine tumors following exposure at the highest concentration of D5, while no significant increase in tumors was observed at lower doses. EPA is in the process of evaluating studies received on the mode of action to help determine whether a potential carcinogenic hazard

is associated with D5. Subsequent action may include external peer review of data and a determination whether it is appropriate to conduct a risk assessment for D5. EPA has developed a fact sheet describing its current state of knowledge on D5 that is available on the Garment and Textile Web site and that can be used by industry to guide decisions regarding the use of D5 in dry cleaning.

Hydrocarbon solvents and cyclic siloxanes can present a fire hazard because of their combustibility. However, hydrocarbon solvent dry cleaning machines have a long history of safety, as do cyclic siloxanes. We know of no fires in this country from the use of cyclic siloxanes or the synthetic hydrocarbon solvents currently in use. Dry cleaning machines that use these solvents are designed with special safety features, such as fireproof electrical connections, nitrogen blanketing, temperature controls to prevent explosion, and others.

For CO_2 systems, the commenters were referring to possible hazards due to the high pressure at which these systems operate. However, we are unaware of any safety-related accidents regarding CO_2 systems. The systems currently in use are designed to withstand the high pressures required. The pressures at which these machines operate are not extreme compared to many other processes, and the engineering to operate safely at these pressures is well understood.

Wet cleaning systems are widely used in the industry either to reduce PCE consumption or as a replacement for PCE dry cleaning. While wet cleaning generates wastewater, we are not aware of any health hazards from this waste. We expect that waste generated by wet cleaning systems will be significantly less hazardous than waste from PCE systems they replace.

G. Technical Corrections to the 1993 Dry Cleaning NESHAP

Based on comments received, we have made some technical corrections to the NESHAP in addition to those proposed. Many of these changes are needed to update the rule to reflect advances in PCE dry cleaning technology. Other changes harmonize the revisions with the existing NESHAP. The most significant technical changes are listed below. None of these changes affect the stringency of the rule or increase regulatory burden.

1. Additional Information Requested in the Notice of Compliance Status Report

We have added a requirement to indicate in the notice of compliance report if the dry cleaning facility is a major source or is located in a building with a residence or a business. This one-time requirement will impose no additional cost to the industry since the notice of compliance report is already required to be submitted.

2. Alternative Monitoring Requirement

We revised the monitoring requirement for refrigerated condensers to specify that owners and operators must monitor the high and low pressure of the refrigeration system, rather than the exit temperature, in cases where the system is equipped with pressure gauges. The pressure readings of the refrigeration system are the preferred monitoring parameters since these parameters are the most reliable indicators that the condenser is functioning properly during the drying phase, which represents maximum load conditions.

Virtually all machines have instrumentation for measuring the high and low pressures of the refrigeration system and vendor specifications for the pressure ranges that indicate proper operation of the condenser. However, for refrigeration systems that are not equipped with pressure gauges, the rule requires owners and operators to monitor the temperature of the gas-vapor outlet stream.

V. Impacts

A. Major Sources

The national capital cost of the final rule for major sources is $30,000, with an annual cost savings of about $250,000. The capital costs for individual facilities would range from $0 to $3,300 with a median cost of $3,300. Annualized costs would range from a cost savings of $84,000,000 per year to a cost of $1,319 per year. Most facilities would recognize a cost savings primarily from implementing the enhanced LDAR program. Leak detection and repair is a pollution prevention approach where reduced emissions translate into less PCE consumption and reduced operating costs because facilities would need to purchase less PCE. The highest maximum individual cancer risk are estimated to be reduced from a range of 50-in-1 million (using OPPTS potency values) to 400-in-1 million (using CalEPA potency values) down to a range of 20-in-1 million (using OPPTS potency values) to 200-in-1 million (using CalEPA potency values).

B. Area Sources

The final rule will reduce PCE emissions by an estimated 5,700 tons per year and will result in a net cost savings.

The capital costs to implement these requirements are $12 million. The enhanced LDAR program would cost about $5 million for an estimated 20,000 facilities to purchase a halogenated hydrocarbon detector at a cost of $250 each. About 200 facilities would be required to replace their existing transfer machines with dry-to-dry machines at a cost of about $36,000 each for a total industry cost of $7.5 million.

Annually, we estimate a cost savings to the industry of about $2.7 million per year. This cost savings would be realized because both replacement of transfer machines and enhanced LDAR will reduce annual PCE consumption. The reduction in annual PCE consumption at the 200 businesses that would replace transfer machines is more than sufficient to offset the annualized cost of the new equipment. In particular, most of the transfer machines are beyond the end of their economic life and it would be economically beneficial for the facilities to replace the transfer machines with dry-to-dry machines. Thus, we conclude the economic impacts to the affected businesses and facilities are negligible.

C. Co-Residential Sources

By the fifteenth year, the final rule will reduce PCE emissions from co-residential sources by an additional 317 tons/year. Cancer risks from all co-residential sources will be eliminated by the fifteenth year.

The national capital costs for new co-residential sources are $63.4 million, and the annualized costs are about $7.0 million in the fifteenth year. These cost estimates reflect the incremental capital and operating cost for 1,300 co-residential facilities to replace their PCE machines with machines using hydrocarbon solvent. The incremental cost was estimated as the difference between the costs of a new PCE machine meeting the NESHAP and a new machine using hydrocarbon solvents. The operating cost includes the cost of installing fire protection sprinklers in jurisdictions that are estimated to require sprinklers for hydrocarbon machines. The cost will be lower at facilities that already have sprinkler systems in place, that choose a less costly alternative garment cleaning option utilizing non-combustible solvents, or that choose to convert their facility to a drop shop and conduct PCE dry cleaning operations offsite.

An alternative calculation of the costs to co-residential sources using a net present value methodology shows that these costs are $3.5 million per year at

a 7 percent interest rate and $3.9 million per year at a 3 percent interest rate. These cost estimates are derived from the summing of the present value of the costs from the co-residential phase-out during the period over which the phase-out occurs, amortized over 15 years. This estimate provides a measure of the costs of the co-residential phase-out over the time period in which the phase-out takes place rather than an estimate of the costs for the fifteenth year.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has determined that it considers this final rule a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1415.06 and OMB Control Number 2060–0234.

The 2005 revisions to the Dry Cleaning NESHAP contain recordkeeping and reporting requirements beyond the recordkeeping and reporting requirements that were promulgated on September 22, 1993. Owners or operators will continue to keep records and submit required reports to EPA or the delegated State regulatory authority. Notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to the 1993 Dry Cleaning NESHAP. Owners or operators subject to the 1993 Dry Cleaning NESHAP continue to maintain records and retain them for at least five years following the date of such measurements, reports, and records. Information collection requirements that were promulgated on September 22, 1993 in the Dry Cleaning NESHAP prior to the 2005 proposed amendments, as well the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards, are documented in EPA ICR No. 1415.05.

The information collection requirements described here are only those notification, recordkeeping, and reporting requirements that are contained in the 2005 revisions to the Dry Cleaning NESHAP. To comply with the 2005 revisions to the 1993 Dry Cleaning NESHAP, owners or operators of dry cleaning facilities read instructions to determine how they are affected. All sources will begin an enhanced LDAR program that requires a handheld portable monitor. Major source facilities will purchase a PCE gas analyzer and area sources will purchase a halogenated hydrocarbon leak detector. Owners and operators will incur the capital/startup cost of purchasing the monitors, plus ongoing annual operation and maintenance costs. The total capital/startup cost for this ICR is $5,049,000. Annual operation and maintenance cost are $552,825.

Owners and operators of major and area sources conduct enhanced leak detection and repair and keep monthly records of enhanced leak detection and repair events.

Approximately 28,000 existing area sources and 12 existing major sources are subject to the rule and are subject to the 1993 Dry Cleaning NESHAP. We estimate that an average of 2,330 new area sources per year will become subject to the regulation in the next three years, but that the overall number of facilities will remain constant as the new owners will take over old existing facilities. No new major sources are expected. The estimated annual labor cost for major and area sources to comply with the 2005 rule is approximately $3.9 million.

The recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to our policies set forth in 40 CFR part 2, subpart B.

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.

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 the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business based on the following Small Business Administration (SBA) size standards, which are based on annual sales receipts: NAICS 812310—Coin-Operated Laundries and Dry Cleaners—$6.0 million; NAICS 812320—Dry Cleaning and Laundry Services (Except Coin-Operated)—$4.0 million; NAICS 812332—Industrial Launderers—$12.0 million; (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. Under these definitions, over 99 percent of commercial dry cleaning firms are small. For more information, refer to *http://www.sba.gov/size/sizetable2002.html*. The economic impacts of the regulatory alternatives were analyzed based on consumption of PCE, but are described in terms of comparing the compliance costs to dry cleaning revenues at affected firms. In addition, we used average revenues for firms in the dry cleaning industry instead of median revenues. This was because the Census data source that we utilized did not report medium revenues for firms by industry. For more detail, see the current Economic Impact Analysis in the public docket.

After considering the economic impacts of this final rule on small entities, I certify that the final rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of the final rule to affected small entities in the entire PCE dry cleaning source category and considers the economic impact associated with the options for co-residential facilities. Over 98 percent of the approximately 20,000 small entities directly regulated by the final rule, including both major and area sources, are expected to have costs of less than one percent of sales. The cost impacts for all regulated small entities range from cost savings to less than 1.9 percent of sales. The small entities directly regulated by the final rule are dry cleaning businesses within the NAICS codes 812310, 812320, and 812332. We have determined that all of the major sources affected by the final rule are owned by businesses within NAICS 812332. The final rule is expected to affect 11 ultimate parent businesses that will be regulated as major sources. Six of the parent businesses are small according to the SBA small business size standard. None of the six firms has an annualized cost of more than one percent of sales associated with meeting the requirements for major sources.

We have determined that virtually all of the affected small businesses that own area source dry cleaners are in NAICS 812320. Small businesses complying with the final area source requirements are expected to have the following impacts. Ninety-four percent of the approximately 20,000 small entities owning area sources directly regulated by the final rule, are expected to have costs of less than 0.9 percent of sales. The one-time cost of $250 for purchasing a halogenated hydrocarbon detector is less than 0.10 percent of the average annual revenues for dry cleaning businesses in NAICS 812320, and there are minimal annualized costs associated with a detector's use. Of the nearly 200 small businesses that have to replace their transfer machines (or one percent of the total number of affected small entities), most of these businesses are expected to experience an annual cost savings and the others are expected to have compliance costs of less than 1.2 percent of sales. Of the remaining 1,000 affected small businesses (or 3.5 percent of the total number of affected small entities), all of which are owners of co-residential facilities, the compliance costs based on the first option for co-residential area sources range from 0.9 to 1.9 percent of sales.

Cost impacts associated with the final decision for major sources are presented in section V.A of this preamble. These impacts are also presented for area sources in section V.B, and for co-residential sources in section V.C. These impacts are detailed in the BID in the public docket as memoranda five through seven. For more information on the small entity economic impacts associated with the final decisions for dry cleaners affected by the final rule, please refer to the Economic Impact Analysis in the public docket.

Although the final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the rule on small entities. When developing the final standards, we took special steps to ensure that the burdens imposed on small entities were minimal. We conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. In response to comments, we revised the compliance period for major and area sources from 90 days to two years. Additionally, we added a provision to the rule that allows containers for separator water to be uncovered while the containers are in use.

Following publication of the final rule, copies of the **Federal Register** notice and, in some cases, background documents, will be publicly available to all industries, organizations, and trade associations that have had input during the regulation development, as well as State and local agencies.

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 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.

We have determined that the 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, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, 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" 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."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected dry cleaning facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications as specified in Executive Order 13175. 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. No tribal governments own dry cleaning facilities subject to the final standards for dry cleaning facilities. Thus, Executive Order 13175 does not apply to the final 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While these final rule amendments are not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866, the Agency believes this action represents reasonable further efforts to mitigate risks to the general public, including effects on children. This conclusion is based on our assessment of the imposed technological controls that would reduce the PCE impacts on human health associated with exposures to dry cleaning operations.

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

The final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The final rule will have a negligible impact on energy consumption because less than one percent of the industry will have to install additional emission control equipment to comply. The cost of energy distribution should not be affected by the final rule at all since the standards do not affect energy distribution facilities. We also expect that there would be no impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Further, we have concluded that the final rule is not likely to have any significant adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d)of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final revisions to the 1993 NESHAP for PCE dry cleaners do not include requirements for technical standards beyond what the NESHAP requires. Therefore, the requirements of the NTTAA do not apply to this action.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment 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 amendment in the **Federal Register.** The final rule amendment is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule is effective on July 27, 2006.

List of Subjects in 40 CFR Part 63

Environmental Protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 13, 2006.

Stephen L. Johnson,

Administrator.

■ For 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 M—[Amended]

■ 2. Section 63.320 is amended as follows:
■ a. By revising paragraph (b).
■ b. By revising paragraph (c).
■ c. By revising paragraph (d).
■ d. By revising paragraph (e).

§ 63.320 Applicability.

* * * * *

(b) The compliance date for a new dry cleaning system depends on the date that construction or reconstruction commences.

(1) Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991 and before December 21, 2005, shall be in compliance with the provisions of this subpart except § 63.322(o) beginning on September 22,

1993 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act; and shall be in compliance with the provisions of § 63.322(o) beginning on July 28, 2008, except as provided by § 63.6(b)(4), as applicable.

(2)(i) Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005 shall be in compliance with the provisions of this subpart, except § 63.322(o), immediately upon startup; and shall be in compliance with the provisions of § 63.322(o) beginning on July 27, 2006 or immediately upon startup, whichever is later.

(ii) Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is located in a building with a residence, shall be in compliance with the provisions of this subpart, except § 63.322(o), immediately upon startup; shall be in compliance with the provisions of § 63.322(o)(5)(ii) beginning on July 27, 2006; and shall be in compliance with the provisions of § 63.322(o)(5)(i) beginning on July 27, 2009.

(3) Each dry cleaning system that commences construction or reconstruction on or after July 27, 2006, shall be in compliance with the provisions of this subpart, including § 63.322(o), immediately upon startup.

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall comply with §§ 63.322(c), (d), (i), (j), (k), (l), and (m); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart except § 63.322(o) by September 23, 1996; and shall comply with § 63.322(o) by July 28, 2008.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), and (o)(4); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total PCE consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s), is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), and (o)(4), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the PCE consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

* * * * *

■ 3. Section 63.321 is amended by revising the definition of Filter, and adding in alphabetical order definitions for Halogenated hydrocarbon detector, PCE gas analyzer, Residence, Vapor barrier enclosure, and Vapor leak to read as follows:

§ 63.321 Definitions.

* * * * *

Filter means a porous device through which PCE is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter, button trap, cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

Halogenated hydrocarbon detector means a portable device capable of detecting vapor concentrations of PCE of 25 parts per million by volume and indicating a concentration of 25 parts per million by volume or greater by emitting an audible or visual signal that varies as the concentration changes.

* * * * *

PCE gas analyzer means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of PCE of 25 parts per million by volume.

* * * * *

Residence means any dwelling or housing in which people reside excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room).

* * * * *

Vapor barrier enclosure means a room that encloses a dry cleaning system and is constructed of vapor barrier material that is impermeable to perchloroethylene. The enclosure shall be equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system shall be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes. The vapor barrier enclosure shall be constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor. The enclosure shall be constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

Vapor leak means a PCE vapor concentration exceeding 25 parts per million by volume (50 parts per million by volume as methane) as indicated by a halogenated hydrocarbon detector or PCE gas analyzer.

* * * * *

■ 4. Section 63.322 is amended as follows:

■ a. By revising paragraph (e)(3).
■ b. By revising paragraph (j).
■ c. By revising paragraph (k) introductory text.
■ d. By revising paragraph (k)(11).
■ e. By revising paragraph (m).
■ f. By adding paragraph (o).

§ 63.322 Standards.

* * * * *

(e) * * *

(3) Shall prevent air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

* * * * *

(j) The owner or operator of an affected facility shall store all PCE and wastes that contain PCE in solvent tanks or solvent containers with no perceptible leaks. The exception to this requirement is that containers for separator water may be uncovered, as necessary, for proper operation of the machine and still.

(k) The owner or operator of a dry cleaning system shall inspect the system weekly for perceptible leaks while the dry cleaning system is operating. Inspection with a halogenated hydrocarbon detector or PCE gas analyzer also fulfills the requirement for inspection for perceptible leaks. The following components shall be inspected:

* * * * *

(11) All Filter housings.

* * * * *

(m) The owner or operator of a dry cleaning system shall repair all leaks detected under paragraph (k) or (o)(1) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

* * * * *

(o) Additional requirements:

(1) The owner or operator of a dry cleaning system shall inspect the components listed in paragraph (k) of this section for vapor leaks monthly while the component is in operation.

(i) Area sources shall conduct the inspections using a halogenated hydrocarbon detector or PCE gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

(ii) Major sources shall conduct the inspections using a PCE gas analyzer operated according to EPA Method 21.

(iii) Any inspection conducted according to this paragraph shall satisfy the requirements to conduct an inspection for perceptible leaks under § 63.322(k) or (l) of this subpart.

(2) The owner or operator of each dry cleaning system installed after December 21, 2005, at an area source shall route the air-PCE gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-PCE gas-vapor stream from inside the dry cleaning machine drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(3) The owner or operator of any dry cleaning system shall eliminate any emission of PCE during the transfer of articles between the washer and the dryer(s) or reclaimer(s).

(4) The owner or operator shall eliminate any emission of PCE from any dry cleaning system that is installed (including relocation of a used machine) after December 21, 2005, and that is located in a building with a residence.

(5)(i) After December 21, 2020, the owner or operator shall eliminate any emission of PCE from any dry cleaning system that is located in a building with a residence.

(ii) Sources demonstrating compliance under Section 63.320(b)(2)(ii) shall comply with paragraph (o)(5)(ii)(A) through (C), in addition to the other applicable requirements of this section:

(A) Operate the dry cleaning system inside a vapor barrier enclosure. The exhaust system for the enclosure shall be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(B) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning drum through a carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(C) Inspect the machine components listed in paragraph (k) of this section for vapor leaks weekly while the component is in operation. These inspections shall be conducted using a halogenated hydrocarbon detector or PCE gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

■ 5. Section 63.323 is amended as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraphs (b) introductory text, (b)(1), and (b)(2).

■ c. By revising paragraph (c).

§ 63.323 Test methods and monitoring.

(a) * * *

(1) The owner or operator shall monitor the following parameters, as applicable, on a weekly basis:

(i) The refrigeration system high pressure and low pressure during the drying phase to determine if they are in the range specified in the manufacturer's operating instructions.

(ii) If the machine is not equipped with refrigeration system pressure gauges, the temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F) before the end of the cool-down or drying cycle while the gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ±1.1 °C (±2 °F).

* * * * *

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3) or § 63.322(o)(2), the owner or operator shall measure the concentration of PCE in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or PCE gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the PCE concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or PCE gas analyzer designed to measure a concentration of 100 parts per million by volume of PCE in air to an accuracy of 25 parts per million by volume; and

(2) Use the colorimetric detector tube or PCE gas analyzer according to the manufacturer's instructions; and

* * * * *

(c) If the air-PCE gas vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3) or § 63.322(o)(2), the owner or operator of an affected facility shall measure the concentration of PCE in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or PCE gas analyzer to determine that the PCE concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or PCE gas analyzer designed to measure a concentration of 300 parts per million by volume of PCE in air to an accuracy of ±75 parts per million by volume; and

(2) Use the colorimetric detector tube or PCE gas analyzer according to the manufacturer's instructions; and

(3) Conduct the weekly monitoring by inserting the colorimetric detector or PCE gas analyzer tube into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

* * * * *

■ 6. Section 63.324 is amended as follows:

■ a. By revising paragraphs (d)(3), (d)(5), and (d)(6).

■ b. By adding paragraph (f).

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(3) The dates when the dry cleaning system components are inspected for leaks, as specified in § 63.322(k), (l), or (o)(1), and the name or location of dry cleaning system components where leaks are detected;

* * * * *

(5) The date and temperature sensor monitoring results, as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a), (b), or (o); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), (b)(3), or (o)(2).

* * * * *

(f) Each owner or operator of a dry cleaning facility shall submit to the Administrator or delegated State authority by registered mail on or before July 28, 2008 a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

(1) The name and address of the owner or operator;

(2) The address (that is, physical location) of the dry cleaning facility;

(3) If they are located in a building with a residence(s), even if the residence is vacant at the time of this notification;

(4) If they are located in a building with no other tenants, leased space, or owner occupants;

(5) Whether they are a major or area source;

(6) The yearly PCE solvent consumption based upon the yearly solvent consumption calculated according to § 63.323(d);

(7) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(8) All information contained in the statement is accurate and true.

[FR Doc. 06–6447 Filed 7–26–06; 8:45 am]
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Federal Register

Friday,
July 14, 2006

Part V

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0121; FRL–8190–5]

RIN 2060–AM43

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On November 10, 2003, EPA promulgated national emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing. Several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. Petitioners expressed concern with various requirements in the final rule, including applicability of specific operations and processes, the leak detection and repair requirements for connectors, criteria to define affected wastewater streams requiring control, control requirements for wastewater streams that contain only soluble hazardous air pollutants, the definition of "process condensers," and recordkeeping requirements for Group 2 batch process vents. In this action, EPA amends the final rule to address these issues and to correct inconsistencies that have been discovered during the review process.

DATES: *Effective Date:* July 14, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0121. 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 Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2003–0121, EPA/DC, EPA West, Room B–102, 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: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–5402, fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	3251, 3252, 3253, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

[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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.2435 of subpart FFFF (national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing). 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).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final action will also 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 or promulgated rules at *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 the final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 12, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments 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, 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 20004.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Amendments
  A. Applicability
  B. Emission Limits, Compliance Options, and Initial Compliance Requirements
  C. Monitoring Requirements
  D. Recordkeeping and Reporting
III. Response to Comments
  A. Applicability

B. Requirements for Process Vents
C. Requirements for Wastewater
D. Requirements for Equipment Leaks
E. Initial Compliance Requirements
F. Monitoring Requirements
G. Recordkeeping and Reporting Requirements
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IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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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. Congressional Review Act

I. Background

On November 10, 2003, we promulgated NESHAP for miscellaneous organic chemical (MON) manufacturing as subpart FFFF of 40 CFR part 63. Petitions for review of the MON were filed in the United States Court of Appeals for the District of Columbia Circuit by American Chemistry Council, Eastman Chemical Company, Clariant LSM (America), Inc., Rohm and Haas Company, General Electric Company, Coke Oven Environmental Task Force, and Lyondell Chemical Company (collectively "Petitioners").[1] These matters were consolidated into *American Chemical Council, et al.* v. *EPA*, No. 04–1004, 04–1005, 04–1008, 04–1009, 04–1010, 04–1012, 04–1013 (District of Columbia Circuit). Issues raised by the petitioners included applicability of the final rule; leak detection and repair requirements for connectors; definitions of process condenser, continuous process vent, and Group 1 wastewater; treatment requirements for wastewater that is Group 1 only for soluble hazardous air pollutants (SHAP); recordkeeping for Group 2 batch process vents; and notification requirements for Group 2 emission points that become Group 1 emission points. In early October 2005, the parties signed a settlement agreement. Pursuant to section 113(g) of the CAA, notice of the settlement was published in the **Federal Register** on October 26, 2005 (70 FR 61814).

On December 8, 2005, we proposed amendments to subpart FFFF to address the issues raised by Petitioners and made other corrections and clarifications to ensure that the final rule is implemented as intended. We received a total of 20 comment letters from 18 stakeholders. Most of the letters were from companies that will have affected sources under subpart FFFF, three were from industry trade associations, three were from environmental consulting firms, and one was from a law firm on behalf of some of the petitioners. The final amendments reflect full consideration of the petition, and all of the public comments we received on the proposed amendments.

II. Summary of the Final Amendments

The final amendments clarify applicability of subpart FFFF, provide additional compliance options, modify initial and continuous compliance requirements, and simplify recordkeeping and reporting requirements. Significant changes are summarized in the sections below. Additional clarifications and corrections are highlighted in Table 1 to this preamble and in the preamble to the proposed amendments (70 FR 73098, December 8, 2005). Collectively, these provisions will reduce the burden associated with demonstrating compliance without affecting emissions control or the ability of enforcement agencies to ensure compliance.

A. Applicability

The final amendments exempt carbon monoxide production and additional polymer finishing operations from subpart FFFF. In the definition of the term "miscellaneous organic chemical manufacturing process," the final amendments clarify the end point of processes that produce solid products.

B. Emission Limits, Compliance Options, and Initial Compliance Requirements

Many of the changes in the final amendments involve requirements for process vents. For example, Table 2 in the amended rule allows floating roof technology to control batch process vent emissions from process tanks. The final amendments also change the definition of the term "continuous process vent" to include all continuous operations, not just reactors, air oxidation reactors, and distillation units. A corresponding change has been made in the definition of the term "surge control vessel." Another change to the definition of the term "continuous process vent" requires determinations of continuous process vents prior to combination with emissions from another miscellaneous organic chemical manufacturing process unit (MCPU).

Table 3 in the final rule currently requires control of "particulate matter (PM) hazardous air pollutant (HAP)" emissions from process vents at new sources. The amendments replace requirements for "PM HAP" with requirements for "HAP metals." One of the related changes is that the emissions threshold above which control is required has been changed from 400 pounds per year (lb/yr) of PM HAP to 150 lb/yr of HAP metals. Another change in the amended rule is that Method 29 of appendix A of 40 CFR part 60 is allowed as an alternative to Method 5 of appendix A of 40 CFR part 60.

We have amended the definition of the term "process condenser" to clarify what it means for a condenser to be "integral to the MCPU." Under the current definition, condensers that receive vapor streams from batch operations in an MCPU at temperatures below the boiling or bubble point of the HAP are not process condensers. The amended definition includes most of these condensers, provided they are capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse, or for sale for fuel value, use, or reuse. Exceptions are provided for condensers that are considered to be part of recovery devices.

The final amendments specify corrected procedures for using specified equations to calculate uncontrolled emissions from process condensers. The revised procedures require consideration of the condenser exit gas temperature and composition of the condensate. Alternatively, uncontrolled emissions from process condensers may be estimated based on engineering assessments under the same conditions as the final rule currently allows for estimating emissions directly from the process vessels. The final amendments also specify initial compliance requirements for process condensers. You must either measure the exhaust gas temperature and show it is less than the boiling or bubble point of the substance in the process vessel or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed.

The final amendments specify that biofilters are an option for complying with the 95 percent reduction emission limit for batch process vents (see Table

[1] The Fertilizer Institute and Arteva Specialties S. 'ar.l also filed petitions for review but voluntarily withdrew their petitions.

2 to subpart FFFF of part 63). Related amendments in 40 CFR 63.2460(c)(9) specify initial and continuous compliance requirements for biofilters. A performance test must be conducted to demonstrate initial compliance. Either temperature or organic monitoring devices are required to demonstrate continuous compliance. Average temperatures must be determined if you elect to measure temperature at several locations in the biofilter bed. As for other types of control devices, the amendments related to biofilters also cross-reference the testing and continuous parameter monitoring system(s) (CPMS) requirements in 40 CFR part 63, subpart SS.

The final amendments add a compliance option in Table 3 of subpart FFFF of 40 CFR part 63 for hydrogen halide and halogen HAP emissions from process vents. A halogen atom mass flow rate emission limit of 0.45 kilograms per hour (kg/hr) is allowed as an alternative to the current emission limits that require either a 99 percent reduction or control to an outlet concentration limit of 20 parts per million by volume (ppmv). This mass emission limit applies to each individual continuous process vent and to the collection of all batch process vents within an MCPU.

The final amendments change several of the requirements for wastewater. The concentrations and mass discharge rates of partially soluble HAP (PSHAP), SHAP, and total HAP that define a Group 1 wastewater stream have been changed. The definition of the term "point of determination" (POD) has been changed to specify that the point where effluent is discharged from a scrubber or other control device is a POD. Methyl ethyl ketone has been removed from the list of PSHAP in Table 8 to subpart FFFF of part 63.[2] A new 40 CFR 63.2485(o) requires the CPMS records specified in 40 CFR 63.998(c)(1) in addition to the records specified in 40 CFR 63.147(d) for non-flare control devices. Finally, a new compliance option is included in 40 CFR 63.2485(n) that allows certain waste management units in a biotreatment system to be uncovered if the wastewater being treated is Group 1 only for SHAP. This option also allows lift stations with a volume larger than 10,000 gallons to have openings sized as necessary for proper venting as an alternative to the currently specified vent pipe dimensions in 40 CFR 63.136(e)(2)(ii)(A). Amendments in 40 CFR 63.2485(n) also added initial compliance procedures that are specific to the new compliance option.

For equipment leaks, the final amendments allow compliance with 40 CFR part 63, subpart H as an alternative to compliance with either 40 CFR part 63, subpart UU or 40 CFR part 65, subpart F. The amendments eliminate the option for existing sources of complying with 40 CFR part 63, subpart TT. However, the final amendments also allow two exceptions to the three available options. First, for pumps at an existing affected source, you may elect to comply with a leak definition of 10,000 parts per million (ppm) as an alternative to the leak definitions specified in the cross-referenced rules. Second, for connectors in gas service or light liquid service at any affected source, you may elect to comply with the requirements for connectors in heavy liquid service. The final amendments also specify that bench-scale processes are exempt from the equipment leak requirements.

The final amendments eliminate reporting requirements for offsite cleaning and reloading facilities that control emissions from rail cars and tank trucks that are used in vapor balancing for storage tanks at the affected source. For an offsite cleaning or reloading facility that is subject to any other NESHAP under 40 CFR part 63, the final amendments specify that compliance with the monitoring, recordkeeping, and reporting requirements in the other rule demonstrates compliance with the requirements in subpart FFFF of 40 CFR part 63.

Final amendments to 40 CFR 63.2445 clarify that an initial compliance demonstration must be conducted within 150 days after any of the following process changes: A Group 2 emission point becomes a Group 1 emission point, hydrogen halide and halogen HAP emissions from the sum of all process vents in a process increase to more than 1,000 lb/yr, or a small control device for process vent or transfer rack emissions becomes a large control device.

C. Monitoring Requirements

The final amendments include several changes to the parameter monitoring requirements specified in 40 CFR 63.2450(k). For halogen scrubbers, monitoring caustic strength of the effluent is allowed as an alternative to measuring pH. If the halogen scrubber controls emissions only from batch process vents, the caustic strength or pH may be measured daily instead of continuously. For absorbers that control organic compounds and use water as the scrubbing fluid, liquid and gas flow rates may be monitored instead of the parameters in the current rule. The periodic verification option for control devices that control less than 1 ton per year of HAP is now allowed for all control devices, not just those that control only batch process vents.

D. Recordkeeping and Reporting

The final amendments reduce or eliminate recordkeeping requirements in 40 CFR 63.2525(e) for Group 2 batch process vents. Recordkeeping is eliminated for Group 2 batch process vents that are always controlled with either a flare that meets the requirements of 40 CFR 63.987 or any other control device that meets the requirements for Group 1 batch process vents, provided the worst-case conditions for the control device includes the contribution of all Group 2 batch process vents. Reduced recordkeeping is allowed if non-reactive organic HAP is the only HAP in the process and usage is less than 10,000 lb/yr or if emissions are less than 1,000 lb/yr. Estimating uncontrolled organic HAP emissions is not required if you demonstrate that non-reactive organic HAP usage is less than 10,000 lb/yr. Data and supporting rationale explaining why non-reactive organic HAP usage will be less than 10,000 lb/yr must be included in your notification of compliance status report.

The final amendments also reduce or clarify reporting requirements. As clarification for process changes in 40 CFR 63.2520(e)(10), it should be noted that a new MCPU is created when a new product is made which is not part of an existing family of materials. Process changes to an existing MCPU such as the addition of new or different equipment, use of different feedstock, or addition of a parallel process may be a change in the operating scenario, but do not constitute a new MCPU. The definition of the term "batch process vent" has been amended to eliminate reporting requirements associated with determinations that emissions from batch operations have HAP emissions below the thresholds for batch process vents. The final amendments eliminate the requirement in 40 CFR 63.2520(e)(10)(ii)(C) of the final rule to provide a 60-day advance notification before batch process vents change from Group 2 to Group 1. Under the amended rule, you must document such a change in status in your notification of compliance status report in accordance with 40 CFR 63.2520(e)(10)(i). We changed 40 CFR 63.2465(b) to specify

[2] MEK has been removed as a result of its removal from the CAA section 112(b)(1) list of HAP. [70 FR 75047, December 19, 2005]

that the results of engineering assessments used to estimate uncontrolled hydrogen halide and halogen HAP emissions are to be documented in your notification of compliance status report, not your precompliance report. Finally, the amended rule requires operating logs (and copies of the applicable logs in compliance reports) only for processes with batch process vents from batch operations, not all processes.

III. Response to Comments

A. Applicability

Comment: Although not directly related to the proposed amendments, one commenter expressed concern that, despite previous attempts at clarification, a potential for overlap and conflict between the applicability provisions in the Miscellaneous Organic Chemical Manufacturing NESHAP (40 CFR part 63, subpart FFFF) and the miscellaneous coating manufacturing NESHAP (40 CFR part 63, subpart HHHHH) still exists. Based on the rules as currently written and additional guidance from EPA (70 FR 25678, May 11, 2005), the commenter understands that any process that produces a material that is used as a coating is subject to 40 CFR part 63, subpart HHHHH. The commenter has two concerns with this requirement. First, it is not clear which rule applies to the production of materials that have both coating and non-coating uses. Second, some coating manufacturing processes involve traditional chemical manufacturing operations, including reactions, which differ significantly from the processes consisting of mixing and blending operations that were used to develop the maximum achievable control technology (MACT) floor and regulatory requirements in 40 CFR part 63, subpart HHHHH. On the other hand, these processes are similar to processes that were used to develop the MACT floor and regulatory requirements in 40 CFR part 63, subpart FFFF.

To resolve the conflicts, the commenter requested that we issue a separate rulemaking to revise definitions in the Miscellaneous Coating Manufacturing NESHAP. The commenter, in conjunction with other companies, suggested changes to definitions in earlier communications with EPA. If changes are made before the compliance dates of both rules, needless effort to prepare and review precompliance reports for these situations can be avoided.

Response: We share the commenter's concern about the potential for conflict in applicability determinations. To clarify the applicability and eliminate the conflict, we have proposed changes to the definition of the term "coating" in the Miscellaneous Coating Manufacturing NESHAP (71 FR 28639, May 17, 2006). One of the proposed changes would clarify that only material produced by blending, mixing, dilution, or other formulation operations would be a coating. Thus, a process that involves only formulation operations would be subject to 40 CFR part 63, subpart HHHHH if the product is a coating. A second proposed change would clarify applicability for processes that involve chemical synthesis or separation of formulation components prior to the formulation operations. If the synthesized or separated material is stored as an isolated intermediate or final product prior to use in the formulation operation, the synthesis or separation process is subject to 40 CFR part 63, subpart FFFF. Thus, applicability of 40 CFR part 63, subpart FFFF would end with the storage vessel fed from the synthesis or separation operation, and 40 CFR part 63, subpart HHHHH would apply following storage through final production of the coating. When the synthesized or separated component is not stored before use in a formulation step, the second proposed change to the definition of the term "coating" would specify that a coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel (without storage) where it is formulated to produce a material used as a coating. The preamble to these proposed amendments to the Miscellaneous Coating Manufacturing NESHAP states that comments must be received on or before July 3, 2006.

Comment: One commenter described how they think several tanks in a specific miscellaneous organic chemical manufacturing process would be classified under the amended rule. According to the commenter, a molten material from batch reactors is collected in tank A. Typically, the material from tank A is sent to a continuous centrifuge to remove a catalyst. The catalyst-free material is then transferred to either tank B or tank C. Still molten, material in tanks B and C is either transferred to rail cars for shipment or used onsite as feed material for a flaker or pastille maker. The flaker and pastille maker operates continuously, except when it is necessary to switch from one feed tank to the other. The commenter believes tank A is a surge control vessel, and tanks B and C are either storage tanks or surge control vessels.

Response: Although this is not the proper forum for a site-specific applicability determination, we will provide a general assessment based on the limited available information. Because it is managing the flow of material into a continuous operation, tank A is a surge control vessel. Since the material in tanks B and C is sometimes sold, these tanks mark the end of the process, and the tanks are storage tanks. In this case, the flaker and pastille maker is a separate process.

The determination would be more difficult if all of the material in tanks B and C was used onsite. If material were sometimes added to and withdrawn from these tanks simultaneously, then they would be managing flow to a continuous operation, and they would be surge control vessels. On the other hand, if it could be demonstrated that the tanks are being used solely for storage, then the molten material would be an isolated intermediate, and tanks B and C would be storage tanks. Note that in table 1 to this preamble we describe a change in the final amendments to the definition of "isolated intermediates." This change clarifies that storage equipment for isolated intermediates is part of the MCPU that produces the isolated intermediate.

Comment: One commenter thinks polymer products should not be regulated as "volatile organic liquids" under either subpart FFFF or other regulatory programs because they have very high molecular weights and negligible vapor pressure.

Response: Processes that produce certain polymer products are regulated under 40 CFR part 63, subpart FFFF if HAP are used in the process. However, only the HAP are subject to emission limits. The non-HAP polymer products themselves are not subject to emission limits under 40 CFR part 63, subpart FFFF. The requirements in other regulatory programs are not addressed in this response: Because today's action deals only with amendments to 40 CFR part 63, subpart FFFF.

B. Requirements for Process Vents

Comment: The proposed amendments included an additional compliance option for batch process vents that would allow the use of biofilters to comply with the 95 percent reduction option. One commenter requested that this option be made available for continuous process vents as well. The commenter realizes that, technically, biofilters may be used to comply with the 98 percent reduction option in table 1 to subpart FFFF, but the commenter

believes this is not feasible with current biofilter technology. To support his request, the commenter noted that biofilters have environmental benefits relative to the combustion devices they are likely to supplant. Specifically, both the consumption of fossil fuels and the generation of criteria pollutant emissions would be lower if continuous process vents are controlled using biofilters. The commenter also noted that there is no technological barrier to using biofilters to control emissions from continuous operations, and there is regulatory precedent for their use to control emissions from continuous operations (*i.e.*, 40 CFR part 63, subpart DDDD and subpart UUUU).

Response: We have decided not to include the requested biofilter option at this time. Although we agree that biofilters have some environmental advantages over combustion devices, we are concerned that the difference between 98 percent and 95 percent reduction in HAP emissions is not offset by the benefits of reduced fuel use and criteria pollutant emissions. Analysis of the offsets was not necessary for batch process vents because the rule already included a 95 percent reduction option before the biofilter option was proposed.

This issue is not closed. We have initiated a study to investigate the applicability of biofilters for continuous process vent emissions from miscellaneous organic chemical manufacturing processes. Some of the things we would like to determine are as follows. What level of control can be achieved? Does the level of control vary for different HAP? What effect do other emission stream characteristics such as flow rate and temperature have on the control efficiency? How much of the HAP removed from the emission stream is transferred to wastewater discharges? How much electricity is needed to run fans and pumps associated with a biofilter? How much solid waste is generated by biofilters, and how must it be disposed? Using the information collected, we will also reassess the environmental impacts of biofilters versus combustion devices. Depending on the results, we may decide to propose some type of biofilter option for continuous process vents in 40 CFR part 63, subpart FFFF in the future.

Comment: One of the proposed amendments added a compliance option for process vents that emit hydrogen halide and halogen HAP. This option, in entry 1.b. of Table 3 to subpart FFFF of 40 CFR part 63, would allow compliance by reducing the "halogen atom mass emission rate to ≤0.45 halogen HAP kg/hr by venting through a closed vent system to a halogen reduction device." Three commenters noted that it is unclear which vents need to be controlled when the collective hydrogen halide and halogen emissions from all vents in a process are at least 1,000 lb/yr. The commenters suggested clarifying that the limit applies to each individual process vent. According to two of the commenters, if a stream that is controlled to <0.45 kg/hr is in compliance, then it seems logical that any uncontrolled stream from the process that contains <0.45 kg/hr should also be in compliance.

Response: Application of the 0.45 kg/hr limit for hydrogen halide and halogen HAP differs for batch and continuous process vents. It applies to the sum of all batch vents and to each individual continuous process vent. This approach is consistent with the way limits are applied for organic HAP emissions from batch and continuous process vents. The language in Table 3 to subpart FFFF of 40 CFR part 63 has been changed to clarify the requirements.

Comment: One commenter requested clarification of the language in 40 CFR 63.2450(o), which currently states that "you may not use a flare to control halogenated vent streams or hydrogen halide and halogen HAP emissions." The commenter is concerned that this language appears to prohibit all vent streams with hydrogen halide and halogen HAP from flares, even if no control of hydrogen halide and halogen HAP is required for the stream. To clarify the paragraph, the commenter suggests changing it to read as follows: "You may not use a flare to control halogenated vent streams or as a control device for hydrogen halide and halogen HAP emissions to comply with Table 3."

Response: We have changed 40 CFR 63.2450(o) as suggested by the commenter because the suggested language is consistent with our intent, and it may eliminate confusion. If hydrogen halide and halogen HAP in a vent stream must be controlled to meet the emission limits in Table 3 to subpart FFFF of 40 CFR part 63, then that vent stream may not be vented to a flare. All other vent streams that contain hydrogen halide and halogen HAP may be vented to a flare. For example, a continuous process vent stream containing less than 0.45 kg/hr of hydrogen halide and halogen HAP could be sent to the flare.

Comment: Two commenters noted that the language in entry 1.a of Table 3 to subpart FFFF of 40 CFR part 63 appears to require the use of a single closed-vent system to convey hydrogen halide and halogen HAP from all process vents in a process to a control device(s). According to the commenters, this could be a problem because it is possible that the process vents within a process that must be controlled may be separated by distances that would make collection into a single closed-vent system impractical or uneconomical. The commenters suggested changing the language to allow for the use of a "combination of closed-vent systems."

Response: We did not intend to force the use of a single control device (or series of control devices) for all process vents within the process. Therefore, we have changed entries 1.a and 1.b in Table 3 to subpart FFFF of 40 CFR part 63 to allow venting through "one or more closed-vent systems." We also amended entries 1.a, 1.b, and 1.c in Table 2 to subpart FFFF of 40 CFR part 63 in the same manner. These changes provide flexibility to use as many separate control devices as necessary.

Comment: One commenter requested clarification of the language in 40 CFR 63.2495(b)(1), which currently specifies that "Hydrogen halides that are generated as a result of combustion control must be controlled according to the requirements of 40 CFR 63.994 and the requirements referenced therein." The commenter is concerned that this language appears to require the use of halogen reduction devices regardless of the halogen atom concentration in the emission stream that is combusted. This conflicts with provisions elsewhere in the rule that require the use of halogen reduction devices only when halogenated vent streams are combusted.

Response: To eliminate the inconsistency that the commenter identified, we have amended 40 CFR 63.2495(b)(1) to require control of hydrogen halides generated by combustion control only "if any vent stream routed to a combustion control is a halogenated vent stream."

Comment: One commenter stated that regenerative thermal oxidizers (RTO) should be recognized as a form of incineration that can be used for control as long as any combined control system meets the 98 percent control efficiency or outlet concentration limit.

Response: RTO are acceptable control devices under the rule. Nothing in the rule prohibits their use alone or in combination with other devices to meet specified emission limits for organic HAP.

C. Requirements for Wastewater

Comment: One commenter requested clarification of the POD for scrubbers. According to the commenter, the point where effluent is discharged from a

scrubber should be a POD, and the effluent itself should be process wastewater, only when the scrubber is used to comply with the emission limits for process vents. The commenter suggested adding language like that in 40 CFR 63.1256(a)(1)(iii) of the Pharmaceuticals Production NESHAP.

Response: We agree with the commenter that the requirements for scrubber effluent need to be clarified. On July 1, 2005, we published direct final rule amendments (70 FR 38554) and a parallel proposal (70 FR 38562) that specified requirements for effluent from control devices. We later withdrew these amendments because of adverse comment (70 FR 51269, August 30, 2005). As a result, the rule is now silent on the requirements for scrubber effluent.

We disagree with the commenter's assertion that only scrubbers that are used to meet emission limits for process vents should have a POD. If a process operates a few hours per year, it may have Group 2 batch process vent emissions with high HAP concentrations. If such emission streams are controlled with a scrubber, we believe that the effluent discharges should be considered for possible compliance with wastewater requirements.

After consideration of the comment and evaluation of requirements in other rules, we have decided to resolve the existing ambiguity by modifying the definition of "point of determination" in the final amendments. In general, 40 CFR part 63, subpart FFFF references the wastewater requirements in the Hazardous Organic NESHAP (HON), 40 CFR part 63, subpart G, including the POD definition in 40 CFR 63.111. According to this definition, a POD is each point where process wastewater exits the chemical manufacturing process unit (CMPU) (or MCPU, in the case of 40 CFR part 63, subpart FFFF). However, the term does not have the same meaning under 40 CFR part 63, subpart FFFF as it does in the HON due to an unintended consequence created by the decision to exclude control devices from the MCPU (whereas they are part of CMPU under the HON). To make the application of POD under 40 CFR part 63, subpart FFFF consistent with their application in the HON, the final amendments include a freestanding (i.e., non-cross-referenced) term "point of determination" in 40 CFR 63.2550(i) of 40 CFR part 63, subpart FFFF. This revised definition specifies that a POD is each point where process wastewater exits the MCPU or control device.

As a result of this change, effluent discharge points from all scrubbers, not just those that are used to meet emission limits for process vents, are POD. Discharge points from other types of control devices are also POD. The effluent also is process wastewater, as under the HON. To determine if the effluent is subject to requirements for wastewater, you must determine if it meets any of the Group 1 wastewater criteria, just like for other process wastewater streams.

Comment: Several commenters requested that methyl ethyl ketone (MEK) be deleted from the list of PSHAP in Table 8 to subpart FFFF of 40 CFR part 63 because MEK was removed from the list of HAP in the CAA on December 19, 2005 (70 FR 75047). One of the commenters suggested a separate rulemaking to address the situation before the compliance date.

Response: We agree with the commenters that MEK should no longer be listed in Table 8 to subpart FFFF of 40 CFR part 63 because MEK has been removed from the HAP list. Therefore, we removed MEK from Table 8 to subpart FFFF of 40 CFR part 63 in the final rule amendments.

D. Requirements for Equipment Leaks

Comment: One commenter requested that bench-scale operations be exempt from the MON just as in the HON at 40 CFR 63.160(f) and 40 CFR 63.190(f), the Pharmaceuticals Production NESHAP at 40 CFR 63.1255(a)(6), and the Pesticide Active Ingredient Production NESHAP at 40 CFR 63.1363(a)(6). The commenter states that the justification for excluding bench-scale operations from the other rules, as stated in the preamble to an amendment for the HON (60 FR 18071, April 10, 1995), is equally applicable to the MON source category.

Response: We agree with the commenter and have corrected this oversight by adding an exemption for bench-scale batch operations in a new 40 CFR 63.2480(d). Although the term "bench-scale batch operations" is defined in 40 CFR 63.161 of the HON, we also added the same definition in the final amendments to 40 CFR 63.2550(i) because the term is not defined in 40 CFR part 63, subpart UU or in 40 CFR part 65, subpart A.

Comment: One commenter opposed the proposed amendments to the requirements for equipment leaks at existing sources in Table 6 to subpart FFFF. These changes would eliminate the 40 CFR part 63, subpart TT option for MCPU with no continuous process vents in favor of a new above-the-floor option that would require all MCPU to comply with either 40 CFR part 63, subpart UU, or 40 CFR part 65, subpart F, both modified to allow sensory monitoring of connectors in place of Method 21 monitoring.

The commenter stated four objections to the proposed changes. First, the commenter does not believe we have met the statutory requirement to demonstrate that the costs of the new option are reasonable, particularly for equipment in an MCPU with no continuous process vents. To illustrate this concern, the commenter provided information for an example pump and concluded that the additional cost to comply with 40 CFR part 63, subpart UU instead of 40 CFR part 63, subpart TT could be over $70,000 per ton of HAP removed.

Second, the commenter disagrees with our assertion that a consistent set of options for all MCPU will simplify applicability because this determination needs to consider other rules that apply at the MON facilities. For example, if a facility with MON batch operations is also subject to the Organic Liquid Distribution NESHAP, for which 40 CFR part 63, subpart TT is a compliance option, then eliminating the 40 CFR part 63, subpart TT option from the MON could make applicability more complicated.

Third, even if the nationwide benefits of reduced connector monitoring for continuous operations more than offsets the additional nationwide burden to comply with the 40 CFR part 63, subpart UU for all MCPU, the commenter is concerned that the offsets are inequitably distributed. Facilities primarily engaged in batch chemical manufacturing would incur additional costs but receive little or no benefit, whereas facilities that primarily operate continuous chemical manufacturing processes will receive the benefits but incur little or no cost.

Fourth, the commenter stated that the new leak detection and repair (LDAR) options do not appropriately recognize the difference in potential environmental impact between batch and continuous operations. The commenter noted that, prior to the amendments, 40 CFR part 63, subpart FFFF allowed for the fundamental differences of scale and modes of operation between continuous and batch operations by properly allocating the stringency of equipment leak requirements. The commenter argued that the proposed change does neither. The higher stringency of 40 CFR part 63, subpart UU is appropriate for large continuous operations but not for small batch operations.

Response: In the analysis for the proposed amendments, the MACT floor

for all MCPU was an LDAR program equivalent to the requirements in 40 CFR part 63, subpart TT, and the above-the-floor option lowered the leak definition for pumps and valves to the level specified in 40 CFR part 63, subpart UU. Although we stand by our original conclusion that the average nationwide impacts of the proposed above-the-floor option are reasonable, we also share the commenter's concern that the benefits and costs are not distributed equitably among facilities with different types of operations, especially when considering the leak detection and repair program already implemented at the facility.

Upon closer examination of the results of the cost analysis, it is clear that the incremental impacts for pumps in MCPU that have no continuous process vents are much more significant than the impacts for valves in those same processes and the impacts for MCPU that have continuous process vents. To mitigate the excessive burden for batch operations already in compliance with 40 CFR part 63, subpart TT, we have modified the above-the-floor option to lower the pump leak definition only for MCPU with continuous process vents (the option still lowers the leak definition for valves in all MCPU). As a result of this change, the incremental impacts for both batch and continuous operations are reasonable. For the final amendments, we did not change the language in Table 6 to subpart FFFF of 40 CFR part 63 (i.e., the LDAR programs in 40 CFR part 63, subpart UU and 40 CFR part 65, subpart F are still the starting point for all MCPU). However, new language in 40 CFR 63.2480(b)(5) and (c)(5) specifies that you may elect to comply with a leak definition of 10,000 ppm for pumps in light liquid service in an MCPU that has no continuous process vents and is part of an existing source.

In addition to the changes described above for pumps, the final amendments also include an additional compliance option for equipment leaks. Many facilities with processes that are subject to 40 CFR part 63, subpart FFFF also have processes that are subject to the equipment leak provisions in 40 CFR part 63, subpart H. The requirements in 40 CFR part 63, subpart H are substantially similar to the requirements in 40 CFR part 63, subpart UU. Therefore, we decided to modify Table 6 of subpart FFFF to 40 CFR part 63 to allow compliance with 40 CFR part 63, subpart H as another alternative. This option provides additional flexibility, and it may reduce the burden for some owners and operators while achieving the same level of emissions control.

E. Initial Compliance Requirements

1. Design Evaluations

Comment: A proposed amendment to 40 CFR 63.2450(h) would clarify that the option to conduct a design evaluation instead of a performance test for a small control device applies only to control devices used to control process vents and transfer racks because other provisions in the rule already allow design evaluations for storage tanks and wastewater. Section 63.2450(h) also references the criteria for design evaluations in 40 CFR 63.1257(a)(1) of the Pharmaceuticals Production NESHAP. One commenter believes it would be preferable to require compliance with the design evaluation requirements in 40 CFR 63.985(b) for small control devices used to meet the emission limits in Tables 1, 3, and 5 to subpart FFFF of 40 CFR part 63, and require compliance with 40 CFR 63.1257(a)(1) only for control devices used to meet the emission limits specified in Table 2 to subpart FFFF of 40 CFR part 63. According to the commenter, referencing the design evaluation procedures in 40 CFR part 63, subpart SS for the emission types subject to Tables 1, 3, and 5 to subpart FFFF of 40 CFR part 63 is appropriate because the performance test and other requirements in 40 CFR part 63, subpart SS also apply to those emission types. The commenter also recommended adding the following statement: "For continuous process vents the design evaluation shall be conducted at maximum representative operating conditions for the process, unless the Administrator specifies or approves alternate operating conditions."

Response: Although written in very different styles, the intent of the design evaluation requirements in 40 CFR part 63, subpart SS and the Pharmaceuticals Production NESHAP are essentially the same, to the extent they overlap. We decided not to reference both sets of requirements because we believe it is clearer to reference only one wherever possible. We selected the criteria in the Pharmaceuticals Production NESHAP because they are slightly more comprehensive than the procedures in 40 CFR part 63, subpart SS (e.g., they include criteria for scrubbers and non-regenerative carbon adsorbers). Furthermore, the language in the Pharmaceuticals Production NESHAP is nearly identical to the language in 40 CFR 63.139 of the HON, which 40 CFR part 63, subpart FFFF references for wastewater control devices.

We agree with the commenter's suggested clarification regarding the conditions under which the design evaluation should be conducted for a control device that controls continuous process vents. This language is borrowed from 40 CFR 63.997(e)(1)(i), and it will ensure that design evaluations are conducted under the same conditions as performance tests. It also complements the instructions in 40 CFR 63.2460(c)(2)(ii), which specify conditions under which a design evaluation should be conducted for a control device that controls batch process vents. Thus, we added the commenter's suggested language in 40 CFR 63.2450(h). Along these same lines, we also added a statement specifying that a design evaluation for a control device that is used to control transfer racks must demonstrate that the required efficiency is achieved during the reasonably expected maximum transfer loading rate.

2. Requirements After Process Changes

Comment: Proposed amendments in 40 CFR 63.2445(d), (e), and (f) specify requirements that apply after various types of process changes. In each case, the proposed amendments specify that a performance test or design evaluation is required within 150 days of the process change. Two commenters requested clarification of the proposed amendments because they noted that an initial compliance demonstration does not always require a performance test or design evaluation. For example, one commenter pointed out that no performance test should be required if the facility complies with the alternative standard or routes the emission stream to a fuel gas system. The other commenter described a situation where a performance test should not be required because a previous test is still valid. According to this commenter, when production is scaled up so that Group 2 batch process vents become Group 1 batch process vents, production may be shifted to different equipment for which initial compliance was previously demonstrated under worst-case conditions that are not exceeded by the operating scenario for the new process. To clarify the amendments, one commenter suggested replacing the references to performance tests and design evaluations with a reference to "an initial compliance demonstration as specified in this subpart."

Response: Our intent was to require a performance test or design evaluation after the specified types of process changes only when a performance test or design evaluation would have been required to demonstrate initial

compliance if the situation after the change had existed at the time the facility first became subject to 40 CFR part 63, subpart FFFF. The commenters correctly observed that in some situations initial compliance can be demonstrated without a performance test or design evaluation, or it can be demonstrated using a previous performance test. Therefore, we revised 40 CFR 63.2445(d), (e), and (f) in the final rule amendments to require any applicable initial compliance demonstration instead of requiring only a new performance test or design evaluation.

3. Calculation of Uncontrolled Emissions

Comment: One commenter pointed out that the calculation of HAP emissions from process condensers requires knowledge of condensate receiver composition and condenser exit gas temperature (or direct knowledge of exit gas stream composition). In most cases, data on the condensate composition is not available. The commenter stated that typical errors made in estimating emissions following process condensers include use of condenser exit water temperature instead of exit gas temperature, lack of an applied material balance, and use of reactor vessel liquid phase mole fraction to determine partial pressure of condensables in the condenser exit gas (single most common mistake). When the operator has no knowledge of the liquid condensate mole fractions, a material balance must be used to determine the mole fractions present in equilibrium with the exiting emission stream. The commenter provided an example of a material balance based on noncondensables for a process operation involving toluene and xylene. The commenter further points out that for process operations where temperature and pressure are changing, the material balance may be complex. In summary, the commenter stated that it is essential that the noncondensable material balance be applied in conjunction with an iterative solution to solve condensate liquid mole fraction for cases where liquid composition in the receiver is not known.

Response: We agree with the commenter that the required procedures to calculate uncontrolled emissions when a vessel is equipped with a process condenser should be corrected to reflect the condenser exit gas temperature and composition of the condensate. The following assumptions apply for calculating uncontrolled emissions from process vent from a process condenser:

(1) For all condenser calculations one would use the condenser exit gas temperature and pressure as the reference conditions.

(2) It should be assumed that the condenser exit vent gas is in equilibrium with the liquid condensate which is also leaving the condenser based on the exit gas temperature. Therefore, the calculated vapor pressure for each volatile component in the condensate would have approximately the same calculated partial pressure of the same component in the exit vent gas from the condenser.

(3) Dalton's Law would be used to calculate the partial pressure of the noncondensable component (air, nitrogen, * * *) contained in the condenser exit vent gas. This is where the sum of all of the partial pressures is equal to the total system pressure and the partial pressure of the noncondensable component would be calculated by subtracting the sum of all volatile component vapor pressures from the total system pressure.

(4) Material balance considerations should be taken into account for each component at the condenser. The amount of each component that enters the condenser should be approximately equal to the amount that is calculated to leave the condenser through the exit vapor stream and the exit condensate liquid stream.

(5) The amount of each component that is emitted from the condenser should be determined first. The total HAP that are emitted from the condenser may then be calculated from the component emission totals. It is likely that many of the compounds that are emitted from the condenser may not be HAP but would need to be calculated as part of the overall condenser solution.

In all but the simplest cases (single component systems) the solution to the condenser problem will require a numerical iteration as part of the basic procedure. We are changing the procedures for calculating emissions from condensers to be as technically correct as possible. This is important because uncontrolled emission estimates are used as a threshold for requiring installation and operation of control devices.

Comment: As part of the proposed amendments, a new paragraph was added at 40 CFR 63.2460(b)(4) to require the use of procedures in 40 CFR 63.1257(d)(3)(i)(B) to calculate uncontrolled batch process vent emissions from a vessel equipped with a process condenser. Three commenters noted that there are some batch process steps where a process condenser is used, but the required equations do not adequately estimate the emissions. The commenters cited the following as examples: intermittent vents from continuous distillation columns, maintenance purges, or regenerator operations. To estimate uncontrolled emissions for such steps, the commenters believe 40 CFR part 63, subpart FFFF should allow the use of engineering assessments in accordance with 40 CFR 63.1257(d)(2)(ii) of the Pharmaceuticals Production NESHAP. According to one commenter, engineering assessments also should be allowed for emission episodes covered by the equations if the owner or operator can demonstrate to the Administrator that those methods are not appropriate.

Response: We agree with the commenters that the specified equations do not address all possible types of emission episodes from process condensers, just as they do not address all possible types of emission episodes directly from process equipment. Therefore, we have modified 40 CFR 63.2460(b)(4) in the final amendments to allow the use of engineering assessments for types of emission episodes not covered by the specified equations. However, the revised procedure for calculating condenser emissions will always apply. We also added the provision that allows engineering assessments covered by the equations in 40 CFR 63.1257(d)(3)(i)(B) if you can demonstrate that those methods are not appropriate. These changes make the procedures for estimating uncontrolled emissions from process condensers consistent with the procedures for estimating uncontrolled emissions directly from process equipment.

Comment: A proposed amendment in 40 CFR 63.2465(b) clarifies that uncontrolled hydrogen halide and halogen HAP emissions may be estimated using either the equations in 40 CFR 63.1257(d)(2)(i) or an engineering assessment in accordance with 40 CFR 63.1257(d)(2)(ii), whichever is appropriate. One commenter noted that in order to use an engineering assessment for emission episodes covered by the equations, 40 CFR 63.1257(d)(2)(ii) requires a demonstration that the equations are not appropriate. The commenter asked if information to support the demonstration should be documented in the notification of compliance status report.

Response: According to 40 CFR 63.1257(d)(2)(ii)(E), all information must be documented in the precompliance report. However, we

understand that the emission equations in 40 CFR 63.1257(d)(2)(i) were developed for organic HAP and decided that a demonstration that the equations are not appropriate for hydrogen halide and halogen HAP emissions would be an unnecessary burden. Therefore, 40 CFR 63.2465(b) of the final amendments specifies that the information to support an engineering assessment for estimating hydrogen halide and halogen HAP emissions must be submitted in the notification of compliance status report.

F. Monitoring Requirements

1. Absorbers

Comment: Five commenters objected to the proposed amendments to the monitoring requirements for absorbers in 40 CFR 63.2450(k)(5). These amendments would require continuous monitoring of liquid and gas flow, and records of the liquid-to-gas ratio, in addition to the monitoring and recordkeeping required in 40 CFR 63.990(c)(1), 63.993(c)(1), and 63.998(a)(2)(ii)(C). According to the commenters, the current monitoring requirements (liquid temperature and specific gravity) are sufficient to demonstrate compliance, and they believe we have not explained why these requirements are inadequate. They also noted that there is no precedent for the proposed monitoring (except for halogen scrubbers, for which flow monitoring is already required in 40 CFR 63.994), and it would add significant burden and cost to monitoring absorbers. Therefore, the commenters believe the proposed amendments should not be finalized.

Response: Our intent was to require liquid and gas flow monitoring only for absorbers where water is used as the scrubbing fluid. As the commenters pointed out, the rule already requires this monitoring for halogen scrubbers by referencing the requirements in 40 CFR 63.994. However, water can also be used to scrub organic compounds from an emission stream. We believe the same monitoring requirements that apply to halogen scrubbers should also apply to any other absorber that uses water as the scrubbing liquid. Therefore, 40 CFR 63.2450(k)(5) in the final amendments has been revised to require the liquid and gas flow monitoring only for absorbers that control organic compounds and use water as the scrubbing fluid.

2. Organic Monitoring Devices

Comment: The proposed amendments added a new 40 CFR 63.2460(c)(9) to specify requirements for biofilters that are used as control devices for batch process vents. Section 63.2460(c)(9)(iii) specified requirements for temperature monitoring devices and organic monitoring devices. This section also indicated that general requirements for continuous emissions monitoring system(s) (CEMS) are specified in 40 CFR 63.2450(j) and in Table 12 to subpart FFFF of 40 CFR part 63. The preamble to the proposed amendments explained that this rule language means the quality assurance/quality control and other requirements for CEMS in subpart A of 40 CFR part 63 would apply to organic monitoring devices. Three commenters disagreed with this statement. One of the commenters pointed out that a CEMS must provide a record of the emissions, whereas an organic monitoring device is required to provide an indication of concentration. As an example, this commenter noted that the monitored parameter for an organic monitoring device could be a calibrated indicator of HAP concentration such as the millivolts generated by a concentration sensor. According to another commenter, the references to CEMS in the amended explanations for citations in Table 12 to subpart FFFF of 40 CFR part 63 should be applicable only to CEMS that are used for compliance with the alternative standard in 40 CFR 63.2505. Thus, the three commenters recommended removing the proposed changes from 40 CFR 63.2460(c)(9)(iii), Table 12 to subpart FFFF of 40 CFR part 63, and all associated preamble discussions.

Response: The commenters' interpretation of the differences in requirements for CEMS and organic monitoring devices is correct. Requirements for CEMS were inappropriately applied to organic monitoring devices in 40 CFR 63.2460(c)(9)(iii) of the proposed amendments, and they have been removed from the final amendments. As a result of these changes, the use of an organic monitoring device with a biofilter is subject to the parameter monitoring requirements in 40 CFR part 63, subpart SS. All other organic monitoring devices, except those used with controls for wastewater systems, are also subject to the requirements in 40 CFR part 63, subpart SS. Organic monitoring devices used with controls for wastewater systems are subject to the similar parameter monitoring requirements in 40 CFR part 63, subpart G of the HON.

We disagree with the comments regarding the proposed changes in Table 12 to subpart FFFF of 40 CFR part 63. Nothing in the rule prohibits the use of a CEMS to monitor pollutant concentrations to demonstrate continuous compliance with a percent reduction requirement. For example, a control device might reduce HAP concentrations to less than 100 ppm. This would not be enough to demonstrate compliance with the alternative standard, but it might be more than 98 percent reduction. Most owners and operators in this situation might choose to comply with the organic monitoring device provisions and monitor a parameter like the millivolts generated by the concentration sensor. That would be acceptable. However, you also have the option to directly monitor the concentration. We believe that monitoring the concentration continuously makes the equipment a CEMS, and the requirements for CEMS should apply. The proposed changes to Table 12 to subpart FFFF of 40 CFR part 63 make it clear that requirements for CEMS apply anytime a CEMS is used (i.e., emissions concentrations are continuously monitored), but they do not apply to an organic monitoring device. Thus, the proposed changes to Table 12 to subpart FFFF of 40 CFR part 63 are retained in the final amendments.

3. Scrubber Monitoring

Comment: Sections 63.994(c) and 63.2450(k)(3) require continuous monitoring of either pH or caustic strength in the effluent from halogen scrubbers. One commenter argued that the requirement for continuous monitoring is "arbitrary and particularly burdensome to batch operators" and should be changed to daily monitoring to match the Pharmaceuticals Production NESHAP and the Pesticide Active Ingredient Production NESHAP.

Response: We decided to modify 40 CFR 63.2450(k)(3) in the final amendments to allow daily monitoring of pH or caustic strength as an alternative to continuous monitoring for halogen scrubbers used to control only batch process vents. This change minimizes the burden for batch operations and brings the monitoring requirements for such operations at MON sources in line with the monitoring requirements for batch operations at pharmaceutical and pesticide active ingredient (PAI) sources.

4. Periodic Verification

Comment: Section 63.2460(c)(5) of the final rule specifies alternative monitoring provisions, called periodic verifications, for control devices that control less than 1.0 ton per year HAP from batch process vents. One commenter suggested that the periodic

verification option should be available for monitoring control devices that control emissions from all types of emission points, not only batch process vents. To support this suggestion, the commenter noted that both the proposed rule (67 FR 16154, April 4, 2002) and the pharmaceuticals production NESHAP did not limit the use of the periodic verification provision to batch process vents.

Response: The purpose of the periodic verification option is to minimize the monitoring burden on small operations that are expected to contribute only a small fraction of the total emissions. We agree with the commenter that there is no need to restrict the option to controls for batch process operations. As the commenter noted, the proposed rule and other rules (pharmaceuticals production and PAI production) did not limit the option to controls for batch process vents. To correct this inadvertent oversight, the final amendments move the periodic verification requirements from 40 CFR 63.2460(c)(5) to 40 CFR 63.2450(k)(6) so that they will apply to control devices that control less than 1.0 ton per year of HAP from any emission points.

G. Recordkeeping and Reporting Requirements

1. Wastewater Control Devices

Comment: As part of the proposed amendments, a new paragraph with recordkeeping requirements for flare monitors was added in 40 CFR 63.2485(o)(1). One commenter believes the proposed provision mistakenly references requirements for nonflares. The commenter recommended revising the proposed language to match the subpart SS recordkeeping requirements for flares.

Response: Flares that are used to control wastewater emissions are subject to the requirements in 40 CFR part 63, subpart G of the HON. The proposed language in 40 CFR 63.2485(o)(1) was added to make the recordkeeping and reporting requirements for flares used to control wastewater systems consistent with the requirements in 40 CFR 63.998(a)(1)(iii) of subpart SS. Since proposal of the amendments we realized that the proposed language is unnecessary because 40 CFR 63.147(d)(1) contains the same recordkeeping requirement, and Table 20 to subpart G of 40 CFR part 63 (as referenced from 40 CFR 63.146(e)(1)) contains the same reporting requirement. Therefore, the proposed amendments to 40 CFR 63.2485(o)(1) were not included in the final amendments.

Comment: According to one commenter, the proposed 40 CFR 63.2485(o)(2) creates a recordkeeping conflict for nonflare control devices used for wastewater emissions. The section requires compliance with both 40 CFR 63.152(f) of subpart G and 40 CFR 63.998(c)(1) of subpart SS. Because some of the requirements are not consistent with each other, the commenter recommended revising 40 CFR 63.2485(o)(2) to read, "you must keep records as specified either in § 63.998(c)(1) or § 63.152(f) in addition to the other records required in § 63.147(d)."

Response: We disagree with the suggested change. Section 63.152(f) specifies requirements such as the frequency of monitoring measurements, procedures for developing daily or other average values, and the amount of time records must be kept. These procedures would overlap with procedures in 40 CFR 63.998(b), but subpart FFFF does not reference 40 CFR 63.998(b) for wastewater control devices. On the other hand, 40 CFR 63.998(c)(1) requires records of information such as calibration results, periods when the CPMS is inoperative, and the occurrence and duration of startup, shutdown, and malfunction of CPMS. For a source subject to the HON, comparable records may be required by 40 CFR 63.103, but this section of the HON is not referenced from 40 CFR part 63, subpart FFFF. Therefore, we retained the proposed requirement in the final amendments so that the same CPMS monitoring records are required for non-flare control devices regardless of the emission point that is controlled.

2. Operating Logs

Comment: As part of the proposed amendments, §§ 63.2520(e)(5)(ii)(C), 63.2520(e)(5)(iii)(K), and 63.2525(c) were modified to require operating logs only for "processes with batch vents." The preamble to the proposed amendments also stated that operating logs are not needed for processes that consist entirely of continuous operations. Two commenters agree with the preamble language, but they noted that the proposed rule language still requires operating logs for continuous operations with intermittent emissions because these operations fit the definition of "batch vents." Therefore, the commenters recommended changing the proposed language to refer to batch "operations."

Response: As the commenters noted, by referring to "processes with batch vents," the proposed rule language did not fully accomplish our goal as stated in the proposal preamble because continuous operations with intermittent emissions are defined as batch process vents. Therefore, 40 CFR 63.2520(e)(5)(ii)(C), 63.2520(e)(5)(iii)(K), and 63.2525(c) were revised in the final amendments to require operating logs only for "processes with batch process vents from batch operations."

3. Frequency of Recordkeeping Calculations for Group 2 Batch Process Vents

Comment: Sections 63.2520(e)(2) and (3) of the proposed amendments specified recordkeeping requirements for MCPU with Group 2 batch process vents for which you documented that the amount of non-reactive HAP used is less than 10,000 lb/yr or the uncontrolled organic HAP emissions are less than 1,000 lb/yr. These sections also require you to calculate daily rolling annual sums of either the non-reactive HAP usage or number of batches operated. Data may be accumulated for up to a month, and all calculations for each day in the month may be performed at one time. One commenter requested that these daily rolling annual sums be changed to monthly rolling annual sums.

According to the commenter, calculations on a daily basis will add to the compliance burden because a new system would be needed to ensure that production is assigned to the correct day. Of particular concern to the commenter is how to comply when a batch operates for longer than 1 day. The commenter believes that new procedures will need to be developed to arbitrarily assign products to individual days during the batch cycle. On the other hand, the commenter pointed out that many facilities already have monthly recordkeeping systems in place under their title V permits, and these systems include procedures to ensure that the monthly data is complete and accurate.

The commenter also argued that the daily calculations would not provide better information than monthly calculations. According to the commenter, the purpose of both procedures is to "track emissions from processes that are well below the Group 1 process vent standards," and a monthly sum would ensure this threshold was not exceeded.

Response: We rejected the suggestion to change the rolling annual sums from a daily to monthly basis for several reasons. First, daily calculation of the annual usage or number of batches is consistent with the basis for the 10,000 lb/yr emission threshold for Group 1 batch process vents. Less frequent calculations increases the potential that

short-term fluctuations and periods of non-compliance will be masked. Second, usage at 10,000 lb/yr is not necessarily "well below" the Group 1 emission threshold of 10,000 lb/yr. For example, usage may nearly equal batch process vent emissions for a process that consists of little more than a batch reactor. Third, we are not persuaded that the burden to collect data for daily calculations will be significantly different than collecting data for monthly calculations. The fundamental information about production and HAP usage that would be collected for monthly calculations most likely would be developed on a batch or daily basis. Handling data for processes that take more than one day also should not be difficult. Any consistent procedure should be acceptable. For example, your system could account for each batch on the day the batch is completed. Similarly, the amount of non-reactive HAP used in each batch could be assigned to the day the batch is completed, or you could elect to define some procedure to assign a percentage of the total usage to each day over which the process operated.

H. Overlap With Other Rules

Comment: The proposed amendments modified provisions in 40 CFR 63.2535(k) that are intended to minimize the burden of complying with equipment leak requirements when both 40 CFR part 63, subpart FFFF and another rule apply to the same process. The first sentence in this section specifies that an owner or operator may elect to comply with only 40 CFR part 63, subpart FFFF for equipment that is part of the affected source under 40 CFR part 63, subpart FFFF and is also subject to either 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V. If an owner or operator elects this method of compliance, the proposed second sentence requires all organic compounds, minus methane and ethane, to be considered as if they were HAP. One commenter noted that in this context the second sentence is unnecessary because all of the equipment described by the first sentence must be in HAP service. However, the commenter believes that this section also should allow sources to apply the requirements in 40 CFR part 63, subpart FFFF to equipment in an MCPU that is subject to 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, but is not subject to 40 CFR part 63, subpart FFFF. The commenter notes that this requirement in conjunction with the proposed second sentence would make sense, and together these provisions would be consistent with 40 CFR 63.160(c) of the HON.

Response: Our intent with the proposed amendments was to include provisions in 40 CFR 63.2435(k) that are consistent with the provisions in 40 CFR 63.160(c) of the HON. We inadvertently neglected to include the first sentence from 40 CFR 63.160. Therefore, the final amendments to 40 CFR 63.2535(k) include the additional sentence as suggested by the commenter to make the provisions consistent with the provisions in 40 CFR 63.160(c).

Comment: Section 63.2535(c) specifies provisions that are intended to minimize the compliance burden when 40 CFR part 63, subpart FFFF and another rule (either 40 CFR part 60, subpart Kb or 40 CFR part 61, subpart Y) apply to the same storage tank. One commenter requested that this section be revised to include provisions similar to those for equipment leaks in 40 CFR 63.2535(k). The commenter believes such provisions would simplify compliance for storage tanks that are assigned to an MCPU but are not subject to the storage tank requirements in 40 CFR part 63, subpart FFFF because they contain little or no HAP. According to the commenter, such flexibility is provided in the HON.

Response: Although a storage tank with little or no HAP may be subject to 40 CFR part 60, subpart Kb or 40 CFR part 61, subpart Y and also be assigned to an MCPU, there is essentially no overlap because no requirements in 40 CFR part 63, subpart FFFF apply to such a tank. This situation is similar to that for shared storage tanks that are assigned to a process unit that is subject to one rule but is also used with a process unit that is subject to another rule. Unlike the situation for equipment leaks, we believe any reduction in burden achieved by complying with 40 CFR part 63, subpart FFFF for storage tanks in an MCPU that are not subject to requirements in 40 CFR part 63, subpart FFFF would be negligible. Furthermore, the HON does not include the provisions described by the commenter. Therefore, we have decided not to amend 40 CFR 63.2435(c) as suggested by the commenter.

I. Definitions

1. Miscellaneous Organic Chemical Manufacturing Process

Comment: As part of the amendments, the definition of "miscellaneous organic chemical manufacturing process" in 40 CFR 63.2550(i) was changed to specify an endpoint to processes that manufacture solid products. One commenter concurred with the concept of defining an end point for such processes. However, the commenter is concerned that the proposed definition could be misapplied on polymer production processes that have no dryer and no extruder or die-plate. The commenter explained that their solid-state polymerization process for polyethylene terephthalate (PET) operates without any of this equipment. The finished polymer is discharged from the reactors as a coarse, ready-to-use powder. Without clarification, the commenter is concerned that the proposed definition conceivably extends the PET process into the subsequent film manufacturing process, which would conflict with previous guidance EPA has provided regarding the applicability of 40 CFR part 63, subpart FFFF. To clarify this situation, the commenter suggested the endpoint for solid-state polymerization processes be "at the container or vessel used to collect or store the reacted polymer if subsequent drying is not required and the polymer is in a form amenable to its intended manufacturing purpose."

Response: We agree with the commenter that the proposed definition needs to be modified to clarify the endpoint of a solid-state polymerization process that does not include a dryer. We believe the reactor is the appropriate end of such a process, provided there are no HAP removal steps following the reactor. This point is comparable to the end points specified for other processes that manufacture solid products. The definition in the final amendments has been revised to reflect this decision.

Comment: In addition to the proposed endpoint described above for processes that produce solid products, one commenter thinks the miscellaneous organic chemical manufacturing process definition also should specify an endpoint for processes that produce liquid products. The commenter cited acrylic polymer manufacturing processes as examples of processes for which an endpoint is needed. According to the commenter, after the polymerization reaction, the product is an emulsion of polymer solids in water, and the residual HAP monomer concentration generally is low. The commenter suggested that EPA could establish an option that would exempt from regulation all processing steps after the point where the residual HAP monomer falls below some reasonable threshold concentration. The commenter pointed to the 5 weight percent HAP option in the Miscellaneous Coating Manufacturing NESHAP as a good example.

Response: This comment is similar to several comments on the original

proposed rule. The earlier commenters wanted the rule to exempt processing steps where the HAP content is less than 5 weight percent or HAP is present only as an impurity. In our response to those comments (see docket item No. EPA–HQ–OAR–2003–0121–0036), we explained that the rule includes numerous applicability cutoffs and exemptions that we think are sufficient.

For example, equipment leak requirements do not apply to equipment that contains or contacts fluid that is less than 5 percent organic HAP by weight. Storage tanks are not subject to requirements if the stored material has a maximum true vapor pressure less than 6.9 kilopascals. Emissions from transfer operations are exempt if the rack-weighted average partial pressure of organic HAP is less than 1.5 pounds per square inch absolute. Emissions from many continuous process operations are exempt if the HAP content is less than 0.005 weight percent, and emissions from other continuous operations and batch operations are exempt if the HAP concentration is less than 50 ppm. In addition, continuous process vents are exempt from some or all requirements if the total resource effectiveness, which is inversely related to the HAP emission rate, is greater than 1.9 or 5.0, respectively. Batch process vents are exempt from all but some recordkeeping requirements if the total organic HAP emissions from the collection of all batch vents in the process are less than 10,000 lb/yr. Strictly speaking, all Group 1 batch process vents are subject to control, regardless of their emission rate, but vents with low emission rates may not actually have to be controlled if the control or recovery from other vents in the process meets the overall reduction requirement. All of these exemption levels are based directly or depend on concentration of HAP. Furthermore, they were all developed as part of the MACT floor.

Although our earlier response did not address the issue of emulsions (or dispersions), we do not believe this should have any bearing on the exemption levels because such fluids are managed the same as other liquids. Finally, the 5 weight percent option in the Miscellaneous Coating Manufacturing NESHAP is not comparable or relevant to this discussion. That 5 percent limit was based on a determination that reducing the HAP content of existing HAP-based coating products to less than 5 percent would achieve comparable reductions to the MACT floor. A similar analysis is not feasible for miscellaneous organic chemical manufacturing processes. Therefore, we do not believe an additional exemption level is needed, and we have not created an exemption as suggested by the commenter.

2. Continuous Process Vent

Comment: Two commenters strongly objected to the proposed changes introduced in the new item 7 in the definition of the term "continuous process vent." The proposed language specified, in part, that "when a gas stream that originates as a continuous flow from a continuous operation is combined with gas streams from other process operations [], the determination of whether the gas stream is a continuous process vent must be made prior to the combination of the gas streams." One of the commenter's concerns was that the proposed changes will alter how some vents are handled under the HON and other NESHAP because the proposed language is not confined to gas streams from MCPU. For example, emission streams from batch operations within a HON process (which are batch process vents under 40 CFR part 63, subpart FFFF) that are combined with emissions from continuous operations within the HON process should not affect the point at which a continuous process vent is determined under the HON.

The commenters also believe the proposed regulatory language is far more expansive than needed to satisfy our stated reason for the change in the preamble, which they noted was to meet our intent that continuous process vents and batch process vents be separate, distinct streams. According to the commenters, only the mixing of potential continuous process vents with Group 2 process vents needs to be addressed because the rule is already clear that anything mixed with Group 1 batch process vents must be controlled. Furthermore, mixing potential continuous process vents with any other types of emission streams is already addressed by the referenced language in 40 CFR 63.107 of the HON and is consistent with the database used to determine the MACT floor for continuous process vents. As a result, both commenters strongly recommended revising the proposed language to minimize differences from the continuous process vent provisions in the HON.

Response: We agree with the commenter's assessment that several changes are needed to avoid confusion over the regulatory status of continuous process vents. First, the proposed language should have specified that the continuous operations of interest were only those in MCPU because we did not intend to affect determinations under other rules. After reconsideration, we also decided that there is no need to address the combination of potential continuous process vents and batch process vents. As the commenters pointed out, if a combined stream includes Group 1 batch process vents, the combined stream must be controlled as required for the Group 1 batch process vents. However, note that when Group 2 batch process vent emissions are combined with emissions from potential continuous process vents, the recordkeeping requirements for the Group 2 batch process vents still apply. In addition, by referring only to other *process operations* in the proposed language, we were trying to indicate that continuous process vent determinations could be downstream of the point where emissions from continuous process operations combine with emissions from storage tanks, wastewater systems, or other sources, consistent with 40 CFR 63.107.

Although our discussion in the preamble to the proposed amendments neglected to explain it, a related objective of the proposed language was to ensure that separate determinations are made for emissions from each MCPU. This concept is not part of the provisions in 40 CFR 63.107, and we continue to believe that it is important because it is consistent with the data used to develop the MACT floor for continuous process vents. Therefore, in the final amendments, we have revised item 7 in the definition of "continuous process vent" to specify that separate determinations are required for the emissions from each MCPU, even if emission streams from two or more MCPU are combined.

3. Continuous Operation

Comment: One commenter believes the definition of the term "continuous operation" should allow for the interruption of product flow during a switch from one feed tank to another if the materials are similar in nature. The commenter described a situation where a flaker or pastille maker is fed from either of two storage tanks. The commenter noted that the flaker and pastille maker equipment operates continuously, except when switching from one feed tank to the other.

Response: We have not changed the definition in the final rule because the rule already allows you to consider an operation to be a continuous operation even if there are periodic breaks in operation. We think the commenter may be misinterpreting the definition of "batch operation." Although this definition says a batch operation

involves intermittent or discontinuous feed, it also says addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. Both conditions must be met to be a batch operation. Thus, even though there may be a break in operation when switching from one feed tank to another, as long as material is being added and withdrawn simultaneously while it is in operation, it is a continuous operation.

Comment: One commenter expressed concern that in our discussion of changes to the definition of "continuous process vent," we appeared to conclude that all atmospheric dryers are continuous operations with continuous process vents. The preamble stated that many atmospheric dryers "have emission characteristics that are sufficiently similar to other continuous process vents in our database such that they should be included in the definition of "continuous process vents." The commenter argued that atmospheric dryers used in batch specialty chemical manufacturing are substantively dissimilar to continuous process vents because emissions vary with time as a function of the batch cycle. Therefore, the commenter requested that we clarify that atmospheric dryer vents can be either batch or continuous process vents and that the classification is determined by an evaluation of the emission characteristics of the vent.

Response: The commenter is correct. Some atmospheric dryers are continuous operations with continuous process vents and others are batch operations with batch process vents. We did not mean to imply otherwise. As part of our analysis of the MACT floor for continuous process vents, we determined the characteristics of controlled dryers in both our continuous process database and batch process database. We confirmed that *some* of these dryers were continuous operations. Other dryers with controlled emissions were confirmed to be batch operations, and these were excluded from our analysis of continuous process vents.

4. Process Condenser and Recovery Device

Comment: Two commenters believe the proposed definition of the term "process condenser" is too expansive. The proposed definition reads as follows:

Process condenser means a condenser whose primary purpose is to recover material as an integral part of an MCPU. A primary condenser or condensers in series are considered to be integral to the MCPU if they are capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. All condensers recovering condensate from an MCPU at or above the boiling point or all condensers in line prior to a vacuum source are considered process condensers.

One of the commenters recommended modifying the definition to clarify that a condenser is not "integral to the process" if the condenser was intended to be a control device and it can be demonstrated that the process could technically or economically operate without it. This commenter described a situation where several condensers are used in a process to recover materials from gas streams. Condensate from these condensers is collected in single vessel and later reused in the process. Displaced gases from the collection vessel are routed through another condenser. Even though the final condenser recovers small amounts of material that are re-used, the commenter does not think it should be a process condenser.

The second commenter requested changes that would allow condensers to be considered an integral part of recovery devices. According to the commenter, if HAP are to be recovered from a vapor stream that is at a temperature below their bubble point, condensation must be involved at some point. For example, condensation may be necessary to dehumidify a vent stream before it enters a carbon adsorber. The commenter suggested two ways that the rule could be modified to allow condensers to be part of recovery devices. One way would be to modify the definition of the term "process condenser" to exclude condensers that meet the conditions of the second sentence of the proposed definition if those condensers also receive an emission stream that is below its bubble point, and they are located prior to any recovery device that is not a condenser. Alternatively, the commenter suggested editing the definition of the term "recovery device" to delete condensers from the list of examples of equipment that may be recovery devices, and indicate that the remaining examples of recovery devices include any integral condensation equipment.

Response: As discussed in the preamble to the proposed amendments, the main purpose of proposing a new definition was to align the requirements in the rule with the data that were used to develop the MACT floor for batch process vents. The final rule referenced the definition of "process condenser" in the Pharmaceuticals Production NESHAP. According to this definition, a condenser is a process condenser only if it supports a vapor-to-liquid phase change for periods of source equipment operation that are above the boiling or bubble point of substances at the liquid surface. Petitioners objected to this definition because they explained that it is inconsistent with the way industry representatives interpreted the term when they reported uncontrolled emissions in response to our information collection request (ICR) in 1997. They indicated that companies considered condensers to be integral to a process whenever condensate was returned to the process or used for fuel value, even if the inlet gas stream was at a temperature below the boiling or bubble point of the corresponding liquid. Thus, the final rule requires determination of uncontrolled emissions at different points than had been used in the processes that formed the basis for the MACT floor and the 10,000 lb/yr uncontrolled emissions threshold for Group 1 batch process vents.

To align the rule with the data provided in the ICR responses, we developed the proposed definition as shown above. One consequence of this definition is that it will reduce the number of condensers that can be used to comply with the 95 percent reduction recovery device option because designation as a process condenser is intended to preclude the recovery option. After considering the comments and review of the data, we have decided that the proposed definition is more expansive than it needs to be to address the issue raised by the petitioners. None of the 44 processes in the project data base that were used to establish the 10,000 lb/yr threshold for Group 1 batch process vents was controlled with a non-condenser recovery device. Therefore, we believe that condensers can be considered as part of a recovery device if they are followed by a device that is clearly a recovery device, and the condenser is needed for the proper functioning of the downstream recovery device. Rather than leave this determination open to subjective determinations, we decided to specify such exceptions to the process condenser definition in the definition itself. These situations involve condensers that remove moisture in order to prevent icing in a following condenser, remove moisture that would negatively affect adsorption capacity in a following carbon adsorber, or remove high molecular weight organic compounds or other organic compounds prior to a carbon adsorber if those compounds would be difficult to

remove during regeneration of the carbon.

In the preamble to the proposed amendments, we noted that the proposed definition of "process condenser" makes the concept of recovering chemicals with a condenser the same regardless of whether the vent is associated with a batch unit operation or a continuous unit operation. This was our intent, and, in addition, the recovery device definition also needs to be modified to allow recovery of chemicals for fuel value by devices associated with continuous process vents. To correct this oversight, the recovery device definition in the final amendments has been changed to allow equipment that is associated with continuous process vents to be a recovery device when it recovers chemicals for fuel value. The final definition retains the intent of the original definition for recovery devices that are used to reduce emissions from batch process vents; this equipment must recover chemicals to be reused in a process on site.

Finally, all of the changes described above have created a conflict between the definition of "process condenser" and "recovery device." Both definitions refer to recovery of chemicals for fuel value, use, or reuse. Thus, a condenser could meet both definitions. However, a process condenser is part of the MCPU and can not be considered a control device to meet the 95 percent control alternative in table 2.

J. Miscellaneous Technical Corrections

We have made several changes throughout subpart FFFF to correct inconsistencies that have been discovered during the review processes. Other editorial changes have also been made to improve clarity. These changes are described in Table 1 in this preamble.

TABLE 1.—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART FFFF

Section of subpart FFFF	Description of correction
40 CFR 63.2435(b)(2) and 63.2525(e)(1)(i)	Replaced the word "produces" with the word "generates" to clarify that generation of any HAP, not only HAP that are an intended product, makes the MCPU subject to 40 CFR part 63, subpart FFFF.
40 CFR 63.2450(d), (e), and (f)	1. Redesignated paragraphs (d), (e), and (f) as paragraphs (e)(1), (2), and (3). 2. Reserved paragraph (d). 3. Added a new paragraph (f) to clarify flare compliance assessment procedures. Section 63.11(b)(6) of the General Provisions contains alternative procedures for flares that control hydrogen emissions. The alternative procedures are not included in 40 CFR part 63, subpart SS. The new provisions in paragraph (f) clarify that the alternative in the General Provisions is available under 40 CFR part 63, subpart FFFF.
40 CFR 63.2470(e)(2)(i) and (ii) and 63.2535(a)(2).	Offsite cleaning and reloading facilities must control emissions from tank trucks and railcars that are used in vapor balancing for storage tanks at the affected source. The final amendments include these new paragraphs to specify that such facilities may comply with the monitoring, recordkeeping, and reporting requirements in other applicable rules in 40 CFR part 63 as an alternative to the requirements in subpart FFFF. These changes make the requirements consistent with parallel requirements in 40 CFR part 63, subpart GGG.
40 CFR 63.2485(n)(2)(iv)(B)	Replaced "F_{bio}" with "f_{bio}."
40 CFR 63.2520(d)(2)(ix)	Replaced incorrect reference to 40 CFR 63.2535(i)(1) with correct reference to 40 CFR 63.2535(l)(1).
40 CFR 63.2520(e)(9) and 63.2525(a)	Restored references to 40 CFR part 63, subpart UU that were mistakenly removed in the proposed amendments.
40 CFR 63.2525(e)(1)(iii)	Replaced the undefined term "Group 2 batches" with the defined term "Group 2 batch process vents."
40 CFR 63.2550(b)	Added reference to terms defined in section 63.2 of 40 CFR part 65, subpart F.
40 CFR 63.2550(c)	Did not finalize proposed amendment that mistakenly removed this paragraph.
40 CFR 63.2550(i) introductory text	Restored reference to 40 CFR 63.1020, which was mistakenly removed in the proposed amendments.
40 CFR 63.2550(i)	1. Added definitions for the term "emission point". 2. Added a sentence to the definition of "isolated intermediate" to clarify that the storage equipment is part of the process that produces the isolated intermediate, not a process that uses the isolated intermediate as a raw material. The new sentence also clarifies that isolated intermediate storage equipment is not subject to the storage tank assignment procedures in 40 CFR 63.2445(d).
Table 3	Removed the extraneous word "with" from item 1.a.
Tables 4 and 5	Replaced references to 40 CFR 63.984 with references to 40 CFR 63.982(d). 40 CFR 63.982(d) not only references 40 CFR 63.984, but it also makes it clear that requirements for boilers and process heaters do not apply to fuel gas systems.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments give owners and operators options to some requirements. For example, biofilters are allowed as an option to meet the emission limit for batch process vents. Other changes may result in a minor reduction in the burden. For example, one option allows an owner or operator to conduct sensory monitoring as an alternative to instrument monitoring of connectors. Another change eliminates the requirement to include data and results from an engineering assessment of emissions from batch operations in the precompliance report if the HAP concentration is determined to be less than 50 ppmv. Since all of these changes are either options or have the potential to result in minor reductions in the information collection burden, the ICR has not been revised.

OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart FFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0533 (EPA ICR number 1969.02). A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672. Include the ICR or OMB number in any correspondence.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business ranging from up to 500 employees to up to 1,000 employees, depending on the 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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The maximum number of employees to be considered a small business for each NAICS code is shown in the preamble to the proposed rule (67 FR 16178).

After considering the economic impacts of the final rule amendments on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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. The final amendments include additional compliance options for process tanks, batch process vents, equipment leaks, and SHAP-containing wastewater that provide small entities with greater flexibility to comply with the standards. Other amendments potentially reduce the recordkeeping and reporting burden. We have therefore concluded that the final rule amendments will relieve regulatory burden for all small entities.

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 to 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.

The EPA has determined that the final amendments 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 1 year. The maximum total annual costs of the final rule for any year was estimated to be about $75 million, and the final amendments do not add new requirements that would increase that cost. Thus, the final amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final

amendments are not subject to the requirements of 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" 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."

The final rule amendments 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments provide an owner or operator with several additional options for complying with the emission limits and other requirements in the rule. Therefore, the final rule 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 the final amendments.

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 Executive Order has the potential to influence the regulation. The final amendments are not subject to the Executive Order 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

The final rule amendments do not constitute 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 they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final amendments include additional compliance options that provide affected sources with greater flexibility to comply with the standards. Further, we have concluded that the final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

During the rulemaking, the EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket EPA–HQ–OAR–2003–0121). The final amendments do not require the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the final amendments.

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 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). The final rule amendments are effective on July 14, 2006.

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: June 23, 2006.

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.*

Subpart FFFF—[Amended]

■ 2. Section 63.2435 is amended by:
■ a. Revising "product transfer racks" to read "transfer racks" in paragraph (b) introductory text;
■ b. Revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2);
■ c. Revising paragraph (c) introductory text;
■ d. Revising paragraph (c)(4); and

■ e. Adding new paragraph (c)(7) to read as follows:

§ 63.2435 Am I subject to the requirements in this subpart?

* * * * *

(b) * * *

(1) * * *

(i) An organic chemical(s) classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in paragraph (c)(5) of this section.

(ii) An organic chemical(s) classified using the 1997 version of NAICS code 325, except as provided in paragraph (c)(5) of this section.

* * * * *

(2) The MCPU processes, uses, or generates any of the organic HAP listed in section 112(b) of the CAA or hydrogen halide and halogen HAP, as defined in § 63.2550.

* * * * *

(c) The requirements in this subpart do not apply to the operations specified in paragraphs (c)(1) through (7) of this section.

* * * * *

(4) Fabricating operations (such as spinning or compressing a solid polymer into its end use); compounding operations (in which blending, melting, and resolidification of a solid polymer product occur for the purpose of incorporating additives, colorants, or stabilizers); and extrusion and drawing operations (converting an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product). An operation is not exempt if it involves processing with HAP solvent or if an intended purpose of the operation is to remove residual HAP monomer.

* * * * *

(7) Carbon monoxide production.

* * * * *

■ 3. Section 63.2445 is amended by:

■ a. Revising paragraph (b) and the first sentence in paragraph (c); and

■ b. Adding new paragraphs (d), (e), and (f) to read as follows:

§ 63.2445 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than May 10, 2008.

(c) You must meet the notification requirements in § 63.2515 according to the dates specified in that section and in subpart A of this part 63. * * *

(d) If you have a Group 2 emission point that becomes a Group 1 emission point after the compliance date for your affected source, you must comply with the Group 1 requirements beginning on the date the switch occurs. An initial compliance demonstration as specified in this subpart must be conducted within 150 days after the switch occurs.

(e) If, after the compliance date for your affected source, hydrogen halide and halogen HAP emissions from process vents in a process increase to more than 1,000 lb/yr, or HAP metals emissions from a process at a new affected source increase to more than 150 lb/yr, you must comply with the applicable emission limits specified in Table 3 to this subpart and the associated compliance requirements beginning on the date the emissions exceed the applicable threshold. An initial compliance demonstration as specified in this subpart must be conducted within 150 days after the switch occurs.

(f) If you have a small control device for process vent or transfer rack emissions that becomes a large control device, as defined in § 63.2550(i), you must comply with monitoring and associated recordkeeping and reporting requirements for large control devices beginning on the date the switch occurs. An initial compliance demonstration as specified in this subpart must be conducted within 150 days after the switch occurs.

■ 4. Section 63.2450 is amended by:

■ a. Removing and reserving paragraph (d);

■ b. Revising paragraphs (e) and (f);

■ c. Revising paragraph (h);

■ d. Revising paragraph (k) introductory text, paragraph (k)(3), paragraph (k)(4) introductory text, and paragraph (k)(4)(i); and

■ e. Adding new paragraphs (k)(4)(iv), (k)(5), and (k)(6) to read as follows:

§ 63.2450 What are my general requirements for complying with this subpart?

* * * * *

(d) [Reserved]

(e) *Requirements for control devices.*

(1) Except when complying with § 63.2485, if you reduce organic HAP emissions by venting emissions through a closed-vent system to any combination of control devices (except a flare) or recovery devices, you must meet the requirements of § 63.982(c) and the requirements referenced therein.

(2) Except when complying with § 63.2485, if you reduce organic HAP emissions by venting emissions through a closed-vent system to a flare, you must meet the requirements of § 63.982(b) and the requirements referenced therein.

(3) If you use a halogen reduction device to reduce hydrogen halide and halogen HAP emissions from halogenated vent streams, you must meet the requirements of § 63.994 and the requirements referenced therein. If you use a halogen reduction device before a combustion device, you must determine the halogen atom emission rate prior to the combustion device according to the procedures in § 63.115(d)(2)(v).

(f) *Requirements for flare compliance assessments.*

(1) As part of a flare compliance assessment required in § 63.987(b), you have the option of demonstrating compliance with the requirements of § 63.11(b) by complying with the requirements in either § 63.11(b)(6)(i) or § 63.987(b)(3)(ii).

(2) If you elect to meet the requirements in § 63.11(b)(6)(i), you must keep flare compliance assessment records as specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) Keep records as specified in § 63.998(a)(1)(i), except that a record of the heat content determination is not required.

(ii) Keep records of the flare diameter, hydrogen content, exit velocity, and maximum permitted velocity. Include these records in the flare compliance report required in § 63.999(a)(2).

* * * * *

(h) *Design evaluation.* To determine the percent reduction of a small control device that is used to comply with an emission limit specified in Table 1, 2, 3, or 5 to this subpart, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of this part 63. You must establish the value(s) and basis for the operating limits as part of the design evaluation. For continuous process vents, the design evaluation must be conducted at maximum representative operating conditions for the process, unless the Administrator specifies or approves alternate operating conditions. For transfer racks, the design evaluation must demonstrate that the control device achieves the required control efficiency during the reasonably expected maximum transfer loading rate.

* * * * *

(k) *Continuous parameter monitoring.* The provisions in paragraphs (k)(1) through (6) of this section apply in addition to the requirements for continuous parameter monitoring

system (CPMS) in subpart SS of this part 63.

* * * * *

(3) As an alternative to continuously measuring and recording pH as specified in §§ 63.994(c)(1)(i) and 63.998(a)(2)(ii)(D), you may elect to continuously monitor and record the caustic strength of the effluent. For halogen scrubbers used to control only batch process vents you may elect to monitor and record either the pH or the caustic strength of the scrubber effluent at least once per day.

(4) As an alternative to the inlet and outlet temperature monitoring requirements for catalytic incinerators as specified in § 63.988(c)(2) and the related recordkeeping requirements specified in § 63.998(a)(2)(ii)(B)(*2*) and (c)(2)(ii), you may elect to comply with the requirements specified in paragraphs (k)(4)(i) through (iv) of this section.

(i) Monitor and record the inlet temperature as specified in subpart SS of this part 63.

* * * * *

(iv) Recording the downstream temperature and temperature difference across the catalyst bed as specified in § 63.998(a)(2)(ii)(B)(*2*) and (b)(2)(ii) is not required.

(5) For absorbers that control organic compounds and use water as the scrubbing fluid, you must conduct monitoring and recordkeeping as specified in paragraphs (k)(5)(i) through (iii) of this section instead of the monitoring and recordkeeping requirements specified in §§ 63.990(c)(1), 63.993(c)(1), and 63.998(a)(2)(ii)(C).

(i) You must use a flow meter capable of providing a continuous record of the absorber influent liquid flow.

(ii) You must determine gas stream flow using one of the procedures specified in § 63.994(c)(1)(ii)(A) through (D).

(iii) You must record the absorber liquid-to-gas ratio averaged over the time period of any performance test.

(6) For a control device with total inlet HAP emissions less than 1 tpy, you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (i.e., daily or block) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 tpy. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

* * * * *

■ 5. Section 63.2460 is amended by:

■ a. Revising paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(3);

■ b. Redesignating paragraph (b)(4) as paragraph (b)(5) and revising "paragraph (b)(4)(i), (ii), or (iii)" to read "paragraph (b)(5)(i), (ii), or (iii)" in redesignated paragraph (b)(5) introductory text;

■ c. Adding new paragraphs (b)(4), (b)(6), and (b)(7);

■ d. Revising paragraph (c) introductory text, paragraph (c)(1), paragraph (c)(2)(iii), and the first sentence in paragraph (c)(2)(v);

■ e. Removing and reserving paragraph (c)(5), and

■ f. Adding new paragraphs (c)(8) and (c)(9) to read as follows:

§ 63.2460 What requirements must I meet for batch process vents?

* * * * *

(b) *Group status.* If a process has batch process vents, as defined in § 63.2550, you must determine the group status of the batch process vents by determining and summing the uncontrolled organic HAP emissions from each of the batch process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and (ii), except as specified in paragraphs (b)(1) through (7) of this section.

(1) To calculate emissions caused by the heating of a vessel without a process condenser to a temperature lower than the boiling point, you must use the procedures in § 63.1257(d)(2)(i)(C)(*3*).

(2) To calculate emissions from depressurization of a vessel without a process condenser, you must use the procedures in § 63.1257(d)(2)(i)(D)(*10*).

(3) To calculate emissions from vacuum systems for the purposes of this subpart, the receiving vessel is part of the vacuum system, and terms used in Equation 33 to 40 CFR part 63, subpart GGG, are defined as follows:

P_{system} = absolute pressure of the receiving vessel;

P_i = partial pressure of the HAP determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver;

P_j = partial pressure of condensables (including HAP) determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver;

MW_{HAP} = molecular weight of the HAP determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver.

(4) To calculate uncontrolled emissions when a vessel is equipped with a process condenser, you must use the procedures in § 63.1257(d)(3)(i)(B), except as specified in paragraphs (b)(4)(i) through (vii) of this section.

(i) You must determine the flowrate of gas (or volume of gas), partial pressures of condensables, temperature (T), and HAP molecular weight (MW_{HAP}) at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver.

(ii) You must assume that all of the components contained in the condenser exit vent stream are in equilibrium with the same components in the exit condensate stream (except for noncondensables).

(iii) You must perform a material balance for each component.

(iv) For the emissions from gas evolution, the term for time, t, must be used in Equation 12 to 40 CFR part 63, subpart GGG.

(v) Emissions from empty vessel purging shall be calculated using Equation 36 to 40 CFR part 63, subpart GGG and the exit temperature and exit pressure conditions of the condenser or the conditions of the dedicated receiver.

(vi) You must conduct an engineering assessment as specified in § 63.1257(d)(2)(ii) for each emission episode that is not due to vapor displacement, purging, heating, depressurization, vacuum operations, gas evolution, air drying, or empty vessel purging. The requirements of paragraphs (b)(3) through (4) of this section shall apply.

(vii) You may elect to conduct an engineering assessment if you can demonstrate to the Administrator that the methods in § 63.1257(d)(3)(i)(B) are not appropriate.

* * * * *

(6) You may change from Group 2 to Group 1 in accordance with either paragraph (b)(6)(i) or (ii) of this section. You must comply with the requirements of this section and submit the test report in the next Compliance report.

(i) You may switch at any time after operating as Group 2 for at least 1 year so that you can show compliance with the 10,000 pounds per year (lb/yr) threshold for Group 2 batch process vents for at least 365 days before the switch. You may elect to start keeping records of emissions from Group 2 batch process vents before the compliance date. Report a switch based on this

provision in your next compliance report in accordance with § 63.2520(e)(10)(i).

(ii) If the conditions in paragraph (b)(6)(i) of this section are not applicable, you must provide a 60-day advance notice in accordance with § 63.2520(e)(10)(ii) before switching.

(7) As an alternative to determining the uncontrolled organic HAP emissions as specified in § 63.1257(d)(2)(i) and (ii), you may elect to demonstrate that non-reactive organic HAP are the only HAP used in the process and non-reactive HAP usage in the process is less than 10,000 lb/yr. You must provide data and supporting rationale in your notification of compliance status report explaining why the non-reactive organic HAP usage will be less than 10,000 lb/yr. You must keep records of the non-reactive organic HAP usage as specified in § 63.2525(e)(2) and include information in compliance reports as specified in § 63.2520(e)(5)(iv).

(c) Exceptions to the requirements in subparts SS and WW of this part 63 are specified in paragraphs (c)(1) through (9) of this section.

(1) *Process condensers.* Process condensers, as defined in § 63.2550(i), are not considered to be control devices for batch process vents. You must determine whether a condenser is a control device for a batch process vent or a process condenser from which the uncontrolled HAP emissions are evaluated as part of the initial compliance demonstration for each MCPU and report the results with supporting rationale in your notification of compliance status report.

(2) * * *

(iii) As an alternative to conducting a performance test or design evaluation to demonstrate initial compliance with a percent reduction requirement for a condenser, you may determine controlled emissions using the procedures specified in § 63.1257(d)(3)(i)(B) and paragraphs (b)(3) through (4) of this section.

* * * * *

(v) If a process condenser is used for any boiling operations, you must demonstrate that it is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(*4*)(*ii*) and (d)(3)(iii)(B), and the demonstration must occur only during the boiling operation. * * *

* * * * *

(8) *Terminology.* When the term "storage vessel" is used in subpart WW of this part 63, the term "process tank," as defined in § 63.2550(i), applies for the purposes of this section.

(9) *Requirements for a biofilter.* If you use a biofilter to meet either the 95 percent reduction requirement or outlet concentration requirement specified in Table 2 to this subpart, you must meet the requirements specified in paragraphs (c)(9)(i) through (iv) of this section.

(i) *Operational requirements.* The biofilter must be operated at all times when emissions are vented to it.

(ii) *Performance tests.* To demonstrate initial compliance, you must conduct a performance test according to the procedures in § 63.997 and paragraphs (c)(9)(ii)(A) through (D) of this section. The design evaluation option for small control devices is not applicable if you use a biofilter.

(A) Keep up-to-date, readily accessible continuous records of either the biofilter bed temperature averaged over the full period of the performance test or the outlet total organic HAP or TOC concentration averaged over the full period of the performance test. Include these data in your notification of compliance status report as required by § 63.999(b)(3)(ii).

(B) Record either the percent reduction of total organic HAP achieved by the biofilter determined as specified in § 63.997(e)(2)(iv) or the concentration of TOC or total organic HAP determined as specified in § 63.997(e)(2)(iii) at the outlet of the biofilter, as applicable.

(C) If you monitor the biofilter bed temperature, you may elect to use multiple thermocouples in representative locations throughout the biofilter bed and calculate the average biofilter bed temperature across these thermocouples prior to reducing the temperature data to 15 minute (or shorter) averages for purposes of establishing operating limits for the biofilter. If you use multiple thermocouples, include your rationale for their site selection in your notification of compliance status report.

(D) Submit a performance test report as specified in § 63.999(a)(2)(i) and (ii). Include the records from paragraph (c)(9)(ii)(B) of this section in your performance test report.

(iii) *Monitoring requirements.* Use either a biofilter bed temperature monitoring device (or multiple devices) capable of providing a continuous record or an organic monitoring device capable of providing a continuous record. Keep records of temperature or other parameter monitoring results as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring are contained in § 63.996. If you monitor temperature, the operating temperature range must be based on only the temperatures measured during the performance test; these data may not be supplemented by engineering assessments or manufacturer's recommendations as otherwise allowed in § 63.999(b)(3)(ii)(A). If you establish the operating range (minimum and maximum temperatures) using data from previous performance tests in accordance with § 63.996(c)(6), replacement of the biofilter media with the same type of media is not considered a process change under § 63.997(b)(1). You may expand your biofilter bed temperature operating range by conducting a repeat performance test that demonstrates compliance with the 95 percent reduction requirement or outlet concentration limit, as applicable.

(iv) *Repeat performance tests.* You must conduct a repeat performance test using the applicable methods specified in § 63.997 within 2 years following the previous performance test and within 150 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

■ 6. Section 63.2465 is amended by revising the section heading, paragraph (b), and paragraph (d) to read as follows:

§ 63.2465 What requirements must I meet for process vents that emit hydrogen halide and halogen HAP or HAP metals?

* * * * *

(b) If any process vents within a process emit hydrogen halide and halogen HAP, you must determine and sum the uncontrolled hydrogen halide and halogen HAP emissions from each of the process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and/or (ii), as appropriate. When § 63.1257(d)(2)(ii)(E) requires documentation to be submitted in the precompliance report, it means the notification of compliance status report for the purposes of this paragraph.

* * * * *

(d) To demonstrate compliance with the emission limit in Table 3 to this subpart for HAP metals at a new source, you must comply with paragraphs (d)(1) through (3) of this section.

(1) Determine the mass emission rate of HAP metals based on process knowledge, engineering assessment, or test data.

(2) Conduct an initial performance test of each control device that is used to comply with the emission limit for HAP metals specified in Table 3 to this subpart. Conduct the performance test according to the procedures in § 63.997. Use Method 29 of appendix A of 40 CFR part 60 to determine the HAP metals at the inlet and outlet of each control

device, or use Method 5 of appendix A of 40 CFR part 60 to determine the total particulate matter (PM) at the inlet and outlet of each control device. You have demonstrated initial compliance if the overall reduction of either HAP metals or total PM from the process is greater than or equal to 97 percent by weight.

(3) Comply with the monitoring requirements specified in § 63.1366(b)(1)(xi) for each fabric filter used to control HAP metals.

■ 7. Section 63.2470 is amended by:

■ a. Removing and reserving paragraph (b); and

■ b. Revising paragraph (e)(2) to read as follows:

§ 63.2470 What requirements must I meet for storage tanks?

* * * * *

(e) * * *

(2) To comply with § 63.1253(f)(6)(i), the owner or operator of an offsite cleaning or reloading facility must comply with §§ 63.2445 through 63.2550 instead of complying with § 63.1253(f)(7)(ii), except as specified in paragraph (e)(2)(i) or (ii) of this section.

(i) The reporting requirements in § 63.2520 do not apply to the owner or operator of the offsite cleaning or reloading facility.

(ii) As an alternative to complying with the monitoring, recordkeeping, and reporting provisions in §§ 63.2445 through 63.2550, the owner or operator of an offsite cleaning or reloading facility may comply as specified in § 63.2535(a)(2) with any other subpart of this part 63 which has monitoring, recordkeeping, and reporting provisions as specified in § 63.2535(a)(2).

* * * * *

■ 8. Section 63.2475 is amended by removing paragraph (c).

■ 9. Section 63.2480 is revised to read as follows:

§ 63.2480 What requirements must I meet for equipment leaks?

(a) You must meet each requirement in Table 6 to this subpart that applies to your equipment leaks, except as specified in paragraphs (b) through (d) of this section.

(b) If you comply with either subpart H or subpart UU of this part 63, you may elect to comply with the provisions in paragraphs (b)(1) through (5) of this section as an alternative to the referenced provisions in subpart H or subpart UU of this part.

(1) The requirements for pressure testing in § 63.179(b) or § 63.1036(b) may be applied to all processes, not just batch processes.

(2) For the purposes of this subpart, pressure testing for leaks in accordance with § 63.179(b) or § 63.1036(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

(3) For an existing source, you are not required to develop an initial list of identification numbers for connectors as would otherwise be required under § 63.1022(b)(1) or § 63.181(b)(1)(i).

(4) For connectors in gas/vapor and light liquid service at an existing source, you may elect to comply with the requirements in § 63.169 or § 63.1029 for connectors in heavy liquid service, including all associated recordkeeping and reporting requirements, rather than the requirements of § 63.174 or § 63.1027.

(5) For pumps in light liquid service in an MCPU that has no continuous process vents and is part of an existing source, you may elect to consider the leak definition that defines a leak to be 10,000 parts per million (ppm) or greater as an alternative to the values specified in § 63.1026(b)(2)(i) through (iii) or § 63.163(b)(2).

(c) If you comply with 40 CFR part 65, subpart F, you may elect to comply with the provisions in paragraphs (c)(1) through (9) of this section as an alternative to the referenced provisions in 40 CFR part 65, subpart F.

(1) The requirements for pressure testing in § 65.117(b) may be applied to all processes, not just batch processes.

(2) For the purposes of this subpart, pressure testing for leaks in accordance with § 65.117(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

(3) For an existing source, you are not required to develop an initial list of identification numbers for connectors as would otherwise be required under § 65.103(b)(1).

(4) You may elect to comply with the monitoring and repair requirements specified in § 65.108(e)(3) as an alternative to the requirements specified in § 65.108(a) through (d) for any connectors at your affected source.

(5) For pumps in light liquid service in an MCPU that has no continuous process vents and is part of an existing source, you may elect to consider the leak definition that defines a leak to be 10,000 ppm or greater as an alternative to the values specified in § 65.107(b)(2)(i) through (iii).

(6) When 40 CFR part 65, subpart F refers to the implementation date specified in § 65.1(f), it means the compliance date specified in § 63.2445.

(7) When §§ 65.105(f) and 65.117(d)(3) refer to § 65.4, it means § 63.2525.

(8) When § 65.120(a) refers to § 65.5(d), it means § 63.2515.

(9) When § 65.120(b) refers to § 65.5(e), it means § 63.2520.

(d) The provisions of this section do not apply to bench-scale processes, regardless of whether the processes are located at the same plant site as a process subject to the provisions of this subpart.

■ 10. Section 63.2485 is amended by revising paragraph (a) and paragraphs (c)(1) through (3) and by adding new paragraphs (m), (n), and (o) to read as follows:

§ 63.2485 What requirements must I meet for wastewater streams and liquid streams in open systems within an MCPU?

(a) You must meet each requirement in Table 7 to this subpart that applies to your wastewater streams and liquid streams in open systems within an MCPU, except as specified in paragraphs (b) through (o) of this section.

* * * * *

(c) * * *

(1) The total annual average concentration of compounds in Table 8 to this subpart is greater than or equal to 10,000 ppmw at any flowrate, and the total annual load of compounds in Table 8 to this subpart is greater than or equal to 200 lb/yr.

(2) The total annual average concentration of compounds in Table 8 to this subpart is greater than or equal to 1,000 ppmw, and the annual average flowrate is greater than or equal to 1 l/min.

(3) The combined total annual average concentration of compounds in Tables 8 and 9 to this subpart is greater than or equal to 30,000 ppmw, and the combined total annual load of compounds in Tables 8 and 9 to this subpart is greater than or equal to 1 tpy.

* * * * *

(m) When § 63.132(f) refers to "a concentration of greater than 10,000 ppmw of Table 9 compounds," the phrase "a concentration of greater than 30,000 ppmw of total partially soluble HAP (PSHAP) and soluble HAP (SHAP) or greater than 10,000 ppmw of PSHAP" shall apply for the purposes of this subpart.

(n) *Alternative requirements for wastewater that is Group 1 for soluble HAP only.* The option specified in this paragraph (n) applies to wastewater that is Group 1 for soluble HAP in accordance with paragraph (c)(3) of this section and is discharged to biological treatment. Except as provided in paragraph (n)(4) of this section, this option does not apply to wastewater

that is Group 1 for partially soluble HAP in accordance with paragraph (c)(1), (c)(2), or (c)(4) of this section. For wastewater that is Group 1 for SHAP, you need not comply with §§ 63.133 through 63.137 for any equalization unit, neutralization unit, and/or clarifier prior to the activated sludge unit, and you need not comply with the venting requirements in § 63.136(e)(2)(ii)(A) for lift stations with a volume larger than 10,000 gal, provided you comply with the requirements specified in paragraphs (n)(1) through (3) of this section and all otherwise applicable requirements specified in Table 7 to this subpart. For this option, the treatment requirements in § 63.138 and the performance testing requirements in § 63.145 do not apply to the biological treatment unit, except as specified in paragraphs (n)(2)(i) through (iv) of this section.

(1) Wastewater must be hard-piped between the equalization unit, clarifier, and activated sludge unit. This requirement does not apply to the transfer between any of these types of units that are part of the same structure and one unit overflows into the next.

(2) Calculate the destruction efficiency of the biological treatment unit using Equation 1 of this section in accordance with the procedures described in paragraphs (n)(2)(i) through (vi) of this section. You have demonstrated initial compliance if E is greater than or equal to 90 percent.

$$E = \frac{(QMW_a - QMG_e - QMG_n - QMG_c)(F_{bio})}{QMW_a} \times 100 \qquad \text{(Eq. 1)}$$

Where:

E = destruction efficiency of total PSHAP and SHAP for the biological treatment unit including the equalization unit, neutralization unit, and/or clarifier, percent;

QMW_a = mass flow rate of total PSHAP and SHAP compounds entering the equalization unit (or whichever of the three types of units is first), kilograms per hour (kg/hr);

QMG_e = mass flow rate of total PSHAP and SHAP compounds emitted from the equalization unit, kg/hr;

QMG_n = mass flow rate of total PSHAP and SHAP compounds emitted from the neutralization unit, kg/hr;

QMG_c = mass flow rate of total PSHAP and SHAP compounds emitted from the clarifier, kg/hr

F_{bio} = site-specific fraction of PSHAP and SHAP compounds biodegraded in the biological treatment unit.

(i) Include all PSHAP and SHAP compounds in both Group 1 and Group 2 wastewater streams from all MCPU, except you may exclude any compounds that meet the criteria specified in § 63.145(a)(6)(ii) or (iii).

(ii) Conduct the demonstration under representative process unit and treatment unit operating conditions in accordance with § 63.145(a)(3) and (4).

(iii) Determine PSHAP and SHAP concentrations and the total wastewater flow rate at the inlet to the equalization unit in accordance with § 63.145(f)(1) and (2). References in § 63.145(f)(1) and (2) to required mass removal and actual mass removal do not apply for the purposes of this section.

(iv) Determine F_{bio} for the activated sludge unit as specified in § 63.145(h), except as specified in paragraph (n)(2)(iv)(A) or paragraph (n)(2)(iv)(B) of this section.

(A) If the biological treatment process meets both of the requirements specified in § 63.145(h)(1)(i) and (ii), you may elect to replace the F_{bio} term in Equation 1 of this section with the numeral "1."

(B) You may elect to assume f_{bio} is zero for any compounds on List 2 of Table 36 in subpart G.

(v) Determine QMG_e, QMG_n, and QMG_c using EPA's WATER9 model or the most recent update to this model, and conduct testing or use other procedures to validate the modeling results.

(vi) Submit the data and results of your demonstration, including both a description of and the results of your WATER9 modeling validation procedures, in your notification of compliance status report as specified in § 63.2520(d)(2)(ii).

(3) As an alternative to the venting requirements in § 63.136(e)(2)(ii)(A), a lift station with a volume larger than 10,000 gal may have openings necessary for proper venting of the lift station. The size and other design characteristics of these openings may be established based on manufacturer recommendations or engineering judgment for venting under normal operating conditions. You must describe the design of such openings and your supporting calculations and other rationale in your notification of compliance status report.

(4) For any wastewater streams that are Group 1 for both PSHAP and SHAP, you may elect to meet the requirements specified in Table 7 to this subpart for the PSHAP and then comply with paragraphs (n)(1) through (3) of this section for the SHAP in the wastewater system. You may determine the SHAP mass removal rate, in kg/hr, in treatment units that are used to meet the requirements for PSHAP and add this amount to both the numerator and denominator in Equation 1 of this section.

(o) *Compliance records.* For each CPMS used to monitor a nonflare control device for wastewater emissions, you must keep records as specified in § 63.998(c)(1) in addition to the records required in § 63.147(d).

■ 11. Section 63.2495 is amended by revising paragraph (b)(1) to read as follows:

§ 63.2495 How do I comply with the pollution prevention standard?

* * * * *

(b) * * *

(1) You must comply with the emission limitations and work practice standards contained in Tables 1 through 7 of this subpart for all HAP that are generated in the MCPU and that are not included in consumption, as defined in § 63.2550. If any vent stream routed to the combustion control is a halogenated vent stream, as defined in § 63.2550, then hydrogen halides that are generated as a result of combustion control must be controlled according to the requirements of § 63.994 and the requirements referenced therein.

* * * * *

■ 12. Section 63.2520 is amended by:

■ a. Revising paragraph (c)(4);

■ b. Revising paragraph (d)(2)(i) and (d)(2)(ix);

■ c. Revising paragraphs (e)(5) introductory text, (e)(5)(ii)(C), and (e)(5)(iii)(K) and adding new paragraph (e)(5)(iv);

■ d. Revising paragraph (e)(9); and

■ e. Revising the first two sentences of paragraph (e)(10)(i) and paragraph (e)(10)(ii)(C) to read as follows:

§ 63.2520 What reports must I submit and when?

* * * * *

(c) * * *

(4) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions in accordance with § 63.1257(d)(2)(ii). This requirement does not apply to

calculations of hydrogen halide and halogen HAP emissions as specified in § 63.2465(b), to determinations that the total HAP concentration is less than 50 ppmv, or if you use previous test data to establish the uncontrolled emissions.

* * * * *

(d) * * *

(2) * * *

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP usage or HAP emissions from the affected source.

* * * * *

(ix) Records as specified in § 63.2535(l)(1) through (3) of process units used to create a PUG and calculations of the initial primary product of the PUG.

(e) * * *

(5) The compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i), (ii), (iii), and (iv) of this section.

* * * * *

(ii) * * *

(C) Operating logs of processes with batch vents from batch operations for the day(s) during which the deviation occurred, except operating logs are not required for deviations of the work practice standards for equipment leaks.

(iii) * * *

(K) Operating logs of processes with batch vents from batch operations for each day(s) during which the deviation occurred.

* * * * *

(iv) If you documented in your notification of compliance status report that an MCPU has Group 2 batch process vents because the non-reactive HAP is the only HAP and usage is less than 10,000 lb/yr, the total uncontrolled organic HAP emissions from the batch process vents in an MCPU will be less than 1,000 lb/yr for the anticipated number of standard batches, or total uncontrolled hydrogen halide and halogen HAP emissions from all batch process vents and continuous process vents in a process are less than 1,000 lb/yr, include the records associated with each calculation required by § 63.2525(e) that exceeds an applicable HAP usage or emissions threshold.

* * * * *

(9) Applicable records and information for periodic reports as specified in referenced subparts F, G, H, SS, UU, WW, and GGG of this part and subpart F of 40 CFR part 65.

(10) * * *

(i) Except as specified in paragraph (e)(10)(ii) of this section, whenever you make a process change, or change any of the information submitted in the notification of compliance status report or a previous compliance report, that is not within the scope of an existing operating scenario, you must document the change in your compliance report. A process change does not include moving within a range of conditions identified in the standard batch, and a nonstandard batch does not constitute a process change. * * *

* * * * *

(ii) * * *

(C) A change from Group 2 to Group 1 for any emission point except for batch process vents that meet the conditions specified in § 63.2460(b)(6)(i).

■ 13. Section 63.2525 is amended by revising paragraphs (a), (c), and (e) to read as follows:

§ 63.2525 What records must I keep?

* * * * *

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts F, G, SS, UU, WW, and GGG of this part 63 and in referenced subpart F of 40 CFR part 65.

* * * * *

(c) A schedule or log of operating scenarios for processes with batch vents from batch operations updated each time a different operating scenario is put into effect.

* * * * *

(e) The information specified in paragraph (e)(2), (3), or (4) of this section, as applicable, for each process with Group 2 batch process vents or uncontrolled hydrogen halide and halogen HAP emissions from the sum of all batch and continuous process vents less than 1,000 lb/yr. No records are required for situations described in paragraph (e)(1) of this section.

(1) No records are required if you documented in your notification of compliance status report that the MCPU meets any of the situations described in paragraph (e)(1)(i), (ii), or (iii) of this section.

(i) The MCPU does not process, use, or generate HAP.

(ii) You control the Group 2 batch process vents using a flare that meets the requirements of § 63.987.

(iii) You control the Group 2 batch process vents using a control device for which your determination of worst case for initial compliance includes the contribution of all Group 2 batch process vents.

(2) If you documented in your notification of compliance status report that an MCPU has Group 2 batch process vents because the non-reactive organic HAP is the only HAP and usage is less than 10,000 lb/yr, as specified in § 63.2460(b)(7), you must keep records of the amount of HAP material used, and calculate the daily rolling annual sum of the amount used no less frequently than monthly. If a record indicates usage exceeds 10,000 lb/yr, you must estimate emissions for the preceding 12 months based on the number of batches operated and the estimated emissions for a standard batch, and you must begin recordkeeping as specified in paragraph (e)(4) of this section. After 1 year, you may revert to recording only usage if the usage during the year is less than 10,000 lb.

(3) If you documented in your notification of compliance status report that total uncontrolled organic HAP emissions from the batch process vents in an MCPU will be less than 1,000 lb/yr for the anticipated number of standard batches, then you must keep records of the number of batches operated and calculate a daily rolling annual sum of batches operated no less frequently than monthly. If the number of batches operated results in organic HAP emissions that exceed 1,000 lb/yr, you must estimate emissions for the preceding 12 months based on the number of batches operated and the estimated emissions for a standard batch, and you must begin recordkeeping as specified in paragraph (e)(4) of this section. After 1 year, you may revert to recording only the number of batches if the number of batches operated during the year results in less than 1,000 lb of organic HAP emissions.

(4) If you meet none of the conditions specified in paragraphs (e)(1) through (3) of this section, you must keep records of the information specified in paragraphs (e)(4)(i) through (iv) of this section.

(i) A record of the day each batch was completed and/or the operating hours per day for continuous operations with hydrogen halide and halogen emissions.

(ii) A record of whether each batch operated was considered a standard batch.

(iii) The estimated uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(iv) Records of the daily 365-day rolling summations of emissions, or alternative records that correlate to the emissions (e.g., number of batches), calculated no less frequently than monthly.

* * * * *

■ 14. Section 63.2535 is amended by revising paragraphs (a) and (k) to read as follows:

§ 63.2535 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(a) *Compliance with other subparts of this part 63.* (1) If you have an MCPU that includes a batch process vent that also is part of a CMPU as defined in subparts F and G of this part 63, you must comply with the emission limits; operating limits; work practice standards; and the compliance, monitoring, reporting, and recordkeeping requirements for batch process vents in this subpart, and you must continue to comply with the requirements in subparts F, G, and H of this part 63 that are applicable to the CMPU and associated equipment.

(2) After the compliance dates specified in § 63.2445, at an offsite reloading or cleaning facility subject to § 63.1253(f), as referenced from § 63.2470(e), compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the monitoring, recordkeeping, and reporting provisions of § 63.1253(f)(7)(ii) or § 63.1253(f)(7)(iii). You must identify in your notification of compliance status report required by § 63.2520(d) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

(k) *Compliance with 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V.* After the compliance date specified in § 63.2445, if you have an affected source with equipment that is also subject to the requirements of 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, you may elect to apply this subpart to all such equipment. After the compliance date specified in § 63.2445, if you have an affected source with equipment to which this subpart does not apply, but which is subject to the requirements of 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, you may elect to apply this subpart to all such equipment. If you elect either of these methods of compliance, you must consider all total organic compounds, minus methane and ethane, in such equipment for purposes of compliance with this subpart, as if they were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph (k), will constitute compliance with 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V, as applicable.

* * * * *

■ 15. Section 63.2550 is amended by:

■ a. Revising paragraph (b);

■ b. Revising the last sentence in paragraph (i) introductory text;

■ c. Revising paragraph (8) in the definition of the term "batch process vent" in paragraph (i);

■ d. Adding new paragraphs (6) and (7) to the definition of the term "continuous process vent" in paragraph (i);

■ e. Revising the definition of the term "Group 1 continuous process vent" in paragraph (i);

■ f. Revising the definition of the term "isolated intermediate" in paragraph (i);

■ g. Adding new paragraph (6) to the definition of the term "miscellaneous organic chemical manufacturing process" in paragraph (i);

■ h. Revising the definition of the term "recovery device" in paragraph (i);

■ i. Revising the definition of the term "surge control vessel" in paragraph (i);

■ j. Revising the introductory text of the definition of the term "wastewater" in paragraph (i); and

■ k. Adding, in alphabetical order, new definitions for the terms "biofilter," "continuous operation," "emission point," "halogen atoms," "HAP metals," "point of determination," and "process condenser" in paragraph (i) to read as follows:

§ 63.2550 What definitions apply to this subpart?

* * * * *

(b) For an affected source complying with the requirements in 40 CFR part 65, subpart F, the terms used in this subpart and in 40 CFR part 65, subpart F have the meaning given to them in § 65.2.

* * * * *

(i) * * * If a term is defined in § 63.2, § 63.101, § 63.111, § 63.981, § 63.1020, § 63.1061, § 63.1251, or § 65.2 and in this paragraph (i), the definition in this paragraph (i) applies for the purposes of this subpart.

* * * * *

Batch process vent * * *

(8) Emission streams from emission episodes that are undiluted and uncontrolled containing less than 50 ppmv HAP are not part of any batch process vent. A vent from a unit operation, or a vent from multiple unit operations that are manifolded together, from which total uncontrolled HAP emissions are less than 200 lb/yr is not a batch process vent; emissions for all emission episodes associated with the unit operation(s) must be included in the determination of the total mass emitted. The HAP concentration or mass emission rate may be determined using any of the following: process knowledge that no HAP are present in the emission stream; an engineering assessment as discussed in § 63.1257(d)(2)(ii), except that you do not need to demonstrate that the equations in § 63.1257(d)(2)(i) do not apply, and the precompliance reporting requirements specified in § 63.1257(d)(2)(ii)(E) do not apply for the purposes of this demonstration; equations specified in § 63.1257(d)(2)(i), as applicable; test data using Method 18 of 40 CFR part 60, appendix A; or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part.

* * * * *

Biofilter means an enclosed control system such as a tank or series of tanks with a fixed roof that contact emissions with a solid media (such as bark) and use microbiological activity to transform organic pollutants in a process vent stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment processes such as aeration lagoons or activated sludge systems are not considered to be biofilters.

* * * * *

Continuous operation means any operation that is not a batch operation.

Continuous process vent * * *

(6) The references to an "air oxidation reactor, distillation unit, or reactor" in § 63.107 mean any continuous operation for the purposes of this subpart.

(7) A separate determination is required for the emissions from each MCPU, even if emission streams from two or more MCPU are combined prior to discharge to the atmosphere or to a control device.

* * * * *

Emission point means each continuous process vent, batch process vent, storage tank, transfer rack, and wastewater stream.

* * * * *

Group 1 continuous process vent means a continuous process vent for which the flow rate is greater than or equal to 0.005 standard cubic meter per minute, and the total resource effectiveness index value, calculated according to § 63.2455(b), is less than or equal to 1.9 at an existing source and less than or equal to 5.0 at a new source.

* * * * *

Halogen atoms mean chlorine and fluorine.

HAP metals means the metal portion of antimony compounds, arsenic compounds, beryllium compounds, cadmium compounds, chromium compounds, cobalt compounds, lead compounds, manganese compounds, mercury compounds, nickel compounds, and selenium compounds.

* * * * *

Isolated intermediate means a product of a process that is stored before subsequent processing. An isolated intermediate is usually a product of a chemical synthesis, fermentation, or biological extraction process. Storage of an isolated intermediate marks the end of a process. Storage occurs at any time the intermediate is placed in equipment used solely for storage. The storage equipment is part of the MCPU that produces the isolated intermediate and is not assigned as specified in § 63.2435(d).

Miscellaneous organic chemical manufacturing process * * *

(6) The end of a process that produces a solid material is either up to and including the dryer or extruder, or for a polymer production process without a dryer or extruder, it is up to and including the extruder, die plate, or solid-state reactor, except in two cases. If the dryer, extruder, die plate, or solid-state reactor is followed by an operation that is designed and operated to remove HAP solvent or residual HAP monomer from the solid, then the solvent removal operation is the last step in the process. If the dried solid is diluted or mixed with a HAP-based solvent, then the solvent removal operation is the last step in the process.

* * * * *

Point of determination means each point where process wastewater exits the MCPU or control device.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream: At the point of determination; or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of soluble HAP and partially soluble HAP compounds as determined according to procedures in § 63.144 of subpart G in this part 63. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.

* * * * *

Process condenser means a condenser whose primary purpose is to recover material as an integral part of an MCPU. All condensers recovering condensate from an MCPU at or above the boiling point or all condensers in line prior to a vacuum source are considered process condensers. Typically, a primary condenser or condensers in series are considered to be integral to the MCPU if they are capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. This definition does not apply to a condenser that is used to remove materials that would hinder performance of a downstream recovery device as follows:

(1) To remove water vapor that would cause icing in a downstream condenser, or

(2) To remove water vapor that would negatively affect the adsorption capacity of carbon in a downstream carbon adsorber, or

(3) To remove high molecular weight organic compounds or other organic compounds that would be difficult to remove during regeneration of a downstream carbon adsorber.

* * * * *

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals from process vent streams and from wastewater streams for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. For the purposes of meeting requirements in Table 2 to this subpart, the recovery device must not be a process condenser and must recover chemicals to be reused in a process on site. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device for a wastewater stream, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels as part of any continuous operation. Surge control vessels are used within an MCPU when in-process storage, mixing, or management of flowrates or volumes is needed to introduce material into continuous operations.

* * * * *

Wastewater means water that is discarded from an MCPU or control device through a POD and that contains either: an annual average concentration of compounds in Tables 8 and 9 to this subpart of at least 5 ppmw and has an annual average flowrate of 0.02 liters per minute or greater; or an annual average concentration of compounds in Tables 8 and 9 to this subpart of at least 10,000 ppmw at any flowrate. Wastewater means process wastewater or maintenance wastewater. The following are not considered wastewater for the purposes of this subpart:

* * * * *

■ 16. Table 2 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 2 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS

* * * * * * *

For each . . .	Then you must . . .	And you must . . .
1. Process with Group 1 batch process vents.	a. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥98 percent by weight by venting emissions from a sufficient number of the vents through one or more closed-vent systems to any combination of control devices (except a flare); or	Not applicable.
	b. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥95 percent by weight by venting emissions from a sufficient number of the vents through one or more closed-vent systems to any combination of recovery devices or a biofilter, except you may elect to comply with the requirements of subpart WW of this part for any process tank; or	Not applicable.

TABLE 2 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS—Continued

For each . . .	Then you must . . .	And you must . . .
	c. Reduce uncontrolled organic HAP emissions from one or more batch process vents within the process by venting through a closed-vent system to a flare or by venting through one or more closed-vent systems to any combination of control devices (excluding a flare) that reduce organic HAP to an outlet concentration ≤20 ppmv as TOC or total organic HAP.	For all other batch process vents within the process, reduce collective organic HAP emissions as specified in item 1.a and/or item 1.b of this table.

■ 17. Table 3 to subpart FFFF of part 63 is revised to read as follows:

TABLE 3 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR HYDROGEN HALIDE AND HALOGEN HAP EMISSIONS OR HAP METALS EMISSIONS FROM PROCESS VENTS

For each . . .	You must . . .
1. Process with uncontrolled hydrogen halide and halogen HAP emissions from process vents ≥1,000 lb/yr.	a. Reduce collective hydrogen halide and halogen HAP emissions by ≥99 percent by weight or to an outlet concentration ≤20 ppmv by venting through one or more closed-vent systems to any combination of control devices, or b. Reduce the halogen atom mass emission rate from the sum of all batch process vents and each individual continuous process vent to ≤0.45 kg/hr by venting through one or more closed-vent systems to a halogen reduction device.
2. Process at a new source with uncontrolled emissions from process vents ≥150 lb/yr of HAP metals.	Reduce overall emissions of HAP metals by ≥97 percent by weight.

■ 18. Table 4 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 4 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR STORAGE TANKS

For each . . .	For which . . .	Then you must . . .
1. Group 1 storage tank	a. The maximum true vapor pressure of total HAP at the storage temperature is ≥76.6 kilopascals.	i. Reduce total HAP emissions by ≥95 percent by weight or to ≤20 ppmv of TOC or organic HAP and ≤20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or ii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iii. Reduce total HAP emissions by venting emissions to a fuel gas system or process in accordance with § 63.982(d) and the requirements referenced therein.
	b. The maximum true vapor pressure of total HAP at the storage temperature is <76.6 kilopascals.	i. Comply with the requirements of subpart WW of this part, except as specified in § 63.2470; or

TABLE 4 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR STORAGE TANKS—Continued

For each . . .	For which . . .	Then you must . . .
		ii. Reduce total HAP emissions by ≥95 percent by weight or to ≤20 ppmv of TOC or organic HAP and ≤20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or iii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iv. Reduce total HAP emissions by venting emissions to a fuel gas system or process in accordance with § 63.982(d) and the requirements referenced therein.

■ 19. Table 5 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 5 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER RACKS

For each . . .	You must . . .
1. Group 1 transfer rack	a. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or b. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a flare; or c. Reduce emissions of total organic HAP by venting emissions to a fuel gas system or process in accordance with § 63.982(d) and the requirements referenced therein; or d. Use a vapor balancing system designed and operated to collect organic HAP vapors displaced from tank trucks and railcars during loading and route the collected HAP vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected by a common header.

■ 20. Table 6 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 6 TO SUBPART FFFF OF PART 63.—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	You must . . .
1. Equipment that is in organic HAP service.	a. Comply with the requirements of subpart UU of this part 63 and the requirements referenced therein, except as specified in § 63.2480(b) and (d); or b. Comply with the requirements of subpart H of this part 63 and the requirements referenced therein, except as specified in § 63.2480(b) and (d); or c. Comply with the requirements of 40 CFR part 65, subpart F and the requirements referenced therein, except as specified in § 63.2480(c) and (d).

■ 21. Table 8 to subpart FFFF of part 63 is amended by removing entry 10 and redesignating entries 11 through 61 as entries 10 through 60.

■ 22. Table 12 to subpart FFFF of part 63 is amended as follows:

■ a. Removing the entries for §§ 63.8(c)(4)(i)–(ii) and 63.10(e)(1)–(2);

■ b. Adding new entries for §§ 63.8(c)(4)(i), 63.8(c)(4)(ii), 63.10(e)(1), 63.10(e)(2)(i), and 63.10(e)(2)(ii); and

■ c. Revising the entries for §§ 63.8(c)(4), 63.8(c)(6), 63.8(c)(7)–(8), 63.8(d), 63.8(e), 63.9(g), 63.10(b)(2)(xiii), and 63.10(c)(1)–(6), (9)–(15).

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

* * * * * * *

Citation	Subject	Explanation
* *	* *	* * *
§ 63.8(c)(4)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subparts G and SS of part 63. Requirements for COMS do not apply because subpart FFFF does not require continuous opacity monitoring systems (COMS).
§ 63.8(c)(4)(i)	COMS Measurement and Recording Frequency.	No; subpart FFFF does not require COMS.
§ 63.8(c)(4)(ii)	CEMS Measurement and Recording Frequency.	Yes.
* *	* *	* * *
§ 63.8(c)(6)	CMS Requirements	Only for CEMS; requirements for CPMS are specified in referenced subparts G and SS of this part 63. Requirements for COMS do not apply because subpart FFFF does not require COMS.
§ 63.8(c)(7)–(8)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subparts G and SS of part 63. Requirements for COMS do not apply because subpart FFFF does not require COMS.
§ 63.8(d)	CMS Quality Control	Only for CEMS.
§ 63.8(e)	CMS Performance Evaluation	Only for CEMS. Section 63.8(e)(5)(ii) does not apply because subpart FFFF does not require COMS.
* *	* *	* * *
§ 63.9(g)	Additional Notifications When Using CMS.	Only for CEMS. Section 63.9(g)(2) does not apply because subpart FFFF does not require COMS.
* *	* *	* * *
§ 63.10(b)(2)(xiii)	Records	Only for CEMS.
* *	* *	* * *
§ 63.10(c)(1)–(6),(9)–(15)	Records	Only for CEMS. Recordkeeping requirements for CPMS are specified in referenced subparts G and SS of this part 63.
* *	* *	* * *
§ 63.10(e)(1)	Additional CEMS Reports	Yes.
§ 63.10(e)(2)(i)	Additional CMS Reports	Only for CEMS.
§ 63.10(e)(2)(ii)	Additional COMS Reports	No. Subpart FFFF does not require COMS.
* *	* *	* * *

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[FR Doc. 06–6125 Filed 7–12–06; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0083; FRL–8196–6]

RIN 2060–AE48

National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. The final amendments add a new compliance option, revise emission limitations, reduce the frequency of repeat performance tests for certain emission units, add corrective action requirements, and clarify monitoring, recordkeeping, and reporting requirements.

DATES: *Effective Date:* This final rule is effective on July 13, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0083. 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 & Radiation Docket, Docket ID No. EPA–HQ–OAR–2002–0083, EPA/DC, EPA West, Room B102, 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, 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) 541–5289, fax number: (919) 541–3207, e-mail address: *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace (BOPF) shops.
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 be regulated by this action, you should examine the applicability criteria in 40 CFR 63.7781 of subpart FFFFF (NESHAP for Integrated Iron and Steel Manufacturing 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).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final action will also be available on the Worldwide Web 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 11, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments 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 the final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Amendments
III. Impacts of the Final Amendments
IV. Response to Comments on the Proposed Amendments
A. Equivalency of Opacity Limit
B. Monitoring Requirements
C. Applicability to Sinter Coolers Without Stacks
D. Applicability to Discharges Inside Buildings
E. Operating Limit
F. Corrective Action
G. Startup, Shutdown, and Malfunctions
H. Applicability of MACT Standards
I. Subsequent Performance Tests for Baghouses
J. Opacity Observations for Sinter Cooler
K. Compliance Date
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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

On May 20, 2003 (68 FR 27646), we issued the NESHAP for integrated iron and steel manufacturing facilities (40 CFR part 63, subpart FFFFF). The NESHAP implement section 112(d) of the CAA by requiring all major sources to meet emission standards for

hazardous air pollutants (HAP) reflecting application of the maximum achievable control technology (MACT). The NESHAP establish emission limitations for emission sources in each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop.

After publication of the NESHAP, five steel companies and one trade association filed a petition for review challenging the final standards (*AK Steel Corporation et al.* v. *U.S. Environmental Protection Agency,* no. 03–1207, D.C. Cir.). The petitioners raised the following issues:

- Failing to respond to substantive industry comments questioning the definitions, subcategorization, control technologies identified, emission standards, testing and monitoring, and other aspects of the proposed rule;
- Failing to provide justification for setting standards for ladle metallurgy operations, sinter plant discharge ends, and sinter coolers;
- Requiring bag leak detection systems to be used for positive pressure baghouse systems that discharge without stacks or from baghouse systems with continuous emission monitors;
- Applying emission standards to control devices that do not discharge to the ambient air;
- Imposing stringent testing, monitoring, inspection, and reporting requirements on insignificant sources;
- Providing for the establishment of source-specific opacity limitations based on opacity observations made during required source performance testing and by specifying use of infeasible technical requirements for such observations; and
- Failing to adequately consider health threshold levels and to allow for alternative emission standards, performance testing requirements or monitoring methods that are demonstrated to provide comparable protection to public health and the environment.

EPA and industry petitioners entered into a settlement agreement whereby EPA agreed to sign a notice proposing certain amendments by September 23, 2005. See 70 FR 36383, June 23, 2005 (public notice of settlement agreement pursuant to section 113 of the CAA; EPA received no adverse comment on this notice of settlement). These amendments were proposed on August 30, 2005 (70 FR 51306). Three organizations commented on the proposed amendments during the 60-day comment period which ended on October 31, 2005. EPA and the petitioners anticipate that the final amendments to the NESHAP will resolve the petitioners' concerns.

II. Summary of the Final Amendments

The final amendments revise the applicability of the emission limits for sinter cooler stacks at new and existing sinter plants. The revised limits apply to each sinter cooler instead of to each sinter cooler stack. The final amendments also establish a 10 percent opacity limit for a sinter cooler at an existing sinter plant instead of the particulate matter (PM) emission limit of 0.03 grains per dry standard cubic feet (gr/dscf). In response to comments, we have added a new compliance date for a sinter cooler at an existing sinter plant and require compliance by January 13, 2007. We have also added a provision to the opacity test procedures which describes the general direction an observer should take for observations of uncovered portions of sinter coolers.

The final amendments add a new footnote to Table 1 of subpart FFFFF to clarify that PM limits do not apply to discharges inside a building or structure housing a discharge end at an existing sinter plant, inside a casthouse at an existing blast furnace, or inside an existing basic oxygen process furnace (BOPF) shop because these discharges are subject to opacity limits. In response to comments, we have revised the proposed footnote to clarify that it applies only to control devices installed before August 30, 2005.

The frequency for conducting subsequent performance tests has been changed from twice each permit term to once each permit term for emission units equipped with a baghouse. Repeat performance tests are still required at least twice each permit term for a sinter cooler at an existing sinter plant, for each unit equipped with a control device other than a baghouse, and each affected source without a title V operating permit.

The final amendments also revise the operating limit in 40 CFR 63.7790(b)(3) for an electrostatic precipitator (ESP) that controls emissions from a BOPF. The revised operating limit requires the plant owner or operator to maintain the hourly average opacity of emissions from the control device at or below 10 percent.

Section 63.7830(b) of the NESHAP requires a bag leak detection system for each baghouse used to meet a PM limit. The final amendments add an alternative allowing plants to use a continuous opacity monitoring system (COMS) to monitor the opacity of emissions exiting each control device stack. A bag leak detection system or COMS is not required for a positive-pressure baghouse not equipped with exhaust gas stacks that was installed before August 30, 2005.

The final amendments revise the requirements for operation and maintenance (O&M) plans. The corrective action procedures in 40 CFR 63.7800(b)(4) are expanded to apply to baghouses equipped with COMS in addition to those with bag leak detection systems. Plants must initiate corrective action if a bag leak detection system alarm is triggered or if emissions from a baghouse equipped with a COMS exceed an hourly average opacity of 5 percent.

Corrective action procedures also apply to other types of control devices. If a venturi scrubber equipped with continuous parameter monitoring systems (CPMS) or an ESP equipped with a COMS exceeds the opacity operating limit, plants must take corrective action consistent with their site-specific monitoring plan. New provisions added to 40 CFR 63.7833 require plants to initiate corrective action to determine the cause of the exceedance within 1 hour and to measure operating parameter value(s) for the emission unit within 24 hours of the exceedance. If the measured value(s) meet the applicable operating limit, the corrective action is successful and the emission unit is in compliance with the applicable operating limit. If the initial corrective action is not successful, additional corrective action is required within the next 24 hours. Plants must re-measure the operating parameter(s) and if the corrective action is successful, the emission unit is in compliance with the applicable operating limit. If the second attempt at corrective action is not successful, the plant must report the exceedance as a deviation in the next semiannual compliance report.

The final amendments also clarify the requirements for establishing venturi scrubber parametric operating limits in 40 CFR 63.7824(b) by stating that plants may establish the limit during the initial performance test or during any other performance test that meets the emission limit. We have also revised the definition of "ladle metallurgy" by stating that vacuum degassing is not included in the definition. The final amendments also make clarifying changes to certain monitoring, recordkeeping, and reporting requirements cited in Table 4 to subpart FFFFF (Applicability of General Provisions to Subpart FFFFF) and correct errors in certain entries.

III. Impacts of the Final Amendments

The final amendments do not affect the level of emissions control required by the existing NESHAP or the nonair, health, environmental, and energy impacts. However, the costs of implementing the existing rule will be reduced in future years. For example, the reduction in subsequent performance tests for an emissions source equipped with a baghouse will reduce the nationwide cost of PM testing over the next 5 years from $270,000/year to $180,000/year, a savings of $90,000/year.

IV. Response to Comments on the Proposed Amendments

A. Equivalency of Opacity Limit

Comment: One commenter asked if the opacity limit for sinter coolers would achieve the same emission level, be equally protective of public health, and measure the same pollutants and the same levels of emissions as the PM limit of 0.03 gr/dscf?

Response: The opacity limit is a better representation of the MACT floor and will ensure that all sinter coolers perform at the MACT level of control or better. The limit will achieve lower emission levels (and presumably be more protective of public health) than the concentration limit of 0.03 gr/dscf in the current rule because it will apply to all sinter coolers, not just to those with stacks. However, we did not perform a risk analysis and evaluate protection of public health for the MACT standard because residual risk will be assessed no later than 8 years following the promulgation of the MACT standard (section 112(f)(2) of the CAA). See *Sierra Club* v. *EPA*, 353 F.3d 976, 990 (D.C. Cir. 2004) (Roberts, J.) (EPA is not to consider risk when promulgating section 112(d) MACT standards because that is the province of the residual risk analysis to be conducted under section 112(f)). The opacity limit and concentration limit are a measure of the same pollutant, PM, which is a surrogate for particulate metal HAP.

B. Monitoring Requirements

Comment: One commenter stated that the reason for changing to an opacity limit was the inability to measure PM emissions from sinter coolers without stacks. The commenter expressed concerne that the MACT technology is not being achieved for monitoring or measuring emissions and asked if this would be a problem if a facility were required to modernize its monitoring equipment to implement MACT. The commenter recommended that a MACT standard be implemented for monitoring to ensure the best monitoring technology is in place.

Response: MACT standards are based on the level of control achieved by the best-performing sources and a further evaluation of what further reductions could be achieved considering cost, energy, and nonair environmental impacts. Continuous monitoring requirements are not determined by a MACT floor or beyond-the-floor analysis. The continuous monitoring requirements are selected after consideration of many factors, such as the type of control device, source characteristics, and how to ensure that the MACT emission limit is being met on a continuous basis. The standard requires monitoring of capture and control systems to ensure they are operating properly, and these monitoring requirements are provided in the section of the rule entitled "Continuous Compliance Requirements" (40 CFR 63.7830 through 63.7835). See also *Sierra Club*, 353 F.3d at 991 (CAA section 114(a)(3) does not require continuous monitoring). For fugitive emissions that by definition are not emitted through stacks, opacity observations by EPA Method 9 (40 CFR part 60, appendix A) are the most effective means of monitoring to ensure compliance. We are not aware of a monitoring technology that is better than Method 9 for fugitive emissions.

C. Applicability to Sinter Coolers Without Stacks

Comment: One commenter believed that the proposed amendments did not apply an emission limit to sinter coolers without stacks.

Response: The commenter misunderstood the proposed rule amendments. The proposed amendments applied a MACT emission limit of 10 percent opacity to coolers without stacks.

D. Applicability to Discharges Inside Buildings

Comment: One commenter pointed out that the proposed amendments did not apply to discharges inside buildings and asked if the health of workers would be adequately protected from these emissions. Does this open a loophole that allows a facility to discharge inside a building to avoid an emission limit? What if the air discharged inside a building is emitted to the ambient air through the ventilation system?

Response: The capture and control systems reduce worker exposure to fugitive emissions that occur within the building. The air discharged inside the building exits through the building's roof monitor. The applicable emission limit for emissions from the building is the opacity limit, and the air discharged inside the building is subject to this limit. However, we agree that control devices installed on or after proposal of the final amendments (August 30, 2005) should be designed and operated to meet the PM emissions limit, and we are including this provision in the final amendments.

E. Operating Limit

Comment: One commenter asked if the hourly average operating limit for monitoring electrostatic precipitators (ESP) included time when the facility is not operating. If so, the facility could average in zeros to meet the hourly limit. The commenter stated that changing from a 6-minute average to an hourly average did not appear to be protective of public health.

Response: The hourly average does not include time when the facility is not operating because BOPF shops contain two steelmaking furnaces (a few have three furnaces), and at least one of these furnaces is almost always at some point in the steel production cycle. For example, if one furnace finishes a steelmaking "heat", the second furnace begins a heat while the first furnace is being tapped. The exception is during a shutdown, and in that case, parametric monitoring is not required or relevant.

As we stated earlier, residual risk remaining after the MACT standard and the extent to which further risk-based controls may be needed to protect public health with an ample margin of safety will be assessed 8 years following the promulgation of the MACT standard.

F. Corrective Action

Comment: One commenter said that the proposed corrective action procedures for ESP and baghouses are flawed because they do not require the facility to correct the problem and only require they report it in their semiannual compliance report. The authorized agency should be notified immediately of the violation. Otherwise, the agency may not know about the violation until 6 months later. In general, EPA should require monthly reports instead of semiannual reports so that the implementing agency and public know much sooner when a violation occurs, and an appropriate remedy can be instigated much sooner.

Response: This comment is beyond the scope of the proposed amendments. We did not propose any changes to the NESHAP that affected the semiannual reporting requirements or otherwise reopened the issue of the

appropriateness of those requirements; consequently, they are not subject to public comment. In the event any response is considered necessary, however, we note that the semiannual reporting requirements are consistent with § 63.10(e)(3) of the General Provisions (40 CFR part 63, subpart A), and we have no reason to impose more stringent requirements for the integrated iron and steel industry.

For more background, the commenter should examine our responses to public comments on semiannual reporting requirements in our final rule amendments to the General Provisions that reduced recordkeeping and reporting requirements (64 FR 7458, February 12, 1999). We explained that:

> * * * EPA's experience over the past ten years with a variety of NSPS and NESHAP rulemakings covering industries of all types suggests that semi-annual reporting provides sufficiently timely information to both ensure compliance and enable adequate enforcement of applicable requirements, while imposing less burden on the affected industry than would quarterly reporting.

It is in the facility's interest to ensure that the corrective actions are successful to avoid penalties and fines. The facility may be found in violation and subject to penalties and fines if the corrective actions continue to be unsuccessful. A continued pattern of non-compliance may be considered in determining the magnitude of penalties.

G. Startup, Shutdown, and Malfunctions

Comment: One commenter stated that the startup, shutdown, and malfunction (SSM) requirements were not protective enough because they allow a facility to craft a plan such that an SSM event is not an exceedance as long as the facility's response is consistent with the SSM plan. Furthermore, the facility should not be allowed to modify the SSM plan without prior Administrator approval.

Response: This comment is also beyond the scope of the proposed amendments. We did not propose, solicit comment on, or otherwise reopen this issue. If any response is considered necessary, however, we note that the SSM requirements come directly from the NESHAP General Provisions in 40 CFR part 63, and we have no reason to implement different requirements for this standard.

For further information, the commenter can consult our proposed amendments to the General Provisions (70 FR 43992, July 29, 2005). In that notice we discuss the "general duty clause" in the General Provisions and note that:

> * * * following the SSM plan itself is no "safe harbor" for sources if the plan is found to be deficient. That is, a source could not use "following the plan" as a defense for an inadequate program to minimize emissions.

With respect to review of the plan or revisions, we stated:

> Review of each SSM plan, from each facility, by the permitting authority, for adequacy prior to implementation is neither reasonable nor necessary. There are thousands of sources required to develop SSM plans, and each plan is tailored to its source. Some plans are closely tied and cross referenced to other operating materials at the source. Many, and perhaps most, plans contain CBI. The burden on the permitting authorities to review every plan would be enormous.

However, it is important to note that the Administrator (or an authorized permitting authority) may at any time require a facility owner or operator to submit a copy of an SSM plan.

H. Applicability of MACT Standards

Comment: One commenter asked if MACT standards were still in place with the proposed change that requires bag leak detection systems only for baghouses with stacks.

Response: The MACT standards are still in place for all affected sources operating with baghouses. All such sources are subject to a MACT PM emissions limit expressed in gr/dscf. In addition, all baghouses are subject to extensive inspection and monitoring requirements in § 63.7831(b)(4). The requirements applying to all baghouses include daily monitoring of pressure drop across each baghouse cell, weekly visual inspections to confirm dust is removed from hoppers, daily checks of compressed air supply for pulse-jet baghouses, monitoring cleaning cycles, monthly checks of the bag cleaning mechanism and bag tension, and inspections to assess physical integrity and fan wear or corrosion.

I. Subsequent Performance Tests for Baghouses

Comment: One commenter objected to the change of requiring performance tests every 2.5 years to every 5 years for baghouses. The reasoning that bag leak detection systems are in place is not adequate justification because they may not be working properly. The commenter also asked EPA to clarify what a "minor" emission unit means and asked if major units would be affected by the reduction in the frequency of performance testing.

Response: A performance test provides a "snap shot" of performance, usually as the average of three 1-hour runs. However, we require continuous monitoring of the control device, and in this case, bag leak detectors provide assurance of proper operation on a continuous basis. Section 63.7831(f) of the rule provides detailed requirements for the proper installation, operation, and maintenance of bag leak detectors. Moreover, the monitoring requirements in § 63.7830(b)(4) discussed earlier include inspections and other monitoring in addition to the bag leak detection system. The combination of bag leak detectors and the extensive inspection and monitoring requirements for baghouses provide more assurance of proper operation than would more frequent snapshot performance tests. Consequently, we concluded that performance testing more frequently than once per permit term for these baghouses was not necessary. This testing frequency is consistent with many existing operating permits.

We used the term "minor" in a qualitative way (i.e., it is not a term defined in the rule) to describe baghouses applied to ancillary processes that do not generate the large volume of emissions associated with primary production processes such as the sinter plant windboxes and steelmaking furnaces. The ancillary processes include hot metal transfer, desulfurization, and ladle metallurgy.

J. Opacity Observations of Sinter Cooler

Comment: In principle, the commenter supports EPA's decision to revise the emission limit for sinter coolers from a grain loading limit to an opacity limit because some sinter coolers are open to the ambient air, with their emissions to the atmosphere being fugitive in nature, rather than through a stack. However, the commenter feels that design considerations at some sinter coolers that do not use a stack make accurate opacity observations problematic. At the commenter's sinter plant, air is forced upward through the cooler bed, a donut-shaped ring approximately 5 feet wide and 50 feet in diameter at its outside edge. Emissions rise upward from the bed and into the atmosphere. The commenter contends that a visible emission observer would have a difficult time accurately assessing opacity due to overlapping or mingling of other plumes. These plumes are primarily from the discharge end of the sinter strand, from material handling sources, and from the side of the cooler that is directly opposite of the side from which the observations are recorded. Similarly, the commenter feels that heat waves from one side of the cooler can interfere with the accuracy of opacity readings made from the other side of the cooler. The commenter argues that these conditions can impart a positive bias to the readings, which could raise the

potential for exceedances of the opacity standard. The commenter requests language in the final rule that provides for a work practice/operational standard in lieu of the opacity standard.

Response: Representatives of EPA and the State agency visited the commenter's sinter plant and evaluated the commenter's concerns regarding an observer's ability to perform accurate visible emissions observations. We agree that performing visible emissions observations at this source is more problematic than at most sources. First, performing observations from ground level at this source does not give the observer an adequate view of all potential emission sources in proximity to the cooler. An observer could mistake emissions from the sinter strand discharge end for cooler emissions, and therefore, readings should be taken from some elevated level. We identified at least two elevated positions at this source from which observations can be made. However, while there are a number of platforms that are adjacent to the cooler that are accessible for this purpose, we acknowledge that the east platform is situated such that intense heat from the bed is likely to disqualify this position as a safety matter.

Regarding the commenter's concerns related to emissions from one side of the cooler interfering with the accurate observations of emissions from the opposite side of the cooler, we concluded that this issue is adequately addressed by existing rule language and guidance for EPA Method 9 (40 CFR part 60, appendix A). While there can be emissions from the feed end of the cooler, these emissions will decrease essentially to zero a short distance from the feed end. When no emissions are visible from the opposite side of the cooler, Method 9 observations of the sinter cooler can occur without multiple plume distortion. As a regulatory matter, reading through multiple plumes is essentially prohibited by section 2.1 of Method 9. Therefore, if any visible emissions arise from the discharge side of the sinter cooler during the Method 9 test that cause an interference with sinter cooler readings, the test must be discontinued.

A similar issue is the potential interference from heat waves. We agree that heat waves can have an influence (positive bias) on readings, depending on their intensity and relative location to the observer and the plume that is being read. Additional language in section 2.1 of Method 9 provides direction on how this should be addressed: "The qualified observer shall stand at a distance sufficient to provide a clear view of the emissions * * *". This language dictates that the observer must be far enough from the heat waves and at such an angle to ensure that observations are made at such a height as to remove any potential interference. We feel that this language also addresses the commenter's concerns regarding other potential emission sources. Consequently, we do not see a need to change the rule language to address this issue.

We decided that two other issues raised by the commenter during the site visit warrant discussion. One issue is that Method 9 does not address in what general direction an observer should be viewing an emission source of this type. If the observer is looking tangentially along the arc of the cooler, readings would have a positive bias compared to the observer looking approximately perpendicular to the tangent of the bed generally toward the center of the cooler. We have added language to the rule to clarify this. The second issue relates to potential positive bias due to luminescence of the plume and background used. This is mentioned in the preamble to Method 9 as exerting an influence on the appearance of a plume. Numerous structures near the sinter plant cooler can cause the plume being observed and/or the background to be in shadows. Consistent with Method 9, observers of sinter coolers should not read opacity when shadows may influence observations. Because this issue is discussed in the preamble to Method 9, we decided that the language in the current rule should not be changed.

We have considered the commenter's request for the option of an alternative work practice or operating standard, in lieu of an opacity standard. However, there are too many process variables that can affect emissions from the cooler to provide for a meaningful alternative. These variables include the types of raw materials used in the sintering process, bed depth, bed speed, uniformity of the surface of the bed, fan speed, and the condition of the grates, windbox ductwork, and fan. Changing just one of these variables may be insufficient to affect cooler emissions. Changes to a combination of variables may be needed at one point in time, where a different combination may be needed at another point in time.

K. Compliance Date

Comment: Sinter coolers without stacks were not regulated under the original PM limit, but would be regulated for the first time under the proposed opacity limit. Two commenters requested a 3-year extension from the compliance date of the original rule (May 22, 2006). This would allow time to design a compliance strategy, evaluate control options, and install controls that may be necessary to comply with the new standard.

Response: We agree that the 10 percent opacity limit is a new standard for sinter coolers. We concluded that it is permissible for us to establish a new compliance date for the sinter cooler standard, i.e., a compliance date not tied to the compliance date of the previous standard for sinter coolers in the original rule. See CAA section 112(i)(3)(A) (which ties compliance dates to the effective dates of "any emissions standard" promulgated under section 112, and so does not tie the date to an initially adopted standard). However, compliance is still to be as expeditious as possible. It is our engineering judgment that 6 months from date of publication is a reasonable time for compliance for most sources because most sources will not have to install additional controls. It is possible that individual sources may require more time to comply and may petition EPA for more time pursuant to the case-by-case extension mechanism in CAA section 112(i)(3)(B), which is codified in 40 CFR 63.6(i)(4)(i). This provision allows individual sources to submit compliance extension requests of up to 1 year where the extension is necessary for the installation of controls.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments provide additional flexibility through revised requirements for monitoring operational parameters which would not increase the existing information collection burden. Other changes, such as the reduction in subsequent PM performance tests for certain emissions sources, are expected to decrease the information collection burden in future years. However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart FFFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0517, EPA Information Collection Request (ICR) number 2003.02. A copy of the OMB-approved ICR 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.

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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments.

For the purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The final rule amendments will not impose any requirements on small entities. None of the regulated integrated iron and steel manufacturing facilities are 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 the final rule amendments 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 1 year. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule amendments do not have federalism implications. They would 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. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments own plants subject to the MACT standards for integrated iron and steel manufacturing. Thus, Executive Order 13175 does not apply to the final rule amendments.

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. The final rule amendments are not subject to the Executive Order because 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

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are 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 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 one or more VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final rule amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the 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). The final amendments are effective on July 13, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: July 6, 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 FFFFF—[AMENDED]

■ 2. Section 63.7783 is amended by revising paragraph (a) to read as follows:

§ 63.7783 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you by the dates specified in paragraphs (a)(1) and (2) of this section.

(1) No later than May 22, 2006 for all emissions sources at an existing affected source except for a sinter cooler at an existing sinter plant.

(2) No later than January 13, 2007 for a sinter cooler at an existing sinter plant.

* * * * *

■ 3. Section 63.7790 is amended by revising paragraph (b)(3) to read as follows:

§ 63.7790 What emission limitations must I meet?

* * * * *

(b) * * *

(3) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the hourly average opacity of emissions exiting the control device at or below 10 percent.

* * * * *

■ 4. Section 63.7800 is amended by:
■ a. Revising the second sentence in paragraph (b) introductory text;
■ b. Revising paragraph (b)(4) introductory text;
■ c. Revising paragraph (b)(4)(vi);
■ d. Redesignating paragraph (b)(5) as (b)(7); and
■ e. Adding new paragraphs (b)(5) and (b)(6) to read as follows:

§ 63.7800 What are my operation and maintenance requirements?

* * * * *

(b) * * * Each plan must address the elements in paragraphs (b)(1) through (7) of this section.

* * * * *

(4) Corrective action procedures for baghouses equipped with bag leak detection systems or continuous opacity monitoring systems (COMS). In the event a bag leak detection system alarm is triggered or emissions from a baghouse equipped with a COMS exceed an hourly average opacity of 5 percent, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to:

* * * * *

(vi) Shutting down the process producing the particulate emissions.

(5) Corrective action procedures for venturi scrubbers equipped with continuous parameter monitoring systems (CPMS). In the event a venturi scrubber exceeds the operating limit in § 63.7790(b)(2), you must take corrective actions consistent with your site-specific monitoring plan in accordance with § 63.7831(a).

(6) Corrective action procedures for electrostatic precipitators equipped with COMS. In the event an electrostatic

precipitator exceeds the operating limit in § 63.7790(b)(3), you must take corrective actions consistent with your site-specific monitoring plan in accordance with § 63.7831(a).

* * * * *

■ 5. Section 63.7821 is revised to read as follows:

(a) You must conduct subsequent performance tests to demonstrate compliance with all applicable PM and opacity limits in Table 1 to this subpart at the frequencies specified in paragraphs (b) through (d) of this section.

(b) For each sinter cooler at an existing sinter plant and each emissions unit equipped with a control device other than a baghouse, you must conduct subsequent performance tests no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

(c) For each emissions unit equipped with a baghouse, you must conduct subsequent performance tests no less frequently than once during each term of your title V operating permit.

(d) For sources without a title V operating permit, you must conduct subsequent performance tests every 2.5 years.

■ 6. Section 63.7823 is amended by adding paragraph (e) to read as follows:

§ 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

* * * * *

(e) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter cooler at an existing sinter plant:

(1) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(2) Obtain a minimum of 30 6-minute block averages.

(3) Make visible emission observations of uncovered portions of sinter plant coolers with the observer's line of sight generally in the direction of the center of the cooler.

■ 7. Section 63.7824 is amended by:

■ a. Adding a second sentence to the end of paragraph (b) introductory text;

■ b. Revising paragraph (b)(1);

■ c. Removing paragraph (c);

■ d. Redesignating paragraphs (d) through (g) as paragraphs (c) through (f);

■ e. Revising newly designated paragraph (c) introductory text and newly designated paragraph (c)(3);

■ f. Revising newly designated paragraph (d) introductory text; and

■ g. Revising newly designated paragraph (e) introductory text and newly designated paragraph (e)(4) to read as follows:

§ 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with operating limits?

* * * * *

(b) * * * You may establish the parametric monitoring limit during the initial performance test or during any other performance test run that meets the emission limit.

(1) Using the CPMS required in § 63.7830(c), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

* * * * *

(c) You may change the operating limits for a capture system or venturi scrubber if you meet the requirements in paragraphs (c)(1) through (3) of this section.

* * * * *

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) and (b) of this section for a control device or capture system.

(d) For each sinter plant subject to the operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1), you must demonstrate initial compliance according to the procedures in paragraphs (d)(1) through (3) of this section.

* * * * *

(e) To demonstrate initial compliance with the alternative operating limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2), follow the test methods and procedures in paragraphs (e)(1) through (5) of this section.

* * * * *

(4) Continue the sampling and analysis procedures in paragraphs (e)(1) through (3) of this section for 30 consecutive days.

* * * * *

■ 8. Section 63.7825 is amended by:

■ a. Revising paragraphs (a)(2) and (a)(3);

■ b. Removing paragraph (a)(4); and

■ c. Revising paragraph (b) to read as follows:

§ 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) * * *

(2) For each capture system subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and have a record of the operating parameter data measured during the performance test in accordance with § 63.7824(a)(1); and

(3) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(b).

(b) For each existing or new sinter plant subject to the operating limit in § 63.7790(d)(1), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(d) is no more than 0.02 percent. For each existing or new sinter plant subject to the alternative operating limit in § 63.7790(d)(2), you have demonstrated initial compliance if the 30-day rolling average of the volatile organic compound emissions from the sinter plant windbox exhaust stream, measured during the initial performance test in accordance with § 63.7824(e) is no more than 0.2 lb/ton of sinter produced.

* * * * *

■ 9. Section 63.7826 is amended by revising paragraph (b)(1) to read as follows:

§ 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

* * * * *

(b) * * *

(1) Prepared the control device operation and maintenance plan according to the requirements of § 63.7800(b), including a preventative maintenance schedule and, as applicable, detailed descriptions of the corrective action procedures for baghouses and other control devices;

* * * * *

■ 10. Section 63.7830 is amended by revising paragraphs (b), (d), (e)(1), and (e)(2) to read as follows:

§ 63.7830 What are my monitoring requirements?

* * * * *

(b) Except as provided in paragraph (b)(3) of this section, you must meet the requirements in paragraph (b)(1) or (2) of this section for each baghouse applied to meet any particulate emission limit in Table 1 to this subpart. You must conduct inspections of each baghouse according to the requirements in paragraph (b)(4) of this section.

(1) Install, operate, and maintain a bag leak detection system according to § 63.7831(f) and monitor the relative change in particulate matter loadings

according to the requirements in § 63.7832; or

(2) If you do not install and operate a bag leak detection system, you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the hourly average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(3) A bag leak detection system and COMS are not required for a baghouse that meets the requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) The baghouse is a positive pressure baghouse and is not equipped with exhaust gas stacks; and

(ii) The baghouse was installed before August 30, 2005.

(4) You must conduct inspections of each baghouse at the specified frequencies according to the requirements in paragraphs (b)(4)(i) through (viii) of this section.

(i) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(ii) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(iii) Check the compressed air supply for pulse-jet baghouses each day.

(iv) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(v) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(vi) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(vii) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(viii) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

* * * * *

(d) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the hourly average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(e) * * *

(1) Compute and record the 30-day rolling average of the oil content of the feedstock for each operating day using the procedures in § 63.7824(d); or

(2) Compute and record the 30-day rolling average of the volatile organic compound emissions (lbs/ton of sinter) for each operating day using the procedures in § 63.7824(e).

■ 11. Section 63.7831 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(5) and (a)(6), and adding new paragraphs (a)(7) and (a)(8);

■ b. Revising paragraph (f) introductory text; and

■ c. Revising paragraphs (h) introductory text and (h)(4) to read as follows:

§ 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each CPMS required in § 63.7830, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (a)(1) through (8) of this section.

* * * * *

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d);

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i);

(7) Corrective action procedures you will follow in the event a venturi scrubber exceeds the operating limit in § 63.7790(b)(2); and

(8) Corrective action procedures you will follow in the event an electrostatic precipitator exceeds the operating limit in § 63.7790(b)(3).

* * * * *

(f) For each baghouse equipped with a bag leak detection system according to § 63.7830(b)(1), you must install, operate, and maintain the bag leak detection system according to the requirements in paragraphs (f)(1) through (7) of this section.

* * * * *

(h) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3) and each baghouse equipped with a COMS according to § 63.7830(b)(2), you must install, operate, and maintain each COMS according to the requirements in paragraphs (h)(1) through (4) of this section.

* * * * *

(4) COMS data must be reduced to 6-minute averages as specified in § 63.8(g)(2) and to hourly averages where required by this subpart.

■ 12. Section 63.7833 is amended by:

■ a. Revising paragraph (c);

■ b. Revising paragraph (d) introductory text and adding new paragraph (d)(4);

■ c. Revising paragraphs (e) introductory text, and (e)(1), and adding new paragraph (e)(3);

■ d. Revising paragraphs (f)(1)(i) and (f)(2)(i); and

■ e. Adding new paragraph (g) to read as follows:

§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?

* * * * *

(c) For each baghouse applied to meet any particulate emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by meeting the requirements in paragraph (c)(1) or (2) of this section as applicable, and paragraphs (c)(3) and (4) of this section:

(1) For a baghouse equipped with a bag leak detection system, operating and maintaining each bag leak detection system according to § 63.7831(f) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(f)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(2) For a baghouse equipped with a COMS, operating and maintaining each COMS and reducing the COMS data according to § 63.7831(h).

(3) Inspecting each baghouse according to the requirements in § 63.7830(b)(4) and maintaining all records needed to document conformance with these requirements.

(4) Maintaining records of the time you initiated corrective action in the event of a bag leak detection system alarm or when the hourly average opacity exceeded 5 percent, the corrective action(s) taken, and the date on which corrective action was completed.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must demonstrate continuous compliance by meeting the requirements of paragraphs (d)(1) through (4) of this section:

* * * * *

(4) If the hourly average pressure drop or scrubber water flow rate is below the operating limits, you must follow the corrective action procedures in paragraph (g) of this section.

(e) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must demonstrate

continuous compliance by meeting the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining the hourly average opacity of emissions no higher than 10 percent; and

* * * * *

(3) If the hourly average opacity of emissions exceeds 10 percent, you must follow the corrective action procedures in paragraph (g) of this section.

(f) * * *

(1) * * *

(i) Computing and recording the 30-day rolling average of the percent oil content for each operating day according to the performance test procedures in § 63.7824(d);

* * * * *

(2) * * *

(i) Computing and recording the 30-day rolling average of the volatile organic compound emissions for each operating day according to the performance test procedures in § 63.7824(e);

* * * * *

(g) If the hourly average pressure drop or water flow rate for a venturi scrubber or hourly average opacity for an electrostatic precipitator exceeds the operating limit, you must follow the procedures in paragraphs (g)(1) through (4) of this section.

(1) You must initiate corrective action to determine the cause of the exceedance within 1 hour. During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. Within 24 hours of the exceedance, you must measure and record the hourly average operating parameter value for the emission unit on which corrective action was taken. If the hourly average parameter value meets the applicable operating limit, then the corrective action was successful and the emission unit is in compliance with the applicable operating limit.

(2) If the initial corrective action required in paragraph (g)(1) of this section was not successful, you must complete additional corrective action within the next 24 hours (48 hours from the time of the exceedance). During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. After this second 24-hour period, you must again measure and record the hourly average operating parameter value for the emission unit on which corrective action was taken. If the hourly average parameter value meets the applicable operating limit, then the corrective action was successful and the emission unit is in compliance with the applicable operating limit.

(3) For purposes of paragraphs (g)(1) and (2) of this section, in the case of an exceedance of the hourly average opacity operating limit for an electrostatic precipitator, measurements of the hourly average opacity based on visible emission observations in accordance with Method 9 (40 CFR part 60, appendix A) may be taken to evaluate the effectiveness of corrective action.

(4) If the second attempt at corrective action required in paragraph (g)(2) of this section was not successful, you must report the exceedance as a deviation in your next semiannual compliance report according to § 63.7841(b).

■ 13. Section 63.7834 is amended by revising paragraph (a) to read as follows:

§ 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by meeting the requirements of paragraphs (a)(1) through (4) of this section:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements;

(3) Initiating and completing corrective action for a baghouse equipped with a bag leak detection system or COMS according to § 63.7800(b)(4) and recording all information needed to document conformance with these requirements, including the time you initiated corrective action, the corrective action(s) taken, and date on which corrective action was completed.

(4) Initiating and completing corrective action for a venturi scrubber equipped with a CPMS or an electrostatic precipitator equipped with a COMS according to § 63.7833(g) and recording all information needed to document conformance with these requirements, including the time you initiated corrective action, the corrective action(s) taken within the first 24 hours according to § 63.7833(g)(1) and whether they were successful, the corrective action(s) taken within the second 24 hours according to § 63.7833(g)(2) and whether they were successful, and the date on which corrective action was completed.

* * * * *

■ 14. Section 63.7835 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* Except as provided in § 63.7833(g), you must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. * * *

* * * * *

■ 15. Section 63.7851 is amended by revising paragraph (c)(2) to read as follows:

§ 63.7851 Who implements and enforces this subpart?

* * * * *

(c) * * *

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for approval of an alternative method for the oil content of the sinter plant feedstock or volatile organic compound measurements for the sinter plant windbox exhaust stream stack as provided in § 63.7824(f).

* * * * *

■ 16. Section 63.7852 is amended by revising the definition of term "Ladle metallurgy" to read as follows:

§ 63.7852 What definitions apply to this subpart?

* * * * *

Ladle metallurgy means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel. This definition does not include vacuum degassing.

* * * * *

■ 17. Table 1 to subpart FFFFF of part 63 is amended by revising entries 3, 5, 6, 7, 9, 10, and 11; and by revising the footnotes to read as follows:

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS

For . . .	You must comply with each of the following . . .
3. Each discharge end at an existing sinter plant	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf [1] [2]; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average).
5. Each sinter cooler at an existing sinter plant	You must not cause to be discharged to the atmosphere any emissions that exhibit opacity greater than 10 percent (6-minute average).
6. Each sinter cooler at a new sinter plant	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf.
7. Each casthouse at an existing blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf [2]; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average).
9. Each BOPF at a new or existing shop	a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system at a new or existing BOPF shop that contain, on a flow-weighted basis, particulate matter in excess of 0.03 gr/dscf during the primary oxygen blow [2] [3]; and b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf during the steel production cycle for an existing BOPF shop [2] [3] or 0.01 gr/dscf during the steel production cycle for a new BOPF shop [3]; and c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop [2] or 0.0052 gr/dscf for a new BOPF shop.
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop [2] or 0.003 gr/dscf for a new BOPF shop.
11. Each ladle metallurgy operation at a new or existing BOPF shop	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop [2] or 0.004 gr/dscf for a new BOPF shop.

[1] This limit applies if the cooler is vented to the same control device as the discharge end.
[2] This concentration limit (gr/dscf) for a control device does not apply to discharges inside a building or structure housing the discharge end at an existing sinter plant, inside a casthouse at an existing blast furnace, or inside an existing BOPF shop if the control device was installed before August 30, 2005.
[3] This limit applies to control devices operated in parallel for a single BOPF during the oxygen blow.

■ 18. Table 2 to subpart FFFFF of part 63 is amended by revising entries 5 and 6 to read as follows:

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS

For . . .	You have demonstrated initial compliance if . . .

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

For . . .	You have demonstrated initial compliance if . . .
* * * * * * *	
5. Each sinter cooler at an existing sinter plant	The opacity of emissions, determined according to the performance test procedures in § 63.7823(e), did not exceed 10 percent (6-minute average).
6. Each sinter cooler at a new sinter plant	The average concentration of particulate matter, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf.
* * * * * * *	

■ 19. Table 3 to subpart FFFFF of part 63 is revised to read as follows:

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS

[As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table.]

For . . .	You must demonstrate continuous compliance by . . .
1. Each windbox exhaust stream at an existing sinter plant	a. Maintaining emissions of particulate matter at or below 0.4 lb/ton of product sinter; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
2. Each windbox exhaust stream at a new sinter plant	a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
3. Each discharge end at an existing sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
4. Each discharge end at a new sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
5. Each sinter cooler at an existing sinter plant	a. Maintaining the opacity of emissions that exit any sinter cooler at or below 10 percent (6-minute average); and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
6. Each sinter cooler at a new sinter plant	a. Maintaining emissions of particulate matter at or below 0.1 gr/dscf; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
7. Each casthouse at an existing blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the casthouse at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
8. Each casthouse at a new blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.003 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the casthouse at or below 15 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
9. Each BOPF at a new or existing BOPF shop	a. Maintaining emissions of particulate matter from the primary control system for a BOPF with a closed hood system at or below 0.03 gr/dscf; and

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table.]

For . . .	You must demonstrate continuous compliance by . . .
	b. Maintaining emissions of particulate matter from the primary control system for a BOPF with an open hood system at or below 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop; and c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop; and d. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF or 0.003 gr/dscf for a new BOPF; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
11. Each ladle metallurgy operation at a new or existing BOPF shop	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
12. Each roof monitor at an existing BOPF shop	a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF shop or shop operation at or below 20 percent (3-minute average); and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
13. Each roof monitor at a new BOPF shop	a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle; and b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle; and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.

■ 20. Table 4 to subpart FFFFF of part 63 is amended as follows:

■ a. By revising entry § 63.6(h)(2)(i).

■ b. By adding entries § 63.6(i) and § 63.6(j).

■ c. By revising entries §§ 63.8 through 63.10.

* * * * *

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF

* * * * * * *

Citation	Subject	Applies to Subpart FFFFF	Explanation
* *	* *	* *	* *
§ 63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart FFFFF specifies methods and procedures for determining compliance with opacity emission and operating limits.
§ 63.6(i)	Extension of Compliance with Emission Standards.	Yes.	
§ 63.6(j)	Exemption from Compliance with Emission Standards.	Yes.	
* *	* *	* *	* *
§ 63.8(a)(1)–(3), (b), (c)(1)–(3), (c)(4)(i)–(ii), (c)(5)–(6), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in §§ 63.8(c)(4)(i)–(ii), (c)(5)–(6), (d), and (e) apply only to COMS.

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF—Continued

Citation	Subject	Applies to Subpart FFFFF	Explanation
*	*	*	*
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart FFFFF does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart FFFFF specifies requirements for operation of CMS.
§ 63.8(f)(6)	RATA Alternative	No.	
§ 63.8(g)(5)	Data Reduction	No	Subpart FFFFF specifies data reduction requirements.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply only to COMS.
§ 63.10(a), (b)(1), (b)(2)(i)–(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (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 only to COMS.
§ 63.10(b)(2) (xiii)	CMS Records for RATA Alternative.	No.	
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart FFFFF specifies record requirements.
§ 63.10(e)(3)	Excess Emission Reports	No	Subpart FFFFF specifies reporting requirements
*	*	*	*

[FR Doc. 06–6174 Filed 7–12–06; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 05–211; DA 06–1280]

Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of May 4, 2006, a document that included new or modified information collections. This document corrects the ordering clause in paragraph 52.

DATES: Effective June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Carter, Auction and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Erratum and Notice of Office of Management and Budget Approval of Information Collections* released on June 16, 2006. The complete text of the *Erratum and Notice of Office of Management and Budget Approval of Information Collections* and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Erratum and Notice of Office of Management and Budget Approval of Information Collections* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*.

On April 25, 2006, the Federal Communications Commission (Commission) released a *Second Report and Order and Second Further Notice of Proposed Rule Making (Designated Entity Second Report and Order)*, 71 FR 26245, May 4, 2006. The *Designated Entity Second Report and Order* included new or modified information collections. The *Erratum and Notice of Office of Management and Budget Approval of Information Collections* (Erratum) corrects paragraph 103 of the *Designated Entity Second Report and Order*, which appeared as paragraph 52 in the **Federal Register** of May 4, 2006. The Commission may conduct the information collections required by §§ 1.2105(a)(2)(ii)(B), 1.2110(b)(1)(i) and (ii), and 1.2112(b)(1)(iii) and (iv), as amended by the *Designated Entity Second Report and Order* consistent with the Paperwork Reduction Act of 1995. *See* Public Information Collection Approved by Office of Management and Budget, 71 FR 34935, June 16, 2006.

In FR Doc. 06–4257 published on May 4, 2006, (71 FR 26245) make the following corrections. On page 26250, in the third column, paragraph 52 is corrected to read as follows:

Accordingly, *it is ordered*, that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the *Second Report and Order* is hereby *adopted* and Part 1 of the Commission's rules, 47 CFR Part 1, is *amended* as set forth in Appendix B, effective 30 days after publication in the **Federal Register**, except for the grandfathering provisions, which are effective upon release. The Commission will not conduct or sponsor any new or modified information collections required pursuant to Sections 1.913(a)(6); 1.913(b); 1.919(b)(5); 1.2105(a)(2)(ii)(B); 1.2110(b)(1)(i) and (ii); 1.2110(j) and (n); 1.2111(a), (b), and (c)(2) and (3); 1.2112(b)(1)(iii) and (iv), and (2)(iii), (v) and (vii); and 1.2114(b), (f), and (g) of the amended rules adopted herein until approval by the Office of Management and Budget (OMB) has been obtained under the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Commission will publish notice in the **Federal Register** announcing such OMB approval.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–11050 Filed 7–12–06; 8:45 am]
BILLING CODE 6712–01–P

From the shoreline at 46°43'10.00" N, 092°10'31.66" W, then south to 46°43'06.24" N, 092°10'31.66" W, then east to 46°43'06.24" N, 092°09'41.76" W, then north to the shoreline at 46°43'10.04" N, 092°09'41.76" W. [Datum NAD 83].

(b) *Effective period.* This rule is effective from 8 a.m. CST on May 31, 2006 until 8 p.m. CST on November 30, 2006.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Duluth or his designated on-scene representative.

(3) The "designated on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted by calling Coast Guard Marine Safety Unit Duluth at (218) 720–5286.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Duluth or his designated on-scene representative.

Dated: May 25, 2006.

G.T. Croot,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. E6–9662 Filed 6–22–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§ § 63.6580 to 63.8830), revised as of July 1, 2005, on page 309, in § 63.8395 paragraph (b), and on page 332, in § 63.8545 paragraph (b), remove "May 16, 2003" and add in its place "May 16, 2006".

[FR Doc. 06–55523 Filed 6–22–06; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0510; FRL–8073–9]

Spinosad; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of March 8, 2006 (FRL–7758–2) concerning the establishment of tolerances for residues of spinosad in or on various commodities. This document is being issued to correct a typographical omission.

DATES: This final rule is effective June 23, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0510. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: (703) 305-7610; e-mail address:*jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. What Does this Correction Do?

FR Doc. 06–1939 published in the **Federal Register** of March 8, 2006 (71 FR 11519) (FRL–7758–2) is corrected as follows:

On page 11526, in the amendment to §180.495 (a), the table establishing tolerances appeared as a two column table. The table should have appeared as a three column table. The omitted third column should include the heading "Expiration/Revocation Date", and the entry "None" to correspond to the tolerance listed in each row. This document is being published to correct that omission.

III. Why is this Correction Issued as a Final Rule?

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 final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because because the use of notice and comment procedures are unnecessary to effectuate this correction. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

No. This action only corrects typographically omissions for a previously published final rule and does not impose any new requirements. EPA's compliance with the statutes and Executive Orders for the underlying rule

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	*	* *
Kentucky portion of the Ashland-Huntington Sulfur Dioxide Maintenance Plan.	Boyd County	05/13/05	05/24/06 [Insert first page number of publication].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.318, the table entitled "Kentucky SO_2" is amended by revising the entry for "That portion of Boyd County south of UTM northing line 4251 km" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	* *
That portion of Boyd County south of UTM northing line 4251km.	.....	.....	.....	X
* *	*	*	*	* *

* * * * *

[FR Doc. 06–4820 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0441; FRL–8174–5]

RIN 2060–AI66

National Emission Standards for the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for the printing and publishing industry which were promulgated on May 30, 1996, under the authority of section 112 of the Clean Air Act (CAA). The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP.

DATES: The direct final rule is effective on August 22, 2006 without further notice, unless EPA receives adverse written comment by June 23, 2006 or by July 10, 2006 if a public hearing is requested by June 5, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which amendments, sections or paragraphs will become effective and which are being withdrawn due to adverse comment. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on June 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0441. All documents in the docket are listed in the *www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room B–102, 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.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (D205–01), Research Triangle Park, NC 27711; telephone number (919) 541–0859; fax number (919) 541–0246; e-mail address: *salman.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	322212	Folding Paperboard Box Manufacturing.
	322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.
	322222	Coated and Laminated Paper Manufacturing.
	322223	Plastics, Foil, and Coated Paper Bag Manufacturing.
	322224	Uncoated Paper and Multiwall Bag Manufacturing.
	322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging.
	323111	Commercial Gravure Printing.
	323112	Commercial Flexographic Printing.
	323119	Other Commercial Printing.
	326192	Resilient Floor Covering Manufacturing.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rule. 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.

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

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK), the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ), and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) if adverse comments are filed. Instructions for submitting comments are provided in that document. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the EPA determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 24, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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

I. Background
II. Amendments
A. Applicability
B. Designation of Affected Source
C. Definitions
D. Standards: Publication Rotogravure Printing
E. Standards: Product and Packaging Rotogravure and Wide-Web Flexographic Printing
F. Performance Test Methods
G. Monitoring Requirements
H. Recordkeeping Requirements
I. Reporting Requirements
J. Appendix A to 40 CFR Part 63, Subpart KK
III. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility
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. Congressional Review Act.

I. Background

On May 30 1996, we issued the final NESHAP for the printing and publishing industry (61 FR 27140). The final NESHAP established standards to control organic hazardous air pollutant (HAP) emissions from new and existing publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing operations.

Since promulgation of the rule, various issues and questions have been raised by stakeholders and some errors have been identified in the regulatory text. Today's action includes direct final rule amendments that resolve inconsistencies, clarify language, and add additional compliance flexibility. We are also making direct final rule amendments to the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ), and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK). None of the amendments will have any discernable effect on the stringency of the rules.

II. Amendments

The discussion in this section of the preamble pertains to the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK) unless otherwise noted as applying to the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ) or the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO).

A. Applicability

The final rule contains a provision which some sources can use to establish and maintain themselves as area sources of HAP with respect to the Printing and Publishing Industry NESHAP. EPA has received many questions about whether this provision in 40 CFR 63.820(a)(2) is an optional or mandatory provision for sources that wish to establish and maintain themselves as area sources. We have added language to 40 CFR 63.820(a)(2) to emphasize that this is an optional provision. Facilities which establish and maintain themselves as area sources through other mechanisms, as described in 40 CFR 63.820(a)(7), are not subject to this subpart.

B. Designation of Affected Source

In 40 CFR 63.821(a)(3), the final rule provides an option for including "stand-alone coating equipment" in product and packaging rotogravure or wide-web flexographic printing affected sources. We have amended 40 CFR 63.821(a)(3) to now refer to "stand-alone equipment" rather than "stand-alone coating equipment." This change provides the owner or operator with more flexibility for bringing additional equipment into the product and packaging rotogravure or wide-web flexographic printing affected source. This may simplify the compliance demonstration for some affected sources because they will not need to separately quantify the materials used on stand-alone equipment in order to exclude them from the compliance demonstration as is necessary when stand-alone equipment is not part of the product and packaging rotogravure or wide-web flexographic printing affected source. This may also simplify the compliance demonstration for affected sources which vent emissions from product and packaging rotogravure or wide-web flexographic presses and from stand-alone equipment to a common control device.

Consistent with this change, we have also amended 40 CFR 63.3300(a) of the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ) to now refer to "stand-alone equipment" rather than "stand-alone coating equipment."

In response to several requests we have added options in 40 CFR 63.821(a)(4) for including narrow-web flexographic presses and in 40 CFR 63.821(a)(5) for including proof presses in product and packaging rotogravure or wide-web flexographic printing affected sources. These options may simplify the compliance demonstration for some affected sources because they will not need to separately quantify the materials used on narrow-web flexographic presses or proof presses in order to exclude them from the compliance demonstration as is necessary when narrow-web flexographic presses and proof presses are not part of the product and packaging rotogravure or wide-web flexographic printing affected source.

We have corrected 40 CFR 63.821(a)(2)(ii)(A) to state that the total mass of materials applied by the press using product and packaging rotogravure "print" stations be included in the numerator. The final rule incorrectly referred to product and packaging rotogravure "work" stations in the numerator.

We have added a new 40 CFR 63.821(a)(6) to clarify that certain operations affiliated with product and packaging rotogravure or wide-web flexographic printing affected sources are part of the printing and publishing industry source category, but are not part of the product and packaging rotogravure or wide-web flexographic printing affected source. These affiliated operations include mixing or dissolving of ink or coating ingredients prior to application; ink or coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of ink or coating lines and line parts; handling and storage of inks, coatings and solvents; and conveyance and treatment of wastewater. Including these affiliated operations in the printing and publishing source category is consistent with 40 CFR 63.7985(d)(2) of the Miscellaneous Coating Manufacturing NESHAP (40 CFR part 63, subpart HHHHH) which exempts these affiliated operations from coverage under that rule. They were excluded from the product and packaging rotogravure or wide-web flexographic printing affected source in the final rule because they were not within the scope of the data collected and used to establish the floor and the maximum achievable control technology (MACT) standard for these affected sources.

These affiliated operations continue to be part of publication rotogravure affected sources as described in 40 CFR 63.821(a)(1). The material balance records kept for the solvent recovery systems used by all publication rotogravure facilities were broader in scope and included these affiliated operations. As a result, they form part of the basis for the floor and the MACT standard for publication rotogravure affected sources.

We have added a new 40 CFR 63.821(a)(7) to clarify that certain lithographic presses, letterpress presses, or screen printing presses, referred to in this new paragraph as "other presses," are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source unless the owner or operator chooses to include them in the affected source as stand-alone equipment as provided in 40 CFR 63.821(a)(3). A definition of the term "other presses" has been added to the rule.

Rotogravure, flexography, lithography, letterpress, and screen printing were all part of the printing and publishing source category in the "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" published on July 16, 1992 (57 FR 31576). The source category was described in detail in "Documentation for Developing the Initial Source Category List" (EPA–450/3–91–030, July 1992). The publication rotogravure affected source in the final rule addresses the publication rotogravure printing process. The product and packaging rotogravure or wide-web flexographic printing affected source in the final rule addresses the product and packaging rotogravure and wide-web flexographic printing processes. Lithography, letterpress, and screen printing are different printing processes than publication rotogravure, product and packaging rotogravure, and flexographic printing. Lithographic, letterpress, and screen printing presses that did not also meet the definition of rotogravure press or wide-web flexographic press (*i.e.*, that had no rotogravure print stations and no wide-web flexographic print stations), therefore, were not part of the publication rotogravure affected source, or the product and packaging rotogravure or wide-web flexographic printing affected source in the final rule.

We have added a new 40 CFR 63.821(a)(8) to clarify that narrow-web flexographic presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source unless the owner or operator chooses to include them in the product and packaging rotogravure or wide-web flexographic printing affected source as provided in 40 CFR 63.821(a)(3) through (5). The rule did not previously treat narrow-web flexographic presses as part of either of these affected sources. We are providing the option of including them in the product and packaging rotogravure or wide-web flexographic printing affected source because this may simplify the compliance

demonstration for some affected sources that previously had to separately quantify the materials used on these presses in order to exclude them from the compliance demonstration.

We have added the word "affected" to 40 CFR 63.821(b)(1) and (2) to clarify that these paragraphs apply to "affected sources."

C. Definitions

We have added, removed, and revised a number of definitions in the rule. These changes add clarity and consistency to the rule.

We added a definition of "coating" to clarify that in addition to solvent-borne coatings and waterborne coatings, materials with 100 percent or near 100 percent solids such as wax coatings, wax laminations, extrusion coatings, ultra-violet cured coatings, etc., are coatings. Materials used to form unsupported substrates such as calendaring of vinyl, blown film, cast film, etc., are not coatings.

We added a definition of "flexible packaging." This term is used in the revised definition of "printing operation."

We added a definition of "narrow-web flexographic press" to complement the already existing definition of "wide-web flexographic press."

We added a definition of "other press" to complement the use of that term in 40 CFR 63.821(a)(7).

We added a definition of "publication rotogravure press" to complement the definition of "rotogravure press." This definition clarifies that a publication rotogravure press may include one or more flexographic imprinters and that a publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

We added a definition of "stand-alone equipment" and removed the definition of "stand-alone coating equipment." This change provides the owner or operator with additional flexibility for bringing additional equipment into the product and packaging rotogravure or wide-web flexographic printing affected source. We also removed the definitions of "coating operation" and "coating station." Since these two terms were used only in the definition of stand-alone coating equipment and they are not used in the definition of stand-alone equipment, these two definitions are no longer needed.

We revised the definition of "certified product data sheet" (CPDS) to refer to 40 CFR 63.827(b) rather than to Method 311 or 40 CFR 63.827(b) since Method 311 is discussed in 40 CFR 63.827(b). We included volatile matter weight fraction along with solids weight fraction in the reference to 40 CFR 63.827(c) since both of these attributes are addressed in 40 CFR 63.827(c). We also explained how a material safety data sheet may serve as a CPDS.

We revised the definition of "control device efficiency" to refer to organic HAP emissions rather than to HAP emissions. The word "organic" was inadvertently omitted from the original definition.

We revised the definitions of "flexographic press" and "rotogravure press" to clarify that the unwind or feed section may contain more than one unwind or feed station. For example, a press that prints on paper and then laminates plastic film to the paper will have an unwind or feed station for the paper, and an unwind or feed station for the plastic that is being laminated to the paper. Both are included in the unwind or feed section.

We revised the definition of "flexographic print station" to clarify the meaning of the term and to distinguish it from certain operations which take place on "other presses."

We revised the definition of "printing operation" to include fabric or other textiles for use in flexible packaging, and to exclude wood furniture components and wood building products. Fabric is printed by roller (intaglio), rotary screen, ink jet, and other printing techniques. Rotogravure and flexographic printing are not traditional fabric printing techniques because the materials used are too fluid. Today, there is some rotogravure or flexographic printing of non-woven substrates, which may meet the definition of "fabric" or "textile" in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO). This includes rotogravure or flexographic printing of fabric or other textiles for use in flexible packaging which is most appropriately covered by the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK). Therefore, we are including rotogravure or flexographic printing of fabric or other textiles for use in flexible packaging in the definition of "printing operation" in the Printing and Publishing Industry NESHAP.

Consistent with this change, we have also amended 40 CFR 63.4281 of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) by adding a new paragraph (d)(4) which states that equipment used to coat or print on fabric or other textiles for use in flexible packaging that is included in an affected source under the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK) is not part of an affected source under the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP.

There is some rotogravure printing of wood furniture components and wood building products. These wood printing operations are covered by the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) or the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ). Therefore, we are excluding them from the definition of "printing operation" in the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK).

We revised the definition of "proof press" by broadening it to include checking the quality of substrates, inks, or other solids-containing materials. Proof presses sometimes serve these other purposes, for example, at a paper mill or ink manufacturing facility.

We corrected the definition of "rotogravure print station" to use the term "print station" rather than the term "work station" in the body of the definition and revised this definition to clarify that other types of materials that may not be referred to by the supplier or by the user as inks can be applied by rotogravure print stations. The term "ink" in the definition in the final rule was intended to include any solids containing material since materials that might be characterized by the supplier or by the user as inks, coatings, or adhesives are applied on rotogravure print stations.

We revised the definition of "work station" to clarify that work stations are present on equipment other than rotogravure or wide-web flexographic presses. For example, work stations are present on proof presses and stand-alone equipment.

The symbol H was used in two different ways in the final rule. To resolve this inconsistency, we revised the definition of the symbol H and changed the symbol used in equation 8 from H to H_{app}. The symbol H is now defined to mean the monthly organic HAP emitted in kilograms. The symbol H_{app} is defined to mean the total monthly organic HAP applied in kilograms. Since the symbol H_{app} is only used in equation 8, we have placed the definition of H_{app} immediately after that equation.

The symbols C_i and MW_i were used only in equation 20 in the final rule. The definitions of these symbols were inconsistent with the manner in which the results of Methods 25 and 25A are expressed. The definitions referred to individual organic compounds. The results of Methods 25 and 25A, however, are expressed as carbon. We

have added a new symbol C_c for use in equation 20. The definition of C_c is consistent with the manner in which the results of Methods 25 and 25A are expressed. Since C_c is used only in equation 20, we have placed the definition of C_c immediately after that equation. The symbols MW_i and C_i are not needed and have been removed. The symbols M_f and Q_{sd} are used only in equation 20. We have moved the definitions of these symbols to immediately after that equation.

D. Standards: Publication Rotogravure Printing

We revised 40 CFR 63.824(b)(1)(i)(A) and (b)(3)(i) by inserting a comma between "varnish" and "adhesive" to clarify that these are two different types of materials.

We revised 40 CFR 63.824(b)(1)(ii)(A) and (b)(2)(ii) to clarify the continuous emission monitoring requirements for solvent recovery devices and oxidizers. For solvent recovery devices, a single continuous volumetric gas flow measurement should be sufficient since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. For oxidizers, separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required.

E. Standards: Product and Packaging Rotogravure and Wide-Web Flexographic Printing

We corrected the first sentence of 40 CFR 63.825(b) introductory text to refer to "organic HAP emissions" rather than to "emissions."

We revised 40 CFR 63.825(b)(6) to use the symbol H_{app} instead of H because the symbol H is used with a different meaning elsewhere in the final rule. We defined H_{app} in 40 CFR 63.825(b)(6) in the same way in which H was previously used in this paragraph of the final rule.

We revised 40 CFR 63.825(c)(2)(iii) and (d)(2) to clarify the continuous emission monitoring requirements for solvent recovery devices and oxidizers. For solvent recovery devices, a single continuous volumetric gas flow measurement should be sufficient since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. For oxidizers, separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required.

We revised 40 CFR 63.825(d)(1)(iv) to refer to a common oxidizer rather than a common solvent recovery system because 40 CFR 63.825(d) describes compliance demonstration requirements for oxidizers.

F. Performance Test Methods

We revised 40 CFR 63.827(a)(1)(i) and (ii) to clarify that there must be continuous emission monitors for both total organic volatile matter concentration and volumetric gas flow rate, and that the continuous emission monitoring must be done in accordance with the requirements of this subpart. Both concentration and flow data are needed to calculate the total organic volatile matter mass flow.

In 40 CFR 63.827(b) of the final rule, the provisions for using manufacturers formulation data for determining organic HAP content required the inclusion of all HAP present at a level greater than 0.1 weight percent in any raw material used. This requirement was based on indications from ink and coating manufacturers that they were already receiving this level of information from their raw material suppliers. A trade association representing certain raw material suppliers submitted information showing that ink and coating manufacturers are not receiving this level of information from their suppliers. Rather, they are receiving information consistent with the requirements of the Occupational Safety and Health Administration (OSHA) hazard communication standards which require the identification of hazardous constituents present at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other hazardous constituents. We revised 40 CFR 63.827(b) to make it consistent with the OSHA hazard communication standards, included some examples, and clarified that test data and formulation data can be provided by suppliers or independent third parties.

We revised 40 CFR 63.827(c) by including some examples, specifying how to calculate weight solids fraction from volatile matter weight fraction, and clarifying that test data and formulation data can be provided by suppliers or independent third parties.

We revised 40 CFR 63.827(d)(1)(vi) to clarify that the same method must be used to determine inlet and outlet organic volatile matter concentration, and that the 50 parts per million by volume levels for Method 25A are expressed on an as carbon basis.

We revised 40 CFR 63.827(d)(1)(viii) to clarify that the results of Methods 25 and 25A are expressed on an as carbon basis and to define the symbols used in equation 20 immediately after that equation.

In 40 CFR 63.827(e)(1) and (2) the final rule referred to the capture efficiency procedures in appendix B to 40 CFR 52.741 and 40 CFR 52.741(a)(4)(iii)(B). We revised 40 CFR 63.827(e)(1) and (2) to refer to Methods 204 and 204A through F of 40 CFR part 51, appendix M. These methods did not exist when the final rule was published on May 30, 1996. They are updated versions of the procedures specified in the final rule.

G. Monitoring Requirements

We revised 40 CFR 63.828(a)(3) to clarify that there must be continuous emission monitors for both total organic volatile matter concentration and volumetric gas flow rate. Both concentration and flow data are needed to calculate the total organic volatile matter mass flow.

H. Recordkeeping Requirements

We corrected 40 CFR 63.829(e)(1) and (2) to state that records must be kept of the total mass, as opposed to volume, of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month. This is consistent with 40 CFR 63.821(b)(2) and 40 CFR 63.827(b)(2) which require these measurements to be done on a mass basis.

I. Reporting Requirements

We revised 40 CFR 63.830(b)(6) to clarify that summary reports are required even if the affected source does not have any control devices or does not take the performance of any control devices into account in demonstrating compliance with the emission limitations in 40 CFR 63.824 or 40 CFR 63.825. As stated in 40 CFR 63.830(b)(6)(i) through (iv), these summary reports must include information about various types of exceedances. These types of exceedances can occur at sources with or without control devices.

J. Appendix A to 40 CFR Part 63, Subpart KK

We revised appendix A to subpart KK to make several clarifications. In paragraph 3.2 of appendix A we have clarified that the confidence intervals are two-sided, changed the designation of the table to Table A–1, changed the table references to Table A–1, and corrected the table entry for 11 valid test runs. In paragraph 4.8 of appendix A we have changed the table reference to Table A–1.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action adds clarifications and corrections to the final standards. However, OMB has previously approved the information collection requirements contained in the existing regulations (69 FR 3912, January 27, 2004) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0335 (EPA ICR No. 1739.04). A copy of the Information Collection Request (ICR) may be obtained from Ms. Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You also may download a copy from the internet at *http://www.epa.gov/icr*. Include the ICR number in any correspondence.

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

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

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 1,000 as defined by the Small Business Administration's 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 impact of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We conducted an assessment of the impact of the May 30, 1996 final rule on small businesses within the industries affected by that rule. This analysis allowed us to conclude that there would not be a significant economic impact on a substantial number of small entities from the implementation of that rule. There is nothing contained in the direct final rule amendments that will impose an economic impact on small businesses in any way not considered in the analysis of the May 30, 1996 final rule; this means that the direct final rule amendments have no incremental economic impact on small businesses beyond what was already examined in the final 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a 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 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 direct final rule amendments 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 1 year. The direct final rule amendments apply to affected sources in the printing and publishing industry and clarify and correct errors in the final rule and, therefore, add no additional burden on sources. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 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" 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."

The direct final rule amendments 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. No printing and publishing facilities subject to the direct final rule amendments are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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." The direct final rule amendments 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, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments 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 direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are 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 (NTTAA) of 1995, Public Law 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

These amendments add references to EPA Methods 204 and 204A through F of 40 CFR part 51, appendix M for determining capture efficiency. These methods replace the capture efficiency procedures of appendix B to 40 CFR 52.741 and 40 CFR 52.741(a)(4)(iii)(B). EPA Methods 204 and 204A through F are updated versions of the previously used procedures.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 204 and 204A–F. The search and review results have been documented and are placed in the docket for the amendments.

EPA test methods included in the rule are specified in 40 CFR 63.827. Under 40 CFR 63.7(f) and 40 CFR 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 of the EPA testing methods, performance specifications, or procedures.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct 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 direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on August 22, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: May 18, 2006.

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 KK—[Amended]

■ 2. Section 63.820 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 63.820 Applicability.

(a) * * *

(2) Each new and existing facility at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated for which the owner or operator chooses to commit to and meets the criteria of paragraphs (a)(2)(i) and (ii) of this section for purposes of establishing the facility to be an area source of HAP with respect to this subpart. A facility which establishes area source status through some other mechanism, as described in paragraph (a)(7) of this section, is not subject to the provisions of this subpart.

* * * * *

■ 3. Section 63.821 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(ii)(A), and (a)(3).

■ b. Adding paragraphs (a)(4) through (a)(8).

■ c. Revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 63.821 Designation of Affected Sources.

(a) * * *

(1) All of the publication rotogravure presses and all related equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment at a facility.

(2) All of the product and packaging rotogravure or wide-web flexographic printing presses at a facility plus any other equipment at that facility which the owner or operator chooses to include in accordance with paragraphs (a)(3) or (a)(4) of this section, except

(i) Proof presses, unless the owner or operator chooses to include proof presses in the affected source in accordance with paragraph (a)(5) of this section.

(ii) * * *

(A) the sum of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using product and packaging rotogravure print stations and the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using wide-web flexographic print stations in each month never exceeds 5 percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press in that month, including all inboard and outboard stations; and

* * * * *

(3) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source stand-alone equipment subject to the following provisions:

(i) Stand-alone equipment meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The stand-alone equipment and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids-containing materials to the same web or substrate; or

(B) The stand-alone equipment and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(C) A common control device is used to control organic HAP emissions from the stand-alone equipment and from one or more product and packaging rotogravure or wide-web flexographic printing presses;

(ii) All eligible stand-alone equipment located at the facility is included in the affected source; and

(iii) No product and packaging rotogravure or wide-web flexographic presses are excluded from the affected source under the provisions of paragraph (a)(2)(ii) of this section.

(4) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source narrow-web flexographic presses subject to the following provisions:

(i) Each narrow-web flexographic press meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The narrow-web flexographic press and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids containing material to the same web or substrate; or

(B) The narrow-web flexographic press and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(C) A common control device is used to control organic HAP emissions from the narrow-web flexographic press and from one or more product and packaging rotogravure or wide-web flexographic presses; and

(ii) All eligible narrow-web flexographic presses located at the facility are included in the affected source.

(5) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source rotogravure proof presses or flexographic proof presses subject to the following provisions:

(i) Each proof press meeting any of the criteria specified in this subparagraph is eligible for inclusion.

(A) The proof press and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(B) A common control device is used to control organic HAP emissions from the proof press and from one or more product and packaging rotogravure or wide-web flexographic presses; and

(ii) All eligible proof presses located at the facility are included in the affected source.

(6) Affiliated operations such as mixing or dissolving of ink or coating ingredients prior to application; ink or coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of ink or coating lines and line parts; handling and storage of inks, coatings, and solvents; and conveyance and treatment of wastewater are part of the printing and publishing industry source category, but are not part of the product and packaging rotogravure or wide-web flexographic printing affected source.

(7) Other presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source and are, therefore, exempt from the requirements of this subpart except as provided in paragraph (a)(3) of this section.

(8) Narrow web-flexographic presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source and are, therefore, exempt from the requirements of this subpart except as provided in paragraphs (a)(3) through (5) of this section.

(b) * * *

(1) The owner or operator of the affected source applies no more than 500 kilograms (kg) per month, for every month, of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials on product and packaging rotogravure or wide-web flexographic printing presses, or

(2) The owner or operator of the affected source applies no more than

400 kg per month, for every month, of organic HAP on product and packaging rotogravure or wide-web flexographic printing presses.

* * * * *

■ 4. Section 63.822 is amended by:

■ a. Adding in alphabetical order in paragraph (a) definitions for "coating," "flexible packaging," "narrow-web flexographic press," "other press," "publication rotogravure press," and "stand-alone equipment."

■ b. Removing the definitions of "coating operation," "coating station," and "stand-alone coating equipment" from paragraph (a).

■ c. Revising the definitions in paragraph (a) of "certified product data sheet (CPDS)," "control device efficiency," "flexographic press," "flexographic print station," "printing operation," "proof press," "rotogravure press," "rotogravure print station," and "work station."

■ d. Revising paragraph (b)(12).

■ e. Removing and reserving paragraphs (b)(6), (b)(22), (b)(32), and (b)(36) to read as follows:

§ 63.822 Definitions.

(a) * * *

* * * * *

Certified product data sheet (CPDS) means documentation furnished by suppliers of inks, coatings, varnishes, adhesives, primers, solvents, and other materials or by an independent third party that provides the organic HAP weight fraction of these materials determined in accordance with § 63.827(b), or the volatile matter weight fraction or solids weight fraction determined in accordance with § 63.827(c). A material safety data sheet (MSDS) may serve as a CPDS provided the MSDS meets the data requirements of § 63.827(b) and (c). The purpose of the CPDS is to assist the owner or operator in demonstrating compliance with the emission limitations presented in §§ 63.824–63.825.

Coating means material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, solvent-borne coatings, waterborne coatings, wax coatings, wax laminations, extrusion coatings, extrusion laminations, 100 percent solid adhesives, ultra-violet cured coatings, electron beam cured coatings, hot melt coatings, and cold seal coatings. Materials used to form unsupported substrates such as calendaring of vinyl, blown film, cast film, extruded film, and coextruded film are not considered coatings.

* * * * *

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total organic HAP emissions that are introduced into the control device, expressed as a percentage.

* * * * *

Flexible packaging means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, labels, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

Flexographic press means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection section. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

Flexographic print station means a print station on which a flexographic printing operation is conducted. A flexographic print station includes an anilox roller that transfers material to a raised image (type or art) on a plate cylinder. The material is then transferred from the image on the plate cylinder to the web or sheet to be printed. A flexographic print station may include a fountain roller to transfer material from the reservoir to the anilox roller, or material may be transferred directly from the reservoir to the anilox roller. The materials applied are of a fluid, rather than paste, consistency.

* * * * *

Narrow-web flexographic press means a flexographic press that is not capable of printing substrates greater than 18 inches in width and that does not also meet the definition of rotogravure press (i.e., it has no rotogravure print stations).

* * * * *

Other press means a lithographic press, letterpress press, or screen printing press that does not meet the definition of rotogravure press or flexographic press (i.e., it has no rotogravure print stations and no flexographic print stations), and that does not print on fabric or other textiles as defined in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO), wood furniture components as defined in the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) or wood building products as defined in the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ).

* * * * *

Printing operation means the formation of words, designs, or pictures on a substrate other than wood furniture components as defined in the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ), wood building products as defined in the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ), and fabric or other textiles as defined in the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO), except for fabric or other textiles for use in flexible packaging.

* * * * *

Proof press means any press which prints only non-saleable items used to check the quality of image formation of rotogravure cylinders or flexographic plates; substrates such as paper, plastic film, metal foil, or vinyl; or ink, coating varnish, adhesive, primer, or other solids-containing material.

* * * * *

Publication rotogravure press means a rotogravure press used for publication rotogravure printing. A publication rotogravure press may include one or more flexographic imprinters. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

* * * * *

Rotogravure press means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations, including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

Rotogravure print station means a print station on which a rotogravure printing operation is conducted. A

rotogravure print station includes a rotogravure cylinder and supply for ink or other solids containing material. The image (type and art) to be printed is etched or engraved below the surface of the rotogravure cylinder. On a rotogravure cylinder the printing image consists of millions of minute cells.

* * * * *

Stand-alone equipment means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator); a series of one or more work stations and any associated dryers; and a rewind, stack, or collection section that is not part of a product and packaging rotogravure or wide-web flexographic press. Stand-alone equipment is sometimes referred to as "off-line" equipment.

* * * * *

Work station means a unit on which material is deposited onto a substrate.

(b) * * *

(6) [Reserved]

* * * * *

(12) H = the monthly organic HAP emitted, kg.

* * * * *

(22) [Reserved]

* * * * *

(32) [Reserved]

* * * * *

(36) [Reserved]

* * * * *

■ 5. Section 63.824 is amended by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(ii), and (b)(3)(i) to read as follows:

§ 63.824 Standards: Publication rotogravure printing.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material used by the affected source during the month.

* * * * *

(ii) * * *

(A) Install continuous emission monitors to collect the data necessary to calculate the total organic volatile matter mass flow in the gas stream entering and the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for each month such that the percent control efficiency (E) of the solvent recovery device can be calculated for the month. This requires continuous emission monitoring of the total organic volatile matter concentration in the gas stream entering the solvent recovery device, the total organic volatile matter concentration in the gas stream exiting the solvent recovery device, and the volumetric gas flow rate through the solvent recovery device. A single continuous volumetric gas flow measurement should be sufficient for a solvent recovery device since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. Each month's individual inlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream entering the solvent recovery device for the month. Each month's individual outlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for the month.

* * * * *

(2) * * *

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. The percent control efficiency of the oxidizer shall be demonstrated in accordance with the requirements of paragraph (b)(1)(ii) of this section except that separate continuous measurements of the inlet volumetric gas flow rate and the outlet volumetric gas flow rate are required for an oxidizer.

(3) * * *

(i) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material used in the affected source during the month.

* * * * *

■ 6. Section 63.825 is amended by:

■ a. Revising the first sentence of paragraph (b) introductory text.

■ b. Revising paragraph (b)(6).

■ c. Revising paragraph (c)(2)(iii).

■ d. Revising paragraph (d)(1)(iv).

■ e. Revising paragraph (d)(2) to read as follows:

§ 63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.

* * * * *

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source shall limit organic HAP emissions to no more than 5 percent of the organic HAP applied for the month; or to no more than 4 percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month; or to no more than 20 percent of the mass of solids applied for the month; or to a calculated equivalent allowable mass based on the organic HAP and solids contents of the inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month. * * *

* * * * *

(6) Demonstrate that the total monthly organic HAP applied, H_{app}, as determined by Equation 8, is less than the calculated equivalent allowable organic HAP, H_a, as determined by paragraph (e) of this section.

$$H_{app} = \sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj} \qquad \text{Eq. 8}$$

Where:

H_{app} = Total monthly organic HAP applied, kg.

* * * * *

(c) * * *

(2) * * *

(iii) Install continuous emission monitors to collect the data necessary to calculate the total organic volatile matter mass flow in the gas stream entering and the total organic volatile mass flow in the gas stream exiting the solvent recovery device for each month such that the percent control efficiency (E) of the solvent recovery device can be calculated for the month. This requires continuous emission monitoring of the total organic volatile matter concentration in the gas stream entering the solvent recovery device, the total organic volatile matter concentration in the gas stream exiting the solvent recovery device, and the volumetric gas flow rate through the solvent recovery device. A single continuous volumetric gas flow measurement should be sufficient for a solvent recovery device since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. Each month's individual inlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream entering the solvent recovery device for the month. Each month's individual outlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for the month.

* * * * *

(d) * * *

(1) * * *

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials

applied, or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common control device during the month.

* * * * *

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. The percent control efficiency of the oxidizer shall be demonstrated in accordance with the requirements of paragraph (c)(2) of this section except that separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required for an oxidizer.

* * * * *

■ 7. Section 63.827 is amended by:
■ a. Revising paragraphs (a)(1)(i) and (a)(1)(ii).
■ b. Revising paragraph (b).
■ c. Revising paragraph (c).
■ d. Revising paragraphs (d)(1)(vi) and (d)(1)(viii).
■ e. Revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 63.827 Performance Test Methods.

(a) * * *

(1) * * *

(i) It is equipped with continuous emission monitors for determining total organic volatile matter concentration and the volumetric gas flow rate, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall organic HAP control efficiency can be calculated, and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.824(b)(1)(ii), § 63.825(b)(2)(ii), § 63.825(c)(2), or § 63.825(d)(2), as applicable, and § 63.828, or

* * * * *

(b) Determination of the weight fraction organic HAP of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials used by a publication rotogravure affected source shall be conducted according to paragraph (b)(1) of this section. Determination of the weight fraction organic HAP of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials applied by a product and packaging rotogravure or wide-web flexographic printing affected source shall be conducted according to paragraph (b)(2) of this section. If the weight fraction organic HAP values are not determined using the procedures in paragraphs (b)(1) or (b)(2) of this section, the owner or operator must submit an alternative test method for determining their values for approval by the Administrator in accordance with § 63.7(f). The recovery efficiency of the test method must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(1) Each owner or operator of a publication rotogravure affected source shall determine the weight fraction organic HAP of each ink, coating, varnish, adhesive, primer, solvent, and other material used by following one of the procedures in paragraphs (b)(1)(i) through (iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The organic HAP content determined by Method 311 must be calculated according to the criteria and procedures in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) Include each organic HAP determined to be present at greater than or equal to 0.1 weight percent for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds.

(B) Express the weight fraction of each organic HAP included according to paragraph (b)(1)(i)(A) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(C) Calculate the total weight fraction of organic HAP in the tested material by summing the weight fraction of each organic HAP included according to paragraph (b)(1)(i)(A) of this section and truncating the result to three places after the decimal point (for example, 0.763).

(ii) The owner or operator may determine the weight fraction volatile matter of the material in accordance with § 63.827(c)(1) and use this value for the weight fraction organic HAP for all compliance purposes.

(iii) The owner or operator may use formulation data to determine the weight fraction organic HAP of a material. Formulation data may be provided to the owner or operator on a CPDS by the supplier of the material or an independent third party. Formulation data may be used provided that the weight fraction organic HAP is calculated according to the criteria and procedures in paragraphs (b)(1)(iii)(A) through (D) of this section. In the event of an inconsistency between the formulation data and the result of Method 311 of appendix A of this part, where the test result is higher, the Method 311 data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(A) For each raw material used in making the material, include each organic HAP present in that raw material at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds. The weight fraction of each such organic HAP in each raw material must be determined by Method 311 of appendix A of this part, by an alternate method approved by the Administrator, or from a CPDS provided by the raw material supplier or an independent third party. The weight fraction of each such organic HAP in each raw material must be expressed as a value truncated to four places after the decimal point (for example, 0.1291).

(B) For each raw material used in making the material, the weight fraction contribution of each organic HAP, which is included according to paragraph (b)(1)(iii)(A) of this section, in that raw material to the weight fraction organic HAP of the material is calculated by multiplying the weight fraction, truncated to four places after the decimal point (for example, 0.1291), of that organic HAP in that raw material times the weight fraction of that raw material, truncated to four places after the decimal point (for example, 0.2246), in the material. The product of each such multiplication is to be truncated to four places after the decimal point (for example, 0.1291 times 0.2246 yields 0.02899586 which truncates to 0.0289).

(C) For each organic HAP which is included according to paragraph (b)(1)(iii)(A) of this section, the total weight fraction of that organic HAP in the material is calculated by adding the weight fraction contribution of that organic HAP from each raw material in which that organic HAP is included according to paragraph (b)(1)(iii)(A) of this section. The sum of each such addition must be expressed to four places after the decimal point.

(D) The total weight fraction of organic HAP in the material is the sum of the counted individual organic HAP weight fractions. This sum must be truncated to three places after the decimal point (for example, 0.763).

(2) Each owner or operator of a product and packaging rotogravure or

wide-web flexographic printing affected source shall determine the organic HAP weight fraction of each ink, coating, varnish, adhesive, primer, solvent, and other material applied by following one of the procedures in paragraphs (b)(2)(i) through (iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The organic HAP content determined by Method 311 must be calculated according to the criteria and procedures in paragraphs (b)(2)(i)(A) through (C) of this section.

(A) Include each organic HAP determined to be present at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds.

(B) Express the weight fraction of each organic HAP included according to paragraph (b)(2)(i)(A) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(C) Calculate the total weight fraction of organic HAP in the tested material by summing the weight fraction of each organic HAP included according to paragraph (b)(2)(i)(A) of this section and truncating the result to three places after the decimal point (for example, 0.763).

(ii) The owner or operator may determine the weight fraction volatile matter of the material in accordance with § 63.827(c)(2) and use this value for the weight fraction organic HAP for all compliance purposes.

(iii) The owner or operator may use formulation data to determine the weight fraction organic HAP of a material. Formulation data may be provided to the owner or operator on a CPDS by the supplier of the material or an independent third party. Formulation data may be used provided that the weight fraction organic HAP is calculated according to the criteria and procedures in paragraphs (b)(2)(iii)(A) through (D) of this section. In the event of an inconsistency between the formulation data and the result of Method 311 of appendix A of this part, where the test result is higher, the Method 311 data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(A) For each raw material used in making the material, include each organic HAP present in that raw material at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds. The weight fraction of each such organic HAP in each raw material must be determined by Method 311 of appendix A of this part, by an alternate method approved by the Administrator, or from a CPDS provided by the raw material supplier or an independent third party. The weight fraction of each such organic HAP in each raw material must be expressed as a value truncated to four places after the decimal point (for example, 0.1291).

(B) For each raw material used in making the material, the weight fraction contribution of each organic HAP, which is included according to paragraph (b)(2)(iii)(A) of this section, in that raw material to the weight fraction organic HAP of the material is calculated by multiplying the weight fraction, truncated to four places after the decimal point (for example, 0.1291), of that organic HAP in that raw material times the weight fraction of that raw material, truncated to four places after the decimal point (for example, 0.2246), in the material. The product of each such multiplication is truncated to four places after the decimal point (for example, 0.1291 times 0.2246 yields 0.02899586 which truncates to 0.0289).

(C) For each organic HAP which is included according to paragraph (b)(2)(iii)(A) of this section, the total weight fraction of that organic HAP in the material is calculated by adding the weight fraction contribution of that organic HAP from each raw material in which that organic HAP is included according to paragraph (b)(2)(iii)(A) of this section. The sum of each such addition must be expressed to four places after the decimal point.

(D) The total weight fraction of organic HAP in the material is the sum of the counted individual organic HAP weight fractions. This sum is to be truncated to three places after the decimal point (for example, 0.763).

(c) Determination of the weight fraction volatile matter content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials used by a publication rotogravure affected source shall be conducted according to paragraph (c)(1) of this section. Determination of the weight fraction volatile matter content and weight fraction solids content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials applied by a product and packaging rotogravure or wide-web flexographic printing affected source shall be conducted according to paragraph (c)(2) of this section.

(1) Each owner or operator of a publication rotogravure affected source shall determine the volatile matter weight fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material used by following the procedures in paragraph (b)(1)(i) of this section, or by using formulation data as described in paragraph (c)(3) of this section.

(i) Determine the volatile matter weight fraction of the material using Method 24A of 40 CFR part 60, appendix A. The Method 24A determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The Method 24A result shall be truncated to three places after the decimal point (for example, 0.763). If these values cannot be determined using Method 24A, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing affected source shall determine the volatile matter weight fraction and solids weight fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material applied by following the procedures in paragraphs (b)(2)(i) and (ii) of this section, or by using formulation data as described in paragraph (c)(3) of this section.

(i) Determine the volatile matter weight fraction of the material using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The Method 24 result shall be truncated to three places after the decimal point (for example, 0.763). If these values cannot be determined using Method 24, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator.

(ii) Calculate the solids weight fraction Method 24 result by subtracting the volatile matter weight fraction Method 24 result from 1.000. This calculation may be performed by the owner or operator, the supplier of the material, or an independent third party.

(3) The owner or operator may use formulation data to determine the volatile matter weight fraction or solids weight fraction of a material. Formulation data may be provided to

the owner or operator on a CPDS by the supplier of the material or an independent third party. The volatile matter weight fraction and solids weight fraction shall be truncated to three places after the decimal point (for example, 0.763). In the event of any inconsistency between the formulation data and the result of Method 24 or Method 24A of 40 CFR part 60, appendix A, where the test result for volatile matter weight fraction is higher or the test result for solids weight fraction is lower, the applicable test method data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(d) * * *

(1) * * *

(vi) Method 25 of 40 CFR part 60, appendix A, shall be used to determine organic volatile matter concentration, except as provided in paragraphs (d)(1)(vi)(A) through (D) of this section. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with notice of the performance test required under § 63.7(c). The same method must be used for both the inlet and outlet measurements. The owner or operator may use Method 25A of 40 CFR part 60, appendix A, if (A) An exhaust gas organic volatile matter concentration of 50 parts per million by volume (ppmv) or less as carbon is required to comply with the standards of §§ 63.824–63.825, or

(B) The organic volatile matter concentration at the inlet to the control system and the required level of control are such to result in exhaust gas organic volatile matter concentrations of 50 ppmv or less as carbon, or

(C) Because of the high efficiency of the control device, the anticipated organic volatile matter concentration at the control device exhaust is 50 ppmv or less as carbon, regardless of inlet concentration, or

(D) The control device is not an oxidizer.

* * * * *

(viii) Organic volatile matter mass flow rates shall be determined using Equation 20:

$$M_f = Q_{sd} C_c [12.0] [0.0416] [10^{-6}] \quad \text{Eq. 20}$$

Where:

M_f = Total organic volatile matter mass flow rate, kg/hour (h).

Q_{sd} = Volumetric flow rate of gases entering or exiting the control device, as determined according to § 63.827(d)(1)(ii), dry standard cubic meters (dscm)/h.

C_c = Concentration of organic compounds as carbon, ppmv.

12.0 = Molecular weight of carbon.

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

* * * * *

(e) * * *

(1) You may assume your capture efficiency equals 100 percent if your capture system is a permanent total enclosure (PTE). You must confirm that your capture system is a PTE by demonstrating that it meets the requirements of section 6 of Method 204 of 40 CFR part 51, appendix M, and that all exhaust gases from the enclosure are delivered to a control device.

(2) You may determine capture efficiency according to the protocols for testing with temporary total enclosures that are specified in Methods 204 and 204A through F of 40 CFR part 51, appendix M. You may exclude never controlled work stations from such capture efficiency determinations.

* * * * *

■ 8. Section 63.828 is amended by revising paragraph (a)(3) to read as follows:

§ 63.828 Monitoring Requirements.

(a) * * *

(3) An owner or operator complying with §§ 63.824–63.825 through continuous emission monitoring of a control device shall install, calibrate, operate, and maintain continuous emission monitors to measure total organic volatile matter concentration and volumetric gas flow rate in accordance with § 63.824(b)(1)(ii), § 63.825(b)(2)(ii), § 63.825(c)(2), or § 63.825(d)(2), as applicable.

* * * * *

■ 9. Section 63.829 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 63.829 Recordkeeping Requirements.

* * * * *

(e) * * *

(1) For each facility which meets the criteria of § 63.821(b)(1), the owner or operator shall maintain records of the total mass of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(2) For each facility which meets the criteria of § 63.821(b)(2), the owner or operator shall maintain records of the total mass and organic HAP content of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

* * * * *

■ 10. Section 63.830 is amended by revising paragraph (b)(6) introductory text to read as follows:

§ 63.830 Reporting Requirements.

* * * * *

(b) * * *

(6) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every 6-month period). These summary reports are required even if the affected source does not have any control devices or does not take the performance of any control devices into account in demonstrating compliance with the emission limitations in § 63.824 or § 63.825. In addition to a report of operating parameter exceedances as required by § 63.10(e)(3)(i), the summary report shall include, as applicable:

* * * * *

■ 11. Appendix A is amended by revising paragraphs 3.2 and 4.8 to read as follows:

Appendix A to Subpart KK of Part 63—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

* * * * *

3.2 The DQO calculation is made as follows using Equations 1 and 2:

$$P = \left[\frac{a}{x_{avg}}\right] 100 \quad \text{Eq. 1}$$

$$a = \frac{t_{0.975} s}{\sqrt{n}} \quad \text{Eq. 2}$$

Where:

a = Distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval for the measured value.

n = Number of valid test runs.
P = DQO indicator statistic, distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval, expressed as a percent of the average measured CE value.
s = Sample standard deviation.
$t_{0.975}$ = t-value at the 95-percent (two-sided) confidence level (see Table A–1).
x_{avg} = Average measured CE value (calculated from all valid test runs).
x_i = The CE value calculated from the ith test run.

TABLE A–1.—t-VALUES

Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$
1 or 2	N/A	N/A
3	4.303	1.886
4	3.182	1.638
5	2.776	1.533
6	2.571	1.476
7	2.447	1.440
8	2.365	1.415
9	2.306	1.397
10	2.262	1.383
11	2.228	1.372
12	2.201	1.363
13	2.179	1.356
14	2.160	1.350
15	2.145	1.345
16	2.131	1.341
17	2.120	1.337
18	2.110	1.333
19	2.101	1.330
20	2.093	1.328
21	2.086	1.325

* * * * *

4.8 The LCL is calculated at an 80 percent (two-sided) confidence level as follows using Equation 11:

$$LC_i = x_{avg} - \frac{t_{0.90}s}{\sqrt{n}} \quad \text{Eq. 11}$$

Where:
LC_1 = LCL at an 80-percent (two-sided) confidence level.
n = Number of valid test runs.
s = Sample standard deviation.
$t_{0.90}$ = t-value at the 80-percent (two-sided) confidence level (see Table A–1).
x_{avg} = Average measured CE value (calculated from all valid test runs).
* * * * *

Subpart JJJJ—[Amended]

■ 12. Section 63.3300 is amended by revising paragraph (a) to read as follows:

§ 63.3300 Which of my emission sources are affected by this subpart?

* * * * *

(a) Any web coating line that is stand-alone equipment under subpart KK of this part (National Emission Standards for the Printing and Publishing Industry) which the owner or operator includes in the affected source under subpart KK.

* * * * *

Subpart OOOO—[Amended]

■ 13. Section 63.4281 is amended by:
■ a. Revising paragraph (d) introductory text.
■ b. Adding paragraphs (d)(4) to read as follows:

§ 63.4281 Am I subject to this subpart?

* * * * *

(d) Web coating lines specified in paragraphs (d)(1) through (4) of this section are not part of the affected source of this subpart.

* * * * *

(4) Any web coating line that coats or prints fabric or other textiles for use in flexible packaging and that is included in an affected source under subpart KK of this part (National Emission Standards for the Printing and Publishing Industry).

* * * * *

[FR Doc. 06–4821 Filed 5–23–06; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906–AA60

Smallpox Vaccine Injury Compensation Program: Smallpox (Vaccinia) Vaccine Injury Table

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Adoption of interim final rule as final rule with an amendment.

SUMMARY: This document adopts the Smallpox (Vaccinia) Vaccine Injury Table (the Table) Interim Final Rule as the Final Rule with an amendment, as follows: the Final Rule clarifies that, in order for the presumption of causation to apply, the time intervals listed on the Table refer specifically to the period in which the first symptom or manifestation of onset of injury must appear following administration of the smallpox vaccine or exposure to vaccinia, and that the time intervals listed have no relevance to time of diagnosis of the injury.

DATES: The Interim Final Rule, published on August 27, 2003, was effective on that date, and is adopted as the Final Rule with an amendment effective May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, (301) 443–2330.

SUPPLEMENTARY INFORMATION:

Background

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Pub. L. 108–20, 117 Stat. 638, directed the Secretary of Health and Human Services (the Secretary) to establish the Smallpox Vaccine Injury Compensation Program (the Program). Secondary to other payers, the Program provides medical, lost employment income, and death benefits for eligible individuals who sustained covered injuries as a result of receiving smallpox vaccine or other covered countermeasures, or as a result of accidental exposure to vaccinia. Congress appropriated $42 million in fiscal year (FY) 2003 for the administration of, and payment of benefits under, the Program. The Consolidated Appropriations Act of 2005 reduced this appropriation to $22 million. The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–149) further reduced the Program's appropriation by $10 million to a total of $12 million.

Individuals who receive a smallpox vaccination under a Department of Health and Human Services (HHS), State, or local emergency response plan approved by HHS within the period described in the Secretary's Declaration, and who sustain a covered injury may be eligible for benefits under SEPPA. Individuals who contracted vaccinia through contact with such individuals or other eligible vaccinia contacts and who sustain a covered injury may also be eligible for benefits. In the case of death resulting directly from receipt of the smallpox vaccine or exposure to vaccinia by eligible individuals, certain of their survivors may be considered for death benefits. If an eligible individual who sustained a covered injury dies from another cause before payment of benefits has been made under the Program, the estate may qualify for payment of unreimbursed medical expenses incurred and employment income lost as a result of the covered injury, secondary to other payers. SEPPA directed the Secretary to establish a table identifying adverse effects (including injuries, disabilities,

Federal Register

Thursday,
April 20, 2006

Part II

Environmental Protection Agency

40 CFR Parts 63 and 65
National Emission Standards for Hazardous Air Pollutants: General Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 65

[EPA–HQ–OAR–2004–0094; FRL–8055–5]

RIN 2060–AM89

National Emission Standards for Hazardous Air Pollutants: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates amendments to certain aspects of startup, shutdown, and malfunction (SSM) requirements affecting sources subject to the national emission standards for hazardous air pollutants (NESHAP) in response to a July 29, 2003 petition to reconsider certain aspects of amendments to the NESHAP General Provisions published on May 30, 2003.

EFFECTIVE DATE: This final rule is effective on April 20, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0094. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.*, 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–2004–0094, EPA West, Room B–102, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, U.S. EPA Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Program Design Group (C504–05), Research Triangle Park, NC 27711; telephone number (919) 541–5262; fax number (919) 541–5600; e-mail address: *colyer.rick@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Regulated Entities. Categories and entities potentially regulated by this action include sources in all source categories regulated under 40 CFR parts 63 and 65 that must develop a startup, shutdown, and malfunction plan.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly promulgated rules at *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 the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 19, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments 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 the final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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

I. General Information
II. Summary of Final Amendments
III. Responses to 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 and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

II. Summary of Final Amendments

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to the initial rule based in part on settlement negotiations with industrial trade organizations, which had sought judicial review of the rule, and in part on our practical experience in developing and implementing NESHAP, also known as maximum achievable control technology (MACT) standards, under the General Provisions (66 FR 16318; March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582; April 5, 2002).

On April 25, 2002, Sierra Club filed a petition seeking judicial review of those final amendments, *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (DC Circuit). The Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final amendments, pursuant to Clean Air Act (CAA) section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with the Sierra Club concerning a settlement agreement. We reached initial agreement with the Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002, under which we agreed to propose a rule to make specified amendments to the General Provisions.

Following execution of the final settlement agreement, we published proposed amendments effectuating its terms (67 FR 72875; December 9, 2002). Most of the General Provisions amendments dealt with clarifying the general duty to minimize emissions and its relationship to the startup, shutdown, and malfunction (SSM) plans required under 40 CFR 63.6(e)(3).

We issued final amendments (68 FR 32586; May 30, 2003) that require that a source must promptly submit a copy of its plan to its permitting authority if and when the permitting authority requests that the plan be submitted. The final amendments also require the permitting authority to obtain a copy of the plan from a facility if a member of the public makes a specific and reasonable request to examine or receive a copy. We noted that the permitting authority should work with the requester to clarify any request if it is overly broad or insufficiently specific.

After promulgation of the amendments, the NRDC petitioned EPA on July 29, 2003, under section 307(d)(7)(D) of the CAA, to reconsider the public access aspects of the SSM plan provisions. Specifically, NRDC opposed the criteria for the public to access SSM plans, i.e., that a plan may be obtained only if the request is "specific and reasonable." The NRDC concluded that the final amendments

allow the Administrator to block a citizen's access to SSM plans just by declaring the request not "specific and reasonable."

On July 29, 2005 (70 FR 43992), we announced our reconsideration of these issues arising from the final amendments of May 30, 2003, regarding SSM plans, and proposed additional amendments to the General Provisions and conforming amendments to other parts 63 and 65 subparts. Today's notice responds to comments on the July 29, 2005 proposal and promulgates final rule amendments.

By removing the requirement that the SSM plan must be followed during periods of SSM, the final amendments allow sources flexibility to address emissions during periods of SSM. This in no way alters the obligation and requirement set out at 40 CFR 63.6(e)(1)(i) that source owners or operators "minimize emissions" at all times, including periods of SSM. Root cause analysis of excess emissions events may generally be the most effective means in many industry sectors to assist a source in meeting its regulatory obligation to minimize emissions at all times including during periods of SSM. Appropriately conducted root cause analysis should determine the fundamental cause of an excess emissions event, and identify the steps and corrective action necessary to ensure that the excess emission does not arise again. Through this process, we have determined that fewer and fewer excess emission events occur over time. Thus, performing a root cause or similar analysis and implementing corrective action may often be relevant in determining whether a source has met the good air pollution control measures standard. The final amendments do not change the current approach to minimizing emissions during periods of SSM, and we fully expect owners or operators to follow their SSM plans during periods of SSM. Owners or operators are also still required to keep records of and report actions taken during SSM periods to minimize emissions whenever there is an exceedance of an emissions limit (or a potential exceedance in the case of a malfunction). (See discussion of recordkeeping and recording requirements below.) We expect few owners or operators to deviate from their plans, and only when necessary due to unanticipated types of malfunctions, emergencies that are not amenable to strict adherence to the plan at the time, safety considerations that preclude following the plan as written, or when emissions can be better minimized by taking steps that are different from those set forth in the plan. Even then, the owner or operator must report such deviations and demonstrate how emissions were minimized when the plan was not followed. This is consistent with the prior provisions, except that deviation from the plan is no longer a violation of the SSM requirements of the General Provisions regulations. This change has been made in all the parts 63 and 65 subparts that had previously required the plan to be followed.

We are also removing the requirement that the Administrator obtain a copy of a source's SSM plan whenever requested by a member of the public. The public may obtain a copy of any plan obtained by the Administrator from a source. This includes any permitting authority (state or local agency) that has been delegated the authority to enforce standards under parts 63 and 65. Under the amendments, any permitting authority with delegation will still have the discretion to obtain plans requested by the public, but will not be required to do so. EPA's position is that SSM plans should not be viewed as compliance plans under section 502(b)(8) or 503(c) of the Clean Air Act or under EPA's Title V regulations at 40 CFR 70.5(c)(8). This is the most reasonable interpretation of those statutory and regulatory provisions and is consistent with EPA's position on implementation issues associated with SSM plan requirements discussed in more detail in the response to comment section below.[1]

The definition of "compliance schedule" in section 501(3) of the CAA equates "schedule of compliance" to "schedule of remedial measures." Nothing in this definition or in any other provision of the CAA suggests that SSM plans must be considered "compliance plans." In fact, the definition of compliance schedule suggests that the primary purpose of "compliance schedules" and "compliance plans" is to set out measures to be taken to remedy noncompliance. EPA's title V regulations at 40 CFR 70.5(c)(8), which describe what is to be included in a compliance plan, further support the reasonableness of EPA's view that SSM plans should not be considered compliance plans. Those regulations provide that a compliance plan must include a description of the compliance status of the source, a statement that the source will continue to comply with applicable requirements and, if the source is not in compliance with an applicable requirement, a narrative describing how compliance will be achieved. SSM plans serve a purpose different from that of compliance plans (see discussion below) and do not include the components described above that are required in compliance plans. Thus, EPA's position that SSM plans are not compliance plans is reasonable.

Plans available to the public will have confidential business information removed. Startup, shutdown, and malfunction plans are similar to the risk management plans prepared under section 112(r) to prevent accidental releases of HAP and may likely contain information that is protected as CBI or that may be sensitive from a security standpoint. For these reasons, many facilities are reluctant to provide the details of their plans and permitting authorities are reluctant to request them except when necessary. While these plans may be redacted prior to public release to remove CBI, this imposes additional burden on both the facilities and the permitting agencies. Thus we believe the limitation we are imposing in the final rule strikes a reasonable balance between the public's right to know, protection against acts of terrorism, and protection of a facility's CBI.

The amendments also make clarifying edits that reporting and recordkeeping is only required when a startup or shutdown causes the applicable emission standards to be exceeded, and for any occurrence of malfunction which also includes potential exceedances[2] and that such recordkeeping and reporting shall include information on actions taken during such periods of SSM to minimize emissions in conformance with § 63.6(e)(1)(i). When such actions are consistent with the plan the report can include a checklist, as is currently allowed for recordkeeping. Reports would allow a member of the public to review the actions taken and whether or not they conform to the general duty to minimize emissions. We are also revising the definitions for malfunction

[1] In the preamble to the proposal, we suggested that EPA does not have the authority to treat SSM plans as compliance plans or to require permitting authorities to make such plans available to the public. (70 FR 43994–95; July 29, 2005). Upon further consideration, we believe that the term "compliance plan" is somewhat ambiguous. However, for the reasons set forth below and in the response to comment section, we believe that an interpretation that SSM plans are not compliance plans is reasonable and appropriate.

[2] A malfunction is defined as 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.

throughout parts 63 and 65 in various subparts for consistency with the previously revised definition in the General Provisions.

III. Responses to Comments

General

Comment: One commenter thought EPA should not have considered petitions from parties who did not participate in previous rulemakings, and that EPA should have denied NRDC's petition for reconsideration.

Response: The EPA granted reconsideration on a narrow issue and has properly followed Section 307(d) of the CAA.

Enforcement

Comment: Several commenters were concerned that the amendments would render the SSM provisions essentially unenforceable. They felt that removal of the requirement to follow the plan would allow owners or operators to do anything they want during SSM periods with no accountability and will lead to increases in emissions if the plan is not followed. More specifically, Sierra Club asserts that section 304 of the CAA guarantees a citizen's right to enforce CAA requirements and that section 504(a) of the CAA requires that title V permits contain enforceable limits and standards and conditions necessary to assure compliance. Sierra Club alleges that if the requirement that a source implement its SSM plan is eliminated, there would be no means by which to measure a source's compliance with the general duty to minimize emissions. Sierra Club further argues that without the ability to measure a source's actions during an SSM event against that source's SSM plans, the public can't enforce the general duty requirement.

Sierra Club also asserts that proving a violation of the general duty standard would be virtually impossible given the vagueness of the standard. Sierra Club argues that EPA's proposed scheme renders the MACT standard unenforceable because if the SSM plan is not incorporated into the title V permit as a requirement, there will be no information in the title V permit indicating when the limit applies. Sierra Club believes that EPA's seeks to create a system in which adherence to plan can be used as a defense, but failure to follow a plan is not a violation.

Comments submitted by Tulane Environmental Law Clinic on behalf of St. Benard Citizens for Environmental Quality and Louisiana Bucket Brigade argue that the requirement to develop an SSM plan is (even under EPA's proposal) an applicable requirement and that the only way to assure compliance with this applicable requirement is to require that it be submitted to the regulatory agency and be available to the public.

Response: As summarized in the previous section, we do not believe the amendments will change anything with respect to how owners and operators will react during periods of SSM except that they will have the flexibility to depart from a SSM plan when doing so makes sense under the circumstances. They are still required to develop SSM plans, minimize emissions during periods of SSM, and keep records and report SSM events if there is an exceedance (or could have been, in the case of malfunctions) of an applicable MACT standard. We expect owners and operators to continue to follow the SSM plans with respect to most SSM events because those plans should generally set forth the best way to minimize emissions. Those who fail to follow their plan will undergo additional scrutiny, as they do now, to determine if emissions were minimized during SSM periods. The amendments should have no practical effects on a source's obligation to minimize emissions during periods of SSM.

EPA's intention is that the recordkeeping and reporting requirements will provide the permitting authority and the public with information to determine whether the general duty to minimize emissions has been satisfied any time there is an exceedance (or could have been, in the case of malfunctions). We have evaluated the recordkeeping and reporting requirements in light of comments on the availability of information necessary to evaluate compliance with the general duty requirement and have decided to amend the recordkeeping and reporting requirements to clarify that a source must keep records of and report actions taken during an SSM event any time there is an exceedance. Revisions to § 63.10(d)(5)(i) and (ii) require that a description of actions taken to minimize emissions be included in SSM reports whether or not the SSM plan was followed. In the case where the plan is followed, a checklist may suffice, and in the case of multiple events, only one checklist is necessary (*e.g.*, multiple startups of batch processes where the procedure to minimize emissions is always the same). With respect to recordkeeping, the rules currently require sources to keep a record of actions taken during SSM events (40 CFR 63.10(b)(2)(iv) and (v)). Where actions were consistent with an SSM plan, the rules require records of "all information necessary to demonstrate conformance" with the plan and provide that such information can be recorded in the form of a checklist. (§ 63.10(b)(2)(v)) We are amending these rules today to clarify that such records or checklist must include all actions taken during the SSM event to minimize emissions. We are also making conforming changes to 40 CFR 63.6(e)(3)(iii).

With these clarifications, any time there is an exceedance of an emission limit (or could have been in the case of malfunctions) and thus a possibility that the general duty requirement was violated, there will be a report filed that will describe what actions were taken to minimize emissions that will be available to the public.

Any member of the public could use the information in these reports to evaluate whether adequate steps were taken to meet the general duty requirement. This information is likely to be of as much if not more use in determining compliance with the general duty requirement than a facility's general SSM plan because the information will be specific to the particular SSM event that caused the exceedance. We note that the public can also request that the permitting authority obtain the SSM plan if information in the SSM report suggests that the contents of the SSM plan would help determine if there was a violation of the general duty requirement. However, even if the permitting authority is not willing to obtain the SSM plan, the required reports should provide adequate information to determine whether there is a violation of the general duty requirement and thus a basis for a citizen suit. In any such citizen suit, plaintiffs can seek to obtain the SSM plan through discovery.

The general duty to minimize emissions is not too vague to be enforced as suggested by Sierra Club. Though the general duty to minimize emissions may not provide absolute certainty in all cases, there will be many circumstances in which compliance or non-compliance will be clear. A regulation that does not reach constitutionally protected conduct is not facially vague unless it is impermissibly vague in all its applications. (*Village of Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 496(1982); *Sweet Home Chapter of Communities for a Greater Oregon* v. *Babbit*, 1.F.3d. 1, 4 (D.C. Cir. 1994).

Further, it is not impossible to know when the MACT applies without knowing how the facility defines startup, shutdown and malfunction in

its SSM plan. EPA regulations define the terms startup shutdown and malfunction and it is these definitions that apply when determining whether a facility is legitimately claiming to be experiencing a period of SSM.

With respect to the argument that the only way to assure compliance with the duty to develop a plan is to require that it be submitted to permitting authority and be available to the public, assuring compliance does not require that the Agency observe compliance first hand. It is perfectly appropriate for the Agency to rely on certifications (title V regulations require sources to certify compliance with all applicable requirements (40 CFR 70.5(c)(9))) or on inspection, record keeping and reporting authorities of section 114 of the CAA to decide on a case by case basis when to inspect or request copies of documents

Comment: Two commenters said that emissions during SSM events should be required to comply with the NESHAP standard. One commenter said EPA had failed to support a general assumption that sources cannot meet emission limitations during periods of SSM or that setting emission limitations during these periods is not feasible.

Response: These commenters raise issues that are outside of the scope of this rulemaking. The general duty provision has been in place since 1994. Moreover, comments concerning whether a particular source type can meet a particular emission standard during periods of startup, shutdown or malfunction could be raised when the emissions standards for that source are developed. As one commenter noted, "EPA can, and in some instances has, included requirements for compliance during SSM in source-specific NESHAP standards."

Though these comments raise issues that are outside the scope of this rulemaking, we note that in the May 8, 2004 Federal Register notice EPA stated "EPA believes that it has discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply" (68 FR 32586, 32590; May 30, 2003). We also note that the EPA SIP guidance cited by one commenter is not relevant to the scope of EPA's authority to consider periods of SSM in promulgating NESHAP standards.

Comment: Several commenters stated that the sources should be required to provide the permitting authorities with copies of SSM plans even absent a request because the permitting authorities need to review SSM plans before problems arise. These commenters also felt that greater public access to the plans is beneficial because such scrutiny can help ensure that the plans are adequate and the general duty to minimize emissions can be met.

Response: We do not believe that it is necessary to have each owner or operator automatically submit its SSM plan. Our regulations make it clear that all a permitting authority has to do is request the SSM plan and the owner or operator is required to provide it. While the authority to request the plan is derived from section 114, there is no special order or document that needs to be issued to obtain the SSM plan. Thus, the permitting authority may review any plan and may also make it available to the public. We do not believe prior review and approval of plans are necessary; rather, in most cases, review of reports required to be submitted by a facility when emission limitations are exceeded (or could have been in the case of malfunctions) will allow the permitting authority and the public to determine whether emissions were minimized during periods of SSM. However, if it so chooses, a permitting authority is free to request SSM plans and review them prior to any SSM events occurring. Typically, permitting authorities will more often review and assess SSM plan of sources with numerous and frequent periods of SSM. It may not be necessary to review plans of sources with few or infrequent SSM events, allowing the permitting authority to direct its resources to more productive endeavors. The permitting authority has the discretion to review as many plans as it wants in order to ensure, that emissions are minimized during periods of SSM.

Comment: Several commenters thought it made no sense to require that plans be developed but not require them to be followed.

Response: We disagree. Development of SSM plans help sources to think through and document actions to take during SSM events. Plans will help sources more expeditiously address SSM events to minimize emissions during those periods. Once the plans are developed, sources will have every incentive to follow the plans if appropriate, or face additional scrutiny if the plans are not followed. In any event, sources are required to minimize emissions regardless of whether the plans are followed. By not requiring strict adherence to the SSM plan, we are allowing the source additional flexibility as to how it will minimize emissions. Plans also may help permitting authorities streamline determinations of whether emissions are minimized. If it is established that emissions are minimized by following the plan during a particular SSM event, making that determination when a subsequent similar SSM event occurs should be much less burdensome assuming the plan has not been revised.

Comment: Several commenters felt that if an SSM plan is developed in good faith and is not "obviously deficient," it should be considered a "safe harbor." Others felt that following the plan should not be a safe harbor.

Response: We believe that following the SSM plan should not be a safe harbor. Where the SSM plan is out of date or deficient or the circumstances clearly called for other steps to minimize emissions, blind adherence to the plan should not be sufficient. We leave to the discretion of the permitting authority the question of how much weight to give the SSM plan in a particular situation. However, assuming that the plan was made in good faith and not deficient, we believe that in most cases following the SSM plan should help establish that the source was minimizing emissions.

Comment: Several commenters thought there should be a requirement that sources periodically review and update their SSM plans. Two commenters stated that because implementation of SSM plans will no longer be required, sources will be less likely to periodically review and update SSM plans.

Response: Our regulations already require sources to keep their SSM plans current, *i.e.*, up to date, and to review and change the plans to ensure that emissions are minimized. "The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator" (§ 63.6(e)(3)(v)). Plans are required to address potential expected SSMs to minimize emissions. Plans should be updated whenever changes are necessary to address new or different types of SSM events as provided for in paragraphs 63.6(e)(3)(vii) and (viii). Moreover, the Administrator (or delegated authority) has the ability under § 63.6(e)(3)(vii) to require that SSM plans be revised if they are deficient or not current.

Applicable Requirements

Comment: Numerous commenters agreed with the EPA's position at proposal that the SSM plan details themselves are not the applicable requirements under the Act, but the general duty clause (§ 63.6(e)(1)) is. They further agreed that the plan

elements should not be incorporated into the title V permits.

One commenter believed that the SSM plan elements should be applicable requirements. Another commenter thought that the requirement to follow the plan should be an applicable requirement in the title V permit but the individual elements of the SSM plan should not be considered incorporated into the permit.

Response: As explained in our proposal (70 FR 43992; July 29, 2005), we believe that the general duty to minimize emissions is the applicable requirement, not the SSM plan itself. However, we note that the SSM plan is a useful tool for sources to demonstrate—and for permitting authorities to confirm—that the general duty to minimize emissions is met. We do not agree that requiring implementation of the SSM plan is necessary to assure compliance with general duty requirement. The SSM plan is a useful tool that may help the permitting authority determine compliance depending on the circumstances, but it is not "necessary." As explained above, compliance with the general duty requirement can be achieved through different means such as examining SSM reports to determine whether general duty has been satisfied. The case law cited by Sierra Club is not on point. Both *Waterkeeper Alliance, Inc.* v *EPA*, 399 F.3d. 486 (2nd Cir. 2005) and *Environmental Defense Center, Inc.* v. *EPA*, 344 F.2d. 832 (9th Cir.2003) involved EPA regulatory schemes under which plans developed by the regulated entity, which were not reviewed or approved by the regulatory agency (nutrient development plans and stormwater management plans under the Clean Water Act, respectively), served to establish binding requirements, compliance with which would automatically satisfy an underlying statutory or regulatory requirement. SSM plans are not binding requirements and, as explained above, adherence with an SSM plan does not necessarily establish compliance with the general duty requirement.

Comment: One commenter wanted clarification on the relationship of the SSM plan requirements to title V, specifically what language should be included in the permit regarding the requirement to develop a plan. The commenter notes that § 63.6(e)(3)(ix) explicitly refers to a title V requirement whereas other provisions do not; the comment suggests an edit to the paragraph that would clarify the provision.

Response: The intent of § 63.6(e)(3)(ix) was to ensure that the only requirement with respect to the title V permit was that an SSM plan be developed, that the elements of the plan are not to be incorporated into the permit, and that changes to the plan would not trigger a permit modification. The commenter's suggested edits are helpful and have been incorporated into the paragraph.

Conforming Changes to Other Subparts

Comment: Several commenters supported the conforming changes to the other subparts with respect to the requirement to follow the plan. One commenter stated that EPA failed to explain its reason for changing specific part 63 subparts and how the changes would affect the specific source categories.

Response: Although there was no explicit statement explaining why the other subparts were being amended, these changes were made merely to conform to the changes being made in the General Provisions. Many of the part 63 subparts repeated requirements in the General Provisions about following the SSM plan and had to be revised to be consistent with the changes to the General Provisions. Because the changes in the individual subparts are necessary for conformance with the General Provisions, we felt that no explanation was required.

Impacts

Comment: One commenter stated that EPA failed to comply with Executive Order 12898 on Environmental Justice. The commenter asserts that the amendments will adversely affect minority and low income communities around the sources.

Response: Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and low-income populations. The EPA has considered the impact of the proposal on minority and low income populations. We do not believe that these amendments will have any adverse effects on emissions during periods of SSM. Therefore, there should not be any adverse impact on minority and low income populations as a result of these amendments. The amendments do not affect the underlying requirement to minimize emissions during SSM events. Owners or operators are still required to develop SSM plans to address emissions during these periods. They are required to report immediately when the plans are not followed and semiannually when the plans are followed and emission limitations are exceeded (or could have been in the case of malfunctions) and describe steps taken to minimize emissions. The only difference from current regulations is that the source is not required to follow the plan, especially when the situation may call for other action or when safety considerations override following the plan as written.

Comment: One commenter stated that EPA failed to comply with Executive Order 13045 on Protection of Children for Environmental Health and Safety Risk. The commenter disagrees with EPA's position that the Executive Order only applies to regulations that are based on health or safety risks.

Response: Executive Order 13045 does not apply to this proposal because, as is explained above, it does not change any emission standard, it is not economically significant and because it is not based on health and safety risks.

SSM Plan Availability

Comment: There were numerous comments on SSM plan availability to permitting authorities and the public. Some governmental commenters stated that it is difficult to obtain SSM plans using section 114 of the Act, and that permitting authorities should not be required to obtain the information through a request made under section 114 of the Act. One commenter stated that part 63 does not clearly state that permitting authorities can request and receive copies of the plans and that the provisions should be amended to make this clear and to require that the plan be provided within 30 days. The commenter stated that state laws allowing access to information vary from state to state and are sometimes vague. Several industry commenters stated that SSM plans should be available only through CAA section 114 requests.

Response: The existing part 63 regulations already require a source to (1) allow the permitting authority to inspect the SSM plan at the premises or (2) "promptly" submit the plan to the permitting authority if the permitting authority makes a written request for it. The regulations state that the "Administrator may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or portion thereof) * * * [and] the owner or operator must promptly submit a copy of the requested plan (or a portion thereof) to the Administrator" (§ 63.6(d)(3)(v)). The authority for this provision is section 114(a) of the Act.

However, there is no special procedure or order required; the Administrator or the permitting authority need only request the SSM plan in writing. The Administrator or permitting authority may also inspect and copy the SSM plan at the premises: "The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator" (§ 63.6(e)(3)(v)). The authority for this inspection provision is also section 114(a). Under section 114(b), states may develop and submit to the Administrator a procedure for carrying out section 114 in the state, and the Administrator may delegate his/her authority to the state. All permitting authorities that have obtained delegation of part 63 standards have already demonstrated that they have state authority equivalent to section 114 to monitor, to inspect, and to obtain records, including SSM plans. Accordingly, permitting authorities should have no difficulty in obtaining plans. The underlying authority for the part 63 provisions allowing permitting authorities to inspect or obtain copies of SSM plans is based on section 114(a) or its state equivalent. Because all SSM plans are obtained under section 114(a) or its state equivalent, any plans so obtained must be available to the public under section 114(c) of the Act, which provides that any records obtained under section 114(a) "shall be available to the public," with the exception of portions considered confidential.

Comment: Several commenters agreed that permitting authorities should not be required to obtain SSM plans whenever a member of the public requests one. Other commenters disagreed and believed that any member of the public should be able to request an SSM plan. Several commenters thought the public should be able to review the plans to determine if emissions are minimized and argued that denying public access makes general duty unenforceable.

Response: As discussed above, we do not believe that the details of SSM plans are compliance plans or are required to be available under title V. As discussed above, recordkeeping and reporting requirements will provide regulators and the public with adequate information concerning actions taken during periods of SSM. Permitting authorities can obtain and review plans as necessary, and all plans that are obtained will be available to the public subject to limitation on availability of CBI.

Comment: Several commenters believed the proposal effectively cut off public access to plans.

Response: We disagree. Public access to SSM plans is still available, in the case where the permitting authority has obtained a plan. We believe that most permitting authorities will request a plan from a source when presented with a reasonable request for the plan. There is no federal requirement to do so, however, and unless otherwise specified under state statute or regulations, state and local authorities have the discretion to obtain the plan upon public request.

Comment: Several commenters argued that companies will not be responsive to requests for SSM plans from the public.

Response: We recognize that some companies might choose not to respond to requests from the public. However, we hope and expect that other companies would indeed respond to public requests. Moreover, as explained above, the public may ask the permitting authority to obtain the SSM plan. Where the public has made a reasonable request, we believe that the permitting authority would likely be responsive and obtain the plan from the source. Because the authority to obtain such plan is based on section 114 of the Act or its state equivalent, any plan obtained by the permitting authority will be available to the public.

Comment: Another commenter noted that the difficulty of "untangling" SSM plans from facility operating procedures and CBI are not good reasons for restricting public access.

Response: As stated earlier, all SSM plans obtained by the permitting authority are publicly accessible. We are sensitive to the effort involved by some sources to create a standalone SSM plan for submittal, but do not believe requiring all plans to be submitted automatically for review is justified. However, permitting authorities will obtain SSM plans as necessary, regardless of the burden imposed on the source to develop a standalone document.

Comment: The same commenter maintained that the paperwork burden on permitting authorities also should not be a reason for not requiring submittal of SSM plans.

Response: Permitting authorities may obtain any SSM plan that it wants. Thousands of sources are required to prepare SSM plans, and we believe the permitting authority should have the discretion to obtain those it feels are appropriate. For the reasons discussed above, we do not think it is necessary to impose a requirement that all plans be automatically submitted to the permitting authority, especially if this results in the permitting authority reallocating resources from enforcement and implementation to handling paper. We think it is best for the individual permitting authority to make that decision. If they so choose, they can routinely ask all sources to submit SSM plans.

Confidential Business Information (CBI)

Comment: Two commenters noted that plans can be sanitized of their CBI-sensitive information prior to submittal to the permitting authority, but other commenters insisted that SSM plans not be released because of sensitive information. One commenter additionally noted that SSM plans may contain security-sensitive information and provide a roadmap to terrorists seeking to disrupt a facility.

Response: Plans may be submitted with CBI identified; such submittals will be treated in accordance with requirements applicable to claims of CBI. We also agree that plans can be "cleansed" of CBI and other sensitive information and submitted. The public will have access to any non-CBI submittal and non-CBI portions of plans with CBI identified. This is what happens now.

Comment: Some commenters stated that limiting public access to plans and removing the requirement to implement the SSM plan makes it difficult for the public to determine when an emission exceedance constitutes a violation of a MACT standard. These commenters also stated that reducing public access to SSM plans hinders citizen enforcement efforts.

Response: These amendments do not change the ability of the public to determine when an emissions exceedance constitutes a violation of a MACT standard and shouldn't make enforcement of the general duty requirement more difficult. Plans previously available are still available for public review. Permitting authorities may obtain any SSM plan from any source and allow the public to examine it. Sources must report what procedures and actions it did take during periods of SSM if there was an exceedance of an emission limit (or could have been in the case of malfunctions). Such reports are also available to the public. As explained above, this information can be used by the public and the permitting authority to support enforcement efforts.

Reporting

Comment: One commenter stated that without a requirement to implement SSM plans, the regulation should require reporting of all SSM events so that the general duty can be evaluated

for each event. Another commenter added that only those SSM events that exceeded the emission standards be reported.

Response: We agree that all SSM events that exceed (or could have exceeded, in the case of malfunctions) the emission limitations be reported. We also agree that as long as the emission limitations are being met, SSM events need not be reported (except those malfunctions that could have exceeded the emission limitations), *i.e.*, as long as the relevant standards are being met, there is no benefit to a reporting requirement in terms of assuring compliance with the general duty standard. We have made clarifying edits in the regulatory language.

Comment: One commenter did not think that facilities should have to report whether or not they followed their SSM plan. Another commenter did not think sources should have to report immediately if the SSM plan was not followed.

Response: We disagree. Information on whether or not an SSM plan was followed gives the permitting authority and the public information that can help them determine if further scrutiny of a source is in order. If the permitting authority has reviewed a source's SSM plan and determined that it is adequate, information that the source followed that plan during an SSM event could be helpful to the regulator in determining whether to investigate the event. Not following the plan may or may not indicate a problem, but such information would be very helpful to the permitting authority and the public in order to determine if additional scrutiny or investigation of the event is necessary. Immediate reporting if the plan was not followed is appropriate to alert the permitting authority and the public of a potential problem.

Comment: One commenter questioned why SSM events still have to be reported as deviations if emission limitations do not apply.

Response: The general duty to minimize emissions is the applicable requirement during SSM events. In order to effectively enforce this requirement, it is important to have information about SSM events that involve exceedances (or potential exceedances in the case of malfunctions) in order to determine whether further scrutiny is appropriate. Deviations do not necessarily equate to violations.

Recordkeeping

Comment: Numerous commenters agreed with the elimination of certain recordkeeping requirements for startups and shutdowns when relevant emission standards are not exceeded. One commenter was not clear on how burden had been relieved; the commenter cites § 63.6(e)(3)(iii) and asked what documentation was necessary.

Response: The amendments and the clarifications we are promulgating today relieve the recordkeeping burden for startups and shutdowns that do not result in a exceedance of an emissions limitation.

Regulatory Language

Comment: Several commenters pointed out that some subparts have their own SSM provisions and do not cite subpart A as the applicable requirements. The proposal should have not referenced subpart A but instead continued to reference the applicable provisions within their subparts.

Response: We agree with the commenters and have made the suggested edits.

Comment: Several commenters noted that the reference to § 63.6(e) instead of the requirement to follow the SSM plan was overly broad, and in fact should have referred more narrowly to the general duty to minimize emissions since that is the applicable requirement.

Response: We agree with the commenters and have made the suggested edit to refer to § 63.6(e)(1).

Comment: One commenter suggested clarifying changes to ensure reporting and recordkeeping for startups and shutdowns is required only when the applicable emission limitation is exceeded.

Response: We agree and have made the suggested edits. As explained above, as long as the standards are being attained there is no need to report.

Comment: Several commenters recommended revising the definition for "malfunction" in other subparts where it occurs to be consistent with the definition in subpart A. One commenter also suggested revising the general duty provision where it occurs in other subparts to be consistent with subpart A.

Response: We agree this is appropriate for consistency and have revised the definitions and provisions accordingly.

Comment: A couple of commenters recommended incorporating paragraph § 63.6(e)(3)(ix) into the General Provisions applicability table in all of the applicable subparts.

Response: We agree that § 63.6(e)(3)(ix) should apply to all the applicable part 63 subparts. We have revised all of the applicable General Provisions applicability tables accordingly.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required in connection with these final amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for

particular source categories which have their own ICRs. In any case, we believe that adoption of the amendments will not materially alter the burden imposed on affected sources through the incorporation of the General Provisions in individual MACT standards. We anticipate that any incremental changes in the recordkeeping and reporting burden estimate for individual MACT standards will be addressed in the context of the periodic renewal process required by the PRA.

However, OMB has previously approved the information collection requirements contained in the existing regulations of 40 CFR parts 63 and 65 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of the final rule amendments 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 for each applicable subpart; (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 that is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has 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 on a substantial number of small entities (5 U.S.C. 603–604). 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.

Small entities that are subject to MACT standards would not be required to take any action under the final rule amendments; the amendments simply remove the requirement that sources must follow their SSM plan. However, we do not expect sources will address periods of SSM any differently than they do now.

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 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 1 year. Before promulgating a 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 the 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.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's final rule amendments are not subject to sections 202 and 205 of the UMRA. The EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule amendments are not subject to the requirements of 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" 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."

The final rule amendments do not have federalism implications and 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments 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. Thus, Executive Order 13175 does not apply to the final rule amendments.

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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

The final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they do not have an economically significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 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. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule amendments do not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the 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 final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments are effective on April 20, 2006.

List of Subjects in 40 CFR Parts 63 and 65

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

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons cited in the preamble, title 40, chapter I, parts 63 and 65 of the Code of Federal Regulations are 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 63.6 is amended by:
■ a. Revising the first sentence in paragraph (e)(1)(ii);
■ b. Removing the first sentence in paragraph (e)(3)(i) introductory text and adding two new sentences in its place;
■ c. Removing and reserving paragraph (e)(3)(ii);
■ d. Revising the first through third sentences in paragraph (e)(3)(iii);
■ e. Removing the sixth sentence in paragraph (e)(3)(v); and
■ f. Revising the first and second sentences in paragraph (e)(3)(ix) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1) * * *

(ii) Malfunctions must be corrected as soon as practicable after their occurrence. * * *

* * * * *

(3) * * *

(i) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standard. The startup, shutdown, and malfunction plan does not need to address any scenario that would not cause the source to exceed an applicable emission limitation in the relevant standard. * * *

* * * * *

(ii) [Reserved]

(iii) When actions taken by the owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan and describes the actions taken for that

event. In addition, the owner or operator must keep records of these events as specified in paragraph 63.10(b), including records of the occurrence and duration of each startup or shutdown (if the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. * * *

* * * * *

(ix) The title V permit for an affected source must require that the owner or operator develop a startup, shutdown, and malfunction plan which conforms to the provisions of this part, but may do so by citing to the relevant subpart or subparagraphs of paragraph (e) of this section. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of this chapter and the elements of the startup, shutdown, and malfunction plan shall not be considered an applicable requirement as defined in § 70.2 and § 71.2 of this chapter. * * *

* * * * *

■ 3. Section 63.8 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 63.8 Monitoring requirements.

* * * * *

(c) * * *

(1) * * *

(iii) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

* * * * *

■ 4. Section 63.10 is amended by:

■ a. Revising paragraphs (b)(2)(i), (ii), and (iv), and the first sentence in paragraph (b)(2)(v); and

■ b. Revising the first four sentences in paragraph (d)(5)(i) and the first and second sentences in (d)(5)(ii) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) The occurrence and duration of each startup or shutdown when the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards;

(ii) The occurrence and duration of each malfunction of operation (*i.e.*, process equipment) or the required air pollution control and monitoring equipment;

* * * * *

(iv)(A) Actions taken during periods of startup or shutdown when the source exceeded applicable emission limitations in a relevant standard and when the actions taken are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)); or

(B) Actions taken during periods of malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when the actions taken are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary, including actions taken, to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. * * *

* * * * *

(d) * * *

(5)(i) * * * If actions taken by an owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. Actions taken to minimize emissions during such startups, shutdowns, and malfunctions shall be summarized in the report and may be done in checklist form; if actions taken are the same for each event, only one checklist is necessary. Such a report shall also include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. Reports shall only be required if a startup or shutdown caused the source to exceed any applicable emission limitation in the relevant emission standards, or if a malfunction occurred during the reporting period. * * *

(ii) * * * Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup or shutdown that caused the source to exceed any applicable emission limitation in the relevant emission standards, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph (d)(5)(ii) shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, describing all excess emissions and/or parameter monitoring exceedances which are believed to have occurred (or could have occurred in the case of malfunctions), and actions taken to minimize emissions in conformance with § 63.6(e)(1)(i). * * *

* * * * *

Subpart F—[Amended]

■ 5. Section 63.102 is amended by revising paragraph (a)(4) to read as follows:

§ 63.102 General standards.

(a) * * *

(4) During start-ups, shutdowns, and malfunctions when the requirements of this subpart F, subparts G and/or H of this part do not apply pursuant to paragraphs (a)(1) through (a)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. The general duty to minimize

General provisions reference	Applies to subpart HH	Explanation
* * * * * * *		
§ 63.6(e)(3)(ix)	Yes.	
* * * * * * *		

Subpart LL—[Amended]

■ 23. Section 63.848 is amended by revising the first sentence in paragraph (h) to read as follows:

§ 63.848 Emission monitoring requirements.

* * * * *

(h) * * * If a monitoring device for a primary control device measures an operating parameter outside the limit(s) established pursuant to § 63.847(h), if visible emissions indicating abnormal operation are observed from the exhaust stack of a control device during a daily inspection, or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control, the owner or operator shall initiate corrective action procedures within 1 hour. * * *

* * * * *

■ 24. Section 63.850 is amended by revising the first sentence in paragraph (c) introductory text to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

* * * * *

(c) * * * The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart MM—[Amended]

■ 25. Section 63.864 is amended by revising paragraphs (k)(1) introductory text and the first sentence in paragraph (k)(2)(v) to read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(k) * * * (1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action if the monitoring exceedances in paragraphs (k)(1)(i) through (vi) of this section occur:

* * * * *

(2) * * *

(v) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. * * *

* * * * *

■ 26. Section 63.866 is amended by revising the first sentence in paragraph (a) introductory text to read as follows:

§ 63.866 Recordkeeping requirements.

(a) * * * The owner or operator must develop a written plan as described in § 63.6(e)(3) that contains specific procedures for operating the source and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart SS—[Amended]

■ 27. Section 63.998 is amended by:
■ a. Revising paragraph (b)(2)(iii);
■ b. Revising paragraph (b)(6)(i)(A); and
■ c. Revising the second sentence in paragraph (b)(6)(ii) to read as follows:

§ 63.998 Recordkeeping requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Startups, shutdowns, and malfunctions, if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(6)(i) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(ii) * * * If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance.

* * * * *

Subpart YY—[Amended]

■ 28. Section 63.1101 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1101 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 29. Section 63.1108 is amended by:
■ a. Removing the second sentence in paragraph (a)(1) introductory text;
■ b. Revising paragraph (a)(6); and
■ c. Revising paragraph (b)(2)(i) to read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) * * *

(6) Malfunctions shall be corrected as soon as practical after their occurrence.

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)), or

* * * * *

■ 30. Section 63.1111 is amended by revising the first and fifth sentences in paragraph (a)(1) introductory text and revising paragraph (a)(2) to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) * * * (1) *Description and purpose of plan.* The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of an affected source subject to this subpart YY shall operate and maintain such affected source (including associated air pollution control equipment and CPMS) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the extent practical. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required by this section), review of operation and maintenance records, and inspection of the source.

* * * * *

Subpart CCC—[Amended]

■ 31. Section 63.1164 is amended by revising the last sentence in paragraph (c) introductory text and revising paragraph (c)(1) to read as follows:

§ 63.1164 Reporting requirements.

* * * * *

(c) * * * Malfunctions must be corrected as soon as practicable after their occurrence.

(1) *Plan.* As required by § 63.6(e)(3) of subpart A of this part, the owner or operator shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standards.

* * * * *

Subpart EEE—[Amended]

■ 32. Section 63.1206 is amended by revising paragraphs (c)(2)(v)(A)(*2*) and (c)(2)(v)(B)(*4*) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) * * *

(*2*) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 is not a violation of this subpart EEE if you operate in accordance with § 63.6(e)(1).

* * * * *

(B) * * *

(*4*) Although the automatic waste feed cutoff requirements of this paragraph (c)(2)(v)(B)(*4*) apply during startup and shutdown, an exceedance of an emission standard or operating limit is not a violation of this subpart EEE if you operate in accordance with § 63.6(e)(1).

* * * * *

Subpart GGG—[Amended]

■ 33. Section 63.1251 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1251 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, emissions 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. * * *

* * * * *

■ 34. Section 63.1256 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 63.1256 Standards: wastewater.

(a) * * *

(4) * * *

(iii) The owner or operator shall incorporate the procedures described in paragraphs (a)(4)(i) and (ii) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

■ 35. Section 63.1258 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a start-up, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e)(1).

* * * * *

■ 36. Section 63.1259 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart HHH—[Amended]

■ 37. Section 63.1283 is amended by revising paragraph (d)(8)(i)(A) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e)(1); or

* * * * *

■ 38. Table 2 to Subpart HHH is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) 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	Applies to subpart HHH	Explanation
* * * * * * *		
§ 63.6(e)(3)(ix)	Yes.	
* * * * * * *		

Subpart JJJ—[Amended]

§ 63.1310 [Amended]

■ 39. Section 63.1310 is amended by removing the third sentence in paragraph (j)(1).

■ 40. Section 63.1335 is amended by:

■ a. Revising the first sentence in paragraph (b)(1) introductory text; and

■ b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average or (batch cycle daily average) value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of § 63.6(e)(1).

* * * * *

■ 41. Table 1 to Subpart JJJ is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) 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
* * * * * * *		
§ 63.6(e)(3)(ix)	Yes.	
* * * * * * *		

Subpart MMM—[Amended]

■ 42. Section 63.1361 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1361 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, emissions 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. * * *

* * * * *

■ 43. Section 63.1366 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e)(1).

* * * * *

■ 44. Section 63.1367 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart NNN—[Amended]

■ 45. Section 63.1386 is amended by revising the first sentence in paragraph (c)(1) introductory text to read as follows:

§ 63.1386 Notification, recordkeeping, and reporting requirements.

* * * * *

(c) * * *

(1) The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process modifications and control systems used to comply with the standards. * * *

* * * * *

Subpart OOO—[Amended]

§ 63.1400 [Amended]

■ 46. Section 63.1400 is amended by removing the third sentence in paragraph (k)(1) and by removing the last sentence in paragraph (k)(2).

■ 47. Section 63.1402 is amended by revising the first sentence in the definition of *malfunction* in paragraph (b) to read as follows:

§ 63.1402 Definitions.

* * * * *

(b) * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment or process equipment, or failure of a process to operate in a normal or usual manner, or opening of a safety device which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 48. Section 63.1413 is amended by revising the first sentence in paragraph (h)(4) introductory text and paragraph (h)(5) introductory text to read as follows:

§ 63.1413 Compliance demonstration procedures.

* * * * *

(h) * * *

(4) *Deviation from the emission standard.* If an affected source is not operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e)(1), there has been a deviation from the emission standard.

* * *

* * * * *

(5) *Situations that are not deviations.* If an affected source is operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e)(1), and any of the situations listed in paragraphs (h)(5)(i) through (iv) of this section occur, such situations shall not be considered to be deviations.

* * * * *

■ 49. Section 63.1416 is amended by:

■ a. Revising the first sentence in paragraph (b) introductory text; and

■ b. Revising paragraph (h)(2)(iv) to read as follows:

§ 63.1416 Recordkeeping requirements.

* * * * *

(b) * * * The owner or operator of an affected source shall develop a startup, shutdown, and malfunction plan as specified in § 63.6(e)(3) and shall keep the plan on-site. * * *

* * * * *

(h) * * *

(2) * * *

(iv) For purposes of paragraph (h)(2) of this section, a deviation means that the daily average, batch cycle daily average, or block average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except that the daily average, batch cycle daily average, or block average value during any startup, shutdown, or malfunction shall not be considered a deviation, if the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

■ 50. Table 1 to Subpart OOO is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart OOO of Part 63—Applicability of General Provisions to Subpart OOO Affected Sources

Reference	Applies to subpart OOO	Explanation
* *	* *	* *
63.6(e)(3)(ix)	Yes.	
* *	* *	* *

* * * * *

Subpart PPP—[Amended]

§ 63.1420 [Amended]

■ 51. Section 63.1420 is amended by removing the third sentence in paragraph (h)(1).

■ 52. Section 63.1439 is amended by:

■ a. Revising the first sentence in paragraph (b)(1) introductory text; and

■ b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

■ 53. Table 1 to Subpart PPP is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart PPP of Part 63—Applicability of General Provisions to Subpart PPP Affected Sources

Reference	Applies to subpart PPP	Explanation
* *	* *	* *
63.6(e)(3)(ix)	Yes.	
* *	* *	* *

* * * * *

Subpart QQQ—[Amended]

■ 54. Section 63.1448 is amended by revising paragraph (c) to read as follows:

§ 63.1448 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 55. Section 63.1453 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 63.1453 How do I demonstrate continuous compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

* * * * *

(c) * * *

(1) * * *

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan, and you operated the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart RRR—[Amended]

■ 56. Section 63.1516 is amended by revising the first sentence in paragraph (a) introductory text as follows:

§ 63.1516 Reports.

(a) * * * The owner or operator must develop a written plan as described in

§ 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. * * *

* * * * *

Subpart TTT—[Amended]

57. Section 63.1542 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.1542 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 58. Section 63.1547 is amended by revising paragraph (g)(2) to read as follows:

§ 63.1547 Monitoring requirements.

* * * * *

(g) * * *

(2) Alarms that occur during startup, shutdown, or malfunction shall not be included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart UUU—[Amended]

■ 59. Section 63.1570 is amended by:

■ a. Revising paragraph (d);

■ b. Removing and reserving paragraph (e); and

■ c. Revising paragraph (g) to read as follows:

§ 63.1570 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(e) [Reserved]

* * * * *

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The SSMP must include elements designed to minimize the frequency of such periods (i.e., root cause analysis). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

■ 60. Table 44 to Subpart UUU is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 44 to Subpart UUU of Part 63—Applicability of NESHAP General Provisions to Subpart UUU

* * * * *

Citation	Subject	Applies to subpart UUU	Explanation
*	*	*	*
§ 63.6(e)(3)(ix)		Yes.	
*	*	*	*

Subpart XXX—[Amended]

■ 61. Section 63.1651 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.1651 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 62. Section 63.1656 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 63.1656 Performance testing, test methods, and compliance demonstrations.

* * * * *

(e) * * *

(2) * * *

(ii) Do not include alarms that occur during startup, shutdown, and malfunction in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart AAAA—[Amended]

■ 63. Section 63.1960 is amended by revising the fourth and sixth sentences to read as follows:

§ 63.1960 How is compliance determined?

* * * Finally, you must develop a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). * * * Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

* * * * *

■ 64. Section 63.1965 is amended by revising paragraph (c) to read as follows:

§ 63.1965 What is a deviation?

* * * * *

(c) A deviation occurs when a SSM plan is not developed or maintained on site.

Subpart CCCC—[Amended]

■ 65. Section 63.2150 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.2150 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written malfunction plan. * * *

■ 66. Section 63.2164 is amended by revising paragraph (a) to read as follows:

§ 63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

(a) Each CEMS must be installed, operated, and maintained according to manufacturer's specifications and in accordance with § 63.6(e)(1).

* * * * *

§ 63.2171 [Amended]

■ 67. Section 63.2171 is amended by removing paragraph (d).

Subpart DDDD—[Amended]

■ 68. Section 63.2250 is amended by revising paragraph (c) to read as follows:

§ 63.2250 What are the general requirements?

* * * * *

(c) You must develop a written SSMP according to the provisions in § 63.6(e)(3).

* * * * *

■ 69. Section 63.2271 is amended by removing and reserving paragraph (b)(1) and revising the first sentence in paragraph (b)(2) to read as follows:

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

* * * * *

(b) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart EEEE—[Amended]

■ 70. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

§ 63.2378 [Amended]

■ 71. Section 63.2378 is amended by removing the third sentence of paragraph (b)(1).

■ 72. Table 12 to subpart EEEE is amended by revising the citation to § 63.8(c)(1)(i)–(iii) 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
*	*	*	*
§ 63.8(c) (1)(i)—(iii)	Routine and Predictable SSM.	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan..	Yes.
*	*	*	*

Subpart FFFF—[Amended]

■ 73. Table 12 to Subpart FFFF is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 12 to Subpart FFFF of Part 63—Applicability of General Provisions to Subpart FFFF

* * * * *

Citation	Subject	Explanation
*	*	*
§ 63.6(e)(3)(ix)	SSMP incorporation into title V permit	Yes.
*	*	*

Subpart GGGG—[Amended]

■ 74. Table 1 to § 63.2850 is amended by revising the paragraph (a) entries to read as follows:

§ 63.2850 How do I comply with the hazardous air pollutant emission standards?

* * * * *

Table 1 to § 63.2850—Requirements for Compliance With HAP Emission Standards

Are you required to . . .	For periods of normal operation?	For initial startup periods subject to § 63.2850(c)(2) or (d)(2)?	For malfunction periods subject to § 63.2850(e)(2)?
(a) Operate and maintain your source in accordance with general duty provisions of § 63.6(e)?	Yes. Additionally, the HAP emission limits will apply.	Yes, you are required to minimize emissions to the extent practible throughout the initial startup period. Such measures should be described in the SSM plan.	Yes, you are required to minimizwe emissions to the extent practible throughout the initial startup period. Such measures should be described in the SSM plan.
*	*	*	*

* * * * *

■ 75. Section 63.2852 is amended by revising the first sentence to read as follows:

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written SSM plan in accordance with § 63.6(e)(3). * * *

■ 76. Table 1 to § 63.2870 is amended by revising the entry for "§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii)"; by removing the entry

"§ 63.6(e)(3)(v)(iii)" and adding in it's place a new entry for "§ 63.6(e)(3)(iii)"; and by adding in numerical order a new entry for "§ 63.6(e)(3)(ix)" to read as follows:

§ 63.2870 What parts of the General Provisions apply to me?

* * * * *

Table 1 to § 63.2870—Applicability of 40 CFR Part 63, Subpart A, to 40 CFR, Part 63, Subpart GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
*	*	*	*	*
§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintenance requirements.		Yes	Minimize emissions to the extent practical.
§ 63.6(e)(3)(iii)	Operation and maintenance requirements.		No	Minimize emissions to the extent practical
*	*	*	*	*
§ 63.6(e)(3)(ix)	Title V permit		Yes.	
*	*	*	*	*

■ 77. Section 63.2872(c) is amended by:

■ a. Revising the second sentence in the definition of *initial startup period;* and

■ b. Revising the third sentence in the definition of *malfunction period* to read as follows:

§ 63.2872 What definitions apply to this subpart?

* * * * *

(c) * * *

Initial startup period means * * * During an initial startup period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Malfunction period means * * * During a malfunction period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Subpart HHHH—[Amended]

■ 78. Section 63.2984 is amended by revising paragraph (b) to read as follows:

§ 63.2984 What operating limits must I meet?

* * * * *

(b) When during a period of normal operations you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. The corrective actions must be completed in an expeditious manner as specified in the OMM plan.

* * * * *

■ 79. Section 63.2986 is amended by revising the first sentence in paragraph (g)(3) to read as follows:

§ 63.2986 How do I comply with the standards?

* * * * *

(g) * * *

(3) You must develop a written SSMP according to the provisions in § 63.6(e)(3). * * *

Subpart IIII—[Amended]

■ 80. Section 63.3100 is amended by revising the first sentence in paragraph (f) to read as follows:

§ 63.3100 What are my general requirements for complying with this subpart?

* * * * *

(f) If your affected source uses emission capture systems and add-on control devices, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 81. Section 63.3163 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

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

* * * * *

Subpart KKKK—[Amended]

■ 82. Section 63.3500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 83. Section 63.3542 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

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

* * * * *

■ 84. Section 63.3552 is amended by:

■ a. Removing and reserving paragraph (f); and

■ b. Revising the first sentence in paragraph (g) to read as follows:

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) [Reserved]

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

* * * * *

Subpart MMMM—[Amended]

■ 85. Section 63.3900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.3963 [Amended]

■ 86. Section 63.3963 is amended by removing and reserving paragraph (g).

Subpart NNNN—[Amended]

■ 87. Section 63.4100 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4100 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 88. Section 63.4110 is amended by revising paragraph (b)(9)(v) to read as follows:

§ 63.4110 What notifications must I submit?

* * * * *

(b) * * *

(9) * * *

(v) A statement of whether or not you developed the startup, shutdown, and malfunction plan required by § 63.4100(d).

* * * * *

■ 89. Section 63.4163 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

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

* * * * *

Subpart OOOO—[Amended]

■ 90. Section 63.4300 is amended by:

■ a. Revising paragraph (a)(3)(i); and

■ b. Revising the first sentence in paragraph (c) to read as follows:

§ 63.4300 What are my general requirements for complying with this subpart?

(a) * * *

(3) * * *

(i) The web coating/printing or dyeing/finishing operation(s) must be in compliance with the applicable emission limit in Table 1 to this subpart or minimize emissions at all times as required by § 63.6(e)(1).

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 91. Section 63.4310 is amended by revising paragraph (c)(9)(iv) to read as follows:

§ 63.4310 What notifications must I submit?

* * * * *

(c) * * *

(9) * * *

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293 and developed the startup, shutdown, and malfunction plan required by § 63.4300.

■ 92. Section 63.4342 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4342 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or web coating/printing or dyeing/finishing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 93. Section 63.4352 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4352 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

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

* * * * *

Subpart PPPP—[Amended]

■ 94. Section 63.4500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.4563 [Amended]

■ 95. Section 63.4563 is amended by removing and reserving paragraph (g).

Section QQQQ—[Amended]

■ 96. Section 63.4700 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4700 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 97. Section 63.4763 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4763 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart RRRR—[Amended]

■ 98. Section 63.4900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device to comply with the emission limitations in § 63.4890, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

§ 63.4962 [Amended]

■ 99. Section 63.4962 is amended by removing and reserving paragraph (g).

Subpart UUUU—[Amended]

■ 100. Section 63.5515 is amended by revising paragraph (c) to read as follows:

§ 63.5515 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 101. Section 63.5555 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising paragraph (d) to read as follows:

§ 63.5555 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

■ 102. Table 10 to subpart UUUU of part 63 is amended by revising the citation to § 63.8(c)(1)(i) 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
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart WWWW—[Amended]

■ 103. Section 63.5835 is amended by revising paragraph (d) to read as follows:

§ 63.5835 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3) for any organic HAP emissions limits you meet using an add-on control.

■ 104. Section 63.5900 is amended by:

■ a. Revising paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.5900 How do I demonstrate continuous compliance with the standards?

* * * * *

(d) When you use an add-on control device to meet standards in § 63.5805, you are not required to meet those standards during periods of startup, shutdown, or malfunction, but you must operate your affected source to minimize emissions in accordance with § 63.6(e)(1).

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of malfunction for those affected sources and standards specified in paragraph (d) of this section are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart XXXX—[Amended]

■ 105. Section 63.5990 is amended by revising paragraph (d) to read as follows:

§ 63.5990 What are my general requirements for complying with this subpart?

* * * * *

(d) For each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

Subpart YYYY—[Amended]

■ 106. Section 63.6140 is amended by revising paragraph (c) to read as follows:

§ 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?

* * * * *

(c) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations if you have operated your stationary combustion turbine in accordance with § 63.6(e)(1)(i).

■ 107. Section 63.6175 is amended by revising paragraph (4) under the definition of *deviation* to read as follows:

§ 63.6175 What definitions apply to this subpart?

* * * * *

Deviation * * *

* * * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Subpart ZZZZ—[Amended]

■ 108. Section 63.6640 is amended by:
■ a. Removing and reserving paragraph (c); and
■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations from the emission or operating limitations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 109. Section 63.6675 is amended by revising paragraph (4) under the definition of *deviation* and by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.6675 What definitions apply to this subpart?

* * * * *

Deviation * * *

* * * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

Subpart AAAAA—[Amended]

■ 110. Section 63.7100 is amended by revising paragraph (e) to read as follows:

§ 63.7100 What are my general requirements for complying with this subpart?

* * * * *

(e) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 111. Section 63.7121 is amended by:
■ a. Removing and reserving paragraph (c); and
■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7121 How do I demonstrate continuous compliance with the emission limitations standard?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart BBBBB—[Amended]

■ 112. Section 63.7185 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7185 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP). * * *

* * * * *

§ 63.7187 [Amended]

■ 113. Section 63.7187 is amended by removing and reserving paragraph (d).

Subpart CCCCC—[Amended]

■ 114. Section 63.7310 is amended by revising paragraph (c) to read as follows:

§ 63.7310 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 115. Section 63.7336 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startup, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart DDDDD—[Amended]

■ 116. Section 63.7505 is amended by revising paragraph (e) to read as follows:

§ 63.7505 What are my general requirements for complying with this subpart?

* * * * *

(e) If you have an applicable emission limit or work practice standard, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 117. Section 63.7540 is amended by:
■ a. Revising the first sentence in paragraph (a)(9);
■ b. Removing and reserving paragraph (c); and
■ c. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) * * *

(9) If your unit is controlled with a fabric filter, and you demonstrate continuous compliance using a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions as soon as practical, and operate and maintain the fabric filter system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. * * *

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you

demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

■ 118. Table 10 to subpart DDDDD of part 63 is amended by revising the citation to § 63.8(c)(1)(iii) to read as follows:

Table 10 to Subpart DDDDD of Part 63—Applicability of General Provisions to Subpart DDDDD

* * * * *

Citation	Subject	Brief description	Applicable
*	*	*	*
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance.	Must develop an SSMP for CMS	Yes.
*	*	*	*

Subpart EEEEE—[Amended]

■ 119. Section 63.7720 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7720 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 120. Section 63.7746 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with the requirements of §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart FFFFF—[Amended]

■ 121. Section 63.7810 is amended by revising paragraph (c) to read as follows:

§ 63.7810 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 122. Section 63.7835 is amended by removing introductory text to paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart GGGGG—[Amended]

■ 123. Section 63.7935 is amended by:

■ a. Revising paragraph (c);

■ b. Removing and reserving paragraph (d); and

■ c. Revising the first sentence in paragraph (f) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) [Reserved]

* * * * *

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 124. Table 3 to subpart GGGGG of part 63 is amended by revising the citation to § 63.8(c)(1)(i) 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
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart HHHHH—[Amended]

■ 125. Table 10 to Subpart HHHHH is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 10 to Subpart HHHHH of Part 63—Applicability of General Provisions to Subpart HHHHH

* * * * *

Citation	Subject	Explanation
* * * * * * *		
§ 63.6(e)(3)(ix)	Title V permit	Yes.
* * * * * * *		

Subpart IIIII—[Amended]

■ 126. Section 63.8226 is amended by revising paragraph (b) to read as follows:

§ 63.8226 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 127. Section 63.8248 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.8248 What other requirements must I meet?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart JJJJJ—[Amended]

■ 128. Section 63.8420 is amended by revising paragraph (c) to read as follows:

§ 63.8420 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 129. Section 63.8470 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

* * * * *

Subpart KKKKK—[Amended]

■ 130. Section 63.8570 is amended by revising paragraph (c) to read as follows:

§ 63.8570 What are my general requirements for complying with this subpart?

* * * * *

(c) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 131. Section 63.8620 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

* * * * *

Subpart LLLLL—[Amended]

■ 132. Section 63.8685 is amended by revising paragraph (c) to read as follows:

§ 63.8685 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 133. Section 63.8691 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8691 How do I demonstrate continuous compliance with the operating limits?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

■ 134. Table 7 to subpart LLLLL of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 7 to Subpart LLLLL of Part 63—Applicability of General Provisions to Subpart LLLLL

Citation	Subject	Brief description	Applies to subpart LLLLL
* * * * * * *			
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunction.	1. Keep parts for routine repairs readily available. 2. Reporting requirements for CMS malfunction when action is described in SSM plan.	Yes.
* * * * * * *			

Subpart MMMMM—[Amended]

■ 135. Section 63.8794 is amended by revising paragraph (e) to read as follows:

§ 63.8794 What are my general requirements for complying with this subpart?

* * * * *

(e) For each new or reconstructed flame lamination affected source, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 136. Section 63.8812 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart NNNNN—[Amended]

■ 137. Section 63.9005 is amended by revising paragraph (c) to read as follows:

§ 63.9005 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 138. Section 63.9040 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart PPPPP—[Amended]

■ 139. Section 63.9305 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.9305 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written SSM plan (SSMP) for emission control devices and associated monitoring equipment according to the provisions in § 63.6(e)(3). * * *

■ 140. Section 63.9340 is amended by removing introductory text in paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 63.9340 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of control devices and associated monitoring equipment are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

■ 141. Section 63.9375 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.9375 What definitions apply to this subpart?

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 142. Table 7 to subpart PPPPP of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 7 to Subpart PPPPP of Part 63—Applicability of General Provisions to Subpart PPPPP

* * * * *

Citation	Subject	Brief description	Applies to subpart PPPPP
*	*	*	*
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunctions.	1. Keep parts for routine repairs of CMS readily available. 2. Reporting requirements for SSM when action is described in SSMP.	Yes.
*	*	*	*

Subpart QQQQQ—[Amended]

■ 143. Section 63.9505 is amended by revising paragraph (c) to read as follows:

§ 63.9505 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 144. Section 63.9530 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart RRRRR—[Amended]

■ 145. Section 63.9610 is amended by revising paragraph (c) to read as follows:

§ 63.9610 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 146. Section 63.9637 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9637 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart SSSSS—[Amended]

■ 147. Section 63.9792 is amended by revising paragraph (c) to read as follows:

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 148. Section 63.9810 is amended by removing and reserving paragraph (e)(1) and revising the first sentence in paragraph (e)(2) to read as follows:

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(e) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

Subpart TTTTT—[Amended]

■ 149. Section 63.9910 is amended by revising paragraph (b) to read as follows:

§ 63.9910 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 150. Section 63.9925 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

PART 65—[AMENDED]

■ 151. The authority citation of part 65 continues to read as follows:

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

Subpart A—[Amended]

■ 152. Section 65.2 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 65.2 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, 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. * * *

* * * * *

■ 153. Section 65.3 is amended by
■ a. Revising the second sentence in paragraph (a)(3);
■ b. Revising the first sentence in paragraph (a)(4); and
■ c. Revising paragraph (b)(2)(i) to read as follows:

§ 65.3 Compliance with standards and operation and maintenance requirements.

(a) * * *

(3) * * * The measures to be taken may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. * * *

(4) Malfunctions shall be corrected as soon as practical after their occurrence. * * *

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 65.3(a)(3)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

* * * * *

■ 154. Section 65.6 is amended by:
■ a. Revising the first and fourth sentences in paragraph (b)(1) introductory text;
■ b. Revising paragraph (b)(2); and
■ c. Revising paragraph (c)(3) to read as follows:

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

* * * * *

(b) *Startup, shutdown, and malfunction plan*—(1) *Description and purpose of plan.* The owner or operator of a regulated source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with § 65.3(a). The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the

Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (b)(1) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(c) * * *

(3) If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report, and describe the actions taken. Such description can take the form of a checklist; only one checklist is necessary if actions taken are the same for multiple events during the reporting period.

* * * * *

■ 155. Section 65.115 is amended by revising the last sentence in paragraph (b)(1) and the last sentence in paragraph (b)(2) to read as follows:

§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

* * * * *

(b) *Compliance standard.* (1) * * * Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

(2) * * * Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

■ 156. Section 65.156 is amended by revising paragraphs (d)(3)(i) and (ii) to read as follows:

§ 65.156 General monitoring requirements for control and recovery devices.

* * * * *

(d) * * *

(3) * * *

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods to minimize emissions in accordance with § 65.3(a)(3).

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with § 65.3(a)(3).

* * * * *

■ 157. Section 65.161 is amended by revising paragraph (e)(2)(iv)(A) to read as follows:

§ 65.161 Continuous records and monitoring data system handling.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (e) if the owner or operator operates the source in accordance with § 65.3(a).

* * * * *

■ 158. Section 65.163 is amended by revising paragraph (c)(2) to read as follows:

§ 65.163 Other records.

* * * * *

(c) * * *

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and a description of actions taken to minimize emissions. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

* * * * *

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entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

EPA has determined that this final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action will require the state of Missouri to revise laws and regulations to meet the NAAQS for lead. This requirement would not result in aggregate costs over $100 million to either the state or local districts. It is unclear whether a requirement to submit a SIP revision would constitute a Federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

This final action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it 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 (64 FR 43255, August 10, 1999), because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the states as established by the CAA. This SIP call is required by the CAA because the current SIP is inadequate to attain the lead NAAQS. Missouri's direct compliance costs will not be substantial because the SIP call requires Missouri to submit only those revisions necessary to address the SIP deficiency and applicable CAA requirements.

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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. 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 rule is not subject to Executive Order 13045 because it requires attainment of a previously promulgated health-based Federal standard. In addition, it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with the National Technology Transfer and Advancement Act, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In making a finding of a SIP deficiency, EPA's role is to review existing information against previously established standards (in this case, what constitutes a violation of the lead standard). In this context, there is no opportunity to use VCS. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 7, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 06–3592 Filed 4–13–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0088; FRL–8158–5]

RIN 2060–AM90

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule amendments to the national emission standards for hazardous air pollutants (NESHAP) for Refractory Products Manufacturing, published in the Federal Register on February 13, 2006. We stated in the direct final rule amendments that if we received adverse comment by March 15, 2006, we would publish a timely notice of withdrawal in the Federal Register. We subsequently received adverse comment on the direct final rule amendments. We will address those comments in a subsequent final action based on the parallel proposal also published on February 13, 2006. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of April 14, 2006, EPA withdraws the direct final rule amendments published on February 13, 2006 (71 FR 7415).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0088. 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 NESHAP for Refractory Products Manufacturing Docket, EPA/DC, EPA West, Room B102, 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 Refractory Products

Manufacturing Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D–243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5167; fax number: (919) 541–5600; e-mail address: *fairchild.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Categories and entities potentially affected by this action include those which manufacture refractory products. Regulated categories and entities include:

Category	NAICS code[1]	Examples of regulated entities
Industry	327124 327125	Clay refractory manufacturing plants and nonclay refractory manufacturing plants.
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. This table lists the types of entities that EPA is now aware could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in 40 CFR 63.9782 of subpart SSSSS (NESHAP for Refractory Products Manufacturing). If you have 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).

II. Background Information

On February 13, 2006, we published a direct final rule (71 FR 7415) and parallel proposal (71 FR 7494) amending the NESHAP for Refractory Products Manufacturing. The amendments would have clarified the testing and monitoring requirements of the NESHAP, made the NESHAP consistent with recent changes to the General Provisions (40 CFR part 63, subpart A), and made certain technical corrections to the rule. The amendments would have clarified that sources complying with the total hydrocarbon (THC) percent reduction emission limit could choose to meet the alternative concentration emission limit if they turn back the control device after it is no longer needed (*i.e.*, after the concentration of THC in the exhaust gas is at or below the THC concentration emissions limit).

The preamble to the direct final rule amendments stated that if we received adverse comment by March 15, 2006, we would publish a timely notice of withdrawal in the Federal Register. EPA received adverse comment on the direct final rule amendments. Accordingly, we are withdrawing the direct final rule amendments as of April 14, 2006. EPA will take final action on the parallel proposal after considering the comments received. As stated in the parallel proposal, EPA will not institute a second comment period on this action.

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: April 7, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

PART 63—[AMENDED]

■ Accordingly, the amendments to the rule published in the Federal Register on February 13, 2006 (71 FR 7415) on pages 7415–7441 are withdrawn as of April 14, 2006.

[FR Doc. 06–3545 Filed 4–13–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2002–0241; FRL–8063–5]

Sodium Metasilicate; Amendment to an Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an amendment to an exemption from the requirement of a tolerance for residues of sodium metasilicate on all food commodities when applied/used as an insecticide or fungicide to control or suppress leafhoppers and powdery mildew in accordance with approved label rates and good agricultural practice. A petition was submitted to EPA on behalf of Environmentally Safe Systems, Inc. under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium metasilicate.

DATES: This regulation is effective April 14, 2006. Objections and requests for hearings must be received on or before June 13, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IX. of the SUPPLEMENTARY INFORMATION. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2002–0241. All documents are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/.* Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

and by adding a new paragraph (h) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(b) For areas newly required to implement basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(d) For areas newly required to implement enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(e) [Reserved]

* * * * *

(h) For areas newly required to implement either a basic or enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, such programs shall begin OBD testing on subject OBD-equipped vehicles coincident with program start-up.

* * * * *

[FR Doc. 06–3317 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0197, FRL–8054–6]

RIN 2060–AK09

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision.

SUMMARY: This action finalizes our decision not to revise the Ethylene Oxide Emission Standards for Sterilization Facilities, originally promulgated on December 6, 1994. Within 8 years of promulgating these standards, the Clean Air Act directs us to assess the risk and to promulgate more stringent standards if necessary to protect public health with an ample margin of safety and to prevent adverse environmental effects. Also, within 8 years of promulgating the national emission standards, the Clean Air Act requires us to review and revise the standards as necessary, taking into account developments in practices, processes, and control technologies. Today's action reflects our findings that after conducting these risk and technology reviews, no additional control requirements are warranted.

DATES: *Effective Date:* April 7, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0197. 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, EPA/DC, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Facility 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. David Markwordt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E–143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0837, facsimile number (919) 685–3195, electronic mail (e-mail) address: *markwordt.david@epa.gov.*

Residual Risk Assessment Information. Mr. Mark Morris, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5470, facsimile number (919) 541–0840, electronic mail (e-mail) address: *morris.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the national emission standards include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	329112 339113 325412 311942 311423	(3841) (3842) (2834) (2099) (2034)	Operations at major and area sources that sterilize or fumigate medical supplies, pharmaceuticals, and spice.
Federal/State/ local/tribal governments.			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

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 would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.360. If you have any questions regarding the applicability of the national emission standards 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final decision will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final decision 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.

Judicial Review. Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 the final decision may not be challenged separately in civil or criminal proceedings brought 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, 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 20004.

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

I. Background
A. What Is the Statutory Authority for These Actions?
B. What Did We propose?
II. Risk and Technology Review Final Decision
III. Summary of Comments and Responses
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 & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Statutory Authority for These Actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and ethylene oxide sterilization facilities are identified as both major and area source categories. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based national emission standards for HAP (NESHAP) must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and nonair health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. We promulgated the National Emission Standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations Facilities at 59 FR 62585 on December 6, 1994 (Ethylene Oxide Sterilization NESHAP). As for area sources, we established MACT standards for certain emission points pursuant to section 112(d)(2) and generally available control technology (GACT) standards for other emission points pursuant to section 112(d)(5).

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account "developments in practices, processes, and control technologies."

The residual risk review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a GACT standard, whether the NESHAP protects public health with an ample margin of safety (AMOS). If the NESHAP 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 one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (defined in 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," but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did We Propose?

We promulgated the Ethylene Oxide Sterilization NESHAP in 1994. On October 24, 2005 (70 FR 61406), we proposed not to revise the Ethylene Oxide Sterilization NESHAP and requested public comments on the residual risk and technology review for the Ethylene Oxide Sterilization NESHAP.

II. Risk and Technology Review Final Decision

In our proposal, we presented the analysis and conclusions on residual risk and technology review, concluding that the maximum individual cancer risk for this source category already meets the level we generally consider acceptable, and that further control requirements would achieve, at best, minimal emission and risk reductions at a very high cost from emission vents controlled with MACT at both major and area sources. Further, the analyses showed that both the chronic noncancer and acute risks from this source category are below their respective relevant health thresholds, and that there are no adverse impacts to the environment (i.e., ecological risks). As a result, we concluded that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the NESHAP MACT requirements for the

ethylene oxide major and area source categories.

In the technology review, we concluded that additional controls at existing sources would achieve, at best, minimal emission and risk reductions at a very high cost. Additionally, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994 which represent the best controls that can be implemented nationally. Thus, we proposed no additional controls under the technology review under CAA section 112(d)(6).

We conclude in this rulemaking, as proposed, that there is not a need to revise the Ethylene Oxide Sterilization NESHAP under the provisions of CAA section 112(f) or 112(d)(6).

III. Summary of Comments and Responses

The proposal provided a 45-day comment period ending December 8, 2005. We received comments from eight commenters. Commenters included three State agencies, one State and local agency association, three industry trade associations, and one coalition of trade associations. We have considered the public comments as discussed below and did not find that the comments changed any of our determinations.

1. Source Category Risk Approach

Comment: One commenter disagreed that EPA can utilize approaches different from that specified in the Benzene NESHAP. The commenter believes that EPA misinterpreted the CAA legislative history stating that EPA could read section 112(f)(2)(B) as directing it to use the interpretation set out in the Benzene NESHAP or use approaches affording the same level of protection. According to the commenter, EPA must use only the Benzene NESHAP approach and cannot use any other approach by relying on a Senate manager's statement that EPA should interpret the section 112(f)(2)(B) requirement to establish standards reflecting an ample margin of safety in a manner no less protective of the most exposed individual than the policy set forth in the Benzene NESHAP.

Response: In the proposed rule, EPA followed the approach set out in National Emission Standards for Hazardous Air Pollutants (NESAHP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants, 54 FR 38044 (September 14, 1989). EPA used the two-step decision process of first determining a level of acceptable risk followed by finding an ample margin of safety. As the commenter concedes EPA's approach is fully consistent with the Benzene NESHAP approach and therefore acceptable. Since, in this instance, EPA did not use any other approach, the comment is not applicable to this particular rulemaking.

Comment: One commenter stated that Congress was clear in requiring EPA to evaluate only the risks from an individual source category or subcategory in establishing residual risk standards. The commenter stated EPA should not include the risk from area sources in determining whether risks from the major source category exceeds the one-in-a-million risk trigger under section 112(f)(2) or in making judgments on acceptable risk and ample margin of safety for major sources.

Response: We listed separate source categories for major and area commercial sterilization facilities under section 112(c) of the CAA, and we agree with the commenter that a separate determination of acceptable risk and ample margin of safety should be made for each source category under section 112(f) of the CAA. Our risk assessment for commercial sterilization facilities includes risk estimates for all known sources, including mostly major sources and the area sources with the highest emissions. Only two area sources have estimated cancer risk greater than 1 in 1 million (highest is 20 in 1 million), and no area sources have modeled ethylene oxide concentrations near the reference concentration. For additional information on our risk assessment of area sources see section III.2.

In the preamble to the proposed rule, we stated that risks were acceptable considering all known sources (major and area sources) and that an ample margin of safety was achieved without control requirements beyond those in the current standards. Although the preamble to the proposed rule does not discuss separate determinations of acceptability and ample margin of safety for major and areas source categories, our conclusions would not have changed whether we had considered all sources together, or separately for major sources and area sources.

Comment: One commenter stated that EPA did not comprehensively consider the plants' impacts because it did not consider all HAP emissions or all source categories at the facilities. The commenter stated that in considering only a portion of the facilities' emissions, the determination of low-risk is based on a distorted and unrealistic view of their impact. The commenter included an example of a facility that uses and emits methyl bromide from its sterilization operations.

Response: In general, there is much less co-location of commercial sterilization operations with other industrial processes than there is for the typical source category. Many facilities are contract sterilizers with no co-location. In some cases, there is co-location of commercial sterilizers with other processes, such as pharmaceuticals production. We do not have sufficiently detailed information to analyze the possibility of controls on the various specific sources within a facility but outside the commercial sterilizer source category. As a result, we could not evaluate the existing levels of control or the potential for applying additional controls at the facilities where HAP emissions from other sources contribute to the risk. Therefore, we did not consider emissions from co-located sources in our decision to require no additional controls because we did not have the control cost and feasibility data necessary to do so. Our position on the potential consideration of co-located source categories is fully discussed in the coke oven final rule (70 FR 19995–19998).

Regarding emissions of methyl bromide, we searched the 1999 National Emissions Inventory (NEI) for the 76 identified ethylene oxide sterilization facilities to determine which emit both ethylene oxide and methyl bromide. According to the NEI data base, only two of the facilities emit both HAP. One of the facilities emits so little methyl bromide that the risk estimates would not be significantly different if methyl bromide were considered. The other facility emits more methyl bromide than ethylene oxide (about 2 to 3 times as much). However, because there is no cancer unit risk estimate for methyl bromide, the emissions of methyl bromide would not affect our cancer risk estimate (3 in 1 million). Considering effects other than cancer, the reference concentration for chronic inhalation exposures to methyl bromide is approximately six times lower than that of ethylene oxide. Consequently, the methyl bromide emissions could result in an increase in our estimate of the hazard index for the facility by as much as a factor of 20 (assuming similar source release parameters like stack height, etc.). This is not a concern because our current estimate of the hazard index is 0.001, and a factor greater than 1000 would be necessary before a hazard index of 1 would be exceeded. Therefore, even considering these emissions would not change our regulatory decision.

Comment: One commenter stated EPA should not conduct a separate technology review for ethylene oxide sources under section 112(d)(6). The commenter believes that once EPA has made a residual risk determination under section 112(f), emissions from the category are "safe," and the Agency must find a revision of the MACT standard under section 112(d)(6) is unnecessary. Another commenter urges EPA to avoid expenditure of resources by conducting further analysis geared to tightening control requirements when an AMOS has already been provided by a protective standard.

Response: As discussed in the preamble to the proposed rule, we performed a separate technology review for both the area and major source categories under section 112(d)(6), but recommended no changes to the NESHAP. It is possible that future advances in control technologies for this source category could allow for meaningful emission reductions at a reasonable cost. We believe that the technology review required under section 112(d)(6) was appropriate here.

Comment: One commenter believes that there is no mechanism to revisit section 112(f) assessments and, therefore, that the risk assessment should be corrected to account for reasonably foreseeable changes that could result in increased risk, such as new residences being built closer to the facility, or increases in actual emissions within the current permit limitations.

Response: We disagree with the commenter's assertion that there is no mechanism to revisit risks from the source category, and that, therefore, the risk assessment must include consideration of foreseeable changes that may occur in the future. We have the authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to science suggests the public is exposed to significant increases in risk as compared to the risk assessment prepared for the rulemaking (e.g., CAA section 301).

2. Area Source Category—MACT and GACT

Comment: One commenter stated that EPA has discretion to not regulate MACT or GACT area sources under section 112(f). One commenter stated that EPA has the discretion under section 112(f)(5) of the CAA to avoid residual risk analysis for area sources subject to GACT, regardless of whether such sources are subject to both MACT and GACT under section 112(d). The commenter reasoned that since the CAA does not require residual risk analysis of area sources subject to GACT only, area sources subject to more stringent requirements under both MACT and GACT should also not require analysis. Two commenters stated that EPA should not omit sources subject to GACT from the residual risk analysis because it could result in serious underestimation of the health risks from area sources. One commenter believes that both section 112(d) and 112(f) of the CAA were satisfied when area sources were addressed under section 112(d)(5); since GACT controls alone would have been sufficient for EPA to avoid a residual risk review, clearly requiring both MACT and GACT controls obviates the need for any further Agency review of these area sources under both 112(d) and 112(f).

Response: For area source ethylene oxide sterilizers, EPA issued MACT standards under section 112(d)(2) for sterilizer vents and chamber exhaust vents and GACT standards for aeration room vents. EPA undertook a section 112(f)(2) analysis for area source emissions standards that were issued as MACT standards and exercised its discretion under section 112(f)(5) to not do an 112(f)(2) analysis for those emission points for which GACT standards were established. EPA appreciates the responses to its question regarding the range of discretion that the Agency has under section 112(f)(5) and will consider the points made by commenters in developing future relevant proposals. However, for purposes of this rulemaking, EPA believes that it exercised its discretion appropriately by conducting a 112(f)(2) analysis for those emission points subject to MACT standards.

3. Risk Analysis Assumptions

Comment: Two commenters stated that EPA must use the best available science to establish a cancer unit risk estimate for ethylene oxide, and that it is scientifically indefensible for EPA to use the California Environmental Protection Agency cancer unit risk factor in risk assessments when more recent epidemiological data exist. One commenter states that the basis for the California unit risk factor (mononuclear leukemia in female rats) is not relevant to humans. One commenter states that a sound scientific estimate of the cancer unit risk for ethylene oxide has been derived by Kirman, *et al.*[1] based partly on two epidemiological studies[2,3] that include exposure estimates for more than 20,000 workers. Two commenters stated that EPA should plan to reevaluate the risks associated with this source category whenever the new cancer risk estimate is made final, regardless of whether or not the final rule has been published.

Response: In estimating potential excess cancer risk associated with ethylene oxide sterilizers, EPA has considered all available, credible, and relevant information. In 1985, the EPA health assessment for ethylene oxide[4] concluded, based on the information available at that time, that ethylene oxide is "probably carcinogenic to humans," and derived a cancer unit risk estimate. California EPA subsequently relied on the EPA assessment in developing their cancer unit risk estimate using the same rat study as basis.[5,6] The California EPA assessment received concurrence from their Scientific Review Panel.[7] In 1994, the International Agency for Research on Cancer categorized ethylene oxide in their Group 1 (Carcinogenic to Humans). In 2000, the United States Department of Health and Human Services revised its listing for ethylene oxide to "known to be a human carcinogen" in the Ninth Report on Carcinogens.[8] Support for this listing includes epidemiological evidence from studies of workers exposed to ethylene oxide and animal studies. Cancer in both human and animal studies has included multiple sites, including reported associations with leukemia.[9]

[1] Kirman, C.R., *et al.* 2004. Addressing nonlinearity in the exposure-response relationship for a genotoxic carcinogen: cancer potency estimates for ethylene oxide. *Risk Anal.* 24(5):1165–83.

[2] Steenland, K.L., *et al.* 1991. Mortality among workers exposed to ethylene oxide. *New England Journal of Medicine*, 324(20):1402–1407.

[3] Teta, M.J., *et al.* 1993. Mortality study of ethylene oxide workers in chemical manufacturing: A 10-year update. *British Journal of Industrial Medicine*, 50:704–709.

[4] USEPA. 1985. Health Assessment Document for Ethylene Oxide, EPA/600/8–84/009F. Office of Health and Environmental Assessment, Washington, DC.

[5] CARB. 1987. Staff Report: Initial Statement of Reasons For Proposed Rulemaking and Report of the Scientific Review Panel. California Air Resources Board. *http://www/oehha.ca.gov/air/toxic contaminants/pdf1/ethylene%20oxide.pdf.*

[6] CalEPA. 2005. Technical Support Document for Describing Available Cancer Potency Factors. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. Air Toxicology and Epidemiology Section. *http://www.oehha.ca.gov/air/hot_spots/pdf/May2005 Hotspots.pdf.*

[7] CARB. *op. cit.*

[8] DHHS. 2000. Report on Carcinogens, Eleventh Edition; United States Department of Health and Human Services, Public Health Service, National Toxicology Program.

[9] DHHS, *op. cit.*

EPA is currently developing an updated cancer assessment for ethylene oxide (*http://cfpub.epa.gov/iristrac/index.cfm?fuseaction=viewChemical.showChemical&iris&_sub_id=897*). EPA's updated cancer assessment for ethylene oxide will consider all relevant literature and studies including the Kirman, *et al.* paper and the epidemiological studies referred to in the comment. However, until completion of that assessment and given the peer review status of the work done by the State of California, the California EPA unit risk estimate must be considered to be the best-available science and has therefore been used in assessing cancer risk for this rulemaking.

The EPA cancer assessment will not receive external peer review until mid-2006, which is after the promulgation date of the residual risk rule for this source category. Our authority to revisit any rulemaking is addressed in Section III.1.

Comment: Several commenters stated that Acute Exposure Guideline Levels (AEGL), Emergency Response Planning Guidelines (ERPG), and Immediately Dangerous to Life or Health (IDLH) values should not be used in assessing the risk from acute exposures to ethylene oxide because these values were developed for accidental release planning and are not appropriate for assessing daily human exposure scenarios. One commenter stated that EPA's acute assessment discounted the use of the National Institute of Occupational Safety and Health (NIOSH) 10-minute ceiling value of 5 parts per million (ppm) (9 mg/m^3), and noted that EPA's maximum acute exposure estimate for this source category (23 mg/m^3) exceeds the NIOSH value. Two of the commenters stated that EPA's new acute reference concentration value for ethylene oxide should be used when it becomes available.

Response: We are continuing to evaluate the role of acute health effects in our section 112(f) analysis. In any event, we have concluded that this source category does not present acute health risks that warrant further regulation. Our authority to revisit any rulemaking is addressed in Section III.1.

Comment: Three commenters stated that EPA should consider the risks from chronic exposure at facility property boundaries instead of at the geographic centroids of census blocks. The commenters state that census blocks can be large and that the point of maximum impact can be far from the census block centroid.

Response: We believe that, in a national-scale assessment of lifetime inhalation exposures and health risks from a category of facilities, it is appropriate to identify exposure locations where an individual may reasonably be expected to spend a majority of his or her lifetime. Further, we believe that it is appropriate to use census block information on where people actually reside, rather than points on a fence-line, to locate the estimation of exposures and risks to individuals living near such facilities.

Census blocks are the finest resolution available for the nationwide population data set (as developed by the U.S. Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In our risk assessments, we use the geographic centroid of each census block containing at least one person 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, since actual residence locations may be closer to or farther from facility emission points, this may result in an overestimate or underestimate of the actual chronic risks. However, given the relatively small dimensions of census blocks in densely-populated areas and the relatively large number of sources being assessed for any given source category, we believe that these uncertainties are small and do not bias our estimates of maximum individual risks for a source category.

Comment: One commenter stated that the risk assessment for ethylene oxide sterilization facilities lacks a reliable facility-specific inventory of emissions. The commenter stated that EPA did not acquire the ethylene oxide usage records and emissions data needed to perform the residual risk assessment, but instead relied on industry-supplied data from the Toxics Release Inventory (TRI) and the National Emissions Inventory (NEI). The commenter implied that EPA should have requested data from facilities under its authority under section 114 of the CAA. The commenter strongly recommend that the EPA re-conduct this residual risk assessment by requiring the sources subject to this proposed rulemaking to report five years of usage data and/or throughput data. The EPA should then select the maximum usage value to calculate emissions for each facility in the residual risk assessment based on the current percent control requirement prescribed by the NESHAP. One commenter stated that EPA's risk assessment considered only actual reported emissions instead of potential emissions. The commenter stated that since facility emissions (and associated impacts) could increase over time for a variety of reasons EPA should have considered the risks based on potential emissions. Two commenters stated residual risk assessments must be performed on allowable emissions to fully understand the potential public health implications for a source category.

Response: Our position on the use of allowable emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999).

We used reported emissions (from the National Emissions Inventory database and company reports) for the ethylene oxide source category risk analysis. The reported emissions are a mix of actual, allowable, and potential emissions, but we do not have the necessary information to distinguish between the types of data reported. While we generally recognize that most facilities over comply with the MACT requirements (thus, actual emissions are lower than allowable), we do not have data to determine the degree of over compliance that facilities are achieving or reporting. For example, chamber exhaust emissions in some cases may be lower because they are controlled by some States although not by EPA because of the safety issue discussed in the proposal. The removal of chamber exhaust vent controls by the States would likely result in a significant increase in risk. However, as discussed in section III.3, we have no basis to change conclusions presented in the proposal and will not impose controls on chamber exhaust emissions for either new or existing facilities.

The commenter also recommended we use the authority under section 114 of the CAA to gather data rather than use data bases like the TRI or data submitted by the facility but not under authority of the CAA. Since the data ultimately is supplied by the facility we believe the data is comparable to data gathered under section 114. The commenter also recommended we base rule-making on 5 years of data. The commenter provided no basis which demonstrates modeled results based on the previous 5 years are any more representative of risks than those based on the most recent emission estimates.

4. Additional Issues

Comment: One commenter stated EPA concludes that "further controls would not meaningfully reduce emissions from emission vents" but indicates that the Agency is aware that the State of California's requirement for the main sterilizer vent is 99.9 percent as contrasted with the 99 percent MACT requirement. The Agency therefore requests further data from the public in the form of five questions dealing primarily with technology and costs. (70 FR 61408) EPA does not clearly set out what decision criteria will be applied to the information that the public is being asked to supply. The commenter also stated that EPA does not explicitly state the decision criteria used in making ample margin of safety decisions under the residual risk program. Specifically, the commenter stated that for ethylene oxide sterilization facilities, the EPA did not explicitly state that incremental emission control costs were compared to incremental risk reductions in making the ample margin of safety decision, as it has in past rulemakings such as the Benzene NESHAP and radionuclide standards. The commenter also stated that the public would better understand and accept EPA's ample margin of safety decisions if EPA were to better educate the public regarding its estimated risk estimates and the contribution of stationary sources to the overall risk. One commenter stated EPA indicates that the agency had considered increasing the emission reduction limit to 99.9 percent in the national emission standards but that "we do not have data to confirm that facilities are capable of achieving 99.9 percent on a continuous basis" (70 FR 61409). The commenter encouraged EPA to review state data on this source category, including information from New York and New Jersey, indicating that such levels are achievable. Another commenter stated that EPA needs to re-evaluate the control technologies and exemptions from the current NESHAP. The emissions of ethylene oxide from the largest fugitive sources evaluated in the residual risk assessment equates to over 28 tons per year. The EPA should assess the risk reductions associated with the additional control percentages on the sterilizer chamber vent and aeration room vents for sources which use between 1 and less than 10 tons and 10 tons or greater per year of ethylene oxide.

Response: EPA stated in the proposal, "we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors." We used the same decision criteria today to address the data submitted in response to the proposal. The EPA does not have definitive criteria such as a specific cost effectiveness value which dictates the final outcome.

We solicited comments concerning both the control effectiveness and costs associated with increasing the performance limit to 99.9 percent. The summary test data submitted by the commenters lend support to the technical feasibility of complying with a higher limit for the main sterilizer vent. Commenters did not supply data supporting continuous compliance with a higher limit.

Many of the outlet concentrations are reported at the detection limit. This implies the measurement devices were showing zero concentration of ethylene oxide in the outlet stream. Because both the 1990s and 2000s data show no ethylene oxide in the outlet stream, we believe there isn't a measurable difference in the control efficiencies of the tested devices.

We did not receive comments addressing the safe control of emissions from the chamber exhaust vent. As we stated in the "Memorandum: Technology Review and Residual Risk Data Development for the Ethylene Oxide Commercial Sterilization NESHAP" (Docket # EPA–HQ–OAQ–2003–0197–0027): "Many, if not all, source facilities utilize a chamber exhaust fan while personnel are removing product from the sterilization chamber. This fan removes ethylene oxide off-gassing from the product. The Ethylene Oxide Commercial Sterilization and Fumigation NESHAP promulgated in 1994 (59 FR 62585) required control of the chamber exhaust vent. In 1997 there were a series of explosions associated with control of the chamber exhaust vent (62 FR 64736). We subsequently reassessed the control requirements and removed the requirement to control the chamber exhaust in November 2001 (66 FR 55577); the Agency continues to believe that the action taken in 2001 is reasonable and we have found no safe way to impose controls on the chamber exhaust vents. Approximately 1 percent of the ethylene oxide used in the process is emitted through the chamber exhaust vent."

Therefore, we have no basis to change conclusions presented in the proposal and will not impose controls on chamber exhaust emissions for either new or existing facilities.

To assess the risk reduction associated with increasing the stringency of the standard for the main sterilizer vent from 99 to 99.9 percent emission reduction, we looked at the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27). Only one commenter provided cost estimates to retrofit existing facilities to comply with a higher standard. This commenter estimated the retrofit costs to be approximately one million dollars per facility. Emissions from these five facilities range from approximately 0.3 to 4.5 tons per year and total 18 tons per year (Docket item EPA–HQ–OAR–2003–0197—0003, Table 2). Approximately 12 of the 18 tons are fugitive emissions from the chamber exhaust. Residual emissions i.e., emissions after the application of emission control devices from the main chamber and aeration vents for the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27) range from approximately 0 to 1.6 tons per year, and are 4 tons per year in total (Docket item EPA–HQ–OAR–2003–0197—0003 Table 2). Based on a $1 million capital investment per facility, a 7 percent discount rate, and a 10-year capital recovery period, the average cost per ton of emissions reduced for the five facilities is approximately $35,000. These estimates assume facilities complying with the 99 percent limit do not in practice achieve a higher efficiency than 99 percent and there are zero emissions from control devices complying with the 99.9 percent limit.

To test the commenter's assertion that more stringent controls on the main and aeration vents would reduce risk levels, we remodeled the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27) with the assumption that main vent and aeration vent emissions are essentially zero after a 99.9 percent reduction and we compared the results to the baseline risks estimates. The risks (estimated to one significant figure) changed for only one facility, for which the maximum individual risk was reduced from 90 in 1 million to 80 in 1 million. Although we did not remodel all facilities, similar results would be expected for the other facilities because of the high chamber exhaust emissions relative to the emissions from the main vent and aeration vent after 99 percent control. Therefore, for existing major sources we conclude in our ample margin of safety decision that further controls would achieve minimal emission and risk reductions at a very high cost.

For existing sources under the 8 year review, in the proposal we stated, "Because the three vents associated

with these facilities (i.e., the main sterilization, aeration room, and chamber exhaust emission vents) are the same for both major and area sources, the conclusions concerning technology apply to both source categories. We found that additional controls for emission vents controlled with either MACT or GACT would achieve at best, minimal emission and risk reductions at a very high cost. In our review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the national emission standards in 1994." The analysis presented above for the five facilities with the highest risk support the conclusion presented in the proposal.

As stated above we believe for new main sterilizer vent and aeration control, increasing the stringency of the control limit from 99 to 99.9 percent achieves only a minimal reduction in risk. Therefore, EPA does not find it necessary to increase the control limit for new facilities.

Comment: One commenter stated EPA appropriately concluded that changes to the standard are not required to satisfy section 112(f) of the CAA. However, the commenter stated EPA did not provide sufficient data in the preamble to the document on the AMOS analysis that led to this conclusion, including its cost versus risk-reduction benefit analysis for a possible increase in the EO reduction requirements from 99 percent to 99.9 percent.

Response: As we stated in the proposal, we did not find any new technology or alternative controls for any vents for commercial EO sterilizers. We also found no data to support the addition of down stream control devices to existing controls as a way of further reducing emissions. We, therefore, concluded that further controls would achieve minimal reductions at a high cost. While we were aware of more stringent control limits at the State level, we stated in the proposal that we did not have data to confirm that all facilities are capable of meeting a more stringent level and solicited both control and cost data. Based on the data received from commenters we performed a risk assessment which confirmed our earlier qualitative conclusion.

Comment: One commenter stated EPA's language suggests that the decision criterion is whether further reductions would "meaningfully reduce emissions or risks." (70 FR 61408) The commenter stated that introducing the term "meaningfully reduce" without further explaining it is potentially misleading to the public. They were further troubled by the continued insertion of the word "emissions" in this formulation of the decision criteria as reinforced by the specific questions asked in this Federal Register notice.

Response: EPA presented, in the proposal, its analysis and conclusions on residual risk and technology review. Under section 112(d)(6), EPA is required to review the MACT standards and revise them as necessary taking into account developments in practices, processes and control technologies, no less frequently than every 8 years. Section 112(f)(2) requires us to determine for each source category whether the NESHAP protect public health with an ample margin of safety and prevent an adverse environmental effect. After reviewing and analyzing data under both these sections, EPA concluded that further controls would not meaningfully reduce emissions or risks. EPA reached this conclusion because the maximum individual cancer risk for this source category is already at the level we generally consider acceptable and that further controls would achieve minimal risk reduction at a very high cost. In addition, our conclusion referred to both emissions and risk because EPA's analysis included both the technology review and a residual risk determination.

Comment: One commenter stated EPA's CAA section 112(d)(6) review of the source category correctly concluded that the NESHAP standards did not need to be revised. However, the commenter stated that EPA reached this conclusion after conducting an independent technology review instead of basing it on the conclusions of EPA's CAA section 112(f)(2) analysis, which showed that the source category achieves an AMOS that is not limited by cost or technological feasibility concerns. The commenter believes that EPA should have based its determination that further controls under 112(d)(6) are not required through the 112(f) AMOS determination. According to the commenter, EPA did not need to conduct a separate technology review because it considered the need for additional controls in its AMOS analysis. The commenter goes on to state that where the AMOS is based in large part on cost or technical feasibility concerns, which according to the commenter was not the case with EO sterilizer facilities, then further future review under CAA section 112(d)(6) may remain viable and additional controls may not be precluded if feasible control measures are identified. Further, the commenter states that in evaluating whether action is necessary under CAA section 112(d)(6), EPA should not apply a "bright line" 1 in 1 million standard for cancer risks, nor a similar "bright line" standard for non-cancer risks.

Response: 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), emission standards promulgated under section 112 no less often than every 8 years. We disagree, therefore, that the Agency did not need to conduct a separate technology review because it considered, among other factors, the need for additional controls under its 112(f) analysis. As we noted in the preamble to the Coke Ovens residual risk rule, the findings that underlie a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. However, as the word "subsequent" indicates, we believe that we are obligated to perform the initial section 112(d)(6) analysis. Because the timing for the initial section 112(d)(6) analysis coincides with those of the residual risk analysis, it is appropriate for the Agency to conduct both analyses at the same time and for the results of the risk analysis to impact future section 112(d)(6) technology reviews. However, we agree with the commenters that a revision is not necessarily required under section 112(d)(6) even if cancer risks are greater than or equal to 1 in 1 million. For example, it may be the case that a technology review is performed, but no change in the standard results from that review. In the preamble to the residual risk rule for Coke Ovens, we have applied a similar logic to the need for subsequent technology revisions under section 112(d)(6). As we stated in the Coke Ovens rule, if the ample margin of safety analysis for a section 112(f) standard shows that the remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision should not be needed because an ample margin of safety has already been assured.

We generally agree that where an AMOS is based on cost or technical feasibility future review under § 112(d)(6) may require additional controls if feasible control measures are identified. If the availability and/or costs of technology are part of the rationale for the ample margin of safety determination, it is reasonable to conclude that changes in those costs or in the availability of technology could alter our conclusions regarding the ample margin of safety. For this reason, we agree that revisions may be

appropriate if the ample margin of safety established by the residual risk process considers cost or technical feasibility. In the EO proposal, we noted that while some states required the facilities to meet a more stringent standard, we believed that the costs and feasibility concerns for implementing such a standard did not make adopting this standard a reasonable alternative. In addition, we noted in the preamble to the EO proposal that EPA had evaluated new technologies and alternatives during our investigation of the safety issue regarding chamber exhaust vents and concluded that controls on those vents were not technologically feasible and additional controls on these vents were limited because of the safety issues. [For a full discussion of the safety issues, see 66 FR Notice 55577.]

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified us that it considers this a "significant regulatory action" within the meaning of the Executive Order. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements for the national emissions standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0283, EPA ICR number 1666.06. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

We have established a public docket for this action, which includes the ICR, under Docket ID number EPA–HQ–OAR–2003–0197, which can be found in *http://www.regulations.gov*. Today's final decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

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 Administrations' 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 decision on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. We are taking no further action at this time to revise the national emission standards. Thus, the final decision will not impose any requirements on small entities. Today's final decision on the residual risk assessment and technology review for the national emission standards imposes no additional burden on facilities impacted by the national emission standards.

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, we 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 aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating a 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 of 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's final decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's final decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision 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 us 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."

Today's final decision 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. Thus, the requirements of the Executive Order do not apply to today's final decision.

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 us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final decision.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because, as explained earlier, the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

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

Today's final decision is not an "economically 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 today's final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

Today's final decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

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 the Congress and to the Comptroller General of the United States. We will submit a report containing this final decision 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 decision 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). The final decision becomes effective on April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0161, FRL–8054–2]

RIN 2060–AK23

National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's final decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's final decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision 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 us 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."

Today's final decision 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. Thus, the requirements of the Executive Order do not apply to today's final decision.

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 us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final decision.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because, as explained earlier, the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

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

Today's final decision is not an "economically 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 today's final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

Today's final decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

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 the Congress and to the Comptroller General of the United States. We will submit a report containing this final decision 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 decision 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). The final decision becomes effective on April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3314 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0161, FRL–8054–2]

RIN 2060–AK23

National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On December 15, 1994, we promulgated national emission standards for hazardous air pollutants for Magnetic Tape Manufacturing Operations. The standards limit and control emissions of hazardous air pollutants that are known or suspected to cause cancer or have other serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act directs EPA to assess the risk remaining (residual risk) after the application of national emission standards for hazardous air pollutants controls and to promulgate more stringent standards, if necessary, to protect public health with an ample margin of safety and to prevent adverse environmental effects. Also, section 112(d)(6) of the Clean Air Act requires EPA to review and revise the national emission standard for hazardous air pollutants, as necessary, taking into account developments in practices, processes, and control technologies. On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the national emission standards for hazardous air pollutants and requested public comment. Today's final action responds to public comments received on the proposed action and announces EPA's final decision not to revise the standards.

DATES: This final action is effective on April 7, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0161. 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, i.e., confidential business information (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 HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2003–0161, EPA West Building, Room B102, 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 HQ EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions about the final action, contact Mr. H. Lynn Dail, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (C539–03), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2363; fax number: (919) 541–5689; e-mail address: *dail.lynn@epa.gov*. For questions on the residual risk analysis, contact Ms. Maria Pimentel, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C404–01), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5280; fax number: (919) 541–0840; e-mail address: *pimentel.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the national emission standards for hazardous air pollutants (NESHAP) include:

Category	NAICS[a] code	Examples of regulated entities
Industry	334613 322222 325992	Operations at major sources that are engaged in the surface coating of magnetic tape.
Federal government		Not affected.
State, local, tribal government		Not affected.

[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 affected by the Magnetic Tape NESHAP. To determine whether your facility would be affected by the Magnetic Tape NESHAP, you should examine the applicability criteria in 40 CFR part 63.701(a) of subpart EE (NESHAP for Magnetic Tape Manufacturing Operations). If you have any questions regarding the applicability of the Magnetic Tape NESHAP to a particular entity, contact Mr. Leonard Lazarus, U.S. EPA, Office of Enforcement and Compliance Assurance, Office of Compliance, Air Compliance Branch (2223A), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final action will also be available on the World Wide Web 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.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 the final decision may not be challenged separately in civil or criminal proceedings brought to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only 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, "if 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, 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 20004.

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

I. Background
A. What Is the Statutory Authority for This Action?
B. What Did the Magnetic Tape NESHAP Accomplish?
C. What Were the Conclusions of the Residual Risk Assessment?
D. What Were the Conclusions of the Technology Review?
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H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Statutory Authority for This Action?

Section 112 of the Clean Air Act (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 the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as "major sources"), as well as for certain "area sources" emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. For area sources, CAA section 112(d)(5) provides that, in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices, and such standards are commonly referred to as generally available control technology (GACT) standards.

The 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.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires that EPA prepare a Report to Congress describing, among other things, methods of estimating risks 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 risks to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report ("Residual Risk Report to Congress," EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk stage. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects public health with an ample margin of safety. If the NESHAP 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 one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As a part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent an adverse environmental effect (defined in 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"), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did the Magnetic Tape NESHAP Accomplish?

On December 15, 1994, we promulgated the NESHAP for Magnetic Tape Manufacturing Operations (59 FR 64580) and required existing sources to comply with the NESHAP by December 15, 1996.

The Magnetic Tape NESHAP covers HAP emissions from surface coatings used in the manufacture of magnetic and optical recording media used in audio, video, computer and magnetic stripe tape and disks. The emission units regulated by the Magnetic Tape NESHAP are storage tanks, mix preparation equipment, coating operations, waste handling devices, condenser vents in solvent recovery, particulate transfer operations, wash sinks for cleaning removable parts, equipment for flushing fixed lines, and wastewater treatment operations. The Magnetic Tape NESHAP regulates only those sources located at major sources. During the development of the NESHAP, we identified 25 existing magnetic recording media and magnetic stripe facilities, of which 14 were considered major and, therefore, subject to the NESHAP. Currently, there are only six magnetic tape manufacturing facilities remaining in the United States, all of which are major.

In general, the current NESHAP requires an overall HAP control efficiency of at least 95 percent for emissions from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, or condenser vent in solvent recovery. If an incinerator is used to control these emissions points, an outlet HAP concentration of no greater than 20 parts per million by volume by compound may be met, instead of achieving 95 percent control, as long as the efficiency of the capture system is 100 percent. If a coating with a HAP content no greater than 0.18 kilograms per liter (1.5 pounds per gallon) of coatings solids is used, that coating operation does not require further control.

Several solvents and particulate HAP are used in the magnetic tape manufacturing industry. Currently, the solvents used to the greatest extent are methyl ethyl ketone (MEK) and the HAP toluene, and the particulate HAP are

cobalt and cobalt compounds. At the time of promulgation of the NESHAP, however, the solvents in use included MEK, cyclohexanone, acetone, and isopropyl alcohol and the HAP toluene, methyl isobutyl ketone, toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde; and the particulate HAP included chromium, cobalt, and their respective compounds. Several of these compounds are no longer used in the industry. The compound MEK and the HAP toluene are used at all facilities. At the time of promulgation of the magnetic tape NESHAP, MEK was a listed HAP, and we estimated that HAP emissions, including MEK and toluene, would be reduced by 2,080 megagrams per year (Mg/yr) (2,300 tons per year (tpy)) from a baseline of 4,060 Mg/yr (4,470 tpy). Methyl ethyl ketone was later delisted by EPA in 70 FR 75047, December 19, 2005.

C. What Were the Conclusions of the Residual Risk Assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by magnetic tape manufacturing operations after implementation of the NESHAP. We compiled a list of the six magnetic tape manufacturing facilities still in operation in the United States based on inventory information we gathered from a number of manufacturing facilities and State environmental program offices (e.g., whether these facilities were still operating and manufacturing magnetic tape).

The major compounds emitted by the magnetic tape manufacturing source category are MEK and the HAP toluene, which comprise 97 percent, by tpy, of all emissions in the source category. The six magnetic tape manufacturing facilities have MEK and HAP emissions ranging from 3.9 to 214 Mg/yr (4.3 to 236 tpy). At the time of proposal, MEK was a listed HAP, and the nationwide annual HAP emissions, including MEK and toluene, were estimated to be 468 Mg/yr (516 tpy). Methyl ethyl ketone has since been delisted.

Using these data, we modeled exposure concentrations surrounding the six facilities, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

The emissions data used in the residual risk assessment represent actual levels of emissions for the base year. We have no reason to believe that there is a substantial amount of over control compared to what is allowed under the MACT standard. Therefore, the results of the risk assessment represent our approximation of the maximum risks which would be allowed under compliance with the NESHAP.

Consistent with the tiered modeling approach described in the Residual Risk Report to Congress of March 1999 (EPA–453/R–99–001), the risk assessment for this source category started with a simple assessment, which used health-protective assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary.

The assessment is described in detail in the memorandum "Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category," available in the docket. Since our assessment shows that sources subject to the Magnetic Tape Manufacturing NESHAP pose maximum lifetime excess cancer risks which are significantly less than 1 in 1 million, EPA concluded that public health is protected with an ample margin of safety, and since noncancer health risks and ecological risks were also found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA. Because risks contributed by MEK are a negligible part of the overall risk, the delisting of MEK has essentially no effect on the risk assessment performed for the proposed rule.

D. What Were 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), emission standards promulgated under section 112 no less often than every 8 years. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 20009), and as discussed below, the facts underlying a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. For this and several other source categories, we were under consent decree deadlines to complete both the section 112(d)(6) technology review and the section 112(f)(2) residual risk analysis by the same date. As a result, we conducted the two reviews concurrently and did not have the results of the section 112(f)(2) analysis before we began the section 112(d)(6) technology review.

We reviewed available information about the industry, talked with industry representatives, and contacted several facilities in the industry to investigate available emission control technologies and the potential for additional emission reductions. We did not identify any additional control technologies beyond those that are already in widespread use within the source category (e.g., carbon adsorbers, condensers). The only developments identified involve improvements in the performance of existing technologies or increased frequency of inspections and testing, which would achieve only small incremental emission reductions. However, we did discover that new product developments (optical recording media and solid state recording media) may eventually supplant magnetic tape, but these media are not considered magnetic tape and would not be covered under the Magnetic Tape NESHAP. Therefore, our investigation did not identify any significant developments in practices, processes, or control technologies in the magnetic tape manufacturing industry since promulgation of the original standards in 1994. We undertook the technology assessment for this source category consistent with our policy in the Coke Ovens residual risk rule (70 FR 20008–20009).

E. What Was the Proposed Action?

On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the NESHAP (70 FR 61417) and requested public comment.

II. Today's Action

A. What Is Today's Final Action?

Today's final action responds to public comments received on the proposed action and announces our final decision not to revise the standards.

B. What Comments Were Received on the Proposed Action?

In the proposed action, we requested public comment on our residual risk review and our technology review and on issues of delisting the source category and conducting future technology reviews. By the end of the public comment period, comments from five entities had been received. A summary of these comments and EPA's responses are provided in the sections below.

1. Residual Risk Determination

Comment: Three commenters supported EPA's decisions for the magnetic tape source category. The commenters supported EPA's conclusion that no changes to the existing NESHAP for magnetic tape manufacturing were required to satisfy the requirements of section 112(f). The commenters noted that EPA correctly reviewed the magnetic tape sources, followed the tiered risk assessment approach described in its Residual Risk Report to Congress, and, using a conservative methodology, determined that no source in the category had a maximum individual cancer risk exceeding the 1-in-1-million level for triggering promulgation of a residual risk standard under section 112(f).

Two of the commenters stated that EPA was correct to focus its section 112(f) residual risk analysis on the sources in the magnetic tape source category subject to section 112(d) requirements, and not consider risk from outside that source category. According to the commenters, the statutory language and construction of section 112(f) shows that Congress was directing EPA to perform residual risk analyses for individual source categories.

Response: We acknowledge the commenters' support for our health-protective methodology and our conclusions in the proposed notice. However, we do not agree that our section 112(f) residual risk analyses must always focus only on the sources in the category subject to section 112(d) requirements or that Congress intended to limit all residual risk analyses to the individual source categories in question. As we stated in the preamble to the Coke Ovens residual risk rule, "EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely." Rather, we have concluded that, when the statutory risk trigger is exceeded, the two-step approach set forward in the Benzene NESHAP remains the approach that we should follow in determinations under section 112(f). At the first step, when determining "acceptable risk," we will consider risks that result from emissions from the source category only. However, during the second step, we must determine whether additional reductions should be required to protect public health with "an ample margin of safety." One of the factors that we can consider in this second step is environmental levels of HAP due to emissions from sources outside the source category being assessed. This could include ambient background concentrations of HAP, as well as co-location of other emission sources that augment the identified risks from the source category.

2. Delisting the Source Category

At proposal, we requested comment on whether it would be appropriate to delist the magnetic tape source category under section 112(c)(9) based on the possibility that HAP emissions from the source category would be sufficiently low even in the absence of MACT standards.

Comment: One commenter opposed delisting the magnetic tape source category, stating that if the source category was delisted, there would be nothing to prevent sources from increasing their HAP emissions substantially or changing their processes to emit new HAP, resulting in HAP levels unacceptable to public health and the environment. The commenter indicated that such an approach ignores the possibility that HAP emissions were reduced to an acceptable level because of the MACT requirements and that emissions could increase again without the MACT standard in place. Furthermore, the commenter believed that Congress did not intend for the residual risk review to result in delisting of regulated source categories; if Congress had wanted to make delistings dependent on or linked to the outcome of the residual risk process, it would have specifically mandated this in the CAA, which it did not.

Two commenters argued that delisting a source category does not affect the applicability of an existing NESHAP and cited the delisting action following the Asbestos NESHAP as support for their argument. They also noted that EPA said in its proposal that no further section 112(d)(6) reviews are required unless there is a significant change to the source category. Consequently, the commenters saw no benefit in delisting the magnetic tape source category. However, they were not opposed to such an action.

One commenter supported delisting the magnetic tape source category under the authority of section 112(c)(9) based on EPA's finding of negligible risks (0.01 in 1 million). The commenter stated that EPA's request for comment implied that it interpreted the CAA to allow delisting on the basis of low risk only before a MACT standard is issued; however, section 112(c)(9) provides EPA with the authority to delist a source category whenever the Administrator makes a determination that the risks are below the risk criteria in the CAA and does not limit this authority to sources not yet subject to a MACT or GACT standard. According to the commenter, limiting EPA's discretion to delist source categories prior to issuing MACT or GACT standards also conflicts with the required sequence of duties under section 112, which does not require EPA to conduct a risk analysis until a residual risk evaluation is required 8 years after MACT standards are issued; consequently, EPA is unlikely to have sufficient data on which to base a delisting decision until many years after MACT standards have been promulgated. Furthermore, the commenter stated it is possible that source categories found to be low-risk after MACT standards were imposed may have been low-risk before the standards were imposed, especially magnetic tape facilities, where the risk assessment showed risks two orders of magnitude below the statutory criteria for delisting under section 112(c)(9). Finally, the commenter noted that if EPA was concerned that the source category would exceed risk levels if MACT controls were not applicable, it could use section 112(c)(9) to keep in place those MACT requirements needed to sustain the low-risk determination and delisting. According to the commenter, those requirements could be established as part of the delisting decision and maintained in the title V permit, as was done in the NESHAP for Plywood and Composite Wood Products.

Response: Based on our risk assessment of the magnetic tape source category, we have concluded that these sources are low-risk and, therefore, that no further standards are required to protect public health with an ample margin of safety or to protect the environment. However, we agree with the commenter who argues that this conclusion is based, at least in part, on the fact that the MACT requirements for these sources limit HAP emissions. Further, we disagree with the comment that delisting will not affect the viability of the existing NESHAP. The commenter cited the delisting action following the Asbestos NESHAP as support for their argument, noting that the applicability of that rule was not affected by delisting. However, the Asbestos NESHAP was established under part 61, which is not directly relevant in this situation since the Magnetic Tape NESHAP is a part 63 rule. If we delist this source category, it is our conclusion that existing magnetic tape sources would no longer be subject to the NESHAP and, thus, HAP emissions would no longer be limited by this rule. If sources begin emitting

HAP at levels exceeding those allowed under the NESHAP, risks could increase, and the basis for our finding that the source category is low-risk could be compromised. We have already documented that emissions from magnetic tape manufacturing operations were substantially higher at promulgation, compared to more recent emissions estimates (after the standards were implemented). As noted in the October 24, 2005 proposal (70 FR 61419) and previously in this action, HAP emissions at promulgation were estimated to be 4,060 Mg/yr (4,470 tpy), while HAP emissions in 2000 were estimated to be 468 Mg/yr (516 tpy)—a difference of almost 90 percent, some of which is due to compliance with the MACT standard and some of which is due to 19 plant closures since 1994. These HAP emissions estimates include MEK, which has since been delisted as a HAP. More recent information suggests that the delisting of MEK may result in one plant reducing its emissions to below the major source levels. If the potential-to-emit limit for this facility is below the major source threshold due to the delisting of MEK, it would become an area source and as such would no longer be subject to the magnetic tape manufacturing NESHAP. Nonetheless, since compliance with the MACT standard is part of the basis for our low-risk determination, we believe that our policy objectives are best served if we do not delist the magnetic tape source category.

Contrary to one commenter's contention, we did not intend to imply through our request for comments that we interpret section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated. We were simply seeking comment on the use of section 112(c)(9) after the MACT standard. However, for the reasons presented above, we have decided not to use section 112(c)(9) to delist the magnetic tape source category.

The Agency would like to remove the burden of the repetitive review of Section 112 standards for low risk source categories. At the same time, we think it is appropriate to maintain the MACT controls, in this case. We plan to further investigate approaches for removing low-risk source categories from the Section 112 universe while maintaining MACT-level controls. An example of a similar approach is found in the Plywood and Composite Wood Products MACT where we allow a subcategory of facilities to reduce emissions to acceptable risk levels through Title 5 permits and remove them from the MACT universe.

3. Future Technology Reviews

At proposal, we requested comment on "the notion that, barring any unforeseeable circumstances which might substantially change this source category or its emissions, we would have no obligations to conduct future technology reviews under CAA section 112(d)(6)." We suggested this approach because of the low-risk finding for this source category under section 112(f).

Comment: One commenter disagreed that low risk from a source category at this time should absolve EPA of its obligation to conduct future technology reviews. The commenter stated that, without periodic reviews of source categories and technology in the future reviews, EPA would not be aware of any technologies that have been developed or any "unforeseeable circumstances" related to the source category to which EPA refers in the notice. Furthermore, the commenter believed that Congress did not intend for the residual risk review to result in the removal of EPA's obligation to conduct future technology reviews under section 112(d)(6); if Congress had wanted to make technology reviews dependent on or linked to the outcome of the residual risk process, it would have specifically mandated this in the CAA, which it did not.

Three commenters stated that EPA has no obligation to conduct a technology review in the case of Magnetic Tape. According to the commenters, because the residual risk provisions of the CAA were not triggered by the magnetic tape source category's remaining low risk, even an initial technology review was unnecessary. The commenters noted that EPA only used the results of the section 112(f)(2) residual risk analysis to conclude that future section 112(d)(6) technology reviews would not be required. The commenters stated that EPA's use of a formal technology review as the basis for its conclusion under section 112(d)(6) that the NESHAP did not need to be revised was inconsistent with EPA's prior stated position in the Coke Ovens residual risk rule (70 FR 20009) on determining the need for a technology review under section 112(d)(6). One commenter stated that if the Coke Ovens criteria for when a technology review is not "necessary" under the CAA are sound for subsequent technology reviews, then they are also sound for initial reviews, as in the case of Magnetic Tape. Another commenter stated that, where the ample margin of safety set in the residual risk rule is largely based on cost or technical feasibility, then further future review under section 112(d)(6) may remain viable, and additional controls may not be precluded if feasible, cost-effective control measures are identified in the future.

Response: We stated in the preamble to the Coke Ovens residual risk rule that if the ample margin of safety analysis for the section 112(f) standard is not based at all on the availability or cost of particular control technologies, then advances in air pollution control technology should not justify revising the MACT standard pursuant to section 112(d)(6) because the section 112(f) standard would continue to assure an adequate level of safety. We agree that a technology review is required every 8 years. However, if the ample margin of safety analysis for a section 112(f) standard shows that remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision should not be needed because an ample margin of safety has already been assured. In these situations, it is difficult to conceive of a case where the development of new technology, or of inexpensive control strategies, would cause us to require additional requirements for a source category. If the availability and/or costs of technology are part of the rationale for the ample margin of safety determination, it is reasonable to conclude that changes in those costs or in the availability of technology could alter our conclusions regarding the ample margin of safety. For this reason, we agree with the comment that subsequent technology reviews would be appropriate and revisions may also be appropriate if the ample margin of safety established by the residual risk process considers cost or technical feasibility.

We disagree with the comment that we should not have conducted an initial technology review under section 112(d)(6) for the magnetic tape source category. As we noted in the preamble to the Coke Ovens residual risk rule, we believe that the findings that underlie a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. As indicated by the inclusion of the word "subsequent" in this rationale, we believe that we are obligated to perform the initial section 112(d)(6) analysis. The timing requirements for the initial section 112(d)(6) analysis coincide with those for the residual risk analysis. Thus, it is appropriate for us to conduct both analyses at the same time and for the results of the risk analysis to impact future section 112(d)(6) technology reviews, even though these results do

not negate either the need to perform the initial review or the need to perform subsequent reviews under section 112(d)(6).

4. General Approach to Technology Reviews

Comment: Three commenters stated that action is not necessarily required under section 112(d)(6) even if a residual risk rule does not reduce cancer risks for all persons to a level below 1 in 1 million. Two of the commenters noted that EPA had already rejected such a "bright line" approach under section 112(f) in the Coke Ovens residual risk rule; instead, it serves as a trigger point to evaluate whether additional reductions are necessary to provide an ample margin of safety. The third commenter cited the legislative history of the 1990 amendments to the CAA as support that Congress had rejected provisions requiring sources to meet a 1-in-1-million standard. According to this commenter, EPA's proposed interpretation of section 112(d)(6) of requiring successive reviews unless sources achieve this risk level implies that sources must meet a 1-in-1-million standard to avoid future regulation, and if Congress had intended this "technology-based" downward revision of the standard, there would have been no need for section 112(f).

Noting that EPA's risk estimates are upper bound estimates that likely overstate risks, the first two commenters stated that a "bright line" approach should not be employed under section 112(d)(6) any more than it should be employed under section 112(f); instead, they stated that EPA should make determinations of whether a technology review is necessary on a case-by-case basis for each category.

The third commenter stated that section 112(d)(6) should be more appropriately viewed as a regulatory backstop authority, similar to the case-by-case "MACT hammer" provisions of section 112(j), to ensure that available advances in technology will be applied in the event EPA fails to issue residual risk standards under section 112(f). The commenter stated that once EPA has established a residual risk standard under section 112(f) that is "acceptable" or "safe" and protective with an "ample margin of safety," then it must find that a separate revision of the MACT standard under section 112(d)(6) is not necessary.

Response: We agree with the commenters who indicated that it would be sufficient not to revise MACT standards citing section 112(d)(6) even if cancer risks are greater than or equal to 1 in 1 million. For example, it may be the case that a technology review is performed, but no change in the standard results from that review. In the preamble to the residual risk rule for Coke Ovens, we have applied a similar logic to the need for subsequent technology revisions under section 112(d)(6). As we stated in the Coke Ovens rule, if the ample margin of safety analysis for a section 112(f) standard shows that the remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision would not be needed because an ample margin of safety has already been assured.

5. Context of the Residual Risk Program

Comment: One commenter strongly recommended that EPA carefully lay out the context and framework of the residual risk program in the determination for each source category. The commenter stated that this was especially important because of the unique nature of the program compared to other EPA programs with which the public is familiar.

The commenter specifically recommended that EPA mention the two-stage regulatory process (MACT and residual risk) used to control HAP emissions from major stationary sources and to determine whether the MACT technology controls provide an ample margin of safety. The commenter noted that the residual risk program is different from other EPA programs, in that additional controls will be necessary for only some of the listed categories of sources, because in some cases, the cancer risk will be less than the 1-in-1-million trigger, or, if it is greater, EPA may determine that the current emission level provides the public with an ample margin of safety.

The commenter also recommended that EPA put into the proper context the relatively small contribution of major stationary sources to the risks from air toxics—about 11 percent in 1999 and expected to be even smaller as sources come into compliance with the latest MACT rules.

Finally, the commenter recommended that EPA present the risks from air toxics in context with the risks from ambient (criteria) air pollutants to make clear to the public how the air toxics risk estimates are much more conservative and to avoid any misperceptions by the public that the risk estimates for ambient air pollutants are comparable to the risk estimates for air toxics. Without a program of public education on this issue, the commenter indicated the public may incorrectly believe that the ample margin of safety decisions in the residual risk rules are less stringent than EPA knows them to be, resulting in public lawsuits against EPA's decisions or overregulation by EPA to compensate for the gap in public knowledge. The commenter recommended that EPA include preamble language in future EPA decisions describing the criteria it used to determine the ample margin of safety and presenting the incremental risk/incremental cost approach in the fuller context for the residual risk program.

Response: We agree that it is important to provide context for any residual risk rule. In the preamble of the current rule, we describe the MACT program and its impact on the magnetic tape source category. We also describe our statutory authority and our obligations to assess risks to human health and the environment under section 112(f) of the CAA, as well as the requirement to further regulate categories of sources if any of the estimated individual cancer risks exceed the statutory trigger level of 1 in 1 million.

We agree that our risk assessment for the magnetic tape source category appropriately contains a number of health-protective assumptions, resulting in a screening assessment that is designed to overestimate, rather than underestimate, risks. The results demonstrate negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been conducted. Such an assessment would be more data-intensive; however, it would also present a more accurate estimate of risks which could then be used as the basis for regulatory action. However, since the findings of the screening risk assessment for the magnetic tape source category were negative (i.e., the statutory cancer risk trigger level was not exceeded), it was not necessary to conduct a more refined risk assessment using more site-specific data. Since these activities were not relevant to this action, a complete discussion of them in the context of a full discussion of the residual risk program was not deemed necessary or appropriate. The details of our risk assessment can be found in the docket in the memo titled, "Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category."

6. IRIS Data for Acrylonitrile

Comment: According to one commenter, EPA should not have relied

on the outdated unit cancer risk value for acrylonitrile contained in EPA's Integrated Risk Information System (IRIS) in conducting its residual risk assessment of the magnetic tape manufacturing industry. Although EPA concluded that there were no issues to be addressed regarding acrylonitrile because the facility emitting acrylonitrile presented a potential cancer risk of only 1 in 100 million, the commenter stated that it was inappropriate for EPA to use the acrylonitrile value in IRIS in its assessment because EPA was already aware the value was severely out-of-date. According to the commenter, the IRIS profile itself indicates that there are one or more significant new studies based on a screening-level review of the more recent toxicology literature. The commenter also noted that EPA was aware that numerous new studies had been conducted on assessing the cancer risk from acrylonitrile because its staff were briefed on an assessment of those new studies, received copies of the assessment report, and attended a peer review meeting on the report. The commenter also noted that a summary of the cancer assessment was published in October 2005.

Response: We agree that our IRIS assessment for acrylonitrile does not consider studies published after 1991, and we are currently developing an assessment that includes newer information. Our staff reviewed the assessment referenced by the commenter and determined that it has several weaknesses. First, the assessment concludes that the mode of action (MOA) is nonlinear, but does not provide evidence or analysis sufficient to demonstrate nonlinearity or to identify a nonlinear MOA. The independent peer panel that reviewed this assessment noted that the data do not allow unequivocal determination of acrylonitrile's MOA(s), and could not rule out a genotoxic MOA. Given the negligible contribution of the acrolitrile risk estimates in this assessment, we determined that it was reasonable and protective to continue to use linear low-dose extrapolation. Second, the assessment provides a supplemental linear unit risk value but bases it upon animal data rather than human data, despite the fact that adequate human data were available. Using these human data would have produced a higher inhalation unit risk estimate (i.e., closer to the current IRIS assessment value). Third, the linear unit risk value came from a reanalysis of animal data already considered in EPA's 1991 IRIS assessment for inhalation carcinogenicity, and rejected because better human data were available even then. For these reasons we concluded that the commentor's study should not be used in lieu of the current IRIS assessment.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing NESHAP. However, OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 64580, December 15, 1994) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and has assigned OMB control number 2060–0326 (EPA ICR No. 1678.05). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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.

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 today's final action on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 500 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration size standards); (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 impact of today's final action on small entities, EPA has concluded that this final action will not have a significant economic impact on a substantial number of small entities. The final action will not impose any requirements on small entities. We are taking no further action at this time to revise the NESHAP.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effect 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 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 of 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.

The EPA has determined that the final action 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 for the private sector in any 1 year. The rule imposes no enforceable duty on State, local, or tribal governments, or the private sector. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final action is not subject to the requirements of 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." Today's final action 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final action.

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." The final action does not have tribal implications as specified in Executive Order 13175. 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 today's final action.

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.

The final action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

The final action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Under 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. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA does not use available and applicable VCS.

The final action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final action 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 action in the **Federal Register**. The final action is not a "major rule" as defined by 5 U.S.C. 804(2). The effective date of this final action is April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3313 Filed 4–6–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0004, FRL–8054–1]

RIN 2060–AK16

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 8, 1994, we promulgated national emission standards for hazardous air pollutants for industrial process cooling towers. The rule prohibits the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act directs us to assess the risk remaining (residual risk) after the application of national emission standards for hazardous air pollutants and to promulgate more stringent standards, if warranted, to provide an ample margin of safety to protect public health or prevent adverse environmental effect. Also, section 112(d)(6) of the Clean Air Act requires us to review and revise the standards, as necessary at least every 8 years, taking into account developments in practices, processes, and control technologies. On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the standards and requested public comment. Today's final action amends the applicability section of the rule in response to public comments received on the proposed action. The final amendment provides that sources that are operated with chromium-based water treatment chemicals are subject to this standard; other industrial process cooling towers are not covered.

DATES: *Effective Date:* April 7, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0004. 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, i.e., 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 national emission standards for hazardous air pollutants (NESHAP) for Industrial Process Cooling Towers (IPCT)Docket, EPA/DC, Docket ID No. EPA–HQ–OAR–2004–0004, EPA West, Room B102, 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 Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about the final action, contact Mr. Phil Mulrine, 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) 541–5289; fax number: (919) 541–5450; e-mail address: *mulrine.phil@epa.gov*. For questions on the residual risk analysis, contact Mr. Scott Jenkins, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1167, fax number: (919) 541–0840, e-mail address: *jenkins.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the NESHAP include:

Category	NAICS	Examples of regulated code [1]
Industry	324110 325181 325120 325131 325188 325191 325311 325312 325314 325320 325520 325920 325910 325182 325998 331111 331411 331419 327211 327213 327212 312221	IPCT located at major sources, including petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, tobacco products manufacturing plants, rubber products manufacturing plants, and textile finishing plants.

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final action 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 action in the Federal Register. The final action is not a "major rule" as defined by 5 U.S.C. 804(2). The effective date of this final action is April 7, 2006.

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Category	NAICS	Examples of regulated code [1]
	312229 312229 326211 313311 313311 313312	
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 the NESHAP. To determine whether your facility would be affected by the NESHAP, you should examine the applicability criteria in 40 CFR 63.400(a) of subpart Q (IPCT NESHAP). If you have any questions regarding the applicability of the NESHAP to a particular entity, contact 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).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's 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: *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 the final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final action amendment 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 the final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

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

I. Background
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I. Background

A. What Is the Statutory Authority for This Action?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and industrial process cooling towers are identified as one such source category. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based NESHAP must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account "developments in practices, processes, and control technologies."

The residual risk review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects public health with an ample margin of safety. If the NESHAP 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 one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (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."), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did the IPCT NESHAP Accomplish?

On September 8, 1994 (59 FR 46350), we promulgated the IPCT NESHAP and required existing sources to comply with the rule requirements by March 8, 1996.

Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the

fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with heating, ventilation, and air conditioning (HVAC) systems. The IPCT NESHAP applies specifically to IPCT that use chromium-based water treatment chemicals and are located at major sources of HAP emissions. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (comfort cooling towers) were promulgated under section 6 of the Toxic Substances Control Act (55 FR 222, January 3, 1990).

The primary industries that use IPCT include petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, rubber products manufacturing plants, tobacco products manufacturing plants, and textile manufacturing plants. When the IPCT NESHAP were promulgated, we estimated that there were approximately 6,945 IPCT located at these plants nationwide, and that approximately 260 of these IPCT used chromium-based water treatment chemicals. We estimated that the IPCT NESHAP would reduce emissions of chromium compounds from these facilities by 22.7 megagrams per year (Mg/yr) (25 tons per year (tpy)) by prohibiting the use of chromium-based water treatment chemicals in IPCT. In addition, we estimated that the NESHAP would prevent emissions of 1.6 Mg/yr (1.8 tpy) of chromium compounds from the 870 new IPCT projected by the 5th year of the standards (1998).

When the NESHAP were promulgated, we had no information that indicated that HAP other than chromium compounds were emitted from IPCT. Consequently, we did not address emissions of other HAP in the IPCT NESHAP.

C. What Were the Conclusions of the Residual Risk Assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by IPCT after implementation of the NESHAP. To evaluate the residual risk for the IPCT source category, we identified the HAP emitted from IPCT and, as a discretionary matter in this instance, estimated worst-case emission rates for each of those HAP. These worst-case emission rates were used, along with facility parameters representing an actual facility, to perform the risk assessment.

Because the IPCT NESHAP prohibits the use of chromium-based water treatment chemicals in IPCT, we believe that chromium compound emissions from IPCT have been eliminated by the NESHAP. In assessing the residual risk for the source category, however, we also considered emissions of other HAP from IPCT.

In the absence of process leaks or malfunctions, the chemical species that are emitted from IPCT consist of the naturally-occurring constituents of the cooling water and any substances that are added to the cooling water. To determine what other HAP may be emitted from IPCT, we first contacted suppliers of cooling water treatment chemicals for information on cooling water additives that either contain HAP or form HAP, which could be emitted from IPCT. Then, we conducted a literature search for information on emissions from cooling towers. The information collected from the water treatment chemical suppliers and through the literature search indicated that some biocides used to treat industrial cooling water either contain HAP or form HAP that can be emitted from IPCT. These HAP include chloroform, methanol, and ethylene thiourea.

Industrial process cooling towers typically use one and not all of the biocides that release the three listed HAP at any given time. Therefore, IPCT emit no more than one of the three listed HAP. We estimated worst-case emission rates for chloroform, methanol, and ethylene thiourea based on the range of concentrations of these constituents in cooling water and the model plants developed for the IPCT NESHAP. We used these emission rates to model exposure concentrations surrounding those sources, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

Consistent with the tiered modeling approach described in the "Residual Risk Report to Congress" (EPA–453/R–99–001), the risk assessment for this source category started with a simple assessment which used conservative assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary. The assessment is described in detail in the memorandum "Residual Risk Assessment for the Industrial Process Cooling Source Category," which is available in the docket.

Since our assessment shows that sources subject to the IPCT NESHAP pose maximum lifetime excess cancer risks which are significantly less than 1 in 1 million, EPA concluded that public health is protected with an ample margin of safety, and since noncancer health risks and ecological risks were also found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA.

D. What Were 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), emission standards promulgated under section 112 no less often than every 8 years. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 20009, April 15, 2005), and as discussed below, the facts underlying a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. For this and several other source categories, we were under consent decree deadlines to complete both the section 112(d)(6) technology review and the section 112(f)(2) residual risk analysis by the same date. As a result, we conducted the two reviews concurrently and did not have the results of the section 112(f)(2) analysis before we began the section 112(d)(6) technology review.

For the IPCT source category, the emission standards imposed an absolute prohibition on the use of chromium-based water treatment chemicals in IPCT. As the emission standards imposed for this particular source are already at the most stringent level, no more stringent standards could be imposed. Nor has EPA received any evidence which would justify a downward revision of the standards. In the residual risk analysis discussed above, EPA has considered risks for HAP emissions that are not currently subject to emission standards but are attributable to the source category or subcategory. Since the risk from other HAP emitted from IPCT due to the addition of water treatment chemicals was determined to be very low and the emission standards already preclude the use of chromium-based water treatment

chemicals, we concluded that no further controls are necessary under 112(d)(6).

E. What Was the Proposed Action?

On October 24, 2005 (70 FR 61411), based on the findings from our residual risk and technology review, we proposed no further action to revise the NESHAP and requested public comment.

II. Today's Action

A. What Is Today's Final Action?

Today's final action responds to public comments received on the proposed action and announces our final decision to amend the applicability section of the rule.

B. What Comments Were Received on the Proposed Action?

In the proposed action, we requested public comment on our residual risk review and our technology review and on issues of delisting the source category and conducting future technology reviews. By the end of the public comment period, comments from nine entities had been received. A summary of the major comments and EPA's responses are provided below in sections II.B.1 through II.B.7 of this preamble.

1. Residual Risk Approach

Comment: Two commenters urged EPA to carefully lay out the context and framework of the Residual Risk Program to ensure that the public understands the program and can adequately evaluate EPA's decisions regarding residual risk. The commenters identified several specific aspects of the program, which they believe need to be conveyed to the public. Among those, they included: the success of the MACT program in controlling HAP emissions; further regulatory steps are not required if EPA determines that existing MACT standards have provided an ample margin of safety; and the public can be assured that residual risk rules will provide such a margin of safety in those cases where the standard has not achieved an ample margin of safety. The commenters also stated that it is important for EPA to put the risks associated with major stationary sources in the proper context. The commenters stated that major stationary sources account for only a small percentage of the estimated cancer risk from HAP nationwide. In addition, they urged EPA to present risk from air toxics in context with the risks from other forms of air pollution. Specifically, they pointed out that the unit risk factors assigned to air toxics are much more conservative than the factors assigned to criteria pollutants. As a result, risk estimates for criteria pollutants should not be compared to estimates of risk based on HAP emissions from stationary sources subject to NESHAP.

Response: We agree that it is important to provide context for any residual risk rule. In this preamble, we describe the MACT program and its impact on the IPCT source category. We also describe our statutory authority and our obligations to assess risks to human health and the environment under section 112(f) of the CAA, as well as the requirement to further regulate categories of sources if any of the estimated individual cancer risks exceed the statutory trigger level of 1 in 1 million.

The risks posed by any individual major stationary source depend upon a number of factors, including emission rates at the source, proximity of exposed populations to the emission source, the specific HAP emitted, local meteorological conditions, and terrain conditions surrounding the source. Therefore, the relative contribution of a particular major stationary source to individual risk levels in its vicinity will vary dramatically depending on the local conditions at and around that specific source. This variability is not captured by the national average contribution of major sources to population risk levels mentioned by the commenter, whereas the risk assessments we perform for the purposes of evaluating residual risk are designed specifically to capture localized individual risks associated with individual sources.

We agree that our screening risk assessment for the IPCT source category appropriately contains a number of health-protective assumptions and uses health-protective inhalation risk values. The overall result is a screening assessment that is designed to overestimate, rather than underestimate, risks. The commenters make the seemingly contradictory arguments that we should both present risks from air toxics in the context of those from criteria pollutants and that it is inappropriate to make direct comparisons between assessments of risk for air toxics and criteria pollutants. Given the different goals of the residual risk program and the criteria pollutant program, we agree with their second point that estimates of risk generated for air toxics are not directly comparable to those generated for criteria pollutants.

Comment: Four commenters expressed support for EPA's tiered approach to evaluating residual risk by first performing a screening assessment, followed by a refined assessment. One commenter commented that, if a screening risk assessment based on conservative assumptions showed that risks are negligible, no further assessments or actions should be taken. All four commenters stated that EPA must proceed with the refined approach unless, as was the case for IPCT, the worst-case screening assessment indicates that the risk is less than 1 in 1 million. One commenter stated that in evaluating the residual risk for IPCT, EPA correctly used the same approach used for the 1989 Benzene NESHAP (40 CFR part 61, subpart Y).

Response: We acknowledge the commenters' support of our general approach to risk assessment and agree that, had risks from the IPCT exceeded the statutory trigger of 1 in 1 million cancer risk or exceeded a similar level of protection for threshold effects, we would have conducted a more refined assessment.

Comment: Three commenters stated that, when presenting the results of the initial screening assessment, it is important for EPA to explain the conservative nature of the assumptions and the limitations of this approach to avoid any misperceptions by the public. Two of the commenters added that otherwise, the public may mistakenly believe that the contribution to risk from major stationary sources is much greater. The commenters also encouraged EPA to use the most accurate emission data and models to ensure accurate risk assessments and to avoid mischaracterizing the risk from the regulated sources. One commenter added that site-specific data should be used in residual risk assessments when possible.

Response: We agree that our risk assessment for IPCT contains a number of health-protective assumptions resulting in a screening assessment that is designed to overestimate, rather than underestimate, risks. However, the health-protective assumptions incorporated into this screening risk assessment are appropriate because we are generalizing the results from a single model facility to all cooling towers in the source category. We designed this approach to ensure that the model facility presents at least as much risk as the worst-case actual facility. Then, by demonstrating that risks from our worst-case model facility are low, we can easily conclude that risks from IPCT at any actual facility will also be low.

The details of our risk assessment can be found in the memorandum titled, "Residual Risk Assessment for the Industrial Process Cooling Towers Source Category," which is available in the docket. As indicated above, a

number of health-protective assumptions are incorporated into the assessment. For example, we based the configuration of our model facility on one of the largest and highest-emitting actual facilities in the IPCT source category. We estimated worst-case emission rates for this facility by assuming that it emitted methanol, ethylene thiourea, and chloroform from its cooling towers even though it is unlikely that any actual towers would emit more than one of these HAP. We assumed that individuals are exposed to IPCT emissions for 24 hours per day and 365 days per year for 70 years although the activity patterns of actual individuals would decrease exposure. Finally, we assumed that people lived at locations very close to the cooling towers. Often, these locations would actually be within the facility's fenceline, where no one actually resides. This combination of health-protective assumptions is appropriate for the IPCT assessment because it allows us to generalize the low-risk finding from a single model source to all sources in the category. If we had not been able to use this approach to make the low-risk finding, we would indeed have collected more refined, site-specific data to develop a more precise risk assessment, but, in this situation, that step was not necessary.

2. Co-Located Sources

Comment: Four commenters agreed with EPA's approach of considering the risk associated with the specific sources regulated by the NESHAP and not considering co-located sources. Two of the commenters noted that the risk attributed to co-located sources will be evaluated when the appropriate source category is reviewed under section 112(f) of the CAA. The commenters stated that section 112(f) clearly indicates that Congress intended the residual risk assessment for a specific source category to focus on the source category, as defined in the rulemaking under section 112(d), and not to encompass other source categories.

Response: We agree with commenters that the risks attributable to sources collocated with IPCT will be evaluated when the appropriate category is reviewed under section 112(f). We do not agree that our section 112(f) residual risk analyses must always focus only on the source category as defined in the rulemaking under section 112(d) or that Congress intended to limit all residual risk analyses to the individual source categories in question. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 19998, April 15, 2005), "EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely." Rather, we have concluded that, when the statutory risk trigger is exceeded, the two-step approach set forth in the preamble to the Benzene NESHAP (54 FR 38044, September 14, 1989) remains the approach that we should follow in determinations under section 112(f). At the first step, when determining "acceptable risk," we will consider risks that result from emissions from the source category only. However, during the second step, we must determine whether additional reductions should be required to protect public health with "an ample margin of safety." EPA believes that one of the "other relevant factors" that may be considered in this second step is co-location of other emission sources that augment the identified risks from the source category. In the case of coke ovens, this included the consideration of co-located source categories that are integral parts of the same industrial activity. Additional information regarding co-located sources and 112(f) requirements is provided in the preamble to the coke oven residual risk rule (70 FR 19996).

3. Approach When No Pre-Existing NESHAP Level of Control Exists

Comment: Three commenters responded to our request for comment on the approach to evaluating residual risk when no pre-existing NESHAP requirement exists for the HAP emissions. For example, in the case of IPCT, the residual risk assessment considered three HAP that were not regulated under the NESHAP. The commenters agreed with EPA's approach, stating that it is appropriate to evaluate and control emissions of other HAP if those HAP pose an unacceptable level of risk.

Response: We acknowledge the commenters' support of our approach to evaluating residual risk by considering all HAP emitted by the regulated source category. Section 112(f) requires EPA to determine if an ample margin of safety has been provided for the source category and as part of that determination we identified other HAP that are emitted from the source category.

4. Subcategorizing Source Categories to Satisfy CAA Section 112(f)(2)

Comment: Five commenters responded to our request for comment on the possibility of subcategorizing source categories for the purpose of satisfying the residual risk requirements specified in section 112(f)(2) of the CAA. All five commenters supported the concept of subcategorizing source categories characterized by a broad range of risk levels. Four of the commenters noted that section 112(c) gives EPA broad discretion in creating and modifying categories and subcategories of sources. By subcategorizing, EPA can distinguish between lower risk subcategories and those categories for which additional control is warranted. One of the commenters pointed out that emission characteristics, which vary by subcategory, define the risk of adverse health and environmental impacts. Therefore, establishing separate subcategories on the basis of risk would be consistent with, and would best achieve, the overall statutory mandate of section 112 of the CAA. The same commenter stated that Congress provided a mechanism and criteria for subcategorizing with respect to risk in sections 112(c)(9)(B)(i) and (ii) to preclude overregulating sources that can meet consistent low-risk criteria. Four of the commenters believed that subcategorizing with respect to residual risk would encourage sources to develop site-specific approaches for reducing risk in order to avoid additional regulatory control, work practices, and associated permitting costs. One commenter stated that the intent of Congress was that EPA should focus MACT standards and residual risk requirements on those sources that present a risk of concern. Two of the commenters cited the "Residual Risk Report to Congress" (EPA–453/R–99–001), which supports the concept of regulating only those sources within a source category associated with unacceptable risk. Three of the commenters commented that sources within a lower risk subcategory would still be subject to the NESHAP and would have to continue complying with the standard in order to maintain its low-risk status. The commenters further explained that, even if EPA decides not to subcategorize based on risk, residual risk standards should focus only on the subset of sources that poses unacceptable risk.

Response: We acknowledge the commenters' support for subcategorizing based on risk in order to satisfy section 112(f)(2) of the CAA. For the IPCT source category, our risk assessment indicated that all sources in the category are low-risk. Therefore, there is no need, in the present case, to subcategorize based on risk or any other criteria.

5. Emissions From IPCT

Comment: One commenter commented on our conclusion that emissions of chlorine from IPCT are unlikely under normal operating conditions. We based this conclusion on discussions with water treatment chemical suppliers and information presented in several technical publications on water treatment, all of which clearly stated that chlorine emissions occur only under acidic conditions (i.e., pH of 3.0 or less), and IPCT water treatment programs are designed to maintain alkaline conditions (i.e., pH of 7.5 to 9.0) in the cooling water. The commenter stated that IPCT that are treated with chlorine gas (Cl_2) experience significant flash-off of molecular chlorine. He noted that one facility estimated that chlorine emissions from flash-off amounted to 18 percent of the chlorine gas used to treat the cooling water in an IPCT, and that annual emissions of chlorine from the IPCT were estimated to be 18.2 tons. The commenter did not provide documentation for that estimate. However, he did cite a report prepared by the University of Texas for the Texas Natural Resource Conservation Commission (TNRCC), "Emission Inventory for Atomic Chlorine Precursors in Southeast Texas," which supports his comments regarding chlorine emissions due to flash-off from IPCT. The TNRCC Report also states that the greater the pH, the greater the flash-off rate, which may appear to contradict our conclusion regarding the relationship between pH and Cl_2 emissions from IPCT.

Response: As noted above, the commenter did not provide documentation for the estimate of 18.2 tpy of chlorine emissions from a single IPCT. We assume that the basis for that estimate was the TNRCC Report. We reviewed the TNRCC Report, as well as the primary references used as the basis for the chlorine emission estimates presented in the report. Based on our review, we maintain our conclusion that emissions of Cl_2 from IPCT are not likely to occur under normal operating conditions.

With respect to the discrepancy between our conclusions regarding emissions of chlorine from IPCT, the statement by the commenter, and the information presented in the TNRC Report, there are two issues that must be resolved: (1) Which chlorine species are emitted from IPCT, and (2) what is the relationship between those emissions and the pH of the cooling water.

When gaseous chlorine is added to cooling water, it dissociates to form hypochlorous acid (HClO), hydrogen (H^+), and chloride (Cl^-) ions. The HClO further dissociates to form hypochlorite (ClO^-) and H^+ ions. With respect to the chlorine species emitted, the TNRCC Report presents estimates assuming that chlorine emissions are entirely in the form of Cl_2. The Report does not provide the basis for this assumption, but does note that "* * * chlorine may be released as HClO, Cl_2, or in other chemical forms * * *" The Report later states that emissions "* * * may be in the form of HOCl rather than Cl_2." Apparently, because the focus of the TNRCC Report was the magnitude of the emissions rather than the form of the chlorine emitted, the researchers did not attempt to determine which chlorine species would be emitted. The primary references cited in the TNRCC Report regarding chlorine emissions from IPCT are two journal articles from 1984 by Holzwarth, *et al.* The introduction to the first of those articles explains that chlorine gas added to cooling water "* * * immediately reacts with water to form HOCl and HCl." All of the subsequent discussion and calculations in both papers regarding flash-off are in terms of HOCl and other non-Cl_2 chlorine compounds. In fact, Cl_2 is not mentioned again in either article. In other words, the Holzwarth articles support our conclusion that chlorine is not emitted from IPCT in the form of Cl_2.

With respect to the relationship between pH and emissions of chlorine species, we do not argue that emissions from flash-off may increase with increasing pH. However, our assessment concluded that these emissions would be entirely in the form of HOCl and not as Cl_2. The studies by Holzwarth, *et al.* also support this conclusion, that emissions of HOCl increase with increasing pH, while emissions of Cl_2 decrease with increasing pH.

In summary, we believe our conclusions regarding emissions of Cl_2 from IPCT are correct. Neither the commenter, nor the references cited by the commenter provide any basis for concluding otherwise.

6. Delisting the IPCT Source Category

Comment: Six commenters responded to our request for comment on the issue of delisting the IPCT source category in light of the results of the residual risk assessment. Two of the commenters opposed delisting the source category; one of the commenters supported delisting; and the other commenters, although not opposed to delisting, found no compelling reason to do so. One of the commenters who opposed delisting stated that delisting the source category would not be appropriate because such action would allow owners and operators of IPCT to revert back to using chromium water treatment chemicals. The commenter also noted that delisting the source category would require State and local agencies to amend their rules accordingly. Because there would not be a NESHAP to adopt by reference, State and local agencies would be required to develop and adopt their own regulations on IPCT. In addition, the commenter pointed out that some regulatory agencies are prevented from adopting rules that are more stringent than Federal requirements. In those cases, States and local agencies would have no legal means of preventing IPCT owners and operators from resuming the use of chromium water treatment chemicals in IPCT.

The other commenter who opposed delisting stated that, if the source category were delisted, there would be nothing to prevent sources from increasing their HAP emissions substantially or changing their processes to emit new HAP, either of which could result in HAP levels that are unacceptable to public health and the environment. He noted that such action would disregard the possibility that HAP emissions have been reduced to an acceptable level because of the NESHAP.

Three of the commenters were not opposed to delisting the IPCT source category, but remarked that there was no compelling reason to do so. The commenters noted that, even though the IPCT NESHAP does not apply to any existing sources, it is possible for the rule to apply to sources in the future. The commenters gave the example of an area source, which operated an IPCT using chromium water treatment chemicals and later became a major source. Once the facility became a major source, it would be subject to the NESHAP and would have to discontinue the use of chromium water treatment chemicals. The commenters stated that, on the other hand, delisting a source category does not affect the applicability of an existing NESHAP. The commenters explained that the applicability of the Asbestos NESHAP (40 CFR part 61, subpart M) was unchanged after the source category was delisted. Finally, the commenters pointed out that none of the applicability requirements of 40 CFR part 63 standards (*i.e.*, NESHAP) depend on source category listing.

One of the commenters supported delisting the IPCT source category. The commenter stated that our request for comment on this issue implied that we

interpreted section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated. According to the commenter, section 112(c)(9) grants EPA the authority to delist a source category whenever the Administrator determines that the risks meet the established criteria. The commenter noted that delisting source categories based on risk prior to establishing standards under section 112(d) actually would conflict with the sequence of EPA's duties under section 112, which requires EPA to evaluate residual risk 8 years after promulgation. In addition, the commenter pointed out that EPA would likely not have sufficient data to fully assess the risk until several years after a standard had been in place. Finally, if EPA were to delist the source category, section 112(c)(9) could still be used to establish requirements to ensure that the risk remains within acceptable levels if EPA were to conclude that the risk associated with the source category could become unacceptable in the future.

Response: Based on our risk assessment of the IPCT source category, we have concluded that these sources are low-risk and, therefore, that no further standards are required to protect public health with an ample margin of safety or to protect the environment. However, we agree with the commenter who argues that this conclusion is based, at least in part, on the fact that the MACT requirements for these sources prevent IPCT from using chromium-based water treatment strategies. Further, we disagree with the comment that delisting would not affect the existing NESHAP. The commenter cited the delisting action following the Asbestos NESHAP as support for their argument, noting that the applicability of that rule was not affected by delisting. However, the Asbestos NESHAP was established under 40 CFR part 61, which is not directly relevant in this situation since the IPCT NESHAP is a 40 CFR part 63 rule. If we delist this source category, it is our opinion that existing facilities with IPCT would no longer be subject to the NESHAP and would not be banned from using chromium. If any sources reverted to using chromium, risks could increase, and the basis for our finding that the source category is low-risk would be compromised. Thus, since compliance with the MACT standard is part of the basis for our low-risk determination, we believe our policy objectives are best served if we do not delist the IPCT source category. However, as long as the NESHAP exists and prohibits the use of chromium-based water treatment chemicals, we agree with the commenters who suggest that IPCT sources no longer using these chemicals should not be subject to this NESHAP. Therefore, we are amending the applicability section of the rule to clarify that sources no longer using chromium-based water treatment chemicals are not subject to this NESHAP. The NESHAP remains in effect, and any source that uses chromium-based water treatment chemicals will be subject to the rule and in violation.

Contrary to one commenter's contention, we do not interpret section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated, although that is expected to be the situation in which it is most likely exercised. We agree that section 112(c)(9) grants EPA the authority to delist a source category when the Administrator determines that risks meet the established criteria, including after promulgation of a MACT standard.

The Agency would like to remove the burden of the repetitive review of Section 112 standards for low risk source categories. At the same time, we think it is appropriate to maintain the MACT controls in this case. We plan to further investigate approaches for removing low-risk source categories from the Section 112 universe while maintaining MACT-level controls. An example of a similar approach is found in the Plywood and Composite Wood Products MACT where we allow a subcategory of facilities to reduce emissions to acceptable risk levels through Title 5 permits and remove them from the MACT universe.

7. Technology Reviews Under CAA Section 112(d)(6)

Comment: One commenter remarked that EPA should not have conducted an initial technology review of the IPCT source category. The commenter explained that once a residual risk determination indicates the risk is acceptable, EPA must find that revising the standard under CAA section 112(d)(6) is not necessary. The commenter stated that the legislative history of the CAA demonstrates that Congress rejected imposing controls beyond levels considered to be safe and protective of public health because those controls would impose regulatory costs without any public health benefit. The commenter stated that, if Congress had intended EPA to conduct technology reviews regardless of the outcome of the residual risk assessment, there would be no need for CAA section 112(f). The commenter believes that technology reviews under section 112(d)(6) were meant to be regulatory backstop authority for residual risk reviews, similar to the MACT hammer provision in section 112(j) of the CAA. That is, if EPA failed to address the residual risk for a source category, section 112(d)(6) authority could be used to ensure that advances in technology could still be applied to the source category.

Response: We disagree with the comment that we should not have conducted an initial technology review under CAA section 112(d)(6) for the IPCT source category. The timing requirements for the initial analysis under section 112(d)(6) coincide with those for the residual risk analysis. Thus, it is appropriate for us to conduct both analyses at the same time. Although the results of the risk analysis may impact future section 112(d)(6) technology reviews, these results do not negate the need to perform the initial review. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the Coke Oven residual risk rule (70 FR 20008, April 15, 2005).

Comment: Seven commenters responded to our request for comment on continuing technology reviews every 8 years for source categories subject to NESHAP, as required by section 112(d)(6) of the CAA. Four commenters stated that EPA should not use a "bright line approach" in determining the need for technology reviews under section 112(d)(6) of the CAA. For example, the decision of whether or not to perform a technology review should not be based on a 1-in-1-million risk level, as is the case for residual risk. One of those commenters stated that discontinuing technology reviews would be contrary to the requirements of the CAA. The commenter noted that the phrase "* * * every 8 years" implies a continuum rather than a single action, and if Congress had intended the technology review to be a one-time requirement, it would have used other language in the CAA. As an example of a one-time requirement, the commenter cited CAA section 112(n)(1), which states that "The Administrator shall conduct, and transmit to Congress not later than 4 years after the date of enactment * * *" The other commenter who opposed discontinuing technology reviews remarked that, without future reviews, it is unlikely that EPA would know what new technologies have been developed or know of any unforeseeable circumstances that might substantially change the source category or its emissions.

Three of the commenters stated that, by implementing residual risk requirements under section 112(f) or determining that residual risk requirements are not warranted, EPA completes its obligation to conduct technology reviews under section 112(d)(6) of the CAA. Thus, once the residual risk has been evaluated and the appropriate action taken, technology reviews are no longer required. However, the commenters also stated that later technology reviews may be appropriate if the ample margin of safety established by the residual risk process is based largely on cost or technical feasibility, and feasible, cost-effective controls are identified in the future. Four of the commenters stated that technology reviews under section 112(d)(6) should not provide for a continuing technology ratchet based on the availability of new technology. Instead, technology reviews should be conducted in the context of providing an ample margin of safety under section 112(f) of the CAA.

Response: We agree that a technology review is required every 8 years for emission standards under 112(d) or if new standards are issued pursuant to 112(f). However, if the ample margin of safety analysis for a section 112(f) standard shows that remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision would not be needed because an ample margin of safety has already been assured. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the Coke Oven residual risk rule (70 FR 20008, April 15, 2005).

Comment: Four commenters commented that technology reviews under section 112(d)(6) should be limited to emission standards already established under section 112(d). Three of the commenters stated that, although it is appropriate to evaluate and control emissions of other HAP not regulated by the NESHAP under section 112(f), such HAP should not be considered under the section 112(d)(6) technology review.

Response: The emission standards imposed a prohibition on the use of chromium-based water treatment chemicals in IPCT. Since the risk from other HAP emitted from IPCT due to the addition of water treatment chemicals was determined to be very low and the emission standards already preclude the use of chromium-based water treatment chemicals, we concluded that no further controls are necessary under either 112(f) or 112(d)(6). As stated previously, section 112(d)(6) requires that the emission standard be reviewed and revised as necessary no less often than every 8 years. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the residual risk for coke ovens (70 FR 20008, April 15, 2005).

III. Statutory and Executive Order Reviews

A: Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The final rule amendment does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing NESHAP. OMB has previously approved the information collection requirements contained in the existing regulation (40 CFR part 63, subpart Q) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* (OMB control number 2060–0268). However, this information collection request has been discontinued because the information requested in the original regulation is no longer needed.

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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule amendment.

For purposes of assessing the impacts of today's final rule amendment on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 amendment on small entities, EPA has concluded that this final action will not have a significant economic impact on a substantial number of small entities. The final rule amendment does not impose any requirements on small entities.

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 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.

The EPA has determined that the final rule amendment does not contain a Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it imposes no enforceable duty on any State, local, or tribal governments or the private sector. Thus, today's final amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final amendment contains no regulatory requirements that might significantly or uniquely affect small governments, because it 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."

Today's final amendment 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 the final amendment.

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." The final amendment 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 today's final amendment.

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.

The final amendment is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a significant disproportionate risk to children.

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

The final amendment is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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. The final amendment does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement 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 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 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). The final amendment is effective on April 7, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: March 31, 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 Q—[Amended]

■ 2. Section 63.400 is amended by revising paragraph (a) to read as follows:

§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals and are either major sources or are integral parts of facilities that are major sources as defined in § 63.401.

* * * * *

[FR Doc. 06–3316 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0057; FRL–8055–6]

RIN 2060–AM25

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes amendments to national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The amendments to the final rule clarify certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements. The amendments also correct several omissions and typographical errors in the final rule. We are finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements.

DATES: The final rule is effective April 7, 2006.

ADDRESSES: *Docket.* EPA has established a docket for this action including Docket ID No. EPA–HQ–OAR–2002–0057, legacy EDOCKET ID No. OAR–2002–0057, and legacy Docket ID No. A–99–41. 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 (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 following address: Air and Radiation Docket and Information Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, 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 Docket telephone number is (202) 566–1744. The 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 information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final amendments, contact Mr. Randy McDonald, Coatings and Chemicals Group, Sectors Policies and Programs Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5402; fax number (919) 541–3470; electronic mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities
Industry	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding FOR FURTHER INFORMATION CONTACT section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

Judicial Review. Under section 307(b) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 6, 2006. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only an objection

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

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§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals and are either major sources or are integral parts of facilities that are major sources as defined in § 63.401.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0057; FRL–8055–6]

RIN 2060–AM25

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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DATES: The final rule is effective April 7, 2006.

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SUPPLEMENTARY INFORMATION:

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This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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Judicial Review. Under section 307(b) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 6, 2006. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only 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 EPA to convene a proceeding for reconsideration, "if 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 EPA 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 FOR FURTHER INFORMATION CONTACT section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20004.

Outline. The information in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. How Did the Public Participate in Developing the Amendments to the Final Rule?
II. Summary of the Final Amendments
A. Applicability
B. Definitions
C. Emission Standards
D. Storage Tank Maintenance
E. Notification and Reporting Requirements
F. Omissions and Typographical Corrections
III. Significant Comments and Changes Since Proposal
A. Applicability
B. Retesting Requirements
C. Monitoring of pH
D. Engineering Evaluations
E. Compliance Date
F. Planned Maintenance
G. Work Practice Standards
IV. Impacts of the Final Rule
V. Statutory and Executive Order (EO) Reviews
A. EO 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. EO 13132: Federalism
F. EO 13175: Consultation and Coordination With Indian Tribal Governments
G. EO 13045: Protection of Children From Environmental Health and Safety Risks
H. EO 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

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

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576).[1] On September 18, 2001, we combined these two source categories for regulatory purposes under the production of inorganic chemicals group and renamed the source category as HCl production (66 FR 48174). Major sources of HAP are those that have the potential to emit greater than 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.68 Mg/yr (25 tpy) of any combination of HAP.

B. How Did the Public Participate in Developing the Amendments to the Final Rule?

The final rule was published in the **Federal Register** on April 17, 2003 (68 FR 19076). The final rule contains emission limitations and standards applicable to HCl and chlorine (Cl_2). These limits apply to each new or existing HCl process vent, HCl storage tank, HCl transfer operation, and leaks from equipment in HCl service located at a major source of HAP. Following promulgation of the final rule, EPA became aware of certain aspects of the applicability provisions, emission standards, and testing, maintenance, and reporting requirements that required clarification along with several omissions and typographical errors in the final rule that required correction. On August 24, 2005, we published proposed amendments (70 FR 49530) to address these issues and sought public comment on the proposed amendments. Today's action finalizes those clarifications and corrections. The preamble to the proposed amendments discussed the availability of technical support documents, which described in detail the information gathered during the standards development process.

We received four public comment letters on the proposed amendments. The commenters represent HCl producers and industrial trade associations. All of the comments have been carefully considered, and, where appropriate, changes have been made for the amendments to the final rule.

[1] Later listing notices (e.g., 66 FR 8220) refer to the source category as "fumed" silica.

II. Summary of the Final Amendments

We are finalizing amendments to 40 CFR part 63, subpart NNNNN, to change the applicability provisions, to clarify testing, monitoring, and reporting requirements, and to correct inadvertent omissions and typographical errors. A summary of each of the amendments to 40 CFR part 63, subpart NNNNN, and the rationale for each is presented below.

A. Applicability

In order to avoid regulatory overlap, the HCl Production NESHAP exempt certain HCl production facilities that are part of other source categories and subject to other Federal standards. We intended the HCl Production NESHAP to cover only those HCl production facilities that were not subject to any other NESHAP and not to cover those HCl production facilities that were subject to other NESHAP. Today's final amendments adjust the applicability provisions to rectify three situations that came to our attention after promulgation of the HCl Production NESHAP in which this intent was not satisfied.

First, the final amendments will address the HCl Production NESHAP's exemptions for HCl production facilities that are subject to certain other regulations, including 40 CFR part 63, subpart EEE (the Hazardous Waste Combustors NESHAP), and 40 CFR 266.107, subpart H (regulations issued under the Resource Conservation and Recovery Act governing the Burning of Hazardous Wastes in Boilers and Industrial Furnaces). As worded in the final rule, the exemptions were overly broad, because neither of the above final rules covers emissions of HCl from HCl storage tanks, HCl transfer operations, or leaks from equipment in HCl service at these facilities. This leaves these emission points not subject to any Federal standards, which was not our intent. Therefore, we are amending subpart NNNNN of 40 CFR part 63 to exempt facilities that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the applicability requirements of subpart NNNNN from only the HCl process vent provisions of subpart NNNNN, rather than from all of the requirements of subpart NNNNN. Because the purpose of 40 CFR 63.8985(b) and (c) is to provide exemptions from all of the requirements

of subpart NNNNN for entire HCl production facilities subject to certain other rules, we are removing 40 CFR 63.8985(b)(4) and (c)(3) to eliminate the overly broad exemptions and instead are adding new paragraphs to 40 CFR 63.9000(c) to accomplish the exemptions. The purpose of 40 CFR 63.9000(c) is to exempt certain emission streams from subpart NNNNN. Under 40 CFR 63.9000(c), plants that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the other applicability provisions of subpart NNNNN would be affected sources under subpart NNNNN but would be exempt from the process vents provisions of subpart NNNNN.

Second, the amendments revise the HCl Production NESHAP's exemptions for specific emission streams to eliminate duplicative regulation. Some emission points that are not themselves subject to subpart EEE of 40 CFR part 63 have their emissions controlled under subpart EEE because their emissions are routed directly through equipment that is subject to subpart EEE (*e.g.*, an HCl process vent emission stream routed to a hazardous waste combustor (HWC) for use as supplemental combustion air). Currently, these emissions (*e.g.*, from the combustor) are regulated by both subpart EEE and subpart NNNNN of 40 CFR part 63. To rectify this situation, we are adding a new paragraph to 40 CFR 63.9000(c) to include an emission stream-specific exemption for HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to HWC units subject to subpart EEE. This means that HCl production facility emission streams that are routed to subpart EEE HWC units are exempt from the requirements of subpart NNNNN.

Finally, the amendments remove the HCl Production NESHAP's exemption for HCl production facilities subject to 40 CFR 264.343(b), subpart O (Incinerators), which will no longer be necessary. A combustor that burns hazardous waste and meets the subpart NNNNN of 40 CFR part 63 definition of an HCl production facility would be defined as a halogen acid furnace (currently subject to 40 CFR 266.107, subpart H, and that will be subject to 40 CFR part 63, subpart EEE, on the compliance date (October 14, 2008) of EPA's final rule promulgated on October 12, 2005 (70 FR 59402)), not an incinerator (subject to 40 CFR 264.343(b), subpart O). As discussed above, we are amending the applicability provisions of the HCl Production NESHAP to properly address HCl production facilities that are subject to 40 CFR part 266, subpart H. Therefore, the exemption for 40 CFR part 264, subpart O, is no longer necessary, and we are removing 40 CFR 63.8985(c)(2), which provided this exemption. Consequently, we are incorporating the exemption provided in 40 CFR 63.8985(c)(1) into 40 CFR 63.8985(c), and, thus, removing 40 CFR 63.8985(c)(1).

B. Definitions

We are clarifying the meaning of "equipment in HCl service," which is defined in the HCl Production NESHAP as "each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time" (40 CFR 63.9075). This definition could be interpreted to include equipment that is located at the same plant site as an "HCl production facility" (40 CFR 63.8985(a)(1)) but is not part of the HCl production facility. We intended to include only equipment that meets the above definition and is located within an HCl production facility. Therefore, we are amending the definition of "equipment in HCl service" in 40 CFR 63.9075 to clarify that the definition applies only to equipment within an HCl production facility.

C. Emission Standards

The HCl Production NESHAP specify the emission limits for existing and new HCl process vents, HCl storage tanks, and HCl transfer operations in two forms—a percent reduction and an outlet concentration—and allows HCl production facilities to comply with either one. However, the wording of the emission limits could be construed to require the use of an add-on control device even when an emission point meets the outlet concentration emission limit without an add-on control device. It was not our intent to require add-on control devices when they are unnecessary for compliance. Although a percent reduction emission limit would need to be achieved through the use of an add-on control device, we recognize that an outlet concentration emission limit could be achieved through other means (*e.g.*, process changes, pollution prevention). Therefore, we are amending table 1 to subpart NNNNN of 40 CFR part 63 to clarify that it is not necessary to use an add-on control device in order to meet the outlet concentration form of the emission limits. In addition, we are amending tables 3 and 5 to subpart NNNNN to specify the sampling port location and continuous compliance requirements, respectively, for sources that are not equipped with an add-on control device. Also, we are amending 40 CFR 63.9015(a) to require that emission points meeting the outlet concentration limits without the use of a control device conduct subsequent performance tests when process changes are made that could reasonably be expected to change the outlet concentration. Finally, we are amending 40 CFR 63.9050 by adding paragraph (c)(9), which specifies that compliance reports must include verification that no process changes that could reasonably be expected to change the outlet concentration have been made since the last performance test.

D. Storage Tank Maintenance

The HCl Production NESHAP are silent on the issue of how maintenance is to be conducted on HCl storage tank control devices. This could lead to uncertainty over whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. It was not our intent that an HCl storage tank would need to be emptied prior to maintenance because the standing losses associated with a full or partially-full HCl storage tank are low, when compared to the emissions that occur from filling and emptying the tank. To clarify our intent, we are amending 40 CFR 63.9000, by adding paragraph (d), to allow HCl production facilities to perform planned routine maintenance on each HCl storage tank control device for up to 240 hours per year without emptying the contents of the tank. During this time, the storage tank emission limitations would not apply. Also, we are amending 40 CFR 63.9050, by adding paragraph (c)(10), and 40 CFR 63.9055, by adding paragraph (b)(6), to specify the reporting and recordkeeping requirements for planned routine maintenance events. These provisions are consistent with other NESHAP to which plant sites containing HCl production facilities may be subject.

E. Notification and Reporting Requirements

1. Notification of Compliance Status

The HCl Production NESHAP require the submission of a Notification of Compliance Status (NOCS) to the Administrator when a performance test is conducted (40 CFR 63.9045(a), table 7 to subpart NNNNN of 40 CFR part 63, and 40 CFR 63.9(h)). It could be interpreted that 40 CFR 63.9045(e) and (f) require the submission of a separate NOCS for each performance test that is conducted (*e.g.*, on each emission

point). It is more efficient and no less effective for HCl production facilities to submit one NOCS for the entire affected source, rather than one NOCS for each emission point tested, and it was not our intent to require unnecessary paperwork. Therefore, we are amending 40 CFR 63.9045 to change the submission procedures for NOCS. We will allow NOCS to be submitted within 240 calendar days of the compliance dates for subpart NNNNN of 40 CFR part 63. The final amendments allow for the submission of only one NOCS per affected source because the notification is due 60 days after all performance tests are required to be conducted. We are also amending table 7 to subpart NNNNN to reflect this change to the NOCS submission procedures.

2. Monitoring and Leak Detection and Repair (LDAR) Plans

The HCl Production NESHAP require submission of the initial site-specific monitoring (40 CFR 63.9005(d)) and LDAR (LDAR; table 1 to subpart NNNNN of 40 CFR part 63) plans to the Administrator with a source's NOCS. The final rule does not, however, specify when or how revisions to these plans should be submitted, only that they should be submitted (40 CFR 63.9055(b)(5)). Submission of revisions to these plans is most efficiently done in conjunction with the semi-annual compliance report required by 40 CFR 63.9050. Therefore, we are amending 40 CFR 63.9050(c) by adding paragraph (c)(8) to require submission of revisions to site-specific monitoring plans and LDAR plans with semi-annual compliance reports, if revisions have been made during the reporting period.

F. Omissions and Typographical Corrections

We are adding an exemption which was inadvertently omitted from the HCl Production NESHAP. In the preamble to the final rule (68 FR 19082), we indicated that we would include an exemption for HCl production facilities subject to 40 CFR 63.994, subpart SS. Because this exemption was not included in the final rule text, we are amending the rule to include it. Because we are removing 40 CFR 63.8985(b)(4), we are replacing it with the exemption for 40 CFR 63.994, subpart SS.

We are removing the phrase "/Cl_2" from 40 CFR 63.8990(b)(4) to reflect a change made between the proposed rule and the final rule which was retained incorrectly in the final rule. The proposed rule used the term "in HCl/Cl_2 service," but we wrote this term as "equipment in HCl service" in the final rule. We are making the same change in the first column of table 1, item 4, to subpart NNNNN of 40 CFR part 63.

We are correcting an inaccurate reference in 40 CFR 63.9025(a) regarding operating parameters. The reference should be to 40 CFR 63.9020(e), which requires operating parameters to be established, rather than to 40 CFR 63.9020(d). This was a typographical error in the final rule.

We are correcting an inaccurate reference in the definition of "HCl production facility" in 40 CFR 63.9075. The reference to 40 CFR 63.8985(a)(i) should be to 40 CFR 63.8985(a)(1) because 40 CFR 63.8985(a)(i) does not exist. This was a typographical error in the final rule.

III. Significant Comments and Changes Since Proposal

This section includes discussion of the significant comments received on the proposed amendments, particularly where we made changes to address those comments in the amendments to the final rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "RESPONSE TO SIGNIFICANT PUBLIC COMMENTS Received in response to Proposed amendments to National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production" in Docket ID No. EPA–HQ–OAR–2002–0057. The docket also contains the actual comment letters and supporting documentation developed for the final amendments.

A. Applicability

Comment: One commenter recommends that EPA need not include proposed 40 CFR 63.9000(c)(4) as proposed 40 CFR 63.9000(c)(5) is more inclusive and includes the conditions addressed in 40 CFR 63.9000(c)(4).

Response: EPA agrees with the concept put forward by the commenter and has reworded paragraph (c)(4) to encompass the language proposed in paragraphs (c)(4), (c)(5), and (c)(6).

B. Retesting Requirements

Comment: Two commenters request that EPA clarify the change provisions in proposed 40 CFR 63.9015(a) to explain that the provisions to retest process vent emissions should be tied to a change that could cause an increase in emissions rather than, as currently worded, "whenever process changes are made that could reasonably be expected to change the outlet concentration." A similar change was requested to the language in 40 CFR 63.9050(c)(9).

Response: EPA agrees with the commenters and has made the suggested changes. This language is consistent with other rulemaking actions.

Comment: One commenter requests that EPA define "temporary process changes," in proposed 40 CFR 63.9015(a) to be changes of less than 1 year in duration where the owner/operator believes that the source will continue to demonstrate compliance without changing the compliance demonstration method.

Response: EPA disagrees with the commenter. As mentioned in the previous response, without emissions test data, no one can determine the effect of a change—temporary or not—on an existing facility. Moreover, the commenter errs by excluding the term "unintentional" in discussing "temporary process changes." As written, the final rule identifies "*unintentional*, temporary process changes" (emphasis added) as not being process changes. Surely a process change lasting up to 1 year could not be considered unintentional. Absent any information as to the length of time "unintentional temporary" process changes should or could last, we have not revised the final rule.

C. Monitoring of pH

Comment: One commenter believes that the requirement to measure the pH of the scrubber water as provided in 40 CFR 63.9020(e)(1) and Table 5 to subpart NNNNN is an inappropriate operational parameter and should be removed from the final rule. The commenter believes that monitoring the water flow of the scrubber is a sufficient measurement of scrubber performance, as seen during performance testing. The Pesticide Active Ingredient Production NESHAP (40 CFR 63.1366(b)(ii)) allows for either minimum liquid flow rate or pressure drop to be chosen as operating parameters during the period in which the scrubber is controlling HAP from an emission stream and only requires the measurement of pH if a caustic scrubber is being used. The commenter believes that a rule change is more efficient than going through the alternative monitoring request process.

Response: EPA disagrees with the commenter's suggestion to replace monitoring of the scrubber water effluent pH with monitoring of the minimum liquid flow rate or pressure drop only. Apart from directly measuring HCl emissions, monitoring of the outlet pH of the scrubber water, as well as the water flow rate into the scrubber, provides the most complete depiction of parametric monitoring and best measure for process control. Parametric monitoring that provides a less certain depiction, and

corresponding level of process control, would include scrubber water outlet pH monitoring and flow monitoring. The least-certain depiction, and corresponding level of process control, would arise from monitoring only the scrubber water flow. Although such least-certain monitoring may be appropriate under certain circumstances, sources subject to the HCl production NESHAP may rely on techniques other than once-through scrubber water use. In order not to prescribe any control technique, source owners or operators are able to choose an approach that works best for them. The Pesticide NESHAP cited by the commenter differs from the HCl NESHAP and what is applicable for sources subject to the Pesticide NESHAP may not be relevant for sources subject to the HCl Production NESHAP. Further, the commenter fails to note that other standards that regulate HCl emissions require the monitoring of effluent pH. A more comparable example is that of 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. In this NESHAP, where the HCl production process is very similar to that of the HCl Production NESHAP, monitoring of effluent pH is required whenever a wet scrubber, water or caustic, is used (40 CFR 63.1209(o)(3)(iv)).

EPA is unaware of any difficulty faced by source owners or operators subject to the HCl Production NESHAP in getting approval for alternative monitoring as suggested by the commenter. In fact, at least two HCl Production NESHAP source owners/operators have demonstrated a need for an alternative monitoring technique, requested approval for such technique, and received approval for that technique by the Regional offices.

D. Engineering Evaluations

Comment: Two commenters request that the provision allowing the use of engineering evaluations in lieu of emission testing, as proposed in 40 CFR 9020(e)(3), be amended to include process vents as well as the currently proposed allowance for storage tanks and transfer operations. The commenters note that EPA has historically allowed such assessments for process vents in other NESHAP (*e.g.*, 40 CFR 63.1258(b)(3)(i); 40 CFR 63.1365(c)(3)(i)(A); 40 CFR 63.1426(f)) and continues to support the use of design evaluations (40 CFR 63.2450(h)).

Response: EPA disagrees with the commenters' suggestion. The standards cited by the commenters all deal primarily with organic HAP, with HCl occurring in more limited quantities, as opposed to the primacy of HCl emissions encountered in the HCl Production NESHAP. The commenters provide no data to support their contention about use of engineering evaluations in lieu of emissions testing for HCl and Cl_2 for the process vents. Design values as supplied by such engineering evaluations may be appropriate for small emitters (*i.e.*, those below the NESHAP applicability level) as was done for at least some of the cited NESHAP, but substantial, uncontrolled emissions " such as those that could come from process vents—should be measured.

Again, EPA feels that a more comparable example is the Hazardous Waste Combustor NESHAP (40 CFR part 63, subpart EEE). In this standard (40 CFR 63.1207(m)), conservative engineering evaluations are allowed in lieu of emissions testing for sources that can comply with the emission standards assuming all chlorine in the feed is emitted as total chlorine (HCl + Cl_2)—if the maximum theoretical emission concentration does not (cannot) exceed the emission standards, emissions testing is waived. However, HCl production furnaces could not comply with this waiver of the emission test because they rely on wet scrubbers/absorbers to produce HCl product and control emissions of HCl/Cl_2. We believe this situation is analogous to that encountered in the HCl Production NESHAP where we have allowed engineering evaluations to be utilized for those emission sources that could possibly emit below the emission standard (*i.e.*, the storage tanks and transfer operations) but have required emission testing for the emission sources that are not likely to emit below the standard without the use of a control device (*i.e.*, the process vents).

E. Compliance Date

Comment: Two commenters request that EPA clarify the deadline for compliance with the final rule and the dates when the initial reports are due in 40 CFR 63.9050(b)(1) and (2), believing that there could be confusion among the various entities affected by the rule concerning the submittal date for the first compliance report. They suggest that the rule language specifically state that January 31, 2007, is the date on which the first compliance report is due.

Response: EPA agrees that the wording could be confusing and has added clarification to the language of the regulation to indicate that, for sources in existence on April 17, 2006, the initial compliance period ends June 30, 2006, and the initial compliance report is due on July 31, 2006.

F. Planned Maintenance

Comment: Two commenters expressed concern about the planned maintenance advance notification requirements in proposed 40 CFR 63.9050(c)(10)(ii) in that planned maintenance schedules are subject to change with little or no notice. One of the commenters believes that a facility could, in good faith, report advance plans of maintenance to the permit authority and EPA but then, due to an unforeseen change of plans, not conduct the planned maintenance on the proposed schedule or identify additional, required work that was not in the maintenance plan. The commenter believes that EPA should not establish a regulation where a decision is required to respond to plant-specific conditions that have no impact on emissions becomes a regulatory enforcement matter. The commenter believes that EPA already has sufficient authority through the existing startup, malfunction, and shutdown (SSM) provisions to review such maintenance activities without requiring the additional reporting required by 40 CFR 63.9050(c)(10)(ii). The other commenter requests that tracking of compliance with any needed notification requirements only be included in the required periodic reports (as proposed in 40 CFR 63.9050(c)(10)(i)) or that such reporting not be required unless a deviation of a monitoring condition or an exceedances of an emission limit occurs during the periodic reporting period. One commenter believes that the proposed requirement is overly burdensome and unnecessary. Further, the commenter states that it is not aware of any other NESHAP that requires advance reporting of anticipated planned routine maintenance activities on emission control devices.

Response: EPA disagrees with the commenters. In adding this requirement, EPA was responding to concerns that the rule language was unclear on whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. In the proposed amendments to the final rule, EPA provided language that allowed owners/operators to perform maintenance on each HCl storage tank for up to 240 hours per year without emptying the storage tank. During this period, the storage tank emissions would not apply. The notification requirement was included to ensure that the recipient of the periodic reports is

aware of planned maintenance activities related to the HCl storage tanks, including the type of maintenance to be performed and the duration of the maintenance (which would be the length of time during which the emission standards would not apply). Further, EPA does not believe that an out-of-compliance period should suddenly become a "maintenance period." EPA does not see the dilemma the commenters believe themselves subject to. If a planned maintenance period does not occur, EPA sees no harm or liability for having reported it. EPA recognizes that planned maintenance activities may, on occasion, not occur as scheduled. In cases where an owner/operator had included planned maintenance in a periodic report but the maintenance did not occur, EPA would expect that the owner/operator would merely explain the situation in the next periodic report. EPA understands that occasionally additional unplanned maintenance needs are discovered in the course of a planned maintenance and believes that the regulations are sufficiently flexible to accommodate such circumstances. EPA believes that 240 hours is sufficient time to effect maintenance on HCl storage tank control devices. However, should planned maintenance on such devices require 240 or greater hours per year, the owner/operator would be required to drain the HCl storage tank or comply with the emission limits without the control device in-place.

G. Work Practice Standards

Comment: One commenter expressed concern about changes made to item 4 in table 1 to subpart NNNNN where the term "and new" sources was added to the existing language. The commenter believes that this change was not discussed in the preamble to the proposed amendments and that this addition significantly broadens the impact of the rule and should be justified.

Response: Item 4 in table 1 to subpart NNNNN only addressed leaking equipment at existing sources. EPA acknowledges that it was an oversight in the regulatory language in the final rule to omit leaking equipment at new sources and, so as a technical correction, added "and new" to the language of item 4 in the proposed amendments. The text of the final rule preamble related to the emission limitations and work practice standards (68 FR 19079) provides discussion for process vents, storage tanks, and transfer operations at both new and existing sources. However, for leaking equipment, the text only states "[f]or leaking equipment, the final rule includes a work practice standard." EPA believes that the lack of distinction between leaking equipment at new and existing sources is indication that the final rule applies to both situations. EPA sees no reason to omit new sources from having to address leaking equipment and does not agree with the commenter's concern about this adjustment "significantly" broadening the impact of the final rule.

IV. Impacts of the Final Rule

The changes incorporated as a result of the final rule amendments do not change any of the impacts presented in the preamble to the final rule which was published at 68 FR 19076 (April 17, 2003).

V. Statutory and Executive Order (EO) Reviews

A. EO 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that today's action is not a "significant regulatory action" under the terms of EO 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

OMB has approved the information collection requirements in the 2003 NESHAP for HCl production under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0529. At proposal, EPA prepared a revision to the currently approved information collection request (ICR), and made it available for public comment. Most of the final rule amendments are not expected to have an impact on the ICR burden. However, the ICR was revised because two of the final rule amendments are expected to change the burden slightly. The exemption for individual emission streams that are routed to 40 CFR part 63, subpart EEE, hazardous waste combustors is expected to decrease the reporting and recordkeeping burden for some sources. The routine maintenance allowance is expected to increase the reporting and recordkeeping burden for all sources. Overall, the total annual reporting and recordkeeping burden is expected to be 733 hours (1 percent) lower than for the final rule. No comments were received on the revised ICR or burden estimates.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.202; (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. The small

business size standard for the affected industries (NAICS 325181, Alkalies and Chlorine Manufacturing; and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing) is a maximum of 1,000 employees for an entity.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that today's action will not have a significant economic impact on a substantial number of small entities. The final rule amendments will not impose any requirements on small entities.

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 UMRA section 202, 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 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 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 UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA 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 UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments. EPA has determined that the final amendments 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 1 year. Thus, today's final amendments are not subject to the requirements of UMRA sections 202 and 205.

E. EO 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 EO to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule amendments 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 EO 13132. None of the affected facilities are owned or operated by State governments. Thus, EO 13132 does not apply to the final amendments.

F. EO 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." The final rule amendments do not have Tribal implications, as specified in EO 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. No Tribal governments own facilities subject to the HCl Production NESHAP. Thus, EO 13175 does not apply to the final amendments.

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

EO 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 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 EO 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. The final rule amendments are not subject to EO 13045 because they are based on technology performance and not on health or safety risks.

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

Today's action is not subject to EO 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 EO 12866.

I. National Technology Transfer and Advancement Act

As stated 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 in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, or business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The final rule amendments do not involve changes to the technical standards in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in the final amendments.

J. Congressional Review Act

The Congressional Review Act (CRA), 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 my 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 U.S. Senate, the U.S. 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**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth 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 NNNNN—[Amended]

■ 2. Section 63.8985 is amended by revising paragraphs (b)(4) and (c) to read as follows:

§ 63.8985 Am I subject to this subpart?

* * * * *

(b) * * *

(4) 40 CFR part 63, section 63.994, subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

* * * * *

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to section 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

* * * * *

■ 3. Section 63.8990 is amended by revising paragraph (b)(4) to read as follows:

§ 63.8990 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(4) Each emission stream resulting from leaks from equipment in HCl service.

* * * * *

■ 4. Section 63.9000 is amended by:
■ a. Revising paragraph (a);
■ b. Revising the introductory text of paragraph (c);
■ c. Adding paragraph (c)(4); and
■ d. Adding paragraph (d).

§ 63.9000 What emission limitations and work practice standards must I meet?

(a) With the exceptions noted in paragraphs (c) and (d) of this section, you must meet the applicable emission limit and work practice standard in table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

* * * * *

(c) The emission streams listed in paragraphs (c)(1) through (4) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

* * * * *

(4) Emission streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, or 40 CFR 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) The emission limits for HCl storage tanks in table 1 to this subpart do not apply during periods of planned routine maintenance of HCl storage tank control devices. Periods of planned routine maintenance of each HCl storage tank control device, during which the control device does not meet the emission limits specified in table 1 to this subpart, shall not exceed 240 hours per year.

■ 5. Section 63.9015 is amended by revising paragraph (a) to read as follows:

§ 63.9015 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit. For emission points meeting the outlet concentration limits in table 1 to this subpart without the use of a control device, all applicable performance tests must also be conducted whenever process changes are made that could reasonably be expected to increase the outlet concentration. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets and unintentional, temporary process changes.

* * * * *

■ 6. Section 63.9025 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.9020(e) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

* * * * *

■ 7. Section 63.9045 is amended by:
■ a. Removing and reserving paragraph (e); and
■ b. Revising paragraph (f).

§ 63.9045 What notifications must I submit and when?

* * * * *

(e) [Reserved]

(f) You must submit the Notification of Compliance Status, including the performance test results, within 240 calendar days after the applicable compliance dates specified in § 63.8995.

* * * * *

■ 8. Section 63.9050 is amended by:
■ a. Revising paragraphs (b)(1) and (2);
■ b. Revising the introductory text of paragraph (c); and
■ c. Adding paragraphs (c)(8) through (c)(10).

§ 63.9050 What reports must I submit and when?

* * * * *

(b) * * *

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8995 and ending on June 30 or December 31, whichever date is the first date

following the end of the first calendar half after the compliance date that is specified for your source in § 63.8995 (i.e., June 30, 2006, for sources existing on April 17, 2006).

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8995 (i.e., July 31, 2006, for sources existing on April 17, 2006).

* * * * *

(c) The compliance report must contain the following information in paragraphs (c)(1) through (10) of this section.

* * * * *

(8) If you did not make revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period. If you made revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a copy of the revised plan.

(9) If you meet the outlet concentration limit in table 1 to this subpart without the use of a control device for any emission point, verification that you have not made any process changes that could reasonably be expected to increase the outlet concentration since your most recent performance test for that emission point.

(10) The information specified in paragraphs (c)(10)(i) and (ii) of this section for those planned routine maintenance operations that caused or may cause an HCl storage tank control device not to meet the emission limits in table 1 to this subpart, as applicable.

(i) A description of the planned routine maintenance that was performed for each HCl storage tank control device during the reporting period. This description shall include the type of maintenance performed and the total number of hours during the reporting period that the HCl storage tank control device did not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance.

(ii) A description of the planned routine maintenance that is anticipated to be performed for each HCl storage tank control device during the next reporting period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

* * * * *

■ 9. Section 63.9055 is amended by adding paragraph (b)(6) to read as follows:

§ 63.9055 What records must I keep?

* * * * *

(b) * * *

(6) Records of the planned routine maintenance performed on each HCl storage tank control device including the duration of each time the control device does not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were not met at the beginning of the planned routine maintenance, and

(ii) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were met at the conclusion of the planned routine maintenance.

■ 10. Section 63.9075 is amended by revising the definitions of "Equipment in HCl service" and "HCl production facility" to read as follows:

§ 63.9075 What definitions apply to this subpart?

* * * * *

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in an HCl production facility that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

* * * * *

HCl production facility is defined in § 63.8985(a)(1).

* * * * *

■ 11. Table 1 in subpart NNNNN is revised to read as follows:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . .	You must meet the following emission limit and work practice standard
1. Emission stream from an HCl process vent at an existing source	a. Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 20 ppm by volume or less; and b. Reduce Cl_2 emissions by 99 percent or greater or achieve an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storge tank at an existing source	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl service at existing and new sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator for comment only with your Notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source	a. Reduce HCl emissions by 99.4 percent or greater or achieve an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl_2 emissions by 99.8 percent or greater or achieve an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source	Reduce HCl emissions by 99.9 percent or greater or achieve an outlet concentration of 12 ppm by volume or less.

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As stated in §63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . .	You must meet the following emission limit and work practice standard
7. Emission stream from an HCl transfer operation at a new source	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.

■ 12. Table 3 in subpart NNNNN is revised to read as follows:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

[As stated in §63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source]

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A in appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere or, if no control device is used, prior to any releases to the atmosphere.
2. Determine velocity and volumetric flow rate	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl_2 concentration from HCl process vents.	a. Method 26A in appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl_2 concentration from an HCl process vent provided that a demonstration that Cl_2 is not likely to be present in the stream is submitted as part of the site-specific test plan required by §63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgment, or previous test results.
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with §63.9020(e)(1) or (2).		

■ 13. Table 5 in subpart NNNNN is revised to read as follows:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

[As stated in §63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/adsorber.	a. In Tables 1 and 2 to this subpart.	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to §63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in §63.9025; and

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

[As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
		iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device	a. In Tables 1 and 2 to this subpart.	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
3. Affected source using no control device	a. In Tables 1 and 2 to this subpart..	i. Verifying that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for an emission point.
4. Leaking equipment affected source	a. In Table 1 to this subpart	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

■ 14. Table 7 in subpart NNNNN is revised to read as follows:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.9075.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements	Yes.	
§ 63.6(e)(3)	SSM plans	Yes.	
§ 63.6(f)(1)	Compliance except during SSM	Yes.	
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative non-opacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart NNNNN does not specify opacity or visible emission standards.

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

[As stated in §63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§63.6(i)	Extension of compliance with emission standards	Yes.	
§63.6(j)	Presidential compliance exemption	Yes.	
§63.7(a)(1)–(2)	Performance test dates	Yes	Except for existing affected sources as specified in §63.9010(b).
§63.7(a)(3)	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§63.7(b)	Notification of performance test and rescheduling	Yes.	
§63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§63.7(d)	Performance testing facilities	Yes.	
§63.7(e)(1)	Conditions for conducting performance tests	Yes.	
§63.7(f)	Use of an alternative test method	Yes.	
§63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§63.7(h)	Waiver of performance tests	Yes.	
§63.8(a)(1)–(3)	Applicability of monitoring requirements	Yes	Additional monitoring requirements are found in §63.9005(d) and 63.9035.
63.8(a)(4)	Monitoring with flares	No	Subpart NNNNN does not refer directly or indirectly to §63.11.
§63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§63.8(c)(1)–(3)	Continuous monitoring system O&M	Yes	Applies as modified by §63.9005(d).
§63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by §63.9005(d).
§63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart NNNNN does not have opacity or visible emission standards.
§63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by §63.9005(d).
§63.8(c)(7)–(8)	Out-of-control periods, including reporting	Yes.	
§63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by §63.9005(d).
§63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§63.8(g)	Data reduction	Yes	Applies as modified by §63.9005(d).
§63.9(a)	Notification requirements—applicability	Yes.	
§63.9(b)	Initial notifications	Yes	Except §63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by §63.9(b)(1)(iii) in lieu of the initial notification.
§63.9(c)	Request for compliance extension	Yes.	
§63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§63.9(e)	Notification of performance test	Yes.	
§63.9(f)	Notification of visible emissions/opacity test	No	Subpart NNNNN does not have opacity or visible emission standards.
§63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§63.9(g)(2)	Use of COMS data	No	Subpart NNNNN does not require the use of COMS.
§63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§63.9(h)	Notification of compliance status	Yes	Except the submission date specified in §63.9(h)(2)(ii) is superseded by the date specified in §63.9045(f).
§63.9(i)	Adjustment of submittal deadlines	Yes.	
§63.9(j)	Change in previous information	Yes.	
§63.10(a)	Recordkeeping/reporting applicability	Yes.	
§63.10(b)(1)	General recordkeeping requirements	Yes	§§63.9055 and 63.9060 specify additional recordkeeping requirements.
§63.10(b)(2)(i)–(xi)	Records related to SSM periods and CMS	Yes.	
§63.10(b)(2)(xii)	Records when under waiver	Yes.	
§63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005 (d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)	Results of COMS performance evaluations	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

[FR Doc. 06–3309 Filed 4–6–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[PA209–4302; FRL–8055–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO_2 Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On July 21, 2004 (69 FR 43522) EPA published a Federal Register notice redesignating the Hazelwood SO_2 Nonattainment Area and the Monongahela River Valley Unclassifiable Area to attainment of the sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). In the July 21, 2004 final rulemaking document, two areas were inadvertently omitted from the revised designated area listing. This document corrects that error.

DATES: *Effective Date:* April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used we mean EPA. On July 21, 2004 (69 FR 43522), we published a final rulemaking announcing our approval of the redesignation of the Hazelwood SO_2 Nonattainment Area and the Monongahela River Valley Unclassifiable Area, located in the Allegheny Air Basin in Allegheny County to attainment of the NAAQS for SO_2 and approved a combined maintenance plan for both areas as a State Implementation Plan (SIP) revision. This action pertained to the redesignation of the Hazelwood and Monongahela River Valley areas (V.(B)(1) and V.(B)(2), respectively, of part 81, section 81.339, to attainment. This action was not intended to affect the area within a two-mile radius of the Bellevue monitor (V.(B)(3), or the remaining portions of the Allegheny County Air Basin (V.(B)(4). In the July 21, 2004 rulemaking document, these areas were inadvertently removed in the Pennsylvania SO_2 Table in part 81, section 81.339. Therefore, this correction action restores the entries which were inadvertently removed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action

From 11 p.m. to 7 a.m. the draw shall open after at least a two hour advance notice is given by calling the number posted at the bridge.

(2) From December 1 through March 31, the draw shall open on signal after at least a two hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: March 21, 2006.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 06–3245 Filed 4–5–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0019, FRL–8054–5]

RIN 2060–AK10

National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision; and final rule, amendment.

SUMMARY: On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). Section 112(f)(2) of the Clean Air Act directs us to assess the risk remaining (residual risk) after the application of national emission standards controls for hazardous air pollutants. Also, section 112(d)(6) requires us to review and revise the national emission standards as necessary by taking into account developments in practices, processes, and control technologies. On August 10, 2005, we proposed not to revise the national emission standards based on our residual risk assessment and technology review. This action finalizes that decision not to revise the national emission standards and amends a reference error.

DATES: This final decision and final rule amendment is effective on April 6, 2006.

ADDRESSES: We have established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0019. 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 *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B–102, 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), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: *shedd.steve@epa.gov.*

Residual Risk Assessment Information. Mr. Ted Palma, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5470, facsimile number (919) 541–0840, electronic mail (e-mail) address: *palma.ted@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the national emission standards include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	324110 493190 486910 424710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal/State/local/tribal governments			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

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 would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.420. If you have any questions regarding the applicability of the national emission standards 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final decision will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final decision 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 5, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 the final decision may not be challenged separately in civil or criminal proceedings brought 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, 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 20004.

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

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B. What Did We Propose?
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C. Regulatory Flexibility Act
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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 That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
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I. Background

A. What Is the Statutory Authority for These Actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and gasoline distribution facilities are identified as one such source category. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based national emission standards for hazardous air pollutants (NESHAP) must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and nonair health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. We promulgated the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) at 59 FR 64318 on December 14, 1994 (Gasoline Distribution NESHAP).

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account "developments in practices, processes, and control technologies."

The residual risk review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects public health with an ample margin of safety. If the NESHAP 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 one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As a part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (defined in 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"), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did We Propose?

We promulgated the Gasoline Distribution NESHAP in 1994. On August 10, 2005 (70 FR 46452), we proposed to take no further action to revise the Gasoline Distribution NESHAP and requested public comments on the residual risk and technology review for the Gasoline Distribution NESHAP.

II. Risk and Technology Review Final Decision

In our proposal, we presented the analysis and conclusions on residual risk and technology review, concluding that the maximum individual cancer risk for this source category already meets the level of 100 in 1 million that we generally consider acceptable, and that further control requirements would achieve minimal additional risk reduction at a very high cost. Further, the analyses showed that both the chronic noncancer and acute risks from this source category are below their respective relevant health thresholds, and that there are no adverse impacts to the environment (*i.e.*, ecological risks). As a result, we concluded that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the 1994 NESHAP for the gasoline distribution source category.

In the technology review, we concluded that additional controls at existing sources would achieve, at best, minimal emission and risk reductions at a very high cost. Additionally, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994 which represent the best controls. Thus, we proposed no additional controls under the technology review under CAA section 112(d)6).

We conclude in this rulemaking, as proposed, that there is not a need to revise the Gasoline Distribution NESHAP under the provisions of CAA section 112(f) or 112(d)(6).

III. Summary of Comments and Responses

The proposal provided a 60-day comment period ending October 11, 2005. We received comments from eight commenters. Commenters included one State agency, one State and local agency association, three industry trade associations, one industrial consultant, and two individual commenters. We

have considered the public comments as discussed below and did not find that the comments changed any results of our risk or technology reviews or analyses, or any of our determinations.

1. General Approach

Comment: We received comments both in favor of and objecting to the consideration of facilitywide emissions in the risk analyses; objecting to what was perceived as an implication within the proposal that we must conduct mandatory facilitywide risk determinations in future CAA section 112(f) rulemakings; and concerns with emissions from other source categories at the facility providing an overly conservative analysis not consistent with the CAA.

Response: In our ample margin of safety analysis, we calculated residual risk from facilitywide emissions of the nine HAP found in gasoline. However, we did not have sufficiently detailed information to analyze the emissions from various specific sources within a facility but outside the gasoline distribution source category. Because the facilities in this source category also frequently handle other, non-gasoline, petroleum products, we could not always associate the reported emissions to a particular source category. As a result, we could not evaluate the existing levels of control or the potential for applying additional controls at the facilities where HAP emissions from non-gasoline distribution sources contributed to the risk. Therefore, as stated in the August 2005 proposal, we did not use the residual risk calculated from facilitywide emissions in our decision to require no additional controls because we did not have the control cost and feasibility data necessary to do so.

Our position on the potential consideration of both source category-only emissions and facilitywide emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19996–19998, April 15, 2005).

Comment: Comments were received objecting to the need to perform a separate technology review for the source category.

Response: As discussed in the proposal, we performed a separate technology review for the gasoline distribution source category under section 112(d)(6), but recommended no changes to the NESHAP. It is possible that future advances in control technologies for this source category could allow for further emission reductions (possibly reducing risk to below 1 in 1 million) at a reasonable cost. We continue to believe that the technology review required under section 112(d)(6) is applicable to this source category.

2. Risk Analysis Assumptions

Comment: One commenter stated that the methodology used in the gasoline distribution risk assessment sets a poor precedent for future residual risk determinations that must be carried out for other source categories, recommending that, because there is no mechanism to revisit the section 112(f) assessments, the risk assessment be corrected to account for reasonably foreseeable changes that could result in increased risk.

Response: We disagree with the commenter's assertions that there is no mechanism to revisit risks from the source category and that the risk assessment must include consideration of foreseeable changes that may occur in the future. We have the authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to science suggests the public is exposed to significant increases in risk as compared to the risk assessment prepared for the rulemaking (*e.g.*, CAA section 301).

Comment: One commenter stated that the use of a number of overly conservative assumptions make the modeling results more conservative than necessary and do not accurately reflect reality. Another commenter also pointed out these same conservative assumptions and stated that "the conservative level of analysis determined that the risk was acceptable, and thus, there was no need to go further with the analysis."

Response: We agree with the second commenter. Several assumptions mentioned by the commenters as conservative are used in the risk assessment because the specific intent of that risk assessment is to perform an initial screening analysis. If this initial conservative risk assessment predicts negligible levels of risk, then no further analysis or action would be required. However, if it showed unacceptable risk, then additional data would be collected and incorporated into a refined analysis so that the results would more accurately reflect the true risks posed by the source category. Our position is that this type of screening approach is valuable because it allows us to focus resources on source categories that potentially pose unacceptable risks versus those that pose clearly negligible risks.

Other assumptions mentioned by commenters as being overly conservative include the use of the 24 hours a day, 7 days a week, 70-year exposure duration for determining maximum individual risk (MIR) and the use of a Hazard Index threshold of 1.0. In the final Coke Oven Batteries NESHAP, we stated that we are currently working on additional revisions to refine the residual risk analysis. A more realistic assessment of population mobility is part of this effort (70 FR 20004, April 15, 2005). Our rationale for the use of both the exposure duration and the Hazard Index threshold that were used in this assessment is fully addressed in the final Coke Oven Batteries NESHAP (70 FR 19999–20000, April 15, 2005).

Comment: Two commenters recommended that the impacts be recalculated based on concentrations at the property line and beyond, rather than at the centroid of the most highly-exposed census block; because census blocks can be large geographically, the maximum point of impact can be far from the centroid and, thus, the use of the census block centroid does not take into account the maximum exposed individual who may live adjacent to the fence-line.

Response: In a national-scale assessment of lifetime inhalation exposures and health risks from a category of facilities, it is appropriate to identify exposure locations where an individual may reasonably be expected to spend a majority of his or her lifetime. Further, it is appropriate to use census block information on where people actually reside, rather than points on a fence-line, to locate the estimation of exposures and risks to individuals living near such facilities. This is the approach that we took for this analysis to predict the MIR.

Census blocks are the finest resolution available for the nationwide population data set (as developed by the United States Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In our risk assessments, we use the geographic centroid of each census block containing at least one person 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 MIR. In some cases, since actual residence locations may be closer to or farther from facility emission points, this may result in an overestimate or underestimate of the actual chronic risks. However, given the relatively small dimensions of census blocks in densely-populated areas and

the relatively large number of sources being assessed for any given source category, these uncertainties are small and do not bias our estimates of MIR for a source category.

Comment: Two commenters recommended that the risk assessment be based on potential emissions rather than on only actual reported emissions, stating that facility emissions could increase over time and that determining risk based on actual emissions does not address the potential risk to the public. One commenter stated that major source HAP thresholds are based on maximum potential to emit and that air agencies issue permits based on potential emissions, further stating that limiting the scope of the risk evaluation to actual emissions is inconsistent with the CAA section 112 rules.

Response: Our position on the use of both allowable and actual emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999, April 15, 2005). We used reported emissions (from the National Emissions Inventory database) for the gasoline distribution risk analysis. The reported emissions are a mix of actual, allowable, and potential emissions, but we do not have the necessary information to distinguish between the types of data reported. While we generally recognize that most facilities overcomply with the MACT requirements (thus, actual emissions are lower than allowable), we do not have data to determine the degree of overcompliance that facilities are achieving or reporting. However, the possible inclusion of actual emissions in our analysis is not significant enough to change the results even if we could more accurately account for it. For example, if the modeled emissions doubled because of our use of some reported actual emissions, the regulatory decision would be the same as proposed.

Comment: One commenter recommended that the effects of building downwash be included in the risk assessment. The commenter stated that downwind concentrations from a point source vary and that the concentrations are skewed highest close to a source when it is affected by building downwash.

Response: While the effects of building downwash are not specifically accounted for in the model (Human Exposure Model—Screen) used, these effects generally occur only very close to the buildings or structures from which emissions emanate, and in most cases, only occur on the property of the facility. Further, for this source category, emissions are from low-level structures (*i.e.*, storage tanks and tank truck loading racks), and this minimizes the impacts of downwash. In determining the MIR for this source category, we note that the locations of the census block centroids where the risks are maximum are well beyond the zone of influence of any building downwash effects.

Comment: One commenter stated that the cost-effectiveness analysis should have been performed in terms of dollars per cancer incidence reduced (rather than dollars per ton of emissions reduced) because it takes into account toxicity and exposure.

Response: Our residual risk decisions are based on the approach in the 1989 benzene decision framework.[1] In that decision, we stated that the level of the MIR, distribution of risk in exposed population, incidence, science policy assumptions, and uncertainties associated with risk measures, and weight of evidence that a pollutant is harmful to health are all important factors which may be considered in the acceptability judgment (first step). In the second step, we again consider 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.

For the Gasoline Distribution NESHAP ample margin of safety analysis, we developed cost data for a hypothetical model terminal to apply additional controls because we do not have data on the actual control levels being achieved at real terminals. Thus, we do not have data on the actual emission reductions that could be achieved or on the control costs that real terminals would incur. We examined the hypothetical emission reductions (at best, a 30 percent reduction) that could be achieved through the application of additional controls and the estimated costs of these additional controls.

We found the 30 percent reduction would reduce the highest calculated MIR cancer risk from this source category from about 5 in 1 million to about 3 in 1 million. Given these relatively low risk reductions and lack of data concerning actual controls at real terminals, we did not further consider incidence or change in distribution of risks. The costs and emission reductions of these additional controls were compared to the controls required by the MACT standards and we found the additional costs to be very high compared to the emission reduction of the MACT standards and considering the limited risk reduction these controls would achieve. Thus, our model terminal analysis led us to conclude in our ample margin of safety decision that "additional control requirements would achieve minimal risk reduction at a very high cost" (70 FR 46456, August 10, 2005). Thus, while we did not calculate cost effectiveness, we did account for toxicity, exposure, and control costs in our decision, as the commenter recommended.

3. Conclusions

Comment: One commenter does not believe the current standards for gas distribution facilities protect children and recommended that we consult a children's environmental health toxicologist due to recent research on the risks posed by these facilities.

Response: The commenter did not provide or reference a particular research study. Our most recent assessment activity on cancer effects due to early-life exposure is reflected in the "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens" (EPA/630/R–03/003F, March 2005). The Supplemental Guidance addresses a number of issues pertaining to cancer risks associated with early-life exposures generally, but provides specific guidance on potency adjustments only for carcinogens that have been determined to cause cancer through a mutagenic mode of action. While some recent articles have suggested an association between gasoline vapors and childhood leukemia, the carcinogenic HAP commonly found in gasoline (benzene and naphthalene) have not yet been determined by us to act through a mutagenic mode of action. If we determine in the future that these pollutants do cause cancer by a mutagenic mode of action, and assuming early life exposure, the approximately 60 percent increase in estimated lifetime cancer risk would still result in a risk well below the generally considered acceptable level of 100 in 1 million. In addition, regarding effects other than cancer, EPA Reference Concentration values are designed to be protective of sensitive populations, including children.

[1] Our decisions regarding residual risk in the gasoline distribution and other source categories follows the two-step framework established in the Benzene NESHAP (54 FR 38044, September 14, 1989, National Emission Standards for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By Product Recovery Plants). In the Benzene NESHAP, we interpreted and applied the two-step test drawn from the D.C. Circuit Court's Vinyl Chloride opinion.

IV. Correction to the December 19, 2003 Final Rule

On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (48 FR 37590) and on December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). On December 19, 2003, we promulgated final rule amendments in the Federal Register (68 FR 70960) for the 1983 standards of performance and 1994 national emission standards. An error was subsequently discovered in a cross-reference in the final rule amendments. Under 40 CFR 63.428, Reporting and Recordkeeping, paragraph (b)(1) refers to 40 CFR 63.425(k). The correct reference is to 40 CFR 63.425(i). Today's final amendment corrects the reference error.

This correction does not affect the substance of the above-noted regulatory action, nor does it change the rights or obligations of any party. Thus, it is proper to issue this notice of final rule corrections without notice and comment. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the change to the rule is a minor correction, is noncontroversial, and does not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements for the national emissions standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0325, EPA ICR number 1659. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

We have established a public docket for this action, which includes the ICR, under Docket ID number EPA–HQ–OAR–2004–0019, which can be found in *http://www.regulations.gov*. Today's final decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

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 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 decision on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. We are taking no further action at this time to revise the national emission standards. Thus, the final decision will not impose any requirements on small entities. Today's final decision on the residual risk assessment and technology review for the national emission standards imposes no additional burden on facilities impacted by the national emission standards.

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 by 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 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 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's final decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today's final decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision 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" 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."

Today's 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, the requirements of the Executive Order do not apply to today's final decision.

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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

Today's final decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final decision.

G. Executive Order 13045: Protection of Children From Environmental Health & 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, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because, as explained earlier, the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

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

Today's final decision is not an economically 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 today's final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

Today's final decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

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 the Congress and to the Comptroller General of the United States. We will submit a report containing this final decision 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 decision 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). The final decision becomes effective on April 6, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

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 R—[Amended]

■ 2. Section 63.428 is amended by revising paragraph (b)(1) to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(i); and

* * * * *

[FR Doc. 06–3315 Filed 4–5–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6089–30; I.D. 032906C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,248 nm² (4,281 km²), east of Chatham, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours April 8, 2006, through 2400 hours April 22, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 24, 2006, an aerial survey reported a sighting of fifteen right whales in the proximity 41° 34'N. lat. and 69° 33'W. long. This position lies east of Chatham, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8047–7]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative stay.

SUMMARY: Pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA), EPA is issuing an administrative stay of one requirement of the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors that were issued October 12, 2005, under section 112 of the CAA. EPA is staying the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste while EPA reconsiders this provision. The length of the stay is three months, until June 23, 2006. During the period the stay is in effect, new cement kilns are subject to the particulate matter standard that was applicable prior to promulgation of the standard.

DATES: This final rule is effective on March 23, 2006. Section 63.1220(b)(7)(i) is stayed from March 23, 2006 until June 23, 2006.

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 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 B–102, 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.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially affected are those industrial facilities that manufacture Portland cement. Portland cement manufacturing is classified under Standard Industrial Classification (SIC) code 3241 and the North American Industry Classification System (NAICS) code is 327310. Other types of entities could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1200. 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. Administrative Stay

As proposed elsewhere in today's Federal Register, EPA is granting the petition of Ash Grove Cement Company and the petition of the Cement Kiln Recycling Coalition, Continental Cement Company, and Giant Cement Holding, Inc. to reconsider the new source standard for particulate matter for cement kilns that burn hazardous waste. That standard is 0.0023 gr/dscf corrected to 7 percent oxygen. 40 CFR 63.1220(b)(7)(i) (70 FR at 59573 (October 12, 2005)).[1] As set out in that notice, EPA is proposing this action because it appears that the promulgated standard is overly stringent in that it does not fully reflect the variability of the best performing source over time. Additional performance data from the source whose performance was the basis for the standard supports this conclusion.

EPA also has decided to stay the effective date of the new source standard, pursuant to section 307(d)(7)(B) of the CAA. The duration of this stay is consequently three months ("the rule may be stayed during such reconsideration * * * by the Administrator * * * for a period not to exceed three months"). We believe this administrative stay is justified not only because the petitions for reconsideration appear to have merit, but also because if the standard remains in place, new cement kilns (and there are several contemplated) could decide not to burn hazardous waste because they are unable to achieve the promulgated standard. The kilns would then be subject to the less stringent standard for particulate matter applicable to Portland cement kilns that do not burn hazardous waste. 40 CFR 63.1343(c)(1). There is, thus, a potential environmental detriment associated with the current standard.

Accordingly, the effective date of 40 CFR 63.1220(b)(7)(i) is stayed until June 23, 2006.[2] In this action we are revising 40 CFR 63.1220(b)(7)(i) to reflect the dates that the administrative stay will remain in effect. In addition, we are adding a new provision requiring that new cement kiln sources must instead comply with the particulate matter standard specified in 40 CFR 63.1204(b)(7) during the period of the administrative stay. See 40 CFR 63.1220(b)(7)(iii). We want to emphasize that all new sources will be subject to the particulate matter standard of 40 CFR 63.1220(b)(7), whether or not it is revised after EPA completes the reconsideration process for this standard.

List of Subjects in 40 CFR Part 63

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

Dated: March 15, 2006.

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 63.1220 is amended by revising paragraph (b)(7) to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

* * * * *

(b) * * *

[1] The new source standard also contains an opacity requirement. 40 CFR 63.1220(b)(7)(ii). EPA is not reconsidering or staying that provision.

[2] The opacity standard specified in 40 CFR 63.1220(b)(7)(ii) is not affected by this stay and remains in effect as promulgated.

(7) For particulate matter:

(i) Except as provided by paragraph (b)(7)(iii) of this section, particulate matter emissions in excess of 0.0023 gr/dscf corrected to 7 percent oxygen.

(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).

(iii) The particulate matter standard specified in paragraph (b)(7)(i) of this section is stayed from March 23, 2006 to June 23, 2006. During the period that this stay is in effect, you must not emit particulate matter in excess of 0.15 kg/Mg dry feed, as determined according to the requirements under § 63.1204(b)(7)(i) through (iii).

* * * * *

[FR Doc. 06–2702 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the Federal Register. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the Federal Register. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the Federal Register anytime after the 15-day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

IV. Will this Notification be Subject to the Congressional Review Act?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

List of Subjects

Part 9

Environmental protection, Reporting and recordkeeping requirements.

Part 156

Environmental protection, Labeling, Pesticides and pests.

Part 16

Environmental protection, Packaging and containers, Containment structures, Pesticides and pests.

Dated: February 9, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 06-1853 Filed 2-28-06; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[EPA-HQ-OAR-2003-0121; FRL-8039-2]

RIN 2060-AM43

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. The amendment will extend the compliance date for existing sources by 18 months. Under the promulgated rule, existing affected sources would be required to be in compliance by November 10, 2006. With this final action, existing sources will be required to comply with the rule by May 10, 2008.

DATES: *Effective Date:* March 1, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0121. 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, *i.e.*, 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, EPA/DC, EPA West, Room B102, 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: Mr. Randy McDonald, Coatings and Chemicals Group (C504-04), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5402; fax number: (919) 541-3470; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code*	Examples of regulated entities
Industry	3251, 3252, 3253, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.2435. 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule amendment will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule amendment will be posted 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendment is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 1, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendment 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 the final rule amendment may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Response to Comments on the Proposed Amendment to the Compliance Date for Existing Sources
III. 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. Congressional Review Act

I. Background

On November 10, 2003, we promulgated NESHAP for miscellaneous organic chemical manufacturing as subpart FFFF in 40 CFR part 63 (the "MON"). Petitions for review of the MON were filed in the U.S. Court of Appeals for the District of Columbia Circuit by American Chemistry Council, Eastman Chemical Company, Clariant LSM (America), Inc., Rohm and Haas Company, General Electric Company, Coke Oven Environmental Task Force ("COETF") and Lyondell Chemical Company (collectively "Petitioners").[1] These matters were consolidated into *American Chemistry Council, et al.* v. *EPA*, No. 04–1004, 04–1005, 04–1008, 04–1009, 04–1010, 04–1012, 04–1013 (D.C. Cir.). Issues raised by the petitioners included applicability of the rule; leak detection and repair requirements for connectors; definitions of process condenser, continuous process vent, and Group 1 wastewater; treatment requirements for wastewater that is Group 1 only for soluble hazardous air pollutants (HAP); recordkeeping for Group 2 batch process vents; and notification requirements for Group 2 emission points that become Group 1 emission points.

In early October 2005, the parties signed a settlement agreement. Pursuant to section 113(g) of the CAA, notice of the settlement was published in the Federal Register on October 26, 2005 (70 FR 61814). The agreement established a schedule by which EPA would propose and promulgate revisions to the NESHAP; it also includes preamble language for the proposed amendments notice that was agreed to by the parties. The settlement agreement provides that EPA would sign a notice of proposed rulemaking, including an 18-month compliance extension for existing sources, by November 30, 2005. The settlement agreement also calls for EPA to take final action on the proposed 18-month compliance extension within 30 days of the date the comment period on the proposed amendments closes. According to the settlement agreement, notice of final rulemaking on the other proposed amendments must be signed within 150 days of the date the comment period on the proposed amendments closes.

On December 8, 2005 (70 FR 73098), we proposed amendments to address issues raised by the petitioners and correct and clarify other provisions to ensure that the rule is implemented as intended. In this action, we are promulgating the 18-month compliance extension for existing sources. Final action on the other proposed amendments will occur in a future notice of final rulemaking.

II. Response to Comments on the Proposed Amendment to the Compliance Date for Existing Sources

Eight commenters expressed support for our decision to extend the compliance date for existing sources by 18 months, and no adverse comments were received. The eight commenters agreed with our position in the preamble to the proposed amendments that the proposed amendments, if finalized, are sufficiently far-reaching and complex that the amended rule would effectively be a new rule warranting a new compliance date. Several of the commenters identified changes to definitions and compliance options that will require regulated sources to reevaluate applicability and control strategies, effectively starting over with respect to a number of key provisions. They indicated that significant time will be needed to review and revise emissions modeling analyses and other calculations; develop revised control strategies; redesign, order, and install control equipment; and complete permitting activities. Several of the commenters also concurred with our rationale in the preamble to the proposed amendments that section 112(d)(6) of the CAA provides authority for the Administrator to set new compliance dates for revised rules. They also noted that there is precedent for such changes, including the extension for the Pesticide Active Ingredient NESHAP (67 FR 38200, June 3, 2002). Therefore, we are taking final action to extend the compliance date for existing sources by 18 months.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that the final rule amendment is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Extending the compliance date does not alter the information collection requirements for any source owner or operator. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0533 (EPA ICR number 1969.02). A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection

[1] The Fertilizer Institute and Arteva Specialties S. 'ar.1 also filed petitions for review but voluntarily withdrew their petitions.

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. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as, (1) A small business as defined by the Small Business Administration (SBA) 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 that is independently owned and operated and is not dominant in its field.

For sources subject to this final rule, the NAICS code is 325 and associated small business employee sizes range from 750 to 1000. Relevant NAICS and associated employee sizes are listed below:

NAICS 32511—Petrochemical Manufacturing—1,000 employees or fewer
NAICS 325192—Cyclic Crude and Intermediate Manufacturing—750 employees or fewer
NAICS 325199—All Other Organic Chemical Manufacturing—1,000 employees or fewer
NAICS 325211—Plastics Material and Resin Manufacturing—750 employees or fewer
NAICS 325212—Synthetic Rubber Manufacturing—1,000 employees or fewer
NAICS 325411—Medicinal and Botanical Manufacturing—750 employees or fewer
NAICS 325611—Soaps and Other Detergents Manufacturing—750 employees or fewer
NAICS 32592—Explosives Manufacturing—750 employees or fewer

After considering the economic impacts of today's final rule amendment on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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. The final rule amendment extends the compliance date, which will not impose any additional requirements on small entities.

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, the 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 aggregate, or by 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 the 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 the 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 the 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.

The EPA has determined that the final rule amendment 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 1 year. No costs are attributable to the final rule amendment. Thus, the final rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments, and it imposes no obligations upon them. Therefore, the final rule amendment is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires the 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."

The final rule amendment 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. None of the affected facilities are owned or operated by State or local governments. Thus,

Executive Order 13132 does not apply to the final rule amendment.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendment does not have tribal implications, as specified in Executive Order 13175. The final rule amendment extends the compliance date and, therefore, imposes no additional burden on the sources. Thus, Executive Order 13175 does not apply to the final rule amendment.

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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

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

The final rule amendment does not constitute 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 the final rule amendment will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule amendment will not 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 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory and procurement 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 one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

During the rulemaking, the EPA conducted searches to identify voluntary consensus standards in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA–HQ–OAR–2003–0121). The final rule amendment does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, the EPA is not considering the use of any additional voluntary consensus standards for the final rule amendment.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment 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 amendment in the Federal Register. The final rule amendment is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendment is effective on March 1, 2006.

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: February 23, 2006.

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.*

Subpart FFFF—[Amended]

■ 2. Section 63.2445 is amended by revising paragraph (b) to read as follows:

§ 63.2445 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than May 10, 2008.

* * * * *

[FR Doc. 06–1918 Filed 2–28–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 06–333]

List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's list of Office of Management and Budget (OMB) approved public information collection requirements with their associated OMB expiration dates. This list will provide the public with a current list of public information collection requirements approved by OMB and their associated control numbers and expiration dates as of January 31, 2006.

DATES: Effective March 1, 2006.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of the Managing Director, (202) 418–0214 or by e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document adopted on February 21, 2006 and released on February 22, 2006 by



Federal Register

Thursday,
February 16, 2006

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0048; FRL–8028–9]

RIN 2060–AN05

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, amendments; notice of final action on reconsideration.

SUMMARY: On July 30, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The Administrator subsequently received a petition for reconsideration of certain provisions in the final rule. In addition, following promulgation, stakeholders expressed concern with some of the final rule requirements including definitions, the emissions testing procedures required for facilities demonstrating eligibility for the low-risk subcategory, stack height calculations to be used in low-risk subcategory eligibility demonstrations, and permitting and timing issues associated with the low-risk subcategory eligibility demonstrations. In two separate Federal Register notices published on July 29, 2005, we announced our reconsideration of certain aspects of the final rule, and we proposed amendments to the final rule. In the notice of reconsideration, we requested public comment on the approach used to establish and delist a low-risk subcategory of PCWP affected sources, as outlined in the final rule, and on an issue related to the final rule's startup, shutdown, and malfunction (SSM) provisions. In the proposed amendments notice, we proposed simplifying the requirements for the low-risk demonstrations (LRD) and allowing additional time for facilities to submit them. We also requested comment on whether to extend the MACT compliance date. We also clarified some common applicability questions. In this action, we are promulgating amendments to the PCWP NESHAP and providing our conclusions following the reconsideration process.

DATES: February 16, 2006. The incorporation by reference of one publication listed in this final action is approved by the Director of the Office of the Federal Register as of February 16, 2006.

ADDRESSES: *Docket.* The EPA has established a docket for this action under Docket ID No. OAR–2003–0048 and Legacy Docket ID No. A–98–44. 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 (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 *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room B102, 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 and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local representative or appropriate EPA Regional Office representative. For information concerning rule development, contact Ms. Mary Tom Kissell, Sector Policies and Program Division, (Mailcode: C439–03), EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–4516; fax number: (919) 541–0246; e-mail address: *kissell.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially affected by today's action include:

Category	SIC code[a]	NAICS code[b]	Examples of regulated entities
Industry	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products plants (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural wood members, not elsewhere classified (engineered wood products plants).

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's action. To determine whether your facility is affected by today's action, you should examine the applicability criteria in § 63.2231 of the final rule. If you have questions regarding the applicability of today's action to a particular entity, consult Ms. Mary Tom Kissell listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's action also will be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly promulgated rules at *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 CAA, judicial review of the final rule amendments to the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 17, 2006. Under section 307(d)(7)(B) of the CAA, only those objections that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the

final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

Outline

The information presented in this preamble is organized as follows:

I. Background
II. Comments and Responses on Low-risk Option
A. Legal Basis
B. Background Pollution and Co-located Emission Sources
C. Ecological Risk
D. The Dose-Response Value Used for Formaldehyde
E. Appendix B to 40 CFR Part 63 Subpart DDDD Requirements
F. Selection of Process Units and Emissions Determination Procedures in Table 2A to Appendix B to 40 CFR Part 63 Subpart DDDD
G. Emission Testing Requirements in Appendix B to 40 CFR Part 63 Subpart DDDD
H. Compliance Date for Existing Sources
I. Low-Risk Demonstration Submittal Dates for Existing Sources
J. Compliance Date for Affected Sources Previously Qualifying For the Low-Risk Subcategory
K. Low-Risk Demonstration Submittal Dates for New Sources
L. Legal Issues With Title V Implementation Mechanism
M. Timing of Title V Permit Revisions
N. Permit Conditions
O. Costs and Benefits of Establishing a Low-Risk Subcategory
III. Responses to Comments on the Proposed Amendments and Clarifications for Subpart DDDD
A. Definitions
B. Applicability of the PCWP Rule to Lumber Kilns Drying Utility Poles
C. Capture Efficiency Determination
D. Incorporation by Reference of NCASI Method ISS/FP-A105.01
IV. Responses to Comments on SSM Issues
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 and Advancement Act
J. Congressional Review Act

I. Background

We proposed NESHAP for the PCWP source category on January 9, 2003 (68 FR 1276). The preamble for the proposed rule requested comment on how and whether we should incorporate risk-based approaches into the final rule to avoid imposition of regulatory controls on facilities that pose little risk to public health and the environment. Fifty-seven interested parties submitted comments on the proposed rule during the comment period. The final rule (subpart DDDD in 40 CFR part 63) was published on July 30, 2004 (69 FR 45944) after consideration of these comments. We adopted a risk-based approach in the final rule by establishing and delisting a low-risk subcategory of PCWP affected sources based on our authority under section 112(c)(1) and (9) of the Clean Air Act (CAA). Under this approach, PCWP affected sources may submit for EPA approval proposed demonstrations that they meet certain risk-based criteria and, therefore, are eligible to join the low-risk subcategory and avoid applicability of the PCWP NESHAP. The methodology and criteria for PCWP affected sources to use in demonstrating that they are part of the delisted low-risk subcategory were promulgated in appendix B to subpart DDDD of 40 CFR part 63. Sources whose LRD EPA approves then must seek permit revisions under title V of the CAA that incorporate their low-risk parameters as enforceable terms and conditions in order to ensure they remain low-risk and remain exempt from otherwise applicable PCWP NESHAP requirements.

Following promulgation of the final PCWP rule, the Administrator received a petition for reconsideration filed by the Natural Resources Defense Council (NRDC) and Environmental Integrity Project (EIP) pursuant to section 307(d)(7)(B) of the CAA.[1] The petition requested reconsideration of nine aspects of the final rule: (1) Risk assessment methodology, (2) background pollution and co-located emission sources, (3) dose-response value used for formaldehyde, (4) costs and benefits of the low-risk subcategory, (5) ecological risk, (6) legal basis for the risk-based approach, (7) maximum achievable control technology (MACT) compliance date for affected sources previously qualifying for the low-risk subcategory, (8) SSM provisions, and (9) title V implementation mechanism for the risk-based approach. The petitioners stated that reconsideration of the above issues is appropriate because they claimed that the issues could not have been practicably raised during the public comment period. The petition for reconsideration also requested a stay of the effectiveness of the risk-based provisions.

In a letter dated December 6, 2004, EPA granted NRDC's and EIP's petition for reconsideration and declined the petitioners' request that we take action to stay the effectiveness of the risk-based provisions. On July 29, 2005 (70 FR 44012), we published a notice of reconsideration to initiate rulemaking by requesting comments on the issues in the petition for reconsideration, including the full content of appendix B to subpart DDDD.

In a separate notice published on July 29, 2005 (70 FR 44012), we proposed amendments to subpart DDDD and both of the appendices to subpart DDDD. We proposed amendments to appendix B to subpart DDDD to reduce the number of emissions tests required while ensuring that emissions from all PCWP process units at the relevant source are considered when demonstrating eligibility for the low-risk subcategory. For emission points that would still require emission tests, we proposed that the emissions tests may be conducted after the LRD is submitted. We also proposed that physical changes necessary to achieve low-risk status may be completed after the LRD is submitted. We proposed to alter the way the stack height is calculated for a look-up table analysis and to clarify some timing issues related to LRD, including the deadline for submitting LRD. We also requested comment on whether the MACT compliance date should be extended for sources submitting LRD or for all sources. Furthermore, we proposed to amend subpart A to 40 CFR part 63, subpart DDDD of 40 CFR part 63, and appendix B to subpart DDDD to allow use of a new test method developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI) for measuring hazardous air pollutants (HAP).

For 40 CFR part 63, subpart DDDD, we proposed several changes to ensure that the rule is implemented as intended: (1) Amend the sampling location for coupled control devices, (2) amend language to clarify rule

[1] In addition to the petition for reconsideration, four petitions for judicial review of the final PCWP rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC and Sierra Club (No. 04–1323, D.C. Cir.), EIP (No. 04–1235, D.C. Cir.), Louisiana-Pacific Corporation (No. 04–1328, D.C. Cir.), and Norbord Incorporated (No. 04–1329, D.C. Cir.). The four cases have been consolidated. In addition, the following parties have filed as interveners: American Forest and Paper Association (AF&PA), Hood Industries, Scotch Plywood, Coastal Lumber Company, Composite Panel Association, APA-The Engineered Wood Association, American Furniture Manufacturers Association, NRDC, Sierra Club, and EIP. Finally, the Formaldehyde Council, Inc. and the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) are participating in the litigation as amicus curiae.

applicability during unscheduled startups and shutdowns, (3) add language to clarify rule applicability for affected sources with no process units subject to compliance options or work practice requirements, and (4) amend selected definitions. A minor numbering error was proposed to be corrected in appendix A to 40 CFR part 63, subpart DDDD. We also clarified some common applicability questions, and we requested comments on whether to extend the deadline for compliance with the rule's requirements for all subject sources.

We received public comments from nine stakeholders on the reconsideration issues during the comment period. Although some commenters on the 2005 reconsideration referred to previous comments they submitted following the 2003 proposal, we have not included the previous comments in the summary presented here unless they are directly relevant to the reconsideration. However, the previous comments are included in the docket for this final rulemaking or the background information document (BID). Our responses to comments today are intended to respond to the comments specifically submitted on our proposed reconsideration notice and to any relevant incorporated comments. We received public comments from 12 stakeholders on the proposed amendments during the comment period. We received supporting comments only (or no comments) on a number of the proposed amendments, including the proposed amendment to the: (1) Sampling location for coupled control devices; (2) definitions of "molded particleboard," "plywood and composite wood products manufacturing facility," and "plywood"; (3) requirements for affected sources with no process units subject to the compliance options or work practice requirements; (4) numbering of paragraphs referenced in 40 CFR 63.2269; (5) test methods for benzene; (6) criteria for assuming zero for Method 29 non-detect measurements; and (7) numbering of appendix A to 40 CFR part 63, subpart DDDD. We have promulgated these amendments as proposed based on the rationale provided in the proposed rule (70 FR 44012, July 29, 2005), and no further discussion of these amendments is presented here. We are also promulgating a revised compliance deadline for sources subject to the rule, which is one year later than the date originally promulgated. The new compliance deadline is October 1, 2008. Our rationale for this revision is contained in our responses below.

II. Comments and Responses on Low-risk Option

A. Legal Basis

Comment: Several commenters stated that there are numerous ways in which the risk-based exemptions contravene the language, structure, and history of the 1990 CAA amendments and EPA's past policies. The commenters noted that technology-based standards should precede risk-based standards, that creating a subcategory based on risk is illegal, that delaying the compliance date to allow the risk-based standards is contrary to the CAA, that not setting emission standards is generally not authorized, that considering sources in the low-risk subcategory when establishing MACT floors is not allowed by the CAA, and that the CAA does not authorize EPA to delist subcategories (versus categories) of sources of carcinogenic emissions.

Other commenters stated there is ample legal basis for establishing and delisting the low-risk PCWP subcategory and supported retaining the low-risk option.

Response: After considering the 2003 proposed PCWP NESHAP and the public comments submitted thereon, the 2004 final PCWP NESHAP, the petition for reconsideration of the final PCWP NESHAP, the 2005 notice of final PCWP NESHAP reconsideration and the comments submitted in response to that notice, EPA stands by the legal rationale for the PCWP low-risk approach explained in the 2004 final PCWP NESHAP (69 FR 45983–45991, July 30, 2004) and incorporates that rationale by reference.

Regarding the comments on the proposed reconsideration that raised new points or elaborated on points previously made, the explanation for why risk may be an appropriate criterion for distinguishing between sources in establishing source categories and subcategories has been clearly set forth in the general policy rationale for the final PCWP NESHAP and today's final action on reconsideration. CAA section 112(c)(9) shows that Congress intended that EPA be able, either in advance of or following the promulgation of emission standards under section 112, to remove source categories and subcategories from regulation under section 112 "whenever" relevant risk-based findings are made.

We disagree that the risk-based approach causes a delay in the compliance date for MACT in contravention of section 112(d)(1) and 112(i). This is because the PCWP sources that remain in the MACT category must meet emission standards by the promulgated MACT deadline, and any sources that wish to join the low-risk subcategory and avoid MACT at the compliance deadline must, on that date, either comply with MACT or have been approved as a member of the low-risk subcategory. While we have in today's final rule revised the MACT compliance deadline to fall one year later than was originally promulgated, this revision is not a result of the mere inclusion of the action we have taken under section 112(c)(9). Rather, it is a result of the significance of the changes we have made to the PCWP NESHAP overall, as well as changed expectations about the scope of MACT-subject and would-be low-risk sources who will need to obtain, install, and certify emissions controls. It is also true that a source that is low-risk and exempt from MACT at the compliance date may later undergo changes that subject it to MACT for the first time, and that the PCWP rule in some cases allows such a source to comply with MACT 3 years after it has lost its low-risk status. This is consistent, however, with how we treat area sources that change status to major sources and thereby join a MACT-regulated category for the first time.

We also disagree that once EPA lists a category or subcategory, it is absolutely required by section 112(c)(2) and 112(d)(1) to set emission standards for that category or subcategory. Section 112(c)(9) itself depends upon the identification of a "category" or "subcategory" as identifying the set of major sources that may be deleted from the list of sources to be regulated, and indeed by its terms assumes that the category or subcategory may be "on the list" (and possibly already regulated) before EPA determines that the risk-based criteria to justify its removal have been met.

As we previously explained in the 2004 final PCWP NESHAP, the approach we have taken for the low-risk PCWP subcategory is not the source-by-source granting of risk-based exemptions rejected by Congress in the 1990 CAA amendments. That approach would have allowed any source, in any source category, to seek an exemption from section 112 standards, without demonstrating that it qualified under previously established criteria to join an already existent delisted subcategory, and without subsequent compliance responsibilities such as having to incorporate its parameters reflecting low-risk eligibility into federally enforceable permit terms and

conditions. The PCWP approach, instead, operates more like the applicability determination process that a source uses to discover which set of multiple sets of applicable requirements under the CAA it must comply with. If a PCWP source is not low-risk, it must meet MACT; but if it meets the low-risk criteria, it must still meet specific, enforceable requirements that can be enforced through the title V permit to the same extent as otherwise applicable MACT standards. Our approach is not the same as the rejected "de minimis" exemption since sources must specifically show that they meet the statutory criteria of section 112(c)(9) that define the low-risk PCWP source category, criteria that are explicitly enumerated in the statutory language itself, rather than based on a legal doctrine allowing exemptions from statutory requirements notwithstanding the absence of express statutory language for such exemption.

We are surprised by the commenter's assertion that our MACT floors for non-low-risk PCWP sources may not be based, in part, on emissions limitation achieved by sources that subsequently show they are eligible for inclusion in the low-risk PCWP subcategory. When we develop MACT standards, we necessarily start at a step where we do not already know what the scope of the final standards' requirements will ultimately be. In identifying the MACT floors for new and existing sources under section 112(d)(2) and 112(d)(3), it is simply not possible to know with certainty exactly which sources will have to meet MACT requirements. In fact, it is always possible that any major source will change its emissions or operations prior to the compliance date such that it is no longer major and, therefore, not subject to the final standards. In the case of PCWP, our approach presumes that nearly all sources are in the MACT category at the outset and that sources may join the non-MACT subcategory over time, but it would be impossible at the MACT floor determination stage to estimate the ultimate population of low-risk sources, just as it is impossible to estimate the number of major sources that may become "area" sources before the MACT compliance dates. In both cases, it would not be administratively feasible—nor is it legally required—to adjust the MACT floor determination over time as the MACT category population changes. There is no indication in the CAA that such an approach, especially to the extent it excluded better-performing sources from floor determinations and thereby weakened technology-based standards, would be consistent with Congress's overall purpose in basing section 112(d) standards on the emissions levels achieved in practice by the best-performing sources.

Regarding the issue of whether EPA may delist only "categories" of sources that emit carcinogens, but not "subcategories," EPA agrees with the commenters that suggest there is functionally no difference between the two terms, and that it is unnecessary to resolve the debate over whether Congress committed a "scrivener's error" raised by other commenters. In section 112(c), Congress provides EPA with broad discretion in not only defining the criteria to be used to identify individual categories and subcategories, but in deciding when one group of sources might constitute a "category" versus a "subcategory," there is literally no statutory definition of either term, and the use of one over the other to define a group of sources is merely a semantic distinction with no legal difference.

Regarding the commenter's objections to EPA's discussion regarding congressional intent related to our authority to establish and delist source categories and subcategories, we conclude that it is not necessary, or even possible, to resolve the debate over what Congress may or may not have silently intended, given the clear statutory language in section 112(c)(1) and 112(c)(9). The plain language of section 112(c)(1) explicitly states that nothing in that subsection "* * * limits the Administrator's authority to establish subcategories under this section, as appropriate[,] * * *" and given that Congress created express authority to delist categories and subcategories under section 112(c)(9) when the specified risk-based criteria are satisfied, it is clearly appropriate for EPA to establish categories and subcategories in a way that best enables the use of the authority provided by section 112(c)(9) when the agency identifies source groups that demonstrate they present no risks above the enumerated criteria. Any other interpretation of the statutory language would unnecessarily restrict the broad discretion that the CAA provides for this purpose. We, therefore, agree with the commenters who stated that section 112, especially when taken as a whole, provides ample authority for EPA's risk-based approach in the 2004 final PCWP NESHAP.

Comment: Two commenters stated that section 112(d) of the CAA clearly establishes a two-step process for addressing HAP emissions through the MACT and residual risk provisions and that the risk-based exemptions contained in the PCWP MACT are contrary to the CAA.

One commenter stated that risk-based exemptions are contrary to the concept of the "level-playing field" that should result from the proper implementation of technology-based MACT standards. The commenter also noted that the National Air Toxics Assessment (NATA) information shows the need for a nationwide technology-based approach and indicates that HAP exposure is very high throughout the entire country in both densely populated urban areas and remote rural locations.

Response: We disagree that inclusion of a low-risk subcategory in the final PCWP rule is contrary to the 1990 CAA Amendments. The PCWP MACT are technology-based standards developed using the procedures dictated by section 112 of the CAA. The only difference between the final PCWP rule and other MACT rules is that we used our discretion under CAA section 112(c)(1) and 112(c)(9) to subcategorize and delist low-risk affected sources, in addition to fulfilling our duties under CAA section 112(d) to set MACT. It is clear from the statutory language that, once EPA has listed a source category under section 112(c)(1), it is then faced with the decision whether to regulate the source category under section 112(d) or to delist it under section 112(c)(9). In light of the authority provided by section 112(c)(9), it is unreasonable to assert that once a category is listed it must in all cases be regulated under section 112(d)(1), since the result of a delisting under section 112(c)(9) is that the source category is exempt from section 112 regulation. Moreover, nothing in the statutory language suggests that this authority to implement section 112(c)(9) is limited by what effect such action may have on competition within a specific industry. Rather, section 112(c)(9) of the CAA requires that categories or subcategories meet specific risk criteria in order to be delisted, and to determine this, risk analyses may be used. We disagree with the commenter that we must wait for implementation of CAA section 112(f) before utilizing risk analysis in this manner, since nothing in section 112(c)(9) suggests that its authority may not be used until after application of technology-based standards under section 112(d). The 2004 final PCWP NESHAP are particularly well-suited for a risk-based option because of the specific HAP that are emitted by PCWP sources. For many affected sources, the HAP are emitted in amounts that pose little risk to the surrounding population. However, the cost of controlling these HAP is high

and may not be justified by environmental benefits for these low-risk affected sources. Only those PCWP affected sources that demonstrate that they are low-risk are eligible for inclusion in the delisted low-risk subcategory. The criteria included in the 2004 final PCWP NESHAP, as amended by today's final rulemaking, defining the delisted low-risk subcategory are based on sufficient information to develop health-protective estimates of risk and will protect human health and the environment.

We agree that one of the primary goals of developing a uniform national air toxics program under CAA section 112 of the 1990 CAA amendments is to establish a "level playing field," where appropriate. We do not agree, however, that this goal limits our broader authority under section 112(c)(1) and (9), and we do not feel that defining a low-risk subcategory in the PCWP NESHAP does anything to remove the level playing field for PCWP facilities. The PCWP NESHAP and its criteria for demonstrating eligibility for the delisted low-risk subcategory apply uniformly to all PCWP facilities across the nation. The PCWP NESHAP establishes a baseline level of emission reduction or a baseline level of risk (for the low-risk subcategory). All PCWP affected sources are subject to these same baseline levels, and all facilities have the same opportunity to demonstrate that they are part of the delisted low-risk subcategory. Therefore, concerns regarding facilities moving to areas of the country with air toxics programs that are less-stringent than today's PCWP NESHAP should be alleviated.

Although NATA may show measurable concentrations of toxic air pollution across the country, these data do not suggest that PCWP facilities that do not contribute to the high exposures and risk should be included in MACT regulations, notwithstanding our authority under CAA section 112(c)(9). Our decisions regarding whether a source has demonstrated its eligibility for inclusion in the low-risk delisted subcategory will be based on whether the risks from that particular source, as proven by its specific facts, are within our pre-established criteria that are based on the statutory levels defining when a source category or subcategory may be delisted.

B. Background Pollution and Co-Located Emission Sources

Comment: One commenter stated that many of the HAP emitted from PCWP facilities are found ubiquitously in U.S. ambient air and, therefore, a risk assessment methodology that ignores background pollution (including co-located sources) underprotects. The commenter noted that the 2003 proposal notice recognized that simply ensuring that the risks caused by PCWP sources themselves were below a hazard index (HI) of one (without accounting for other sources of exposure) would be underprotective. However, in the final PCWP NESHAP, EPA decided to use an HI of 1.0, but did not require sources to account for background pollution or emissions from co-located sources, thus failing to ensure that sources are truly low-risk. Two other commenters noted that the final PCWP NESHAP limits the analysis of risk to the impact of selected emissions units, but the major-source status of a source is based on facilitywide emissions.

Other commenters argued that EPA correctly refrained from considering risks from background ambient HAP concentrations and from co-located sources. One commenter also noted that EPA selected a very conservative HI of 1.0, which builds in a margin of safety in the event that exposure to background sources of HAP increases the risk to public health. Therefore, EPA has in a way accounted for background and co-located source emissions in formulating the low-risk subcategory. The commenter added that CAA section 112(d) and 112(c)(9) address source categories established pursuant to CAA section 112(c)(1) without regard to background or co-located sources outside the source category.

Another commenter added that CAA section 112(c)(9)(B) delisting criteria pertaining to both threshold and non-threshold HAP are focused solely on exposures attributed to the affected source in question. The commenter believes the statutory criterion in CAA section 112(c)(9)(B)(i) is clearly defined (one in a million cancer risk) and is to be evaluated solely with reference to the emissions from affected sources, not background concentrations. The commenter believes that "ample margin of safety" delisting criterion for threshold HAP in CAA section 112(c)(9)(B)(ii) is more than adequately achieved by the combined conservatism of the dose/response assessment (inherent in the derivation of the reference concentration (RfC) or other inhalation benchmark) and the exposure assessment (inherent in the dispersion modeling methodology and the assumption of continuous exposure to the maximum average annual emissions for the duration of a lifetime).

Response: We do not believe that it is necessary or appropriate to consider background HAP concentrations or HAP emissions from co-located sources in implementing our authority to delist the low-risk PCWP subcategory. After reviewing the comments and reconsidering the relevant sections of the CAA, we agree with the commenters who argued that section 112(c)(9) decisions may be based on risk assessments that focus on the emissions from the affected source and are not required to consider co-located source emissions or background concentrations. The residual risk program may consider, as appropriate, risks from co-located source emissions and risks from total emissions from a particular location. This approach is reiterated in the recently finalized Coke Oven Batteries Residual Risk rule 70 FR 19991 (April 15, 2005), where we said we will only consider emissions from the regulated source category when determining acceptable risk during the first step of the residual risk analysis. However, during the second step, where we determine the ample margin of safety considering costs and technical feasibility (70 FR 19997–98), we may consider co-located sources and background levels where appropriate. Additionally, the national strategy for area sources will address emissions from multiple sources in urban areas.

Comment: One commenter contended that the authors of the MACT and delisting provisions at issue made clear that they intended all co-located sources of HAP to be included when EPA made risk-based decisions. The commenter provided examples of legislative history of the 1990 CAA amendments which the commenter believes explains Congressional intent in crafting section 112(c)(9).

Another commenter contended that Congress intended EPA to focus only on the source in question, and provided examples from the legislative history of CAA section 112(d)(4), which according to the commenter is an analogous provision. The commenter argued that Congress was clear when it intended for EPA to consider background concentrations and contributions from all sources. The commenter provided examples from the CAA and judicial precedent.

Response: While we believe that under section 112(f) we may consider, as appropriate, co-located source and background emissions when conducting residual risk reviews, after reviewing the comments and the different statutory language in section 112(c)(9), we do not believe it is necessary or appropriate to consider emissions except those from the affected source category or subcategory at issue. This is because the specific language of section 112(c)(9), compared to that in section

112(f), indicates that the focus of a delisting action should be on the risks presented by the emissions from the affected source category or subcategory itself, rather than from other sources.

The criteria for a delisting decision regarding a source category that emits carcinogens are discussed in section 112(c)(9)(B)(i) in a way that suggests EPA is to start its analysis by first identifying the sources "in" (i.e., the process units that make up the affected source) the source category, and determine whether HAP "emitted by" such affected sources "in" the category exceed quantities that cause a lifetime cancer risk greater than one-in-one million to the individual who is most exposed to emissions of "such pollutants from the source[.]" This focus on emissions from sources that are actually within the source category as being the scope of HAP concentrations that must not exceed the enumerated cancer risk benchmark would be frustrated by an analysis that imports HAP emissions from other sources not in the source category, or that includes background HAP concentrations that may not be attributable to any source at all.

Similarly, section 112(c)(9)(B)(ii) provides that for non-carcinogen HAP, EPA is to assess whether emissions "from no source in the category or subcategory" exceed a level adequate to protect public health and whether emissions "from any source" in the subject category or subcategory will cause an adverse environmental effect. Again, the statutory language focuses on the emissions that are attributable to sources within the source category or subcategory under review, and does not direct EPA to extend its analysis to either emissions from other sources in other categories or subcategories or to non-attributable background concentrations.

Contrast this with the language of section 112(f)(2)(A), which, initially, directs EPA to determine whether further risk-based standards are required in order to provide an ample margin of safety to protect public health to prevent an adverse environmental effect, without specific reference as in section 112(c)(9)(B)(i) and (ii) to the emissions from sources within the source category in question. This difference alone suggests that EPA may take a broader look in assessing risks under section 112(f) than is required under section 112(c)(9). Moreover, in establishing the trigger for when EPA is required to adopt residual risk standards, section 112(f)(2)(A) focuses on the lifetime excess cancer risk to the individual most exposed to emissions from sources in the subject category or subcategory, but does not, like in section 112(c)(9)(B)(i), clearly indicate that the excess cancer risk is to be that caused only from the emissions from the sources within the subject source category. Rather, under the language of section 112(f)(2), EPA may consider the cancer risk experienced by the most exposed individual, whatever the source or sources of that risk may be, and then regulate if the subject source category contributes to that risk. A similar analysis applies to section 112(f)(2)(A)'s directive to assess whether further standards are necessary to prevent an adverse environmental effect, which, unlike the language in section 112(c)(9)(B)(ii), does not specifically state that such effect must be caused by emissions from the sources in the subject source category. Finally, the language in section 112(f)(2)(A) that establishes the threshold of protection residual risk standards must achieve also does not explicitly limit EPA's authority to focusing only on the emissions from the affected sources in the subject category.

Therefore, while both section 112(f)(2) and 112(c)(9) use the phrase "ample margin of safety" to define the triggers for action and/or the benchmark that must be met in action, the differences in additional contextual language in the two subsections makes it reasonable to interpret section 112(c)(9) as allowing a more narrowly focused risk assessment for source category and subcategory delistings than the agency has stated it intends to pursue in residual risk, in which we have asserted the ability to evaluate "other relevant factors" beyond those presented by the affected source (70 FR 19998).

Comment: One commenter stated that if the final PCWP rule incorporates risk-based exemptions, sources included in the low-risk subcategory should not be exempted from consideration during the residual risk process. Other commenters argued that EPA does not have authority to consider facilitywide or background emissions in residual risk determinations.

Response: We disagree that we do not have the authority to include the entire facility in our residual risk analyses. In the preamble to the coke ovens residual risk rule, we reiterated our discretion to include, as appropriate, emissions from outside the source category during the ample margin of safety determination. The emissions evaluated during this ample margin of safety determination can include those from PCWP sources that are part of the low-risk subcategory.

C. Ecological Risk

Comment: Two commenters stated that the risk-based exemptions in the PCWP rule do not address ecological risks that may result from uncontrolled HAP emissions. One of the commenters believes that EPA's ecological assessment for the final rule is fundamentally inadequate. The commenter believes EPA failed to meet the legal requirement in the CAA in several obvious ways: (1) The assessment focused on just a few HAP and thus ignored potential environmental impacts from other emissions; (2) by evaluating a single location, the assessment ignored potential site-specific environmental receptors and locally affected species; and (3) the consideration of only persistent and bioaccumulative HAP would not capture potential acute effects on the environment.

To the contrary, one commenter believes that EPA properly evaluated ecological risks. The commenter referred to their study of ecological risks which the commenter believes concurs with EPA's findings that no potential adverse risk to ecological resources is likely based on the available data.

Response: To determine whether low-risk PCWP sources are likely to cause adverse environmental effects due to HAP emissions, EPA performed a screening assessment of ecological risks from these sources. The ecological assessment focused on HAP that are emitted by PCWP facilities and that have the potential to persist in the environment and bioaccumulate. The list of persistent and bioaccumulative HAP (PB HAP) is described in EPA's Air Toxics Risk Assessment (ATRA) Reference Library (*http://www.epa.gov/ttn/fera/risk_atra_main.html*). We did not evaluate inhalation risks of non-PB HAP to ecological receptors explicitly. Rather, we assert that the acute and chronic dose-response values for human inhalation exposure, which will be used by PCWP facilities to demonstrate their low-risk status, are protective of inhalation exposures that may be experienced by many terrestrial animals. Human dose-response values are derived from studies that consider human data and data from laboratory animals. With the addition of uncertainty factors, the final dose-response values are generally substantially lower than the level observed to cause an adverse effect in exposed animals. Therefore, if the maximum inhalation hazard to humans, which is the major basis for the LRD, is below the level of concern, we do not expect adverse effects on environmental

receptors due to inhalation exposures. For the HAP that must be included in PCWP LRD, and for which ecological inhalation toxicity values are readily available, the human inhalation dose-response values are protective for inhalation exposures to ecological receptors when a hazard quotient or HI of 1.0 is used. For the details of this comparison see the memo titled, "Comparison of ecological inhalation toxicity values to human health inhalation toxicity values for HAP that must be considered in Low-Risk Demonstrations (LRDs) from sources in the Plywood and Composite Wood Products (PCWP) source category".

For the assessment of persistent or bioaccumulating HAP, we made several ecosystem-protective assumptions. We derived estimated worst-case media concentrations by assuming the maximum air concentrations and the maximum deposition rates occurred at the same location, although this is often not the case. We examined six locations representing diverse meteorological conditions, and for the final assessment, we used the location providing the highest predicted HAP concentrations. We used the most conservative ecological screening values readily available, which may overestimate the potential for toxicity to site-specific populations and communities. Finally, we assumed 100 percent bioavailability of the HAP, although site-specific bioavailability is often much less. The results of our ecological assessment demonstrate that for all pollutants assessed, and for all pathways assessed, the ecological hazard quotient values are less than 1. The highest hazard quotient is 0.043, or more than 20 times below a level of potential concern. Given this result, and the ecosystem-protective nature of the assessment scenario, we do not believe that HAP emitted from PCWP facilities will harm local ecosystems. Therefore, we conclude that HAP emissions from any source that demonstrates eligibility to join the low-risk PCWP subcategory will not cause an adverse environmental effect.

D. The Dose-Response Value Used for Formaldehyde

Comment: One commenter noted that in proposing the risk-based exemption idea, EPA indicated that it would use unit risk estimates (UREs) from EPA's Integrated Risk Information System (IRIS) to calculate whether or not a given source is low-risk. However, in the final rule, EPA relied on a much lower value derived by the CIIT Centers for Health Research (CIIT)(previously the Chemical Industry Institute of Toxicology) using a model that estimated the carcinogenic effects of formaldehyde on the respiratory system.

Several commenters recommended that EPA continue to use the IRIS potency factor for formaldehyde until EPA has completed its thorough review process (including public review) and updated IRIS. The commenters stated that adopting a factor that has not undergone the full IRIS review process jeopardizes public health. The commenters recommended that EPA accelerate completion of the IRIS review.

To the contrary, one commenter believes that EPA properly evaluated the carcinogenicity of formaldehyde by abandoning the outdated and scientifically inaccurate IRIS value and instead relying on evidence that has received broad acceptance in the international scientific community. The commenter also believes that IRIS is far from definitive, as EPA resource constraints have resulted in many chemical summaries that are significantly outdated. The commenter contended that EPA management has repeatedly emphasized that EPA is required to consider other information, in addition to the IRIS database, when evaluating the health effects of chemicals in a regulatory context.

Response: We agree with the first commenters that we should use the best available sources of health effects information for risk or hazard determinations. As we have stated previously, we do not rely exclusively on IRIS values. Rather, we consider all credible and readily available assessments.[2] For air toxics risk assessments, we identify pertinent toxicity or dose-response values using a default hierarchy of sources, with IRIS being the preferred source, to assist us in identifying the most scientifically appropriate benchmarks for our analyses and decisions. The IRIS process contains a peer-review process, and the resulting values represent EPA consensus. When adequate toxicity information is not available in IRIS, we consult other sources in a default hierarchy that recognizes the desirability of review and consistency with EPA risk assessment guidelines. This process ensures that we have consistent and scientifically sound assessments. Furthermore, where the IRIS assessment is relatively dated and newer peer-reviewed assessments are available, we will consider the full set of such assessments in selecting the basis for the risk assessment. In the case of formaldehyde, we have determined that the cancer potency derived using the approach developed by CIIT, which has been peer reviewed by an external review panel sponsored by EPA and the Canadian government, represents an appropriate alternative to EPA's current IRIS URE for formaldehyde. Therefore, this potency represents the best available peer-reviewed science at this time. We also agree with the last commenter that the issue of changing health-based guideline values is a general challenge in setting health-based regulations. However, we are committed to setting such regulations that reflect current scientific understanding, to the extent feasible. If dose-response values change, PCWP sources in the low-risk subcategory must ensure that they continue to meet the low-risk requirements in appendix B to subpart DDDD using the revised values. If PCWP sources no longer meet those low-risk criteria due to a change in a peer-reviewed dose-response value selected by the Agency for those assessments, that source must comply with the technology standards of the PCWP MACT. Facilities conducting LRD should refer to appendix B to subpart DDDD of 40 CFR part 63 for guidance on choosing appropriate dose-response values.

Comment: Several commenters submitted in-depth comments relating to the CIIT report and carcinogenicity of formaldehyde. Some commenters argued that the CIIT model for carcinogenic potency of formaldehyde is limited in a number of ways, and needs further validation and peer review. The commenters described recent epidemiological studies that reportedly link formaldehyde exposure to leukemia. Other commenters believe that EPA correctly evaluated the formaldehyde cancer potency value for the final rule and stated that the CIIT risk assessment is the best available science. The commenters disagreed that the availability of new scientific studies justifies use of the outdated IRIS value and argued that the new studies are flawed.

Response: As mentioned above, we are committed to using the best-available science for our risk assessments. In situations where the IRIS assessment lags behind current scientific knowledge and newer peer-reviewed assessments are available, we will consider the full set of such assessments in selecting the basis for the risk assessment. These alternatives need to be grounded in publicly-available,

[2] U.S. Environmental Protection Agency. 1999. *Residual Risk Report to Congress.* Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, March 1999, EPA–453/R–99–001; available at *http://www.epa.gov/ttn/oarpg/t3/meta/m8690.html.* (EPA 1999)

peer-reviewed information. In the case of formaldehyde, we have determined that the cancer potency derived using the approach developed by CIIT and peer-reviewed by an independent expert peer review panel sponsored by EPA and the Canadian government represents an appropriate alternative to EPA's current IRIS URE for formaldehyde, and is therefore the best-available peer-reviewed science at this time. However, we note that a comprehensive reassessment of cancer risk has been initiated for IRIS. This reassessment will include modeling analyses and endpoints (e.g., lymphohematopoietic cancer) not considered in the CIIT assessment. We expect the IRIS reassessment to be completed in 2007. The revised IRIS assessment will represent the best-available peer-reviewed science at the time of its completion and we will require LRD to use the revised URE that results from the reassessment process.

E. Appendix B to 40 CFR Part 63 Subpart DDDD Requirements

1. Average Stack Heights

Comment: One commenter stated that the promulgated risk assessment methodology allows a source to use average stack heights, which decreases the accuracy of the risk assessment and may significantly understate the risks from any given source. The commenter stated that EPA's proposal to incorporate a weighted stack height for the look-up tables only exacerbates the problem. The commenter predicted that sources will only use the weighted stack height when it is to their advantage.

Other commenters stated that the values in the look-up tables and the use of average stack heights are not health protective under worst-case conditions. The commenters stated that dispersion is a non-linear function and it is impossible to try and simplify the effects of a stack. For example, the impact of a 40-foot stack is not one half the impact of a 20-foot stack. In fact, depending on the building heights and the distance to the receptor, the impact of the taller stack could be similar to the shorter one.

One commenter disagreed that use of average stack heights where there are multiple emissions points may significantly understate risks. The commenter pointed out that the LRD requires sources to use the shortest distance to the property boundary, coupled with the average stack height. The commenter believes that use of the shortest distance to the property boundary would more than compensate for any underestimates in exposure in any unlikely instances where lower emitting sources have the taller stacks.

Two commenters supported EPA's proposal to replace the average stack height calculation for the look-up tables in appendix B to subpart DDDD with a separately computed toxicity-weighted stack height corresponding to each of the three health effects. One commenter noted that the large majority of emissions from wood products facilities occur through relatively tall stacks. However, wood products facilities also have many very low-emitting emission points that are quite close to the ground. As promulgated, the rule requires these low-emitting near-ground emission points to be averaged with the higher-emitting stack emission points to develop an average stack height that understates actual stack heights. Therefore, the promulgated approach results in an overly conservative estimation of actual stack height which, coupled with the conservative assumption of using the shortest distance to the property boundary and the other elements of conservatism built into the look-up tables, goes beyond what is needed to protect human health with an ample margin of safety. The commenter stated that the proposed toxicity-weighted stack height approach addresses this issue in a reasonable and appropriate manner.

Another commenter agreed, arguing that assuming all emissions occur at the location of the stack with the minimum distance to the property boundary is unnecessarily conservative. The commenter recommended that an appropriate average property boundary distance be calculated using the same toxicity-weighted averaging procedure suggested for stack height.

Response: We agree that the average stack height is not the best metric for characterizing risks in a look-up table analysis. Appendix B to subpart DDDD now requires the calculation of a toxicity and emissions-weighted stack height for the look-up table analysis. Using this approach, the emission points with the highest toxicity-weighted emission rate will contribute the most to the stack height calculation while the emission points with the lowest toxicity-weighted emission rate will contribute the least. Thus, the weighted stack height metric provides a more accurate characterization of a source's emissions characteristics and it addresses commenters' concerns about under-predicting risks for sources with most emissions coming from the shortest stacks. Further, using this more precise method does not undercut our reliance on other health-protective assumptions in the look-up table analysis when most of the emissions come from taller stacks.

Use of weighted stack height is not optional, but is required for facilities performing the look-up table analysis in their LRD. We proposed to replace the average stack height calculation with the weighted stack height calculation.

Contrary to one commenter's statement, we do not assume dispersion to be linear with stack height. Rather, the allowable emission rates in the look-up tables are based on actual dispersion model runs using the stack heights given in the table. Additionally, we agree that collapsing across multiple stacks to generate a single weighted stack height will not result in the exact same model output as if each stack is modeled separately. However, use of the weighted stack height is a simplifying step that is not expected to be consistently more or less health-protective than modeling each stack separately. Because the look-up table analysis is designed to be simple and because several inputs to the tables bias them toward overestimating risks for most sources, using a weighted stack height is appropriate in this context. We agree with the commenter that, in cases where stacks are located on top of buildings, building height can impact dispersion and risk. Therefore, appendix B requires that when sources determine their stack heights, they must use the height of the stack above the ground. Therefore, if a stack is located on top of a building, that building height is incorporated into the stack height value. We also agree with the commenter that receptor location impacts risks. A look-up table analysis inherently incorporates health-protective assumptions regarding receptor location. The allowable emission rates in the look-up tables are based on the maximum predicted offsite pollutant concentrations, regardless of whether that site is populated. Additionally, sources must use the shortest distance between an emission point and the property boundary when conducting a look-up table analysis. Therefore, sources using the look-up tables must assume that all HAP emissions are coming from the emission point closest to their property boundary, that people live at the location of maximum predicted pollutant concentration, and that they remain at that location for a lifetime. This approach is more health-protective than if actual facility configuration and/or the location of actual populations were to be considered.

We also disagree with changing the minimum distance to property boundary. We recognize that using the

minimum distance to property boundary may overestimate the ambient concentration and exposure. However, the lookup table analysis is meant to be health-protective and using the minimum distance to property boundary helps ensure that this is the case.

2. HAP With No Health Benchmarks

Comment: One commenter stated that the promulgated risk assessment methodology fails to account for all HAP emitted by PCWP sources, omitting some HAP like propionaldehyde, one of the "predominant" HAP emitted by PCWP sources. The commenter noted that EPA's methodology would assign a zero cancer risk to any HAP for which EPA has yet to estimate such a value, even if such HAP may well be carcinogenic.

One commenter stated that six HAP (acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde) make up 96 percent of the emissions from wood products facilities. The only one of these chemicals lacking a health benchmark is propionaldehyde. The commenter stated that EPA could extrapolate a propionaldehyde health benchmark from occupational exposure limits. Even using the resulting health benchmark, the commenter's analysis has demonstrated that propionaldehyde makes no meaningful contribution to individual source risk.

The commenter noted that EPA conducted a preliminary analysis of the risks associated with PCWP facilities which narrowed the substances considered to eight HAP, suggesting that the other HAP either were not emitted from these facilities or were emitted in such low levels as to not be meaningful contributors to risks in the source category. The commenter referred to a sensitivity analysis they commissioned and stated that the available data indicate that pollutants without health benchmarks do not have the potential to influence risk results for wood products industry. Accordingly, the commenter believes that EPA was justified in not requiring sources to consider the potential risks of pollutants emitted by wood products facilities that do not have health benchmarks.

The commenter disagreed that EPA has acted arbitrarily in assuming zero cancer risk for HAP for which it has yet to estimate such a value. The commenter noted that the petitioners want EPA to assume that all chemicals for which EPA has not set a cancer potency value are carcinogenic. The commenter believes the petitioners' approach would prevent EPA or any regulatory agency from ever making any realistic or meaningful evaluation of potential risks (in any context) and would merely serve to confuse (and scare) the public by suggesting that sources pose cancer risks when in fact they do not.

Response: We are committed to using the best science available for our risk assessments. To maintain this standard, we are using the default hierarchy of sources for cancer and non-cancer dose-response values that was originally developed for EPA's National-Scale Air Toxics Assessment (*http://www.epa.gov/ttn/atw/nata/natsa4.html*). When developing this hierarchy, we considered conceptual consistency with EPA risk assessment guidelines and the level of review incorporated into the dose-response values from each source. The EPA's IRIS process is the preferred source of dose-response values. When IRIS values are not available, we consider the alternative sources in our hierarchy. Additionally, in cases where the IRIS value lags behind the scientific literature, we are committed to considering alternative, credible dose-response values. Currently, we do not have an IRIS file for propionaldehyde, and an assessment is not available from the alternative sources in our hierarchy. However, appendix B to subpart DDDD requires sources to update their risk assessments if parameters, including dose-response values, change in a way that could increase risks. Therefore, if an acceptable cancer potency or non-cancer reference value for propionaldehyde becomes available, we will consider whether this HAP should be included in risk assessments for PCWP sources. One commenter suggested that we use a modified occupational exposure limit for propionaldehyde. In the past we have modified toxicity values developed for other purposes so that they can be used for inhalation assessments that support non-regulatory, screening applications. However, because in the present case the modified exposure limit would be used to make regulatory decisions, such a dose conversion is inappropriate, particularly in the absence of scientific peer-review.

We agree that it is appropriate to limit the number of HAP that must be included in PCWP affected source LRD to only those HAP that may possibly result in meaningful contributions to the affected source risk. However, we are not limiting the HAP included in the LRD to the six HAP defined as total HAP in subpart DDDD of 40 CFR part 63 (acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde). We identified the most prevalent HAP based on mass emitted for purposes of developing MACT compliance options because MACT is technology-based (i.e., the same technology that reduces emissions of the six HAP also reduces emissions of other organic HAP). The six HAP defined as total HAP in subpart DDDD of 40 CFR part 63 are the HAP that are most often emitted in detectable amounts from the most PCWP process units, and these HAP make up 96 percent of the mass of nationwide HAP emissions from the PCWP industry. However, the risks associated with emissions of HAP are dependent on the mass emitted and the relative toxicity of each HAP. Thus, the HAP emitted in the greatest mass may not result in the most risk because the HAP may not be as potent as other HAP emitted in lower mass. For example, methanol is the HAP emitted from the PCWP industry in the greatest mass, but because methanol is not as toxic as other HAP emitted (e.g., formaldehyde, certain HAP metals), it does not result in as much risk as do other HAP.

The commenter is correct in that our preliminary risk analysis conducted prior to proposal of the PCWP rule narrowed the list of HAP emitted from PCWP affected sources. We acknowledge receipt of the commenter's sensitivity analysis based on the data used in our pre-proposal risk analysis. Following proposal, we conducted a more detailed risk analysis to evaluate the merits of including a low-risk subcategory in the final PCWP rule. This memo is available in the docket and is titled, Risk Assessment for the Final Maximum Achievable Control Technology (MACT) Rule for the Plywood and Composite Wood Products (PCWP) Source Category. This post-proposal analysis considered emissions of more than 30 HAP emitted from the PCWP source category. Many of these HAP are only emitted in minute amounts that have been detected from a small number of PCWP process units. Nevertheless, we included them in our risk analysis to determine their contribution to PCWP affected source risk. We reviewed the toxicity values for each HAP and the mass of each emitted from PCWP affected sources to determine if it would be appropriate to narrow the list of HAP that PCWP affected sources must consider in their LRD. Based on our review, we determined that 95 percent of the cancer risk at PCWP affected sources is accounted for by the following HAP: acetaldehyde, benzene, arsenic, beryllium, cadmium, hexavalent

chromium, lead, nickel subsulfide, and formaldehyde. We also determined that 95 percent of the non-cancer risk at PCWP affected sources is accounted for by the following HAP: acetaldehyde, acrolein, formaldehyde, phenol, MDI, arsenic, cadmium, and manganese. We feel that inclusion of these HAP in a demonstration of eligibility of the low-risk PCWP subcategory is appropriate. Limiting the list of HAP that must be included in the LRD to 13 HAP minimizes emissions testing costs, while ensuring that the HAP that drive the risk at PCWP affected sources are accounted for on a site-specific basis.

3. Topography and Weather Patterns

Comment: One commenter stated that EPA's methodology treats all PCWP plants as though their local topography and climate are identical and that factors like prevailing winds are ignored. The commenter believes the risk assessment methodology should account for topography since different topographical features may exacerbate HAP exposures. The commenter stated that PCWP plants are located at widely varying altitudes and attached a chart.

One commenter stated that the modeling behind the development of the look-up table should consider downwash. Another commenter stated that facilities in areas with complex terrain should not be allowed to use the look-up tables because the assumptions used to develop the look-up table could not possibly account for this scenario. The commenter expressed concern that the look-up tables do not account for the common use of rain caps and for the likely event of building downwash.

One commenter disagreed that EPA's look-up tables fail to account for topography and weather patterns. To the contrary, the commenter noted that EPA made conservative assumptions (e.g., minimum fence line distance, worst-case meteorology, safety factors built into RfCs and UREs, and the assumption that plumes from all sources directly overlap), such that the look-up tables would be more likely to overestimate (rather than underestimate) actual risk. One commenter stated that it is unlikely that consideration of terrain will substantially affect the screening risk emission levels, given that most PCWP facilities are located in areas characterized by flat or gently rolling terrain.

Response: We disagree that we have not considered site-specific differences between sources in the methodology of appendix B to subpart DDDD. If sources conduct site-specific risk assessments, they should either use site-specific data, including for meteorological and topographical information, or they should use health-protective defaults. For look-up table analyses, we have made a number of health-protective assumptions, including worst-case meteorological conditions. Therefore, even though the look-up tables treat all sources as if they have the same meteorology, that default meteorology should result in higher predicted risks than actual site-specific meteorology.

However, we do not agree that the protective measures inherent in the look-up tables justify their use in all cases. As several commenters identified, we recognize that site-specific factors such as building downwash, the presence of rain caps, and complex terrain were not accounted for in the SCREEN3 dispersion modeling used to create the look-up tables. In situations where these factors can have a significant impact on the risks presented by a source, we agree that use of the look-up tables is not appropriate. Where we determine, during the risk assessment review process, that the look-up tables are inappropriate, sources would be required to demonstrate eligibility using a site-specific risk assessment. If a source is unable to make this demonstration, the source must then comply with the technology standards in the MACT.

4. Children's Health Risk

Comment: One commenter stated that EPA's risk assessment methodology does not adequately account for the sensitivities of children to environmental stressors because the methodology relies on pre-existing cancer potency estimates which are deficient with respect to early-life exposures.

However, another commenter believes that EPA's cancer potency factors are amply conservative to protect against potential childhood cancer risk. The commenter stated that the unit risk factor (URF) is specifically based on worst-case assumptions (i.e., linear multistage model for calculating the URF and through the assumption that a person will be continuously exposed for a lifetime).

Response: The EPA has issued revised Guidelines for Carcinogen Risk Assessment (Guidelines) and also Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens (Supplemental Guidance) which deal specifically with assessing the potential added susceptibility from early-life exposure to carcinogens. The Supplemental Guidance provides an approach for adjusting risk estimates to incorporate the potential for increased risk due to early-life exposures to chemicals that are concluded to be carcinogenic by a mutagenic mode of action. For these chemicals, the supplemental guidance indicates that, in lieu of chemical-specific data on which age or life-stage specific risk estimates or potencies can be based, default age-dependent adjustment factors can be applied when assessing cancer risk for early-life exposures. As EPA's hazard and dose-response assessments are updated under the new Guidelines and Supplemental Guidance, they will include consideration of the available information with regard to mode of action and the potential for this determination. Thus, when estimating cancer risks for the purposes of this regulation, the current HAP-specific assessments must be consulted to obtain both the current inhalation unit risk values and the determination as to mode of action. Where EPA's assessment has determined that the chemical is carcinogenic by a mutagenic mode of action, it is recommended that the risk assessment developed for the purposes of this regulation employ applicable life-stage specific potencies or age dependent adjustment factors per the Supplemental Guidance when early life exposure is expected to occur.

5. Distance to Nearest Residence

Comment: Commenters noted that the risk calculation depends upon the distance any given source is to the nearest residence, ignoring the possibility that there may be exposed people closer to the facility, such as a school, day care center, or neighboring business. One commenter stated that the most exposed individual is likely to be a person who actually works at the PCWP facility as opposed to a person beyond the facility fence line.

One commenter believes EPA should revise the risk screening to use the distance to the property line instead of the distance to the nearest resident. The commenter believes that both the look-up tables and the site-specific screening should use the property boundary or the point of maximum impact for the LRD.

A separate commenter disagreed that EPA should have required the site-specific assessments to evaluate continuous lifetime exposure at the nearest receptor (as opposed to the nearest residence), whether it be a school, shopping mall or church. The commenter noted that the promulgated PCWP rule allows risks to be computed at residential locations with the highest modeled risk for site-specific assessments. The commenter believes this is appropriate because EPA requires sources to assume the worst-case

exposure scenario (i.e., continuous, lifetime exposure for 70 years). The commenter noted that people would not spend 24-hours per day, 365 days per year for 70 years at a school, shopping mall or church. Although this exposure scenario is equally implausible for residences, the commenter thinks that residential locations are a more appropriate choice.

The commenter noted that the rule does not explicitly address the receptors that should be applied for the acute exposure assessments (which are required independently for acrolein and formaldehyde). The commenter requested that the rule clearly state that for acute exposures, the proper reference is to the property boundary rather than to the nearest residence.

Response: In exercising our authority under section 112(c)(9), we do not think it is appropriate to base our determinations on risks presented at the PCWP facility due to occupational exposures, since such risks are not caused by emissions of HAP into the ambient air (i.e., since they are on the plant site, they are not beyond the plant fence line and are therefore not into the ambient air). However, we do agree that risks to individuals at other locations surrounding the source could potentially exceed risks to individuals at nearby residences. Therefore, we have modified appendix B to subpart DDDD to indicate that, in addition to residences, risk assessments should include consideration of other locations such as schools and day care facilities. We note that, as we described in EPA's ATRA Reference Library, sources can deviate from default exposure assumptions if they can provide adequate justification for the deviation. Such deviation is appropriate where exposure duration is limited in terms of hours per day, days per week, and/or total number of years.

Look-up table assessments must use distance to property boundary, not distance to nearest residence. This requirement, which uses the point of maximum impact outside the property boundary, adds to the health-protection provided by look-up tables. We agree with the commenter that this is the preferred approach for the look-up table analyses. However, we disagree that site-specific risk assessments should be limited to the property boundary. If a site-specific risk assessment uses nearest residences for their risk calculations, and if new residences are constructed in an area of higher risk, sources must re-assess their risks to ensure they continue to meet the criteria in appendix B to subpart DDDD. If they no longer meet these criteria (e.g. because someone moved closer to their facility), then the source is no longer eligible for the low-risk subcategory. Such a source must then comply with the technology standards in the PCWP MACT.

We agree that acute assessments should use the point of maximum impact outside the facility's property boundary. This requirement is stated explicitly in appendix B to subpart DDDD.

6. Criteria Included in Site-Specific Risk Demonstrations

Comment: One commenter stated that EPA gives sources the ability to make source-specific demonstrations with a number of open-ended criteria. For instance, the commenter noted that appendix B to subpart DDDD allows any scientifically accepted peer-reviewed assessment methodology for site-specific risk assessment, and instructs sources to use health-protective default assumptions wherever site-specific data are not available. Thus, the commenter believes the facility owner has extreme control over how to assess its risks, and EPA provides few bounds on its discretion to approve such assessments as sufficiently scientifically accepted or health protective. Another commenter believes that the rule does not require that the risk assessment methodology be approved by any regulatory agency as scientifically acceptable or applicable.

One commenter stated that the approach included in the final rule is consistent with general risk assessment methodologies, including recommendations from the National Academy of Sciences Science and Judgment in Risk Assessment (1994) and has been standard EPA practice for over a decade. The commenter noted that EPA specifies its preference that sources conduct their site-specific risk assessments in accordance with the ATRA Reference Library (Volume 2) should facilities not pass the initial look-up table screening analysis. Sources also have the option of using alternative modeling methodologies provided they have undergone scientific peer review. The commenter believes that this does not, in turn, give sources unfettered freedom, but does recognize that new modeling approaches may be developed in the future.

Response: We continue to believe that providing sources with the discretion to use any "scientifically-accepted, peer-reviewed risk assessment methodology" (e.g., see EPA's ATRA Reference Library) is appropriate. However, contrary to the assertions of some commenters, this discretion is not unlimited. Section 7 of appendix B to subpart DDDD presents specific minimum criteria for site-specific low risk assessments. In order to demonstrate eligibility for the low-risk subcategory, the site-specific risk assessment conducted by the facility must meet the following criteria: (1) Estimate long-term inhalation exposures through an estimation of annual or multi-year average ambient concentrations; (2) estimate acute exposures for formaldehyde and acrolein maximum 1-hour average ambient concentrations; (3) estimate the inhalation exposure of the individual most exposed to source emissions; (4) estimate individual risks over a 70-year lifetime for the chronic cancer risk assessment; (5) use site-specific quality-assured data wherever possible; (6) use health-protective default assumptions wherever site-specific data are not available; and (7) contain adequate documentation of the data and methods used so that it is transparent and reproducible. The ATRA Reference Library provides examples of how a risk assessment can be conducted. These examples include instruction in basic risk assessment methodology, in determining what parameters to include in a risk assessment, and in the constraints that should be placed on those parameters. The documents within the ATRA Reference Library have been peer-reviewed and were developed according to the principles, tools and methods outlined in the 1999 EPA Report to Congress. However, the guidance in the ATRA Reference Library may not be appropriate for all sources. For that reason we believe that it is important for sources to be able to consider alternative analytical tools as long as those alternatives are scientifically defensible, peer-reviewed and transparent per the criteria listed above. Additionally, we disagree with the commenter that the risk assessment methodology will not be approved by a regulatory agency. The EPA will be responsible for reviewing all PCWP risk assessments, and part of that review will include ensuring that an appropriate assessment methodology is used. The EPA may disapprove any risk assessment that fails to meet the criteria of appendix B to subpart DDDD.

F. Selection of Process Units and Emissions Determination Procedures in Table 2A to Appendix B to 40 CFR Part 63 Subpart DDDD

1. Use of Emission Factors and Other Emission Estimation Procedures

Comment: Two commenters addressed EPA's proposed amendment to allow facilities to use emissions

factors in LRD for certain process units rather than conduct emissions tests. One commenter strongly supported both EPA's decision to simplify the calculation of emissions used in the risk assessments and the concept of using default emission values for relatively low emitting and/or hard-to-test process units because many of the process units included in table 2A to appendix B to subpart DDDD cannot be tested without research-level effort. Another commenter disagreed with the proposal to allow facilities to demonstrate compliance with the requirements of the low-risk subcategory using emissions factors and emissions estimates instead of conducting emissions tests. The commenter noted that EPA's own publications, including AP–42 and reports by the Office of the Inspector General, state that the use of emission factors for compliance purposes is inappropriate. According to the commenter, this proposal does not satisfy the section 112(c)(9)(B) requirement that EPA determine that all sources in a category emit HAP at levels below identified risk thresholds prior to exempting the category from applicable MACT standards. In addition, the approach does not fulfill EPA's commitment to require "enhanced monitoring" from all sources subject to a section 112 MACT standard.

Response: Appendix B to subpart DDDD provides methodology and criteria for sources to demonstrate whether they are part of the delisted low-risk subcategory. Sources that are part of the delisted low-risk subcategory are not part of the PCWP source category. Therefore, in developing the emission factors in table 2A to appendix B to subpart DDDD, we used the maximum available emission rate, as opposed to the average emission rate, to ensure that emission estimates used for LRD are health protective and reasonably account for the uncertainty associated with using emission factors.

Because the LRD are to be based on the cumulative risk from all process units within each PCWP affected source, we are requiring that each process unit be considered in the LRD. In developing table 2A to appendix B to subpart DDDD, we considered the feasibility of emissions testing for each type of PCWP process unit and chose to allow emission factors to be used for selected hard-to-test process units. We believe that most of the process units for which we would allow emissions estimates in lieu of testing are minor contributors to the total HAP emissions relevant to the LRD. Because sources may use only the most health-protective emission factors for only hard-to-test process units, we do not believe risk assessments will be less health protective with the inclusion of emission factors.

Affected sources that are not part of the low-risk subcategory must comply with the MACT requirements in subpart DDDD, and subpart DDDD contains compliance monitoring requirements for all the process units with control or work practice requirements under subpart DDDD. Sources that demonstrate eligibility to join the delisted low-risk PCWP subcategory, instead, are not subject to the section 112 MACT standard. Therefore, the PCWP rule follows through with the commitment to require all sources subject to section 112 MACT standards to conduct "enhanced monitoring."

Comment: Two commenters addressed the use of maximum emission factors and the use of statistically-derived emission factors in table 2A to appendix B to subpart DDDD. One commenter disagreed that EPA should use statistically-derived emission factors because, in many cases, there are insufficient data available to perform a statistical analysis. The commenter stated that where there is sufficient data, applying a statistical approach would not result in significantly different values from those already provided in table 2A to appendix B to subpart DDDD. The other commenter disagreed with EPA's use of maximum emission factors for hard-to-test process units. The commenter stated that some of the factors are so high that some sources will be forced to attempt to find ways to test the hard-to-test process units. The commenter suggested the EPA either multiply all emission factors by 0.75 (or some other constant) or study the data for each factor and statistically select a lower factor that is still conservative and guards public health but enables sources to avoid costly and unproductive testing.

Response: We proposed to include in appendix B to subpart DDDD the maximum emission factors available for each type of process unit because we believe use of maximum emission factors builds conservatism into the emissions estimates to help account for unit-to-unit variability and ensures protection of human health. However, in the preamble to the proposed amendments, we requested comment on using other statistical approaches. We received only one comment in favor of using a statistical approach, and the commenter did not provide any basis for assuming that emissions from untested PCWP process units are 75 percent of the emissions from the highest-emitting process units for which we have data. We recognize that some of the emission factors presented in table 2A to appendix B to subpart DDDD are quite conservative, that emission testing costs can be significant, and that some process units cannot easily be configured for emission testing. However, we disagree that use of the maximum emission factors is unnecessarily burdensome to small plants and companies because becoming part of the low-risk subcategory is only one option under subpart DDDD, and it is an option provided to reduce the burden on PCWP facilities that do not pose a significant risk to human health or the environment.

2. Blenders, Sanders, and Saws

Comment: One commenter disagreed that emissions testing is "not feasible" for several process units, including blenders, sanders, and saws. These sources are usually controlled by baghouses, which are normally required to be tested for particulate matter (PM). Because HAP emissions from these units can be high, the commenter recommended that actual test data be used rather than emission factors.

Response: We disagree that we should require testing of blenders, sanders, or saws. Methanol is the predominant HAP emitted from blenders. Methanol can also be emitted from sanders and saws. Methanol is not a HAP of concern for purposes of the LRD. Our emission estimates indicate that the appendix B HAP emissions from blenders, sanders, and saws contribute to, but are not likely to drive the risk determination for a PCWP facility because the emissions of these same HAP from dryers and presses exceed those from blenders, sanders, and saws.

Furthermore, based upon the information available to us, we disagree that most blenders, sanders, and saws are controlled by baghouses and that PM emission testing is normally required for these process units. We maintain that very few blenders, sanders, and saws are already configured for emissions testing. We also believe that we have struck an appropriate balance between the process units that must be tested and the process units for which maximum emission factor estimates will suffice for purposes of the LRD. As a result, we are not requiring emissions testing of blenders, sanders, and saws in today's final amendments.

Comment: One commenter suggested converting the acetaldehyde value for finishing sanders from 0.0028 lb/MSF ⅜" to a lb/MSF surface area basis to be consistent with the other sander values.

Response: As requested, we have recalculated the finishing sander acetaldehyde emission factor based on

the production rate in terms of MSF/hr, and have included the revised factor (0.0031 lb/MSF) in table 2A to appendix B to subpart DDDD.

3. Emission Estimates for Lumber Kilns and Small-Scale Kiln Testing

Comment: One commenter supported small-scale lumber kiln testing. The commenter stated that full-scale lumber kilns are difficult to test because they are leaky and have highly variable exhaust rates, and most small-scale kilns do not have exhaust variability or fugitive emission issues. The commenter also noted that there is literature comparing results from small-scale kiln tests to the emissions from full-scale lumber kilns. The commenter stated that if certain conditions and guidelines are followed, the small-scale kiln tests can provide good estimates of emissions from lumber drying. The commenter suggested changes to the list of considerations for a small-scale kiln emissions testing program that was suggested by NCASI and placed in the docket prior to proposal of the amendments.

Response: We recognize the difficulties with testing full-scale lumber kilns due to their variable exhaust flow rates, and we agree that measurement of small-scale kiln emissions can provide data representative of full-scale kiln emissions provided that certain conditions are met. We have reviewed the commenter's suggestions for the consideration list, and we have used the list (with revisions) as the basis for the new appendix C to subpart DDDD of 40 CFR part 63. Facilities that do not want to use the emission factors in table 2A to appendix B to subpart DDDD may conduct small-scale kiln tests taking into account the considerations described in appendix C to subpart DDDD. Small-scale kiln tests that do not address these considerations may be rejected during our review of the LRD. The considerations described in appendix C to subpart DDDD apply only for small-scale lumber kiln emissions testing conducted to provide data for the LRD described under appendix B to subpart DDDD. Permitting authorities may require different procedures for testing or estimating lumber kiln emissions for purposes other than the LRD.

Comment: One commenter requested that EPA reevaluate the lumber kiln emission factors in table 2A to appendix B to subpart DDDD. According to the commenter, emission factors found in NCASI Technical Bulletin 845 are based on the most credible data, and using those factors generally results in much lower emissions than the values selected for table 2A to appendix B to subpart DDDD in the proposed amendments. The commenter expressed concern that using the values in the proposed amendments may lead to facilities being improperly classified as major sources of HAP.

Response: The emission factors presented in the proposed amendments to appendix B to subpart DDDD are not intended to be used for major source determinations. Facilities that are not major sources of HAP emissions are not subject to subpart DDDD, and the LRD procedures are therefore irrelevant for those sources. The emission factors in appendix B to subpart DDDD are intended to be health protective and are intended only for use by facilities choosing not to test their lumber kilns for purposes of the PCWP LRD. As stated previously, facilities that feel the emission factors presented in table 2A to appendix B to subpart DDDD would over-estimate lumber kiln emissions for purposes of the LRD have the option of supplying facility-specific test data for their lumber kilns. States may require data to be obtained for major source determination using methods other than those described in appendix B to subpart DDDD.

4. Wastewater Emission Estimates

Comment: One commenter stated that table 2A to appendix B to subpart DDDD should not require modeling of MDI emissions from wastewater and process water. The commenter stated that MDI hydrolyzes immediately upon contact with water, polymerizing into to an inert polyurea, so any wastewater from these operations cannot contain MDI.

Response: The commenter's assertion reflects the findings presented by the American Chemistry Council (ACC) Diisocyanates Panel in their petition to remove MDI from the list of HAP under section 112(b) of the CAA. Based upon the findings described in the petition, we agree that it is appropriate to change the entry in table 2A to appendix B to subpart DDDD to "NA" for wastewater/process water operations. However, our action with respect to table 2A to appendix B to subpart DDDD does not necessarily reflect our conclusions with regard to the petition to delist MDI, which we are still reviewing at this time.

5. Emission Estimates for Tanks

Comment: One commenter stated that the current wording of the definition of "resin storage tank" includes all resin additives, even caustic and acid. Neither caustic nor acid contain formaldehyde, phenol, or MDI, so emissions of the HAP of concern would not be expected. Additionally, the commenter stated that vessels holding powdered resin should not be considered resin storage tanks. The commenter suggested a revision of the definition of "resin storage tank." The commenter also requested that EPA add a footnote to table 2A to appendix B to subpart DDDD to indicate that estimating emissions for tanks that do not contain formaldehyde, phenol, or MDI is not required.

Response: As proposed, table 2A to appendix B to subpart DDDD specifies default emission rates for tanks with resin containing a specific HAP or modeling using TANKS software. It was not our intent to require TANKS modeling of formaldehyde, phenol, or MDI for tanks holding resins without these HAP, but we realize that the language in the proposed table 2A to appendix B to subpart DDDD could be misinterpreted in this way. For the final amendments, we have revised the language in table 2A to appendix B to subpart DDDD to specify that emissions of a specific HAP need only be estimated if the tank holds a resin containing that HAP, regardless of whether the estimate is obtained using an emission factor or modeling. We also agree that it is not necessary to model emissions from powdered resin storage vessels, so we have amended the definition of "resin storage tank" to include only liquid resins and additives.

Comment: One commenter stated that the emission factors included in table 2A to appendix B to subpart DDDD for resin storage tanks are grossly over-estimated and the alternative techniques suggested by the table are limited and overly simplified. In addition, the commenter stated that there can be a significant difference between average (long-term) and maximum hourly (short-term) emissions. The emission factors should be reduced by a factor of at least 50 for short-term estimates and 100 for long-term. The commenter provided sample calculations to support reducing the emissions factors.

Response: We are aware that the default emission rates contained in proposed table 2A to appendix B to subpart DDDD for resin storage tanks are health protective. These emission rates represent the highest emission rate reported for any single tank in the MACT survey responses. Understanding the limitations of the default emission rates, we also provided modeling using EPA's TANKS software as an option for facilities who wish not to use the conservative default emission rates. To alleviate concerns about these emission rates, we have reevaluated the default emission rates for formaldehyde and

phenol. Because of the limited applicability of the emission rates provided in the MACT survey results, we used other conservative information from the MACT survey as inputs to the TANKS model to generate emission estimates. We arrived at default emission rates of 0.001 pounds per hour (lb/hr) formaldehyde and 0.0002 lb/hr phenol.

Section 7(b)(1) of appendix B to subpart DDDD requires estimation of annual average ambient concentrations for the chronic part of a site-specific risk assessment, and § (7)(b)(2) requires estimation of maximum short-term (hourly) emissions of formaldehyde and acrolein for purposes of estimating acute risk. One way to account for both acute and chronic exposures is to assume the worst-case for all emissions inputs to the risk model used to complete the acute and chronic portions of the analysis. Although some facilities may choose to use different emissions inputs in their site-specific LRD for the chronic and acute portions of the assessment, we disagree with the commenter that it is necessary for us to provide separate resin storage tank default emissions rates for average (long-term) and maximum hourly (short-term) emissions.

Comment: One commenter stated that table 2A to appendix B to subpart DDDD should identify specific techniques for estimating emissions from open-top tanks separately from techniques used to estimate emissions from closed-top tanks. These types of tanks are often used for mixing water and other additives into the resin. The commenter provided an equation for estimating these emissions from the 2002 EPA Risk Management Plan (RMP) Offsite Consequence Analysis Guidance (Appendix D).

Response: Several different approaches may be used to estimate emissions from open-top tanks, including, for example, the 2002 EPA RMP Offsite Consequence Analysis Guidance (Appendix D) noted by the commenter. A similar approach is documented in Chapter 8, section 4.4 of an Emission Inventory Improvement Program (EIIP) document entitled "Methods of Estimating Air Emissions from Paint, Ink, and Other Coating Manufacturing Facilities." In addition, WATER9 or the approach outlined in forms VII and VIII of appendix C to 40 CFR part 63 (and described further with respect to the PCWP industry in a supporting memorandum) could be used to estimate emissions from open-top tanks. Rather than dictating specific methods to be used to develop estimates of open-top tank emissions, we have amended table 2A to appendix B to subpart DDDD to distinguish between open and closed resin storage tanks and added a row to state that engineering estimates must be developed for open resin storage tanks if they hold resin with any formaldehyde, phenol, or MDI content.

6. Insignificant Activities

Comment: One commenter stated that the phrase "may emit" included in the description of ancillary process units is elusive and could include emissions of any amount of HAP, no matter how small. The commenter requested that lists of insignificant and trivial activities be included in appendix B to subpart DDDD to streamline the process of preparing LRD. The commenter noted that the title V program allows emission units with insignificant or trivial emissions to be specified, but no emission estimates or permit limits are required. The commenter (and other commenters) provided suggested lists of insignificant and trivial emission units. Alternatively, the commenter suggested that the final amendments could explicitly allow a facility to list all the insignificant emission units in the PCWP source category at the facility and make a blanket "engineering estimate" evaluation that they are insignificant and their emissions are presumed to be zero. The commenter noted that if EPA disagrees with the facility's designation of an emission unit as an insignificant emission unit during its review of low-risk determination, then it can notify the facility that additional justification of its engineering estimate is needed for that emissions unit.

Response: The amended rule does not include lists of insignificant or trivial activities for several reasons which are documented in the BID for the final amendments. Instead, we have adopted the commenter's alternative suggestion. Each facility completing a LRD may include a site-specific list of insignificant activities for which the facility may make an engineering estimate of presumably zero appendix B emissions. The facility must provide rationale to document placement of each process unit or activity on the list (e.g., the unit does not process HAP-containing materials; no heat is applied; there is no mechanism for appendix B HAP formation, etc.). We will evaluate each facility's list of insignificant activities when reviewing the LRD. Any data that support the placement of a certain activity on the insignificant activities list should be included with the facility's LRD. Only process units and activities within the PCWP affected source should be included in this list.

Comment: One commenter noted that EPA did not include a definition of "ancillary processes" in the rule and suggested a possible definition.

Response: We agree that a definition of "ancillary processes" is needed since the term is used in table 2A of appendix B to subpart DDDD, and we have defined the term in section 15 of appendix B to subpart DDDD based on the definition suggested by the commenter (with necessary edits).

7. Other Specific Comments on Table 2A to Appendix B to Subpart DDDD

Comment: One commenter requested that a footnote be added to the formaldehyde emission factor for particleboard and medium density fiberboard (MDF) blending and forming operations in table 2A to appendix B to subpart DDDD. The footnote should state that the factor applies only to facilities using formaldehyde-based resins. Formaldehyde emissions from facilities that use 100% non-formaldehyde resins or adhesives (such as MDI) should be designated "NA."

Response: We agree with the commenter that it is appropriate to clarify that estimation of formaldehyde emissions from particleboard and MDF blending and forming operations is only necessary for those facilities that use resin containing formaldehyde. We have amended the final rule to include such a footnote.

Comment: One commenter supported excluding metals testing for process units firing only natural gas or propane and stated that footnote b of table 2A to appendix B to subpart DDDD should be revised to clarify that no emissions estimates are required for direct-fired process units firing natural gas or propane.

Response: We agree with the commenter's suggested change to the footnote b of table 2A to appendix B to subpart DDDD and we have amended the footnote as requested.

G. Emission Testing Requirements in Appendix B to 40 CFR Part 63 Subpart DDDD

1. Testing of Multiple Identical Dryers

Comment: One commenter supported the proposed amendment giving facilities the ability to use emissions test data from one unit for modeling of similar process units. The commenter stated that the proposed amendment will help industry better manage emissions testing costs and testing resources while ensuring data quality. Another commenter stated that EPA should consider age as a factor when determining whether units are similar.

As proposed, the amendment would inappropriately allow newer and cleaner-operating equipment to be tested in place of older, more run down equipment without any loss of emissions estimating accuracy.

Response: As a result of the second comment, we reviewed available data to see if any correlations with age of the process units are apparent. We concluded that we do not have the emissions test data spanning decades necessary to confirm or refute the commenter's assertion that age of the process unit is a crucial consideration. We generally agree that process units that are considerably older could be expected to have greater emissions than newer process units of the same design, particularly if the older process units have not been well maintained. Therefore, we have included age of the process unit as a consideration when applying test data from one unit to another similar unit at a plant site to be conservative. However, we wish to clarify that we consider distinctions in the age of the process unit, for purposes of the PCWP LRD, to be many years (e.g., 5 to 10 years) since our data do not show increased emissions as process units age over a few years.

Comment: One commenter suggested that EPA allow facilities to test one of multiple stacks or vents when the gases in those vents have been collected from the same process unit, originate from the same duct or vent, and are not expected to differ in gaseous pollutant concentration. The commenter clarified that this procedure should not be allowed unless the emissions have been collected and then subsequently divided (e.g., the procedure would be inappropriate for multiple vents above a wood products press).

Response: We agree with the commenter that applying results from one stack test to the emissions from multiple stacks is acceptable for purposes of the LRD when the gases in those stacks or vents have been collected into a single duct and subsequently divided and are not expected to differ in gaseous pollutant concentration. We also agree with the commenter that testing one of multiple process unit openings or vents, such as the vents above a wood products press, should not be allowed because the concentration from such vents could differ. We have added a paragraph to section 5 of appendix B to subpart DDDD to incorporate this suggestion.

2. Use of Previous Emission Tests

Comment: One commenter supported the proposed amendment to allow facilities to use previous emissions test data for the purposes of LRD. The commenter stated that the proposed amendment will help industry better manage emissions testing costs and testing resources while ensuring data quality. However, the commenter stated that rather than limiting the use of previously determined emission factors to those units that operate at the same conditions as during the emission test, EPA should require the subject units to be operated in a manner that would result in lower emissions. Another commenter stated that EPA should consider age as a factor when determining whether units are similar. As proposed, the amendment would inappropriately allow newer and cleaner-operating equipment to be tested in place of older, more run down equipment without any loss of emissions estimating accuracy.

Response: We agree with the first commenter that it is not often possible for a process unit to be operated under the exact same conditions as during a previous performance test. It was not our intention for this provision to be interpreted quite so literally. We have revised section 5(i)(3) in appendix B to subpart DDDD to state that the subject process units must be operated in a manner that would be expected to result in the same or lower emissions than observed during the previous emissions test and that the process units must not have been modified such that emissions would be expected to exceed the results from the previous emissions test.

Regarding the second comment, we discussed the effects of process unit age in a previous response. We are limiting previous data submitted for purposes of the LRD to emissions test data gathered in 1997 or later. We picked 1997 as the cutoff date because we recognize that a great deal of HAP emissions data was gathered for PCWP process units during that year, and we do not believe that this data is obsolete at this time provided the other conditions of section 5(i) of appendix B to subpart DDDD are met.

3. Fuel Analysis To Determine HAP Metals Emissions

Comment: Two commenters supported EPA's suggestion of using fuel analyses to estimate HAP metal emissions for direct-fired process units. One of these commenters stated that EPA should allow PCWP facilities to use procedures similar to those in subpart DDDDD, the Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Boilers/Process Heaters rule). This option would lower testing cost yet provide a maximally conservative value that would be protective of public health.

Response: We have decided to adopt a fuel analysis procedure similar to the procedure described in the Boilers/Process Heaters rule. Section 5 of appendix B to subpart DDDD includes a new paragraph referring to the relevant sections of subpart DDDDD. Plywood and composite wood products facilities may conduct a fuel analysis in lieu of emissions testing for HAP metals for purposes of the LRD. The relevant sections of the Boilers/Process Heaters rule include § 63.7521(a) and (c) through (e); § 63.7530(d)(1), (2), and (4); and line 2 of table 6 to subpart DDDDD. For purposes of conducting a fuel analysis for a PCWP LRD, "total selected metals" means the combination of the metal compounds included in table 1 to appendix B to subpart DDDD.

4. Formaldehyde and Phenol Test Methods

Comment: One commenter stated that NCASI Method CI/WP–98.01 should be allowed for formaldehyde and phenol measurement in table 2B to appendix B to subpart DDDD. The method is allowed in other parts of the rule for measurement of formaldehyde, phenol, and methanol, but it was not included in appendix B to subpart DDDD. The commenter stated that using NCASI Method CI/WP–98.01 instead of NCASI Method IM/CAN/WP–99.02 would reduce sampling cost and complexity without sacrificing sampling precision and accuracy.

Response: We agree that NCASI Method CI/WP–98.01, "Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol," is appropriate for measurement of formaldehyde and phenol. We have added NCASI Method CI/WP–98.01 to table 2B to appendix B to subpart DDDD for formaldehyde and phenol testing only.

To be consistent with the test methods allowed in subpart DDDD, we have also edited table 2B to appendix B to subpart DDDD to allow use of Method 0011 for formaldehyde and acetaldehyde, and to allow use of Method 316 (40 CFR part 63, appendix A) for formaldehyde.

In addition, a revised version of NCASI Method IM/CAN/WP 99.02 has been placed in Chapter III of the NCASI Methods Manual and the PCWP docket. The NCASI made minor revisions to the IM/CAN/WP 99.02 method to (1) clarify sections easily misunderstood or that did not provide sufficient instruction and (2) to add some flexibility to the quality assurance procedures and

criteria. We reviewed and agreed with these minor changes to the method.

5. Determining MDI Emissions

Comment: One commenter suggested that EPA also consider the use of EPA proposed Method 207, "A Method for Measuring Isocyanates in Stationary Source Emissions," for measurement of MDI emissions. Method 207 is expected to provide lower detection limits than EPA CTM–031 and Method 320, which are already allowed to be used.

Response: We proposed Method 207 in the **Federal Register** on December 8, 1997 (62 FR 64532). A copy of the proposed method may be downloaded from *http://www.epa.gov/ttn/emc/proposed.html*. We intend to make minor revisions to the method and promulgate it in appendix M to 40 CFR part 51 within the next few months. We will accept data measured using the proposed Method 207 before the promulgated version of the method becomes available. Once promulgated, the final method 207 will appear in the **Federal Register**, appendix M to 40 CFR part 51, and on *http://www.epa.gov/ttn/emc/promgate.html*.

H. Compliance Date for Existing Sources

Comment: In response to our request for comment on the issue, several commenters requested an extension of the MACT compliance deadline (October 1, 2007, for existing sources). One commenter stated that EPA should consider a compliance deadline extension for all PCWP sources because of uncertainties associated with the promulgated amendments, or "supplemental rule." The commenter stated that EPA could give sources 3 years (the maximum amount of time for compliance allowed by section 112(i)(3)(A) of the CAA) from the effective date of the supplemental rule. The commenter requested a new compliance date of August 1, 2008 (based on an extended LRD submittal deadline of March 1, 2008), and noted that this date is less than three years from the anticipated promulgation date of the supplemental rule. A separate commenter suggested extending the PCWP MACT compliance deadline to March 1, 2009 (based on a suggested LRD submittal deadline of March 1, 2008). Another commenter suggested extending the PCWP MACT compliance deadline to October 1, 2008 (based on a suggested LRD submittal deadline of April 1, 2007). The above commenters also suggested that EPA extend the compliance dates for sources that submit LRD that are not approved by EPA.

One commenter disagreed that facilities that do not submit a LRD should be granted any additional time to comply with MACT. The commenter also stated that if an existing facility's LRD is not approved, the facility should be given no more than one year from the current compliance date to comply with all requirements of the rule. Another commenter asserted that section 112(i)(3)(A) denies EPA authority to extend the rule's compliance date beyond October 1, 2007 for sources whose LRD are disapproved or for all PCWP sources.

Response: We are promulgating a MACT compliance date of October 1, 2008 in today's final action. We are providing this new compliance date for all PCWP sources (as opposed to only those sources that submit LRD). We are making this change to the MACT compliance date because today's final action results in revisions to several definitions in subpart DDDD and to the testing requirements in appendix B to subpart DDDD that are substantial and warrant revision of the MACT compliance date.

Our proposal specifically asked for comments on whether to set a new compliance deadline for all sources covered by the PCWP NESHAP. As mentioned by the commenters, section 112(i)(3)(A) of the CAA specifies that NESHAP for existing sources can have compliance deadlines of no more than 3 years following the effective date of their promulgation. The question then becomes which promulgation date to apply—July 29, 2004, which is the date the PCWP NESHAP was first promulgated, or today's date, on which we are promulgating numerous revisions to the rule. We interpret section 112 of the CAA as providing us with the authority to re-set the compliance deadline for NESHAP, as appropriate, in situations where promulgated amendments to the regulation are significant and substantial enough to warrant revisiting the question of how much time is needed for subject sources to comply with the requirements of the rule, as amended. This includes situations where a NESHAP is significantly revised to include additional control requirements in response to either a court's remand of the original rulemaking or a petition for reconsideration of the rule, or is so revised on the agency's own initiative.

We agree with the commenters that noted that section 307(b)(1) of the CAA specifically provides that the filing of a petition for reconsideration of a rule does not postpone the effectiveness of the rule. We do not consider the mere fact that a rule has become the subject of a petition for judicial review or a petition for administrative reconsideration to necessarily justify a re-setting of the compliance deadline. As we stated in the final reconsideration notices for the Brick and Boiler MACT rules (70 FR 69661, November 17, 2005 and 70 FR 76928, December 28, 2005, respectively), the uncertainties raised by reconsideration do not in general necessarily justify an extension of the compliance date. Instead, the facts of each rule's potential revision and the degree of the significance of the rule's amendments should be considered on a case-by-case basis. Where EPA has amended a MACT standard in a significant way, we have found it appropriate to set a new compliance date for the rule that takes into account new requirements not contained in the original rule. The relatively greater degree of changes we made to the overall PCWP rule, which substantially affect how it will be implemented for the majority of sources, as compared to changes we made to the Boiler MACT (we made no changes to the Brick MACT due to reconsideration), for example, justify a different outcome for the PCWP rule.

Thus, changes in expectations about the numbers and types of sources that will need to obtain, install and certify pollution control equipment to comply with the rule's requirements overall are compelling. Since the 2004 rule's promulgation, we found that many, even most, facilities expect to install controls or make other physical changes to the mill to meet the low-risk criteria. While we recognized in 2004 that some sources would have to make these changes to become low risk, we did not predict accurately the number of sources that would do so. Rather, we expected that sources needing to obtain, install and certify controls would be primarily those remaining in the MACT category, such that MACT-subject sources would face comparably less competition from would-be low-risk sources in seeking available vendors for those controls under the original compliance deadline of October 1, 2007. We now have a better understanding that more sources than we first anticipated in 2004, both MACT and low-risk sources, will need to install controls and will be competing for the services of a limited number of control device vendors.

In addition to the difficulties sources may encounter in installing controls and testing emissions, before today's final action, some sources faced uncertainty about whether they were part of the PCWP source category as defined in the

2004 promulgated NESHAP. We received several requests from sources and permitting authorities as to the applicability for certain types of processes such as molded particleboard and curved plywood components. We determined that many of these sources were part of the source category, but few had associated control requirements. However, some, we do not how many, may be required to control emissions (e.g., for a dryer). These are sources, such as furniture manufacturers, who believed they were not subject to the MACT standards in 2004. Since that time, through definitional changes in today's final action and assistance with applicability determinations, we have provided the necessary clarifications so that these sources may begin the process of determining their regulatory obligations, which could include installation of emissions controls.

As stated above, we do not generally regard the perceived "uncertainty" related to the reconsideration and amendment process as constituting a sufficient reason in and of itself for revising the overall compliance date. We note that prior to our issuance of today's final action, sources were able to begin emissions testing for purposes of the LRD with little certainty of what the final potentially-revised emissions testing requirements would be. Furthermore, the entire content of appendix B to subpart DDDD was under reconsideration. While this did not affect the effectiveness or applicability of the originally promulgated requirements pending our rulemaking process, we have learned that the reconsideration and amendment process did affect source decisions about whether to comply with the MACT standards or to apply to join the low-risk subcategory, which, ultimately, caused some sources to delay decisions about MACT compliance.

The emissions testing that facilities must complete for purposes of the LRD involves careful planning (e.g., deciding what process units to test and for which HAP, selection of test contractors, selection of test methods, test plan development, etc.) and the expense of such testing depends greatly on the number of process units and HAP that must be tested. Many facilities will likely plan and conduct emissions tests that serve a dual purpose: (1) To determine emissions of the appendix B HAP for purposes of the LRD, and (2) to determine uncontrolled emissions levels to identify potential MACT compliance options (e.g., to identify emissions averaging opportunities or see if emissions fall below the production-based compliance option) should the facility decide not to pursue the low-risk option. Facilities may view it as more economical to conduct testing of multiple process units and HAP combinations at one time than to repeatedly test individual process units for a few HAP (e.g., because test methods covering multiple HAP can be used, and there is less travel expense for test contractors if multiple tests are completed in one trip). Once onsite stack sampling is completed, laboratory analysis of the samples must be conducted and test reports prepared. The emissions testing that PCWP facilities must conduct, from the planning stage to receiving the final report, can easily take 9 months to 1 year. More time may be required if the testing company or laboratory does not correctly perform the tests or analysis the first time due to the difficulty of some of the test methods (e.g., relatively new NCASI test methods developed specifically for the PCWP industry). While adding these methods add flexibility for sources, sources did not know until today whether the final rule would incorporate them. We also recognize that the number of testing contractors with the equipment and familiarity needed to run the NCASI methods is limited, and that there will be much competition for the qualified testing contractors. Today's final amendments allow use of more test methods applicable to the multiple HAP of concern than did the 2004 final NESHAP (e.g., we are incorporating by reference the new NCASI method ISS/FP–A105.01), and before today's final amendments facilities were uncertain which methods would be acceptable. In addition, today's final amendments allow other emissions determination approaches such as small-scale kiln testing, fuel analyses to predict HAP metals emissions, and modeling of tank or wastewater emissions. For these reasons, many sources have delayed their emissions testing activities until after today's final amendments are promulgated. Emissions testing is only one step in completion of the LRD (i.e., it will take several months to a year or more for PCWP facilities to complete their LRD incorporating all of the emissions data and to complete changes to their facility to ensure they can meet the low-risk criteria on an ongoing basis). Although the changes to the overall rule are significant and the CAA allows us to set a new compliance date 3 years from the promulgation of today's final rule, we concluded only an additional 12 months beyond the original compliance date is necessary.

Comment: Two commenters stated that there is no reason why a source should not be able to move from the MACT to the low-risk subcategory if changes occur such that the facility qualifies as low-risk (e.g., equipment installation that reduces emissions or any future changes to the health benchmarks for acrolein and acetaldehyde), even if the facility qualifies after the MACT compliance deadline. The commenter stated that although these facilities would have already incurred the expense associated with MACT control installation, it may still be worthwhile to be classified as low-risk because of the reduced recordkeeping and reporting burdens.

Response: We agree that sources should be able to join the low-risk subcategory before or after the MACT compliance date. Allowing sources to become part of the low-risk subcategory after the MACT compliance date gives facilities more time to complete any physical changes necessary to operate as low risk, more time to complete their LRD, and more time to complete their permit applications. Existing sources needing extra time must comply with the MACT requirements in subpart DDDD as of October 1, 2008 and until they are part of the low-risk subcategory. Since the CAA does not prohibit us from adding sources to delisted subcategories after the MACT compliance date and existing sources must comply with MACT if not in the low-risk subcategory by the MACT compliance date, allowing sources additional time to complete their LRD is reasonable and should be allowed. Therefore, we have revised § 10 of appendix B to subpart DDDD accordingly.

I. Low-Risk Demonstration Submittal Dates for Existing Sources

Comment: Four commenters supported an extension of the LRD submittal deadline established in the 2004 final rule. One commenter supported the proposed revised date of April 1, 2007. Three additional commenters suggested extending the LRD submittal date beyond the proposed date of April 1, 2007, and requested that EPA adopt extensions of the LRD and MACT compliance deadlines to March 1, 2008, and August 1, 2008, respectively. One commenter stated that most facilities did not begin emissions testing upon promulgation of the PCWP rule because they were aware that clarifying amendments would be forthcoming. The commenters arrived at the March 1, 2008, low-risk submittal date by estimating the amount of time that would be needed to complete each

of eight steps that influence the timing of completing a LRD, including: Planning and performing emissions tests, completing a risk assessment, securing the capital needed to make any changes to the source, installing control devices or completing other physical changes, selecting and hiring contractors and control device vendors, coordinating the LRD activities of multiple facilities, receiving EPA approval of the LRD, and preparing the application for a title V permit modification.

Two commenters disagreed that EPA should extend the LRD submittal date. One commenter believes that extending the LRD submittal deadline would simply encourage sources to spend time and resources attempting to obtain unlawful exemptions instead of dedicating themselves to meeting the rule's cleanup standards by the 2007 compliance date. Another commenter stated that some facilities have already completed their LRD and are simply waiting for the amendments to be promulgated before submitting them.

Response: As explained above, we have revised section 10 of appendix B to subpart DDDD so that sources may become part of the low-risk subcategory any time. Therefore, there is no deadline for existing sources to become part of the low-risk subcategory in today's action. Existing sources that are not part of the low-risk subcategory on October 1, 2008 must be in compliance with the MACT standards in subpart DDDD.

We realize that some existing sources will want to be part of the low-risk subcategory by the MACT compliance date to avoid MACT compliance. For those sources, EPA will review complete and well-documented LRD received by February 1, 2008 and make every attempt to notify sources of our determination of their eligibility to become part of the low-risk subcategory no later than August 29, 2008. (A complete and well-documented LRD includes emissions tests performed on the facility as it will be operated and includes the documentation required in appendix B to subpart DDDD.) We believe this approach balances the time we need to review and approve (or disapprove) LRD with the time sources need to complete activities associated with the LRD.

We do not know how many facilities will submit LRD on or by February 1, 2008, but it could be well over a hundred. We plan to review LRD in the order we receive them and encourage sources to submit their LRD as early as possible. (We will review preliminary LRD based on modeling and emissions factors before February 1, 2008 and as our resources permit. Although these LRD will not be approvable, sources that want a review of their LRD at this preliminary stage should engage us as the earliest possible date.) We note that we may not be able to interact with sources as we might have otherwise (e.g., ask for clarification, recommend minor changes) as the MACT compliance date approaches because of time and resource constraints. If we have many LRD to review, we will likely return incomplete demonstrations without further review. We will likely notify these sources that we could not approve the LRD at that time. Sources whose LRD are deficient may re-submit revised demonstrations, but we will likely not review re-submittals until we have completed our review of all the other timely and complete LRD we have first received.

As to the decision individual sources make regarding whether to spend resources on demonstrating they are low risk, the decision is theirs to make. Similarly, a source must determine for itself when to submit its LRD. We encourage sources to submit their LRD before February 2008 so that we have time to work with sources to resolve deficiencies in their LRD and so that sources have time to resubmit their LRD (if necessary) prior to February 1, 2008.

Comment: One commenter supported EPA's proposal to allow a preliminary LRD that is based on proposed physical changes to the plant that have not yet been completed or verified by stack testing. The commenter noted that this approach addresses some timing concerns and also helps to ensure that sources do not undertake expensive facility changes only to find that EPA does not approve their LRD. The commenter noted that EPA should give sources until the proposed April 1, 2007, deadline (assuming this deadline is not extended further) to submit LRD that are based on proposed physical changes at the plant, and the facility should be required to complete the physical changes by October 1, 2007.

The commenter stated that, for sources making physical changes to comply with the low-risk criteria, confirmatory emissions testing should be required by the date on which performance testing for MACT compliance is due in the 2004 final rule (i.e., 180 days after the compliance deadline). This proposed timing makes sense because physical changes to meet the low-risk criteria and physical changes to meet one of the other compliance options follow similar engineering and capital planning timelines. The commenter noted that sources not making physical changes to their facilities should be allowed to conduct emissions tests after the low-risk submittal date but before the compliance date.

The commenter also supported EPA's proposal to allow sources to submit a preliminary LRD that relies on emissions factors. However, it is critical that EPA provide the source with confirmation that the source has used an acceptable methodology and that, if emission testing provides the results anticipated by the source, the source will meet the low-risk criteria and its demonstration will receive final approval. The commenter noted that allowing preliminary LRD will enable EPA to spread the demonstration reviews over a longer period of time because sources will submit their preliminary demonstrations earlier. In addition, if the preliminary demonstration is not approved, sources have more time to amend their demonstration or prepare for alternative compliance options.

The commenter suggested that EPA allow facilities to propose in their title V applications which process parameters will be limited and state that the emission limits will be set as a result of the most recent emission test. As a result of this change, States would not be able to issue the title V permit revision prior to the facility receiving approval of the LRD.

Another commenter argued that EPA would not have the time to thoroughly review both a pre-clearance application and a subsequent, emissions test-based verification that emissions do not exceed the emission factor calculations presented in the LRD. The commenter contended that EPA will likely focus on sources' pre-clearance submissions (in which sources have every reason to be overly optimistic) and pay only cursory attention to the subsequent compliance demonstrations.

Response: Existing sources may submit preliminary LRD at any time, including those without the required emissions tests and without completing physical changes to the facility. However, existing sources must complete the required emissions tests and physical changes to the facility, submit the complete LRD to EPA, receive approval from EPA (if the LRD is approvable), and apply for their title V permit revision before becoming part of the low-risk subcategory. We will consider preliminary LRD that do not contain the required emissions test data to be incomplete and we will not approve any LRD submitted by existing sources that do not contain this required information.

We recognize that it may be necessary to complete physical changes to emission sources before the required emissions testing can be conducted. Existing sources may now submit their LRD any time (as opposed to July 31, 2006, as originally promulgated). While giving sources more time to complete their LRD, we have minimized the amount of time we will have to review the numerous LRD that we anticipate will be submitted by February 1, 2008. Therefore, we will review preliminary, incomplete LRD only before February 1, 2008. After that date we will focus our efforts on reviewing complete LRD in fairness to those facilities that are low-risk without having to make physical changes to their emission sources and those facilities that completed their physical changes and emissions testing before February 1, 2008. As time allows, we will review and provide feedback to facilities submitting preliminary LRD several months prior to February 1, 2008. In addition, we will accept and attempt to complete our review of final LRD (that contain the required emissions test data) submitted after February 1, 2008 that are follow-up to preliminary LRD we have previously reviewed. Subsequent LRD submittals are likely to use the same risk assessment procedures and should not need as much time to review.

Existing sources will have about 2 years to complete their LRD and the necessary physical changes to their facilities between the time today's final action is available and the February 1, 2008 LRD submittal date. These 2 years, coupled with the availability of the low-risk criteria and risk methodology published in the 2004 final rule, should provide enough time for existing sources to become part of the low-risk subcategory by October 1, 2008 if they wish and have planned accordingly. Sources may also choose to submit their LRD later, and comply with the MACT requirements in subpart DDDD on the compliance date and until they become part of the low-risk subcategory.

J. Compliance Date for Affected Sources Previously Qualifying for the Low-Risk Subcategory

Comment: Two commenters disagreed with the 3-year MACT compliance extension for existing sources that are temporarily low-risk but begin to operate outside of the low-risk subcategory due to a population shift or change in dose-response values. One commenter stated that the CAA requires existing sources to comply no later than 3 years after the effective date and that EPA offers no legal justification or rationale for the extra 3 years provided to PCWP sources that are no longer low-risk.

Other commenters supported EPA's decision to allow sources in the low-risk subcategory to have 3 years to comply with the MACT limits when they are no longer part of the subcategory due to factors outside their control. The commenters stated that this is consistent with the normal 3-year period for sources to comply with a MACT standard after the effective date. The commenters stated that a 3-year compliance window is necessary to ensure the necessary steps are completed to transition between the low-risk subcategory and MACT compliance. Another commenter stated that this approach is exactly consistent with the existing regulatory provisions for area sources which become major sources (and thus are subject to MACT) and have 3 years to comply with MACT.

The commenter believes EPA has closed a potential loophole, rather than creating one as petitioners claim. That is, CAA section 112(c)(9) includes no provision for sources becoming "re-subject" to MACT if they no longer are low-risk. Rather, CAA section 112(c)(9) assumes that once a category is delisted, all sources in that category are permanently exempt from MACT. The commenter believes that, under the statute, if the subcategory no longer qualifies as low-risk, EPA must affirmatively relist the subcategory (and no deadline is provided by which EPA must do so). Relisting the category, in turn, would require EPA to promulgate MACT standards within 2 years, with compliance another 3 years later (or, a 5-year process in total from the date EPA decided to relist the category). The commenter believes that EPA has adopted a more protective approach and required compliance within 3 years.

Response: We agree with the commenter who analogized sources in this situation, where they lose low-risk eligibility due to changing factors that are outside their control, to the way we generally address area sources that undergo changes that subject them to MACT for the first time. In both cases, a source that was previously not part of the MACT-regulated category has become subject to MACT, and it is necessary for us to anticipate a feasible period for bringing the source into MACT compliance. Unlike the situation of a low-risk source that undergoes a change that it should know may have an effect on its ability to maintain low-risk status (for which we are retaining the 2004 final rule requirement that the source comply with MACT immediately upon the change), a source whose low-risk status is affected by changes outside of its control will need some time to comply with MACT, especially where the installation of controls is necessary. We appreciate the commenter's agreement that our approach for ensuring that sources that lose their low-risk status timely comply with PCWP MACT requirements is reasonable. However, we disagree with the commenter's suggestion that the alternative to our approach is to have to relist under CAA section 112(c)(1) either the ex-low-risk source or the entire low-risk subcategory before subjecting that source to MACT. This is because there are only two possible subcategories a PCWP source can belong to: Either the MACT-regulated category, or the delisted low-risk subcategory. If a low-risk source loses its eligibility for membership in the low-risk subcategory, it necessarily follows that it then rejoins the MACT-regulated category, since there is no other PCWP category or subcategory for the source to join. Our approach is intended to make this necessary transition occur efficiently, effectively and fairly.

Since it is possible that the types of changes in this situation, such as a change to a more stringent RfC, may have an impact on a large number of previously low-risk sources, it is fair and reasonable to establish a common compliance deadline for all such similarly affected sources. In adopting the 2004 final rule, based on the information before us, we determined that sources covered by the PCWP NESHAP would need the full statutory 3 years to comply due to the expected schedule for ordering and installing controls from the available vendors. Low-risk sources that, due to changes outside their control, suddenly find themselves in the PCWP MACT category, will essentially be placed in the same position as were PCWP MACT sources upon promulgation of the rule—that is, an event has occurred that has made them subject to the rule even though they took no action on their part to trigger the event. Likewise, those sources may very well then find themselves at the stage of the process that PCWP MACT sources faced in 2004, and have to begin finding a control vendor who can install controls on time. Based on the information we have today, we continue to believe that the full 3 years is needed for sources in this situation who become subject to MACT, and we see no reason to treat the two situations differently as the same process and obstacles will be faced by these sources. On the other hand, for sources that initiate their own changes that would affect their low-risk status,

we continue to believe that MACT planning must be built into those sources' considerations, and therefore maintain the requirement that they comply with MACT immediately upon undergoing changes.

K. Low-Risk Demonstration Submittal Dates for New Sources

Comment: Two commenters suggested that new sources submit a preliminary LRD before startup. One commenter requested that EPA clarify the procedures for new sources to be included in the low-risk category by allowing the demonstration to be submitted during construction using conservative factors, as provided for in § 5(h) of appendix B to subpart DDDD, with EPA approval prior to startup. Subsequent testing could be conducted within 180 days to demonstrate that actual emissions are below the rates used in the demonstration. The other commenter stated that new PCWP facilities that plan to join the low-risk subcategory should be required to submit a preliminary eligibility demonstration with their pre-construction permit application. That way, State and local agencies will know at the time the construction permit application is submitted that the facility plans to submit a LRD and may be exempted from the MACT requirements at a later date. The commenter noted that subpart DDDDD (the Boilers/Process Heaters rule) requires a preliminary eligibility demonstration using emissions estimates, and it also requires the facility to verify the data with source testing within 180 days of startup. The commenter also noted that since there are no provisions in the CAA for extending the compliance date for new sources, new sources that are denied the risk-based exemption must comply at startup and State and local agencies must include all the requirements of the PCWP MACT in their permits.

In addition, one commenter stated that it is not possible for new or reconstructed sources to conduct their emissions testing upon initial startup because the rule requires the facility to be run at maximum capacity during testing and new facilities take at least 3 months to reach maximum capacity. Therefore, submitting a LRD 180 days after startup is not reasonable for new or reconstructed sources. The commenter requested that new and reconstructed sources be required to conduct stack testing within 180 days of initial startup and to submit their LRD within 240 days of initial startup.

Response: Unlike existing sources, new sources cannot conduct the required emissions testing prior to startup. Therefore, we agree that requiring new sources to submit a pre-startup LRD would be useful. It allows new sources to determine whether or not they are likely to be low-risk facilities and helps permitting authorities by notifying them which sources plan to demonstrate eligibility for the low-risk subcategory. Therefore, today's final action requires new sources to submit a pre-startup LRD at least 9 months prior to startup. The pre-startup LRD must be based on the information (e.g., equipment types, estimated emission rates, etc.) that will likely be used to obtain the sources' title V permit and must incorporate the maximum emissions that will likely be allowed under the title V permit. New sources will also be required to submit a verification LRD, based on emissions testing, where required.

Today's action provides three options for new sources who want to become part of the low-risk subcategory. When new sources submit their pre-startup LRD, they must indicate whether they intend to join the low-risk subcategory based on their pre-startup LRD (option 1) or based on their verification LRD (option 2). The third option is for new sources to comply with the requirements of MACT in subpart DDDD at startup and join the low-risk subcategory after startup using the procedures for sources already in compliance with MACT provided in the amended section 10(b) of appendix B to subpart DDDD.

The first option allows new sources to join the low-risk subcategory based on their pre-start-up LRD (i.e., upon startup). The EPA will review and approve (if approvable) the source's pre-startup LRD prior to startup. The source must operate, and certify they are operating, consistently with their pre-startup LRD. After startup, the source must submit a verification LRD, based on the emissions determination requirements in table 2A to appendix B to subpart DDDD. The EPA will review the verification LRD. If the verification LRD does not support the pre-startup LRD, the source must comply with MACT for new sources immediately. This is not to say that the verification LRD must match the pre-startup LRD exactly. In fact, we would expect that the pre-startup LRD would be more conservative than the verification LRD. So while the two LRD may differ, the verification LRD must demonstrate that the facility can operate consistently as low risk and that the facility operated as low risk based on the pre-startup LRD.

The second option is for new sources join the low-risk subcategory based on their verification LRD (i.e., to operate consistently with their pre-startup LRD at startup and join the low-risk subcategory once EPA reviews and approves (if approvable) their verification LRD). The new source would submit a pre-startup LRD and EPA would review it prior to startup of the facility. The facility would then operate and certify operating consistently with their pre-startup LRD. The source becomes part of the low-risk subcategory when EPA approves (if approvable) their verification LRD. As required for sources choosing option 1, if the verification LRD does not support the pre-startup LRD, the source must comply with MACT for new sources immediately. Also, as for sources using option 1, we do not expect the pre-startup LRD to match the verification LRD exactly, but do require that the source operate as low risk from startup or comply with MACT.

New sources must submit an application for a significant title V permit modification to incorporate the low-risk parameters from the verification LRD into their title V permit within a year of their startup date.

New sources choosing either option 1 or option 2 face enforcement liability if the source's verification LRD source does not confirm their low-risk status. If the verification LRD does not demonstrate that the source is low risk, the source is out of compliance with MACT from startup. While any source in the low-risk subcategory is out of compliance with MACT if EPA is sued and judged to have wrongly approved the source's LRD, pre-startup LRD might be subject to more scrutiny by the public and more likely to face a challenge if the LRD was insufficient. Sources choosing option 2 could also be challenged for operating in violation of the MACT standard before EPA determines they are part of the low-risk subcategory.

L. Legal Issues With Title V Implementation Mechanism

Comment: One commenter believes the title V implementation approach for the CAA section 112(c)(9) low-risk exemptions adopted in the final rule: (1) Attempts to create specific and federally enforceable legal requirements, without notice-and-comment rulemaking, through an informal exemption "letter approval" process conducted between a source and EPA; (2) imposes those legal requirements upon States and the public by employing a State-issued title V permit to establish applicable requirements; (3) does so without providing States or the public with any meaningful, legal opportunity to

comment on or challenge those requirements; and (4) does so all in contravention of existing EPA legal interpretations and policy that prohibit use of title V permits for such purposes. The commenter stated that EPA does not identify another instance in which a statutorily-required determination by the Administrator achieves its culmination and embodiment in a title V permit, nor does EPA identify statutory authority in CAA section 112 or title V indicating Congressional intent to allow such a result. The commenter believes that this result transgresses title V's function to incorporate pre-existing federally enforceable applicable requirements into operating permits issued by approved permitting authorities, following applicability determinations by the approved permitting authority. The commenter stated that unlike the Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permitting programs in which the rules contain criteria that are subsequently rendered applicable requirements in federally enforceable preconstruction permits, the risk exemption approval process gives definition and content to the qualifying conditions in an unenforceable, legally meaningless letter. The commenter noted that the State authorities do not render the low-risk approvals, have no ownership over them, and have no reason to stand behind them. The commenter stated that the public does not have the public comment, challenge, and petition opportunities afforded under title V for ordinary State applicability determinations.

Finally, the commenter noted that governing EPA statutory and regulatory interpretations prohibit the title V implementation approach employed in the final rule. If the risk determinations, parameters, and conditions exist exclusively in a title V permit and the title V permit expires, the parameters and conditions of the risk exemption would no longer exist as a legal matter. The existence of a legal document independent of title V preserves the ability of permitting authorities and EPA to reopen title V permits that failed to include all relevant permit terms or to make corrections upon permit renewal. Also, title V regulations allow a permitting authority to include a "permit shield" stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance.

Three other commenters believe that title V permits represent an appropriate implementation mechanism for ensuring that low-risk sources never exceed the applicable risk thresholds. One of the commenters agrees that a significant title V permit modification is suitable for incorporating low-risk parameters. The commenter stated that the reason that a significant permit modification would be needed to incorporate the low-risk subcategory demonstration is found in 40 CFR 70.7(e)(2)(i)(A)(3), a minor permit modification "gatekeeper," which prohibits use of minor modification procedures where a provision would require (or change) a case-by-case determination during the title V permit process. The commenter believes title V is not creating the applicable requirements, rather relevant low-risk parameters are requirements grounded in appendix B to subpart DDDD.

Another commenter stated that the title V process envisioned by the final rule is comparable to the synthetic minor permit process which has been in use for years. The commenter believes that CAA section 112(c)(9) does not specify any mechanism whatsoever for ensuring that sources in delisted categories remain below applicable risk thresholds. Once they are delisted, emissions (and risks) can increase without limitation unless and until EPA takes affirmative action to relist the source category or subcategory. Here, however, EPA is mandating that any source seeking inclusion in the low-risk subcategory agree to enforceable permit conditions to ensure that the source continues to be low-risk. The commenter argued that the procedure envisioned here is virtually identical to the "applicability determination" process under title IV of the CAA. The commenter believes the petitioner's argument that the approach transgresses title V's function is based on a misperception of how the risk-based approach would be implemented. The commenter stated that EPA's approval of the LRD will be conditioned on retention of relevant source parameters that are necessary to ensure that the source remains low-risk. These parameters become federally enforceable requirements that properly are included in the title V permit.

Response: The EPA agrees that the commenter who objected to the use of title V permits as an implementation tool in the low-risk process reflects a fundamental misunderstanding of what is required by the CAA in the delisting context with respect to sources who become no longer subject to section 112 emission standards. The EPA also agrees that the objecting commenter fails to appreciate the added confidence in the process afforded by the use of title V permitting procedures. Nothing in section 112(c)(9) of the CAA directs EPA to impose any further substantive or procedural requirements on sources in source categories or subcategories that are delisted. Under the CAA, such sources may permissibly be released from all obligations under section 112(d) of the CAA with respect to control of HAP emissions. Moreover, in determining whether an individual source is a member of one source category versus another subcategory, even while one is listed and subject to section 112(d) standards and the other is not, nothing in the CAA requires EPA to subject that decision to notice and comment rulemaking or to federally establish directly enforceable requirements. Given that, EPA could have theoretically adopted an approach that relies upon source and EPA application of the appendix B to subpart DDDD criteria for determining eligibility for the low-risk subcategory that, upon EPA approval of a source's LRD, subsequently releases the source from any further obligations related to the PCWP NESHAP. However, in order to better ensure that low-risk PCWP sources remain low risk following the factual findings necessary to approve their LRD, EPA chose to further require (and sources have accepted) significant continuing conditions, the failure to meet which will result in low-risk sources having to return to the PCWP MACT category. The best mechanism for imposing these conditions is the title V permit process, which can be used to establish as binding enforceable requirements terms and conditions that do not otherwise exist as CAA applicable requirements. The EPA has long held that the title V process can be used to establish enforceable limitations on the potential to emit air pollution, for example, in Indian country where there may otherwise be an absence of regulatory controls. Moreover, EPA's title V regulations have long provided for what types of permit modifications must occur to specifically accommodate changes that "establish or change a permit term or condition for which there is no underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject." See 40 CFR 70.7(e)(2)(i)(A)(4). In the low-risk PCWP context, we believe that this authority is directly applicable to this situation where we are conditioning a source's continuing low-risk eligibility upon its assumption of enforceable terms and conditions reflecting its low-risk parameters, taken in order to avoid the

PCWP MACT requirements that would otherwise apply. As a policy matter, we believe this provides far better assurance that low-risk sources will remain so than would merely releasing them from all further obligations with respect to the NESHAP, and in light of the language of our title V regulations, we cannot accept the objecting commenter's view that imposing these conditions is not legally permissible.

Turning to the objecting commenter's specific complaints, we therefore disagree that the process attempts to create specific and federally enforceable requirements without notice and comment rulemaking through an informal approval process between the source and EPA. The process that occurs between the source and EPA is limited to EPA's review and approval or disapproval of the source's LRD submitted in support of its applicability determination request, and EPA's forwarding of approved low-risk parameters to the State permitting authority. The State's subsequent conversion of those parameters into enforceable terms and conditions is very much a notice and comment process.

Regarding the objection that the legal requirements for sources to maintain low-risk eligibility imposes those legal requirements on States and the public, it is, of course, under the principles of federalism embodied in the CAA, always within the States' legal rights to require a more stringent emission limitation for any PCWP source than is otherwise required by our rule, including requiring any low-risk PCWP source to meet MACT. See CAA section 116. In terms of burdening the public, presumably in having to participate in the title V permitting process (should the member of the public so choose), it is not apparent what alternative the objecting commenter would prefer. We assume that the commenter would not have us, for example, revise our title V rules to allow these changes to occur without the opportunity for public comment. We disagree that the process provides no meaningful opportunity to comment on low-risk parameters or their subsequent incorporation as terms and conditions in permits. First, EPA's approval of a source's LRD is a judicially reviewable final action under CAA section 307(b), as is any applicability determination under CAA section 112. Second, to provide better assurance that sources remain low risk than is absolutely required under CAA section 112(c)(9), we are requiring that the notice and comment permit issuance process be used to implement this need for assurance.

The EPA wishes to clarify the characterization of the low-risk parameters that result from the LRD approval process, especially in comparison to our recently finalized reconsideration and amendments of the Boilers/Process Heaters rule. In the Boilers/Process Heaters rule, in response to comments, we explained that the more appropriate title V regulation references of authority for incorporating the section 112(d)(4) compliance option are § 70.7(e)(2)(i)(A)(3), regarding establishment or changes of case-by-case determinations of an emission limitation or other standard, and §§ 70.7(f) and (g), regarding permit reopenings to incorporate new applicable requirements. This is because, unlike in the PCWP context, in the Boilers/Process Heaters rule, a source's choice of the risk-based compliance option is an alternative standard and an "applicable requirement" in the same manner as the MACT-based emission limitations in the Boilers/Process Heaters rule. However, in the PCWP context, prior to a source's obtaining a title V permit that reflects its EPA-approved low-risk parameters, the only enforceable applicable requirements relating to the PCWP NESHAP are the MACT standards themselves, as there is no alternative health-based compliance option within the standard itself. Rather, by the nature of the section 112(c)(9) delisting and exemption, a low-risk PCWP source assumes enforceable terms and conditions only through the title V permit process, taken as a condition for their continuing eligibility in the subcategory and avoidance of the PCWP MACT to which they would otherwise be subject. Therefore, for the PCWP low-risk subcategory, we continue to regard 40 CFR 70.7(e)(2)(i)(A)(4) as the relevant "gatekeeper" requiring changes to title V permits incorporating low-risk parameters to be made through the significant permit revision process. Moreover, since the low-risk parameters sent from EPA to State permitting authorities are not directly enforceable "applicable requirements," unlike in the Boilers/Process Heaters rule, we do not regard the permit reopening provisions of 40 CFR 70.7(f) and (g) as being relevant. While, of course, under CAA section 112(c)(9) EPA could have chosen the statutorily permitted option of requiring no creation of enforceable terms and conditions at all following approval of a source's LRD, we have chosen to require the extra step of a process that is closer to that for other programs that apply to source efforts to limit the potential to emit. While the objecting commenter is dissatisfied that the process is not identical to those for Prevention of Significant Deterioration (PSD) or New Source Review (NSR), which both involve creation of enforceable requirements in preconstruction permits before they are incorporated into title V permits, we are frankly surprised that the commenter does not appear to appreciate the extra assurance we have obtained in requiring approved low-risk sources, notwithstanding their exemption from section 112(d) standards, to assume enforceable terms and conditions even though such is not required under section 112(c)(9).

Regarding the objecting commenter's points about the potential expiration of permits and the function of the title V "permit shield," we do not regard these arguments as being valid reasons to choose to abandon title V as an implementation tool for the low risk approach, particularly since the logical alternative and clearest way to avoid the problems raised by the commenter is to require nothing further of low-risk PCWP sources once EPA approves their LRD and determines they are eligible for the delisted low-risk subcategory. In any case, once the source is in the subcategory, the section 112(d) standard no longer applies to the source and therefore a permit's expiration or the existence of its permit shield poses no potential conflict with the PCWP NESHAP. Instead, in order to ensure that it validly remains in the delisted low-risk subcategory, it is imperative on the source to ensure that it maintains a valid title V permit reflecting its low-risk parameters; otherwise it will fail to maintain low-risk eligibility and will have to comply with MACT.

M. Timing of Title V Permit Revisions

Comment: One commenter strongly supported EPA's proposal to require only the submittal of a facility's low-risk parameters to its permitting authority for incorporation into its title V permit (as opposed to having the title V permit revisions actually incorporated into the permit). The commenter stated that sources do not have any control over the amount of time that it takes for State permitting authorities to review and act upon requests for permit modifications. In addition, the commenter noted that this approach is consistent with the permit application shield provision of part 70 and the Boilers/Process Heaters rule's health-based compliance alternatives. The commenter also noted that the source is entirely responsible for ensuring that it remains in compliance with the relevant operating

parameters that are to be included in the title V permit, even before that permit is issued.

Two commenters disagreed with the proposal to allow facilities to qualify for the low-risk subcategory merely based upon submission of a title V permit revision application. Both commenters stated that EPA's approach violates title V, the part 70/71 regulations, and corresponding State laws. The commenters noted that many existing facilities subject to the PCWP MACT already will have permit terms and conditions subjecting the entire facility to the standard as a result of earlier permit revisions or renewals. The commenters stated that until the title V permits are revised to incorporate enforceable conditions into permits, sources must remain subject to the MACT standard. The commenters believe allowing a facility to become part of the low-risk subcategory before the State or local permitting authority approves the necessary permit revision undermines the role of the permitting authorities. The commenters also argued that the proposal makes the significant permit modification process and public participation meaningless.

Response: The EPA believes that the objecting commenters are confusing the EPA's role in reviewing LRD and determining source eligibility to join the low-risk subcategory with the State permitting authority's role in making sure permits currently reflect applicable requirements. We are providing greater assurance than is strictly required by CAA section 112(c)(9) that sources will remain low risk following EPA LRD approval. We are requiring that sources timely submit permit revision applications that reflect their low-risk parameters for future incorporation as enforceable terms and conditions. We believe this requirement will help ensure that such sources continue to operate under the conditions that proved them to be low risk. In cases where a PCWP source's permit already reflects the PCWP MACT requirements and the MACT compliance deadline has passed, of course, timely amendment of the permit itself will be needed in order to allow the source to alternatively operate according to its low-risk parameters. Until the permit is actually revised, the source will have to comply with its then-applicable terms and conditions, even if they reflect MACT and the source's LRD has been approved by EPA. But we do not regard this practical problem as being sufficiently severe to merit abandoning the additional assurance requirement entirely, or even being one that sources and title V permitting authorities may commonly face when permit terms become obsolete in the face of new applicable requirements.

Comment: Two commenters argued that State and local permitting authorities have the right to thoroughly review and disapprove LRD if they are incomplete or incorrect. However, the final rule does not clearly specify that State and local permitting authorities have this right, and it does not specify that a source must comply with the emission limits and requirements of the NESHAP if the demonstration is not approved by the State and local authority. The commenters noted that without reviewing the LRD, a State or local agency would be unable to defend granting an exemption to a facility during a public review process. The commenters noted that many State and local agencies will find it necessary to review the risk-based exemptions, and the process could place a very intensive resource demand on State and local air agencies that must verify extensive emissions and stack information and review the risk assessments to ensure that they have been done properly. The review of these risk assessments would require expertise in risk assessment methodology that State and local agencies may not possess.

Response: We acknowledge that review of the eligibility demonstrations for the delisted low-risk subcategory would require resources for verification of information and may require expertise in risk assessment methodology that is not yet available in some States. To alleviate these concerns, we will review and approve/disapprove the low-risk subcategory eligibility demonstrations submitted by PCWP facilities. The burden to States of assuring that affected sources continue to be low-risk will be no more than the burden associated with ongoing title V enforcement because the parameters that define a source as low-risk will be reflected in terms and conditions to be incorporated into the title V permit.

Notwithstanding an EPA finding that a source is eligible for inclusion in the low-risk subcategory, States are free, consistent with CAA section 116, to impose more stringent limitations on a low-risk source, including the requirements of this PCWP NESHAP that would otherwise apply if the source had not been found to be low risk. These requirements can be imposed on a State-devised schedule, and might even include provisions for independent State review and approval of LRD. The State might determine whether technical problems suggest that the source may not in fact be low risk, notwithstanding EPA's approval of the source's LRD. However, under the final rule, unless a State chooses to involve itself in the decision of whether a source is low risk, EPA approval of an LRD and the source's submission of a permit revision application are sufficient for the source to join the low-risk subcategory. In order to avoid an over-burdening of State resources, we have maintained the approach that relies upon EPA review and approval of LRD, and we depend upon States' inherent authority to require more of themselves and of sources, under CAA section 116, for those States that choose to do so.

Comment: One commenter stated that there is a possibility that in some cases, EPA's LRD approval action will be too late for a facility to submit its title V application before the MACT compliance deadline. The commenter requested that a facility be allowed to submit its title V application incorporating the emission rate and process limitations stated in the LRD concurrent with or soon after the submittal of the LRD to EPA.

Response: We disagree that the approach suggested by the commenter is appropriate. In the case of any LRD, we expect there will be the need to provide additional information or to correct aspects in initial submissions, and we do not think it is reasonable for permit applications to be based on these unreviewed, uncorrected LRD, especially since submission of a permit application starts a clock under State title V programs with a deadline for the permitting authority's action. While the problem identified by the commenter may prove to be a real one in specific cases, we have generally determined that the best way to ensure that low-risk sources remain low risk and that terms and conditions accurately reflect their status is to require that permit revision applications reflect EPA-approved LRD. Thus, it is important that sources submit their LRD sufficiently early to EPA so that "last-minute" review does not jeopardize the source's chances of becoming a low-risk source before the MACT compliance deadline, if that is the source's goal. Of course, in light of our other changes that extend the MACT compliance deadline and allow sources to become low risk after the MACT compliance deadline passes, we consider this problem to not be as severe as suggested by the commenter.

N. Permit Conditions

Comment: Two commenters requested that the number of parameters to be included in title V permits for low-risk sources be minimized to allow operational flexibility. One commenter stated that section 11(b) of appendix B

to subpart DDDD should ensure that the low-risk requirements continue to be met, but not impose cumbersome monitoring, recordkeeping, and reporting requirements with little environmental benefit. In particular, the commenter is concerned that the list of dispersion modeling parameters (such as stack height, stack temperature, and stack flow) can change without changing the overall conclusion of a risk analysis. The commenter stated that if parameters are too specific, every change to one of those parameters would require a revision to the site-specific risk assessment and a title V permit action before the source has regulatory permission to make the change. The commenter recommended that only conditions that refer to the health effects criteria established in appendix B to subpart DDDD be included.

Another commenter requested that EPA clarify that permits primarily should specify an emission limit and should restrict production rates only to the extent that they impact the plant's emission limit. The commenter noted that facilities will attempt to achieve highest production rates in combination with worst-case operating parameters during testing, but in practice, it can be difficult to reach worst-case conditions. The commenter stated that EPA should clarify that facilities can extrapolate the production rates and operating conditions measured during performance tests to "true" worst-case emissions scenarios for purposes of their operating permit limits.

Response: Our intent is that parameters incorporated as limits into a source's title V permit will be those parameters that determine the source's risk level. This will ensure that sources in the low-risk subcategory continue to operate in a manner that is consistent with their LRD. The results of a risk assessment for a particular source depend on many factors, including the emission rates and dispersion parameters associated with each process unit at the facility. Process unit emission rates are a function of production rate and the effectiveness of any emissions controls used. Process unit emission rates can also be impacted by other process-related parameters (e.g., process unit operating temperature, dryer firing method, fuel type, wood type, resin HAP content, etc.), but the effect of these parameters on emission rate is not as well defined as that of production rate and control system effectiveness. Therefore, we disagree with the notion of simply extrapolating emission rates based on process-related parameters other than production rate. However, we agree that emission rates can be reported in terms of production (i.e., as emission factors) and that production rate can be used to extrapolate to worst-case emission rates (provided that all other worst-case conditions remain the same as during the emissions test). The language in appendix B to subpart DDDD does not prevent such scaling of emission rates to account for increased production.

We maintain that production rate and other indicators of emission rate should be incorporated as limits into title V permits. This is because the requirement to memorialize the low-risk parameters as enforceable title V permit terms and conditions is a condition, under our rule, for eligibility in the low-risk PCWP subcategory established under CAA section 112(c)(1) and delisted under section 112(c)(9). Thus, while the effect of the determination that a source is low risk is to exempt it from other section 112 requirements, the requirement to assume title V permit conditions to maintain low-risk status is itself based on our implementation of section 112(c), and is a necessary condition a source must satisfy as an eligibility criterion for joining the low-risk subcategory. Sources that fail to meet this condition cannot maintain low-risk eligibility.

Appendix B to subpart DDDD does not require continuous measurement of process unit emission rates. Therefore, indicators of process unit emission rate must be documented on an ongoing basis to provide assurance that the actual emission rates used to establish the source as a member of the low-risk subcategory have not changed. Indicators of emission rate include process unit throughput, control device operating parameters (monitored as required in section 5(e) of appendix B) if a control device is used, and other pertinent process unit operational parameters depending on the type of process unit. These indicators of emission rate are appropriate title V permit conditions because, during an inspection, permitting authorities can readily monitor indicators of emission rate but cannot easily measure actual source emissions. Therefore, prior to increasing production rate above the level in a source's permit (or deviating from other permit conditions in a way that could result in HAP emissions above the levels used to establish a source as a member of the low-risk subcategory), that source must revisit its LRD and demonstrate that it continues to qualify for the low-risk subcategory at the higher production rate.

In addition, because our goal is to ensure that risks posed by a facility are maintained at a level at or below those in the facility's LRD, it is also necessary to include certain dispersion parameters as title V permit conditions. Stack height is an important dispersion parameter for the risk demonstration and should be included as a permit condition. If stack height is already incorporated into the title V permit independent of the LRD, then this parameter should be linked explicitly to the LRD so that stacks cannot be modified without revisiting the demonstration. We have also included stack height in section 11(b) of appendix B to ensure it is included as a permit condition for those facilities that do not already have stack height incorporated into their title V permits. We agree that it is not necessary to include stack temperature and exhaust flow rate as title V permit conditions because these parameters are not likely to change considerably in a way that would increase risks without an associated change in other parameters for which title V permit limits will be established (i.e., process throughput, control device operating conditions if a control device is used, or other pertinent process conditions).

We believe appendix B to subpart DDDD already allows operational flexibility while ensuring that sources operate in a manner that is consistent with their LRD. For example, appendix B to subpart DDDD does not include any process unit parameter monitoring, reporting, or recordkeeping requirements. Thus, monitoring, recordkeeping, and reporting requirements must be developed by a permitting authority and then incorporated into a facility's title V permit in order to ensure a facility's compliance with its LRD. Additionally, the requirement that the LRD be based on worst-case operating conditions provides facilities with operational flexibility because if a source meets our low-risk requirements while operating under worst-case conditions, then the source should also meet those criteria when operating under any other conditions. Finally, section 5(h) of appendix B clarifies that facilities can use emission rates in their LRD that are more conservative than worst-case conditions in order to further increase their operational flexibility.

O. Costs and Benefits of Establishing a Low-Risk Subcategory

Comment: One commenter stated that EPA should revise the cost-benefit analysis to accurately reflect the lack of public health protection resulting from the low-risk subcategory. Another commenter charged that EPA's own data

reveal that the risk-based exemptions in the final PCWP rule have a substantially higher net social cost than a lawful MACT standard without the exemptions, and also result in significantly higher emissions of HAP, volatile organic compounds (VOC) and PM than a rule without exemptions. The commenter noted that the preamble to the rule admitted that the exemptions could increase HAP emissions by 4,400 tons per year (tpy), when compared to requiring all plants to meet pollution control requirements. The preamble also acknowledged that exposure to the HAP released by the PCWP industry have been linked to extensive noncancer health effects but the Regulatory Impact Analysis (RIA) for the final rule did not assign an economic value to these very serious health impacts.

The commenter stated that the Office of Management and Budget (OMB) has recognized and published estimates of the cost to the public health associated with exposure to each ton of PM or VOC, but EPA did not attempt to quantify the public health costs associated with higher increases of these pollutants. The commenter stated that even using the lowest end of the monetized benefits published by OMB, the value of reducing VOC and PM emissions from all PCWP plants exceeds the savings to industry under the exemptions in the final rule.

The commenter noted that EPA estimated that requiring all PCWP plants to reduce HAP would result in incidental increases in nitrogen oxide (NO_X) emissions, but EPA made no attempt to compare this potential increase to the additional emissions of HAP, VOC, and PM that would result from the exemptions. The available evidence suggests that the NO_X increases are relatively trivial, especially when compared to the additional pollution authorized by the rule's exemptions. Nitrogen oxide is a pollutant of concern because it is a precursor in the formation of ground-level ozone. But the exemptions that EPA has adopted could increase emissions of VOC (another critical ozone precursor) by as much as an estimated 13,000 tpy. Arbitrarily, neither the RIA nor the preamble explains why increasing VOC by 13,000 tpy to avoid 1,200 tpy of NO_X would yield a net benefit in reducing ozone formation.

Similarly, the Final RIA notes that NO_X can form fine PM, but the exemptions in the rule actually could result in an increase in PM of 6,100 tpy. Based on their calculations using OMB cost-benefit values, the commenter contended that the reduction in NO_X emissions does reduce public health costs, but the increase in VOC and PM emissions results in an increase in public health costs anywhere from 44 to 414 times higher than the public health savings from the NO_X reductions from the exemptions.

In addition, the commenter cited internal EPA documents and stated that the decision to include risk-based exemptions appears to have been driven by the desire to lower the cost of the rule, which contradicts the ruling in *National Lime Assn* v. *EPA*, 233 F.3d 625, 640 (D.C. Cir. 2000) that cost may only be taken into account when considering beyond-the-floor emissions limitations.

Other commenters disagreed and believe there is little sense in requiring a facility to undertake costly control expenditures when it does not pose a significant risk to human health or the environment. One commenter disagreed that the increased HAP emissions resulting from the low-risk subcategory will impose significant risks on the general public because, by definition, a source cannot qualify for the low-risk subcategory unless it does not impose any meaningful risks on the general public.

The commenter also disagreed with the petitioners' claim that EPA should have quantified the potential health benefits of the collateral VOC and PM reductions that would have resulted if low-risk sources were required to install controls. The commenter argued that while there may be health benefits to reducing PM or VOC, to the extent that reductions in these criteria air pollutants are needed, the proper vehicle is title I of the CAA, not through a title III HAP regulation. The commenter believes it is improper to justify HAP regulation under title III solely by the fact that there may be incidental benefits from criteria pollutant reductions.

The commenter stated that the costs of the rule outweighed the benefits for low-risk sources. According to the commenter, the incinerator controls that would be necessary in most cases to meet the rule would cause increased energy demand and a sharp increase in the annual emissions of some criteria pollutants from facilities. The commenter disagreed with the petitioners' claim that increased NO_X emissions are outweighed by the reductions in VOC. The commenter stated that most PCWP facilities are in NO_X-limited areas, such that any increase in NO_X has the potential to increase ozone formation, whereas emissions of VOC do not.

The commenter also disagreed with the petitioners' argument that EPA's evaluation of costs and benefits in analyzing whether to implement the low-risk subcategory "runs afoul of *National Lime Ass'n* v. *EPA*, 233 F.3d 625, 640 (D.C. Cir. 2000)," which held that costs may be considered only when setting "above the floor standards." The commenter noted that the Court's decision in that case was made solely with reference to CAA section 112(d), and EPA here has created a subcategory pursuant to 112(c)(1) and delisted it pursuant to CAA section 112(c)(9).

Response: In the RIA for the final rule, we quantified the social costs of the final standard but did not quantify the change in social costs that would result from application of the low-risk subcategory. Based on the results of economic impact analyses for other MACT standards in general, it is likely that the change in social costs (in this case, without an estimate of benefits) is approximated by the $66 million reduction in compliance costs that is estimated in the supporting information for the final rule and mentioned in Appendix A of the RIA. All assumptions underlying emissions estimates related to the low-risk subcategory are found in the supporting information for the final rule.

We explain in Chapter 6 of the RIA that we did not provide a monetized value for the benefits from reduced health effects from HAP reductions associated with the final rule due to a lack of sufficient scientific data. The state of science in this area is still in that position today. Use of a benefit transfer approach as suggested by commenters is not appropriate in this case. We are continuing our analytical work to address the uncertainty in a benefits transfer approach. We did not provide estimates of the monetized benefits associated with the VOC emission reductions since we did not have sufficient air quality modeling runs available to allow us to estimate these benefits and because we did not have sufficient scientific data to place a monetized benefit value on these reductions. The OMB has prepared benefits estimates for VOC emission reductions in its annual Thompson Reports (reports on benefits and costs of Federal Agency regulations), but these estimates represent broad, general estimates of the monetized value for these reductions and not benefits of VOC emission reductions from sources affected by this final rule. This same point regarding the generalized foundation upon which the Thompson Report estimates rest may be made for our not providing monetized benefits for

the fine PM emission reductions. For the same reasons we did not estimate monetized benefits for the rule, we did not estimate monetized disbenefits associated with the low-risk subcategory (e.g., additional NO_x emissions associated with RTO operations): A lack of sufficient scientific data to assign a monetized benefits value for HAP reductions, a lack of sufficient air quality modeling runs and sufficient scientific data to assign a monetized benefits value for VOC reductions, and the generalized foundation upon which the Thompson Report estimates are based for PM reductions.

It should be noted that we could only consider HAP emissions in setting the final standards as per the requirements of CAA section 112. Quantification of benefits and disbenefits are requested in OMB's RIA guidelines but are not legally required information for setting MACT standards.

We disagree with the assertion that our consideration of costs, in the context of establishing and delisting the low-risk PCWP subcategory, violates the DC Circuit's decision in *National Lime*. In setting the MACT floors for the PCWP NESHAP, cost was not a factor, and costs of compliance may not be used under the PCWP NESHAP as a basis for avoiding MACT, if it otherwise applies. Sources will be able to avoid MACT only if they demonstrate that they are in fact low risk. There is nothing improper about our general desire to reduce costs of CAA compliance, where appropriate and where imposing those costs is not necessary. In fact, the very existence of CAA section 112(c)(9) reflects the basic congressional goal of avoiding imposing regulatory burden where that burden is not needed to provide an ample margin of safety to protect public health.

III. Responses to Comments on the Proposed Amendments and Clarifications for Subpart DDDD

A. Definitions

1. Dryer Definitions

Comment: One commenter stated that the definition of "tube dryer" should be amended to differentiate tube dryers from pneumatic conveyors that use conditioned air. The commenter provided a suggested revised definition of "tube dryer."

Response: We did not intend to include pneumatic fiber transport systems under subpart DDDD. Pneumatic fiber transport systems are distinguished from primary and secondary tube dryers because heat is added to dryers specifically to remove moisture while the purpose of the higher temperatures used in fiber transport systems is to prevent cooling. Therefore, we have amended the definition of "tube dryer" as requested to ensure that pneumatic fiber transport systems are not classified as tube dryers.

Comment: One commenter requested that EPA modify all of the dryer definitions in subpart DDDD and appendix B to subpart DDDD by replacing "at elevated temperature" with "by applying heat."

Response: We agree with the commenter's suggested changes to the dryer definitions to clarify that heat is deliberately applied during drying processes. The final rule has been amended as requested by the commenter.

2. Affected Source and Direct-Fired Process Unit

Comment: One commenter requested that EPA consider modifications to the proposed amendments to the definitions of "combustion unit" and "affected source." First, the definition of "combustion unit" should be modified (1) to include combustion units that direct-fire PCWP process units but are not used to combust HAP emissions, and (2) for consistency with broad references in the proposed amendments that define the source category. Alternatively, the commenter suggested a revision to the proposed amendment to the definition of "affected source."

Second, the use of the word "directly" in the definition of "direct-fired process unit" could exclude process heaters that indirectly heat a heat transfer media before the combustion exhaust is routed to the drying operation, where the remaining heat energy is used in direct-fire contact with the process material. The commenter stated that deleting the word "directly" from the definition of "direct-fired process unit" would not change the meaning of the definition because it would still include the phrase "* * * such that the process material is contacted by the combustion exhaust."

Response: After reviewing how the term "combustion unit" is used throughout subpart DDDD, we agree with the commenter's suggested amendment to the definition to "combustion unit" to clarify that combustion units can be used to direct-fire process units or to control process exhaust. The amended definition of "affected source" (which we are amending as proposed with no further revisions) includes only those combustion unit exhaust streams that direct-fire process units, and it should not be read to mean that all combustion units at the plant site are part of the PCWP affected source (and thereby exempt from the Boiler/Process Heaters rule). We also agree with the commenter that an exhaust stream that supplies indirect heat for other uses would be part of the PCWP affected source if it is eventually routed through the direct-fired dryers such that it too contacts the wood material and becomes a mixture of combustion gases and process gases. We have amended the definition of "direct-fired process unit" accordingly as suggested by the commenter. However, if the indirect heat exhaust stream does not routinely pass through the direct-fired dryers, then this exhaust stream would be subject to the final Boilers/Process Heaters rule.

3. Engineered Wood Products

Comment: One commenter requested several edits to the definition of "engineered wood product." First, the commenter stated that the type of resin or glue and the designed use of the product should not be specified for consistency with the definitions for the other wood products. Second, the list of products should include parallel strand lumber. Although implicit in the rule since the definition of "laminated veneer lumber" includes parallel strand lumber, parallel strand lumber is the more commonly used term.

Response: We agree with the commenter that, for consistency with other definitions in subpart DDDD, the definition of "engineered wood products" need not mention specific resin types or the designed use of the products. We have also removed the reference to glue from the commenter's suggested definition because "resin" is defined elsewhere in subpart DDDD, and the definition of "resin" includes "glue." We have also added the term "parallel strand lumber" to the definition of "engineered wood products." Finally, we have revised the definition of "laminated veneer lumber" and added a new definition of "parallel strand lumber" to indicate that these are two terms for the same product.

Comment: One commenter requested that the definitions of "LSL press" and "LVL press" be revised to clarify that the material exiting these presses is a billet that must be sawn into LVL, LSL, or PSL and that not all LVL presses are heated. The commenter provided suggested revisions to these definitions.

Response: We agree with the commenter that LSL and LVL presses form billets that are subsequently cut into LSL and LVL products and amended the definitions to reflect that clarification. We further edited the definition of "LVL press" to more explicitly include PSL.

B. Applicability of the PCWP Rule to Lumber Kilns Drying Utility Poles

Comment: One commenter expressed support for EPA's proposal to expand the definition of lumber dry kilns to include kilns used to dry utility poles, and two commenters suggested definitions of "lumber."

Response: We requested both comments and additional data to either support or refute the treatment of kilns used to dry utility poles as lumber kilns subject to subpart DDDD, and we received one supporting comment and no additional data on this subject. Therefore, we have concluded that lumber kilns drying utility poles are subject to the rule (but have no control or work practice requirements), and we have added a definition of "lumber" to § 63.2292 based on commenters' suggestions.

C. Capture Efficiency Determination

Comment: One commenter had previously requested clarification from EPA regarding the use of the capture efficiency value and measuring capture efficiency on unenclosed, uncontrolled presses. The commenter supported EPA's adoption of the proposed amendment for line 10 of both table 4 to subpart DDDD and table 2B to appendix B to subpart DDDD but questioned how to handle fugitive emissions from a press enclosure or board cooler, which is important when using a partial enclosure to meet the low-risk criteria.

The commenter also stated that EPA should improve the consistency throughout the rule regarding emission rate determinations whether a press or cooler has a control device on it or not. The commenter stated that regardless of whether a control device is used, facilities should be allowed to use either the design specifications included in the definition of "wood products enclosure" or determine the percent capture efficiency of the enclosure to meet any of the compliance options and/or the LRD. The commenter requested that Lines 9 and 10 of both table 4 to subpart DDDD and table 2B to appendix B to subpart DDDD be combined into a single line with no distinction regarding whether emissions are treated in an add-on control device.

Response: The reconstituted wood products production-based compliance option (PBCO) applies only to uncontrolled presses. When determining compliance with the PBCO, it is necessary to compare total press emissions to the PBCO limit. The total press emissions include press emissions discharged through the press vents plus any emissions that are not collected by the press vents but are discharged elsewhere. To determine the percentage of press emissions discharged through the press vents, it is necessary to measure capture efficiency and emissions from the press vents. Then total press (or board cooler) emissions are determined as follows for comparison to the PBCO limit: Total press emissions (lb/MSF ¾") = measured emissions (lb/MSF ¾")/ capture efficiency.

Reconstituted wood products press emissions discharged through press vents and press emissions discharged elsewhere (e.g., fugitive emissions) are part of the emissions from a PCWP affected source, and therefore, must be included in the LRD for the affected source. The portion of the emissions discharged through the press vents (measured emissions) can be modeled in the LRD as a point source. The capture efficiency of the press must be measured, and then the portion of press emissions that are to be modeled as a fugitive source can be calculated as follows: Fugitive press emissions (lb/hr) = (measured press emissions (lb/hr)/ capture efficiency) − measured press emissions (lb/hr).

We disagree that the rows of table 4 to subpart DDDD and table 2B to appendix B to subpart DDDD pertaining to capture determination should be combined, but we have edited the second row pertaining to capture efficiency in each of these tables to address the commenter's concern. By definition, emissions must be routed to a control device in order for an enclosure to be a wood products enclosure or a Method 204 permanent total enclosure (PTE). The definitions of wood products enclosure and PTE were written for situations where emissions are captured and routed to a control device. However, we agree that it would be reasonable to assume 100 percent capture if a permanent enclosure is installed such that all the design criteria for a "wood products enclosure" or a PTE are met except for the requirement to discharge to a control device.

D. Incorporation by Reference of NCASI Method ISS/FP–A105.01

Comment: One commenter supported EPA's proposal the incorporate by reference NCASI Method ISS/FP–A105.01 as an alternative method for measuring emissions of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

Response: Today's final action amends 40 CFR 63.14 by revising paragraph (f) to incorporate by reference one test method developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI): Method ISS/FP–A105.01, Impinger Source Sampling Method for Selected Aldehydes, Ketones, and Polar Compounds, December 2005. The method is available from the NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.* It is also available from the docket for today's final action (Docket ID No. EPA–HQ–OAR–2003–0048). This document was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

IV. Responses to Comments on SSM Issues

Comment: One commenter stated that there are several problems with the rule's SSM provisions. The provisions unlawfully permit sources to exceed emissions standards during SSM periods, are internally conflicting (paragraphs 63.2250(b) and 63.2271(b)), and limit public availability of sources' SSM plans.

Response: As stated in the notice of reconsideration and in the proposed amendments, where the PCWP rule's SSM provisions mirror the SSM provisions in the General Provisions (40 CFR, part 63, subpart A), EPA will address comments on those provisions in the reconsideration and amendment process for the General Provisions, unless PCWP sources are somehow affected differently than other sources. The EPA has addressed the issue of excess emissions during periods of SSM as part of the General Provisions rulemaking process as well as in the 2004 PCWP final rule's BID. The issue of public access is addressed in the 2005 General Provisions notice of reconsideration and proposed amendments (70 FR 43992, July 29, 2005), and it will be further addressed in the upcoming General Provisions final amendment and reconsideration notice.

In response to the comment that the final PCWP rule's SSM provisions are internally conflicting, we note that the recently proposed amendments to the General Provisions also included amendments to subpart DDDD. Instead of specifying that sources must demonstrate that they were acting in accordance with their SSM plan during periods of SSM, proposed § 63.2271 specifies that sources must demonstrate that they were acting in accordance with § 63.6(e) of the General Provisions during an SSM event. Therefore, when the General Provisions proposed amendments are finalized, most likely

in the Spring of 2006, there will no longer be any conflict within the PCWP rule's SSM provisions.

Comment: Two commenters discussed the proposed amendment to § 63.2250(a), the section that describes when the SSM provisions apply. One commenter mostly supported the proposed amendment but stated that § 63.2250(a) should not continue to differentiate between scheduled and unscheduled startups and shutdowns. In addition, the amendment does not resolve the confusion between scheduled and unscheduled startups and shutdowns. The commenter stated that although malfunctions can result in unscheduled startups and shutdowns, many unscheduled startups and shutdowns are considered to be normal operating practices by the industry rather than malfunctions. The proposed amendment fails to accurately clarify EPA's intent as stated in the preamble to the proposed amendments, and the proposed wording could inadvertently cause all unscheduled startups and shutdowns to be considered malfunctions. The commenter stated that the PCWP rule should not treat scheduled startups and shutdowns any differently from unscheduled startups and shutdowns.

Another commenter stated that the SSM provisions are overly broad, and the proposed amendment suggests extending the provisions to unscheduled startups and shutdowns resulting from malfunction events. The commenter stated that EPA will only worsen the problems with the SSM provisions by promulgating this amendment, particularly in cases in which the equipment "malfunction" is not causally linked to any concurrent pollution exceedance.

Response: We agree with the first commenter that the PCWP NESHAP should not differentiate between scheduled and unscheduled startups and shutdowns. The General Provisions do not treat scheduled startups and shutdowns any differently than unscheduled startups and shutdowns. Although it was not our intention to exclude unscheduled startups and shutdowns from § 63.2250(b), we realize that the promulgated language did appear to exclude them, and our proposed amendment to this language did not clarify our intent. Therefore, we are removing all occurrences of "scheduled" and "unscheduled" from § 63.2250(b). Sources should refer to § 63.6(e) of the General Provisions for guidance on complying with the General Provisions during periods of SSM.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's action is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork (e.g., monitoring, reporting, recordkeeping) as part of today's final action. OMB has previously approved the information collection requirements contained in the final rule (40 CFR part 63, subpart DDDD) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, and has assigned OMB control number 2060–0552, EPA ICR number 1984.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final action.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 action on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may conclude 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.

Today's action reduces the number of emissions tests (and costs associated with these tests) required for facilities to demonstrate that they are part of the low-risk subcategory, and provides facilities with additional time to complete the tests and LRD. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

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 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action 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 1 year. Although the final rule had annualized costs estimated to range from $74 to $140 million (depending on the number of facilities eventually demonstrating eligibility for the low-risk category), today's action does not add new requirements that would increase this cost. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's action does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's action is not subject to the requirements of 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's action 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. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's action will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's action.

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." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's action does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's action.

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 the 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.

Today's action is not subject to the Executive Order because it is not "economically significant" and EPA does not believe that the environmental health or safety risks associated with the emissions addressed by this action present a disproportionate risk to children. This conclusion is based on two factors. First, the noncancer human health toxicity values we used in our analysis at promulgation (e.g., RfCs) are protective of sensitive subpopulations, including children. Second, if EPA determines that a chemical addressed by this regulation has the potential for a disproportionate impact on predicted cancer risks due to early-life exposure and acts through a mutagenic mode of action, it is recommended that the risk assessments developed for the purposes of this regulation employ applicable cancer potency adjustments as described in EPA's Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens. For purposes of this rulemaking, EPA has not determined that any of the pollutants in question has the potential for a disproportionate impact on predicted cancer risks due to early-life exposure.

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

Today's action 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 today's action 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 in its regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This action involves two technical standards. In addition to the standards EPA included in the promulgated rule, the EPA cites the following standards in today's final amendments: (1) NCASI Method ISS/FP–A105.01 (12/05), "Impinger Source Sampling Method for Aldehydes, Ketones, And Polar Compounds"; and (2) EPA Method 207–A (proposed 12/8/97 for appendix M to 40 CFR part 51), "Method for Measuring Isocyanates in Stationary Source Emissions."

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these methods. No applicable voluntary consensus standards were identified for EPA Method 207–A. The search and review results have been documented and are placed in the docket for the final rule.

One voluntary consensus standard was found that is potentially applicable to the NCASI method. The German standard VDI 3862 (12/00), "Gaseous Emission Measurement-Measurement of Aliphatic and Aromatic Aldehydes and Ketones by 2,4-Dinitrophenyhydrazine (DNPH) Impinger Method," is a good impinger method for the sampling and analysis of aldehydes and ketones that includes the use of an external standard, field and analytical blanks, and repeatability tests. However, the VDI method is missing some key quality assurance/quality control (QA/QC) procedures that are included in the NCASI method. Specifically, VDI 3862 (12/00) is missing the use of internal standards, matrix spikes, and surrogate standards in the analytical step, as well as a duplicate sample run requirement, and sampling train QA/QC samples such as field, run, and sampling train spikes. Therefore, this VDI method, as written, is not acceptable as an alternative to the NCASI method for the purposes of today's rule amendments.

Table 4 to subpart DDDD of 40 CFR part 63 and table 2B to appendix B to subpart DDDD of 40 CFR part 63 in today's rule amendments list the testing methods included in the final PCWP NESHAP. 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. 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. The 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). The final rule will be effective February 16, 2006.

List of Subjects for 40 CFR Part 63

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

Dated: January 31, 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.

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (f)(4) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(f) * * *

(4) NCASI Method ISS/FP–A105.01, Impinger Source Sampling Method for Selected Aldehydes, Ketones, and Polar Compounds, December 2005, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for table 4 to subpart DDDD of this part and appendix B to subpart DDDD of this part.

* * * * *

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

■ 3. Section 63.2232 is amended by revising paragraph (b) to read as follows:

§ 63.2232 What parts of my plant does this subpart cover?

* * * * *

(b) The affected source is the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying operations (including any combustion unit exhaust stream routinely used to direct fire process unit(s)), resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other national emission standards for hazardous air pollutants (NESHAP)). The affected source also includes onsite storage and preparation of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (§ 63.2292). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

* * * * *

■ 4. Section 63.2233 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.2233 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than October 1, 2008.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart by October 1, 2008 or upon initial startup of your affected source as a major source, whichever is later.

* * * * *

■ 5. Section 63.2250 is amended by revising paragraph (a) to read as follows:

§ 63.2250 What are the general requirements?

(a) You must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart at all times, except during periods of process unit or control device startup, shutdown, and malfunction; prior to process unit initial startup; and during the routine control device maintenance exemption specified in § 63.2251. The compliance options, operating requirements, and work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during periods of startup, shutdown, and malfunction. Startup and shutdown periods must not exceed the minimum amount of time necessary for these events.

* * * * *

■ 6. Section 63.2252 is added to read as follows:

§ 63.2252 What are the requirements for process units that have no control or work practice requirements?

For process units not subject to the compliance options or work practice requirements specified in § 63.2240 (including, but not limited to, lumber kilns), you are not required to comply with the compliance options, work practice requirements, performance testing, monitoring, SSM plans, and recordkeeping or reporting requirements of this subpart, or any other requirements in subpart A of this part, except for the initial notification requirements in § 63.9(b).

■ 7. Section 63.2262 is amended by revising paragraph (d)(1) to read as follows:

§ 63.2262 How do I conduct performance tests and establish operating requirements?

* * * * *

(d) * * *

(1) Sampling sites must be located at the inlet (if emission reduction testing or documentation of inlet methanol or formaldehyde concentration is required) and outlet of the control device (defined in § 63.2292) and prior to any releases to the atmosphere. For control sequences with wet control devices (defined in § 63.2292) followed by control devices (defined in § 63.2292), sampling sites may be located at the inlet and outlet of the control sequence and prior to any releases to the atmosphere.

* * * * *

■ 8. Section 63.2269 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) Wood moisture monitoring. For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1) through (3) and paragraphs (c)(1) through (5) of this section.

* * * * *

■ 9. Section 63.2292 is amended by revising the definitions for "Affected source," "Combustion unit," "Fiberboard mat dryer," "Laminated veneer lumber," "Lumber kiln," "Plywood," "Plywood and composite wood products manufacturing facility," "Press predryer," "Tube dryer," and "Rotary strand dryer"; and adding definitions for "Direct-fired process unit," "Engineered wood product," "Lumber," "Molded particleboard," and "Parallel strand lumber" to read as follows:

§ 63.2292 What definitions apply to this subpart?

* * * * *

Affected source means the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying operations (including any combustion unit exhaust stream routinely used to direct fire process unit(s)), resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined elsewhere in this section). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

* * * * *

Combustion unit means a dryer burner, process heater, or boiler. Combustion units may be used for combustion of organic HAP emissions.

* * * * *

Direct-fired process unit means a process unit that is heated by the passing of combustion exhaust through the process unit such that the process material is contacted by the combustion exhaust.

* * * * *

Engineered wood product means a product made with lumber, veneers,

strands of wood, or from other small wood elements that are bound together with resin. Engineered wood products include, but are not limited to, laminated strand lumber, laminated veneer lumber, parallel strand lumber, wood I-joists, and glue-laminated beams.

* * * * *

Fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed wood fiber mats by applying heat. A *fiberboard mat dryer* is a process unit.

* * * * *

Laminated veneer lumber (LVL) means a composite product formed into a billet made from layers of resinated wood veneer sheets or pieces pressed together with the grain of each veneer aligned primarily along the length of the finished product. *Laminated veneer lumber* is also known as parallel strand lumber (PSL).

Lumber means boards or planks sawed or split from logs or timber, including logs or timber processed for use as utility poles or other wood components. Lumber can be either green (non-dried) or dried. Lumber is typically either air-dried or kiln-dried.

Lumber kiln means an enclosed dryer operated by applying heat to reduce the moisture content of lumber.

* * * * *

Molded particleboard means a shaped composite product (other than a composite panel) composed primarily of cellulosic materials (usually wood or agricultural fiber) generally in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

* * * * *

Parallel strand lumber (PSL) means a composite product formed into a billet made from layers of resinated wood veneer sheets or pieces pressed together with the grain of each veneer aligned primarily along the length of the finished product. *Parallel strand lumber* is also known as laminated veneer lumber (LVL).

* * * * *

Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, medium density fiberboard, or lumber. Plywood products may be flat or curved.

Plywood and composite wood products (PCWP) manufacturing facility means a facility that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a panel, engineered wood product, or other product defined in § 63.2292. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include, but are not limited to, plywood, veneer, particleboard, molded particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

Press predryer means a dryer used to reduce the moisture and elevate the temperature by applying heat to a wet-formed fiber mat before the mat enters a hot press. A *press predryer* is a process unit.

* * * * *

Rotary strand dryer means a rotary dryer operated by applying heat and used to reduce the moisture of wood strands used in the manufacture of oriented strandboard, laminated strand lumber, or other wood strand-based products. A *rotary strand dryer* is a process unit.

* * * * *

Tube dryer means a single-stage or multi-stage dryer operated by applying heat to reduce the moisture of wood fibers or particles as they are conveyed (usually pneumatically) through the dryer. Resin may or may not be applied to the wood material before it enters the tube dryer. Tube dryers do not include pneumatic fiber transport systems that use temperature and humidity conditioned pneumatic system supply air in order to prevent cooling of the wood fiber as it is moved through the process. A *tube dryer* is a process unit.

* * * * *

■ 10. Table 4 to subpart DDDD of part 63 is revised to read as follows:

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	determine velocity and volumetric flow rate	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
(4) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60; OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see § 63.14(b)).
(5) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	measure emissions of total HAP as THC	Method 25A in appendix A to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(6) each process unit subject to a compliance option in table 1A to this subpart; OR for each process unit used in calculation of an emissions average under §63.2240(c).	measure emissions of total HAP (as defined in §63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.02 (IBR, see §63.14(f)); OR the NCASI Method ISS/FP–A105.01 (IBR, see §63.14(f)); OR ASTM D6348–03 (IBR, see §63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.
(7) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a methanol compliance option.	measure emissions of methanol	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (IBR, see §63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see §63.14(f)); OR the NCASI Method ISS/FP–A105.01 (IBR, see §63.14(f)).
(8) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	measure emissions of formaldehyde	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846) for formaldehyde; OR the NCASI Method CI/WP–98.01 (IBR, see §63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see §63.14(f)); OR the NCASI Method ISS/FP–A105.01 (IBR, see §63.14(f)).
(9) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1B to this subpart or used in calculation of an emissions average under §63.2240(c).	meet the design specifications included in the definition of wood products enclosure in §63.2292; or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M, to determine capture efficiency (except for wood products enclosures as defined in §63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a permanent total enclosure (PTE) are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(10) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1A to this subpart.	determine the percent capture efficiency	a TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart. Enclosures that meet the design criteria (1) through (4) in the definition of wood products enclosure, or that meet Method 204 requirements for a PTE (except for the criteria specified in section 6.2 of Method 204) are assumed to have a capture efficiency of 100 percent. Measured emissions divided by the capture efficiency provides the emission rate.
(11) each process unit subject to a compliance option in tables 1A and 1B to this subpart or used in calculation of an emissions average under §63.2240(c).	establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in table 2 to this subpart.	data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

Appendix A to Subpart DDDD of Part 63—Alternative Procedure To Determine Capture Efficiency From Enclosures Around Hot Presses in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

■ 11. Revise paragraphs 10.4 and 10.5 of section 10 to read as follows:

10.0 Calibration and Standardization.

* * * * *

10.4 Gas Chromatograph. Follow the pre-test calibration requirements specified in section 8.5.1.

10.5 Gas Chromatograph for Ambient Sampling (Optional). For the optional ambient sampling, follow the calibration requirements specified in section 8.5.1 or ASTM E 260 and E 697 and by the equipment manufacturer for gas chromatograph measurements.

* * * * *

■ 12. Revise appendix B to subpart DDDD to read as follows:

Appendix B to Subpart DDDD of Part 63—Methodology and Criteria for Demonstrating That an Affected Source Is Part of the Low-risk Subcategory of Plywood and Composite Wood Products Manufacturing Affected Sources

1. Purpose

This appendix provides the methodology and criteria for demonstrating that your affected source is part of the low-risk subcategory of plywood and composite wood products (PCWP) manufacturing facilities. You must demonstrate that your affected source is part of the low-risk subcategory using either a look-up table analysis (based on the look-up tables included in this appendix) or using a site-specific risk assessment performed according to the criteria specified in this appendix. This appendix also specifies how and when you must obtain approval of the low-risk demonstrations for your affected source and how to ensure that your affected source remains in the low-risk subcategory of PCWP facilities.

2. Who is eligible to demonstrate that they are part of the low-risk subcategory of PCWP affected sources?

Each new, reconstructed, or existing affected source at a PCWP manufacturing facility may demonstrate that they are part of the low-risk subcategory of PCWP affected sources. Section 63.2232 of 40 CFR part 63, subpart DDDD, defines the affected source and explains which affected sources are new, existing, or reconstructed.

3. What parts of my affected source have to be included in the low-risk demonstration?

Every process unit that is part of the PCWP affected source (as defined in § 63.2292 of 40 CFR part 63, subpart DDDD) and that emits one or more hazardous air pollutant (HAP) listed in table 1 to this appendix must be included in the low-risk demonstration. You are not required to include process units outside of the affected source in the low-risk demonstration.

4. What are the criteria for determining if my affected source is low risk?

(a) Determine the individual HAP emission rates from each process unit emission point within the affected source using the procedures specified in section 5 of this appendix.

(b) Perform chronic and acute risk assessments using the dose-response values, as specified in paragraphs (b)(1) through (3) of this section.

(1) For a look-up table analysis or site-specific chronic inhalation risk assessment, you should use the cancer and noncancer dose-response values listed on the Environmental Protection Agency (EPA) Air Toxics Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) to estimate carcinogenic and noncarcinogenic chronic inhalation risk, respectively.

(2) For site-specific acute inhalation risk assessment, you should use the acute exposure guidance level (AEGL–1) value for acrolein and the acute reference exposure level (REL) value for formaldehyde for estimating acute inhalation risk found at *http://www.epa.gov/ttn/atw/toxsource/summary.html*.

(3) You may use dose-response values more health-protective than those posted on the EPA Air Toxics Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) to facilitate ongoing certification (as required in section 13 of this appendix) that your affected source remains in the low-risk subcategory.

(c) Demonstrate that your affected source is part of the low-risk subcategory by estimating the maximum impacts of your affected source using the methods described in either section 6 of this appendix (look-up table analysis) or section 7 of this appendix (site-specific risk assessment) and comparing the results to the low-risk criteria presented in the applicable section.

5. How do I determine HAP emissions from my affected source?

(a) You must determine HAP emissions for every process unit emission point within the affected source that emits one or more of the HAP listed in table 1 to this appendix as specified in table 2A to this appendix. For each process unit type, table 2A to this appendix specifies whether emissions testing is required or if emissions estimation is allowed as an alternative to emissions testing. If emissions estimation is allowed according to table 2A, you must develop your emission estimates according to the requirements in paragraph (k) of this section. You may choose to perform emissions testing instead of emissions estimation. You must conduct HAP emissions tests according to the requirements in paragraphs (b) through (j) of this section and the methods specified in table 2B to this appendix. If you conduct fuel analyses, you must follow the requirements of paragraph (m) of this section. For each of the emission points at your affected source, you must obtain the emission rates in pounds per hour (lb/hr) for each of the pollutants listed in table 1 to this appendix.

(b) *Periods when emissions tests must be conducted.*

(1) You must not conduct emissions tests during periods of startup, shutdown, or malfunction, as specified in 40 CFR 63.7(e)(1).

(2) You must test under worst-case operating conditions as defined in this appendix. You must describe your worst-case operating conditions in your performance test report for the process and control systems (if applicable) and explain why the conditions are worst-case.

(c) *Number of test runs.* You must conduct three separate test runs for each test required in this section, as specified in 40 CFR 63.7(e)(3). Each test run must last at least 1 hour except for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F in 40 CFR part 51, appendix M, which require three separate test runs of at least 3 hours each; and testing of an enclosure conducted using the alternative tracer gas method in appendix A to 40 CFR part 63, subpart DDDD, which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Sampling locations.* Sampling sites must be located at the emission point and prior to any releases to the atmosphere. For example, at the outlet of the control device, including wet control devices, and prior to any releases to the atmosphere.

(e) *Collection of monitoring data for HAP control devices.* During the emissions test, you must collect operating parameter monitoring system or continuous emissions monitoring system (CEMS) data at least every 15 minutes during the entire emissions test and establish the site-specific operating requirements (including the parameter limits or total hydrocarbon (THC) concentration limit) in table 2 to 40 CFR part 63, subpart DDDD, using data from the monitoring system and the procedures specified in paragraphs (k) through (o) of § 63.2262 of subpart DDDD of 40 CFR part 63.

(f) *Nondetect data.* You may treat emissions of an individual HAP as zero if all of the test runs result in a nondetect measurement and the conditions in paragraphs (1) and (2) of this section are met for the relevant test method. Otherwise, nondetect data (as defined in § 63.2292 of 40 CFR part 63, subpart DDDD) for individual HAP must be treated as one-half of the method detection limit.

(1) The method detection limit is less than or equal to 1 part per million by volume, dry (ppmvd) for pollutant emissions measured using Method 320 in appendix A to 40 CFR part 63; or Method 18 in appendix A to 40 CFR part 60; or the NCASI Method IM/CAN/WP–99.02 (incorporated by reference (IBR), see 40 CFR 63.14(f)); or NCASI Method ISS/FP–A105.01 (IBR, see 40 CFR 63.14(f); or ASTM D6348–03 (IBR, see 40 CFR 63.14(b)).

(2) For pollutants measured using Method 29 in appendix A to 40 CFR part 60, you analyze samples using atomic absorption spectroscopy (AAS) or another laboratory method specified in Method 29 in appendix A to 40 CFR part 60 with detection limits lower than or equal to AAS.

(g) For purposes of your low-risk demonstration, you must assume that 17

percent of your total chromium measured using EPA Method 29 in appendix A to 40 CFR part 60 is chromium VI. You must assume that 65 percent of your total nickel measured using EPA Method 29 in appendix A to 40 CFR part 60 is nickel subsulfide.

(h) You may use emission rates higher than your measured emission rates (e.g., emissions rates 10 times your measured emission rate) to facilitate ongoing certification (as required in section 13 of this appendix) that your affected source remains in the low-risk subcategory.

(i) *Use of previous emissions tests.* You may use the results of previous emissions tests provided that the following conditions are met:

(1) The previous emissions tests must have been conducted using the methods specified in table 2B to this appendix. Previous emission test results obtained using NCASI Method IM/CAN/WP–99.01 are acceptable.

(2) The previous emissions tests must meet the requirements in paragraphs (b) through (j) of this section.

(3) The subject process unit(s) must be operated in a manner (e.g., with raw material type, operating temperature, etc.) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s) and the process unit(s) may not have been modified such that emissions would be expected to exceed (notwithstanding normal test-to-test variability) the results from previous emissions test(s).

(4) The previous emissions test(s) must have been conducted in 1997 or later.

(j) *Use of test data for similar process units.* If you have multiple similar process units at the same plant site, you may apply the test results from one of these process units to the other similar process units for purposes of your low-risk demonstration provided that the following conditions are met:

(1) You must explain how the process units are similar in terms of design, function, heating method, raw materials processed, residence time, change in material moisture content, operating temperature, resin type processed, age, and any other parameters that may affect emissions.

(2) If the process units have different throughput rates, then you must convert the emission test results to terms of pounds of HAP per unit throughput prior to applying the emissions test data to other similar process units.

(3) If one of the process units would be expected to exhibit higher emissions due to minor differences in process parameters, then you must explain and test the process unit that would be expected to exhibit greater emissions (for example, the unit with a slightly higher temperature set point, dryer processing furnish with slightly higher inlet moisture content, press processing thicker panels, unit with the greater throughput, considerably older unit, etc.).

(k) If emissions estimation is allowed, you must follow the procedures in (1) through (3) of this paragraph.

(1) You must use the emission factors or other emission estimation techniques specified in table 2A to this appendix when developing emission estimates.

(2) You must base your emission estimates on the maximum process unit throughput you will incorporate into your permit according to section 11(b) of this appendix.

(3) For process units with multiple emission points, you must apportion the estimate emissions evenly across each emission point. For example, if you have a process unit with two emission points, and the process unit is estimated to emit 6 lb/hr, you would assign 3 lb/hr to each emission point.

(l) *Testing of multiple stacks.* You may test one of multiple stacks for a process unit provided that the following conditions are met:

(1) The emissions are produced by the same process unit.

(2) The emissions originate from the same duct.

(3) The emissions are sufficiently mixed so that the gaseous pollutant concentrations from one stack are not expected to differ from concentrations from another stack.

(m) *Conducting a fuel analysis.* For process units that require testing of metals according to table 2A to this appendix, you may conduct a fuel analysis in lieu of emissions tests. You must follow the procedures described in § 63.7521 (a) and (c) through (e) of subpart DDDDD; § 63.7530(d)(1), (2), and (4) of subpart DDDDD, and line 2 of table 6 to subpart DDDDD. For purposes of this appendix, the total selected metals analyzed by fuel analysis are the metals included in table 1 to this appendix.

6. How do I conduct a look-up table analysis?

Use the look-up tables (tables 3 and 4 to this appendix) to demonstrate that your affected source is part of the low-risk subcategory, following the procedures in paragraphs (a) through (d) of this section.

(a) Using the emission rate of each HAP required to be included in your low-risk demonstration (determined according to section 5 of this appendix), calculate your total toxicity-weighted carcinogen and noncarcinogen emission rates for each of your emission points using Equations 1 and 2 of this appendix, respectively. Calculate your carcinogen and non-carcinogen weighted stack height using Equations 3 and 4 of this appendix, respectively.

$$TWCER = \sum (ER_i \times URE_i) \quad \text{Eqn. 1}$$

TWCER = Toxicity-weighted carcinogenic emission rate for each emission point (lb/hr)/(μg/m³)

ER_i = Emission rate of pollutant i (lb/hr)

URE_i = Unit risk estimate for pollutant i, 1 per microgram per cubic meter $(\mu g/m^3)^{-1}$

$$TWNER = \sum (ER_i / RfC_i) \quad \text{Eqn. 2}$$

TWNER = Toxicity-weighted noncarcinogenic emission rate for each emission point (lb/hr)/(μg/m³)

ER_i = Emission rate of pollutant i (lb/hr)

RfC_i = Reference concentration for pollutant i, micrograms per cubic meter (μg/m³)

$$WHC = \sum_{ep=1}^{ep=n} \frac{TWCER_{ep}}{\sum_{ep=1}^{ep=n} TWCER_{ep}} \times H_{ep} \quad \text{Eqn. 3}$$

WHC = Carcinogen weighted stack height for use in the carcinogen look-up table (table 3 to this appendix)

H = Height of each individual stack or emission point (m)

ep = Individual stacks or emission points

n = Total number of stacks and emission points

$$WHN = \sum_{ep=1}^{ep=n} \left[\frac{TWNER_{ep}}{\sum_{ep=1}^{ep=n} TWNER_{EP}} \right] \times H_{ep} \qquad \text{Eqn. 4}$$

WHN = Non-carcinogen weighted stack height for use in the non-carcinogen look-up table (table 4 to this appendix)
H = Height of each individual stack or emission point (m)
ep = Individual stacks or emission points
n = Total number of stacks and emission points

(b) *Cancer risk.* Calculate the total toxicity-weighted carcinogen emission rate for your affected source by summing the toxicity-weighted carcinogen emission rates for each of your emission points. Identify the appropriate maximum allowable toxicity-weighted carcinogen emission rate from table 3 to this appendix for your affected source using the carcinogen weighted stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the look-up table, then use the next lowest table value. (Note: If your weighted stack height is less than 5 meters (m), you must use the 5 m row.) Your affected source is considered low risk for carcinogenic effects if your toxicity-weighted carcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in table 3 to this appendix.

(c) *Noncancer risk.* Calculate the total central nervous system (CNS) and respiratory target organ specific toxicity-weighted noncarcinogen emission rate for your affected source by summing the toxicity-weighted emission rates for each of your emission points. Identify the appropriate maximum allowable toxicity-weighted noncarcinogen emission rate from table 4 to this appendix for your affected source using the non-carcinogen weighted stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the look-up table, then use the next lowest table value. (Note: If your weighted stack height is less than 5 m, you must use the 5 m row.) Your affected source is considered low risk for noncarcinogenic effects if your toxicity-weighted noncarcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in table 4 to this appendix.

(d) *Low-risk demonstration.* The EPA will approve your affected source as eligible for membership in the low-risk subcategory of PCWP affected sources if it determines that: (1) Your affected source is low risk for both carcinogenic and noncarcinogenic effects using the look-up table analysis described in this section and (2) you meet the criteria specified in section 11 of this appendix.

7. How do I conduct a site-specific risk assessment?

(a) Perform a site-specific risk assessment following the procedures specified in this section. You may use any scientifically-accepted peer-reviewed assessment methodology for your site-specific risk assessment. An example of one approach to performing a site-specific risk assessment for air toxics that may be appropriate for your affected source can be found in the "Air Toxics Risk Assessment Guidance Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document." You may obtain a copy of the "Air Toxics Risk Assessment Reference Library" through EPA's air toxics Web site at *http://www.epa.gov/ttn/fera/risk_atra_main.html.*

(b) At a minimum, your site-specific risk assessment must:

(1) Estimate the long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations for the chronic portion of the assessment.

(2) Estimate the acute exposures for formaldehyde and acrolein through the estimation of maximum 1-hour average ambient concentrations for the acute portion of the assessment.

(3) Estimate the inhalation exposure of the individual most exposed to the affected source's emissions.

(4) Estimate the individual risks over a 70-year lifetime for the chronic cancer risk assessment.

(5) Use site-specific, quality-assured data wherever possible.

(6) Use health-protective default assumptions wherever site-specific data are not available.

(7) Contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emission measurement expert.

(c) Your site-specific risk assessment need not:

(1) Assume any attenuation of exposure concentrations due to the penetration of outdoor pollutants into indoor exposure areas.

(2) Assume any reaction or deposition of the emitted pollutants during transport from the emission point to the point of exposure.

(d) Your affected source is considered low risk for carcinogenic chronic inhalation effects if your site-specific risk assessment demonstrates that maximum off-site individual lifetime cancer risk at a location where people live or congregate (e.g., school or day care center) is less than 1 in 1 million.

(e) Your affected source is considered low risk for noncarcinogenic chronic inhalation effects if your site-specific risk assessment demonstrates that every maximum off-site target-organ specific hazard index (TOSHI), or appropriate set of site-specific hazard indices based on similar or complementary mechanisms of action that are reasonably likely to be additive at low dose or dose-response data for mixtures, at a location where people live is less than or equal to 1.0.

(f) Your affected source is considered low risk for noncarcinogenic acute inhalation effects if your site-specific risk assessment demonstrates that the maximum off-site acute hazard quotients for both acrolein and formaldehyde are less than or equal to 1.0.

(g) The EPA will approve your affected source as eligible for membership in the low-risk subcategory of PCWP affected sources if it determines that: (1) your affected source is low risk for all of the applicable effects listed in paragraphs (d) through (f) of this section and (2) you meet the criteria specified in section 11 of this appendix.

8. What information must I submit for the low-risk demonstration?

(a) Your low-risk demonstration must include at a minimum the information specified in paragraphs (a)(1) through (5) of this section and the information specified in either paragraph (b) or (c) of this section.

(1) Identification of each process unit at the affected source.

(2) Stack parameters for each emission point including, but not limited to, the parameters listed in paragraphs (a)(2)(i) through (iv) below:

(i) Emission release type.

(ii) Stack height, stack area, stack gas temperature, and stack gas exit velocity.

(iii) Plot plan showing all emission points, nearby residences, and fenceline.

(iv) Identification of any HAP control devices used to reduce emissions from each process unit.

(3) Emission test reports for each pollutant and process unit based on the testing requirements and methods specified in tables 2A and 2B to this appendix, including a description of the process parameters identified as being worst case. You must submit your emissions calculations for each pollutant and process unit for which emissions estimates are developed. You must submit fuel analyses for each fuel and emission point which has been conducted, including collection and analytical methods used.

(4) Identification of the dose-response values used in your risk analysis (look-up table analysis or site-specific risk assessment), according to section 4(b) of this appendix.

(5) Identification of the controlling process factors (including, but not limited to, production rate, emission rate, type of control devices, process parameters documented as worst-case conditions during the emissions testing used for your low-risk demonstration) that will become Federally enforceable permit conditions used to show

that your affected source remains in the low-risk subcategory.

(b) If you use the look-up table analysis in section 6 of this appendix to demonstrate that your affected source is low risk, your low-risk demonstration must contain at a minimum the information in paragraphs (a) and (b)(1) through (4) of this section.

(1) Identification of the stack heights for each emission point included in the calculations of weighted stack height.

(2) Identification of the emission point with the minimum distance to the property boundary.

(3) Calculations used to determine the toxicity-weighted carcinogen and noncarcinogen emission rates and weighted stack heights according to section 6(a) of this appendix.

(4) Comparison of the values in the look-up tables (tables 3 and 4 to this appendix) to your toxicity-weighted emission rates for carcinogenic and noncarcinogenic HAP.

(c) If you use a site-specific risk assessment as described in section 7 of this appendix to demonstrate that your affected source is low risk (for carcinogenic and noncarcinogenic chronic inhalation and acute inhalation risks), your low-risk demonstration must contain at a minimum the information in paragraphs (a) and (c)(1) through (8) of this section.

(1) Identification of the risk assessment methodology used.

(2) Documentation of the fate and transport model used.

(3) Documentation of the fate and transport model inputs, including the information described in paragraphs (a)(1) through (4) of this section converted to the dimensions required for the model and all of the following that apply: meteorological data; building, land use, and terrain data; receptor locations and population data; and other facility-specific parameters input into the model.

(4) Documentation of the fate and transport model outputs.

(5) Documentation of exposure assessment and risk characterization calculations.

(6) Comparison of the maximum off-site individual lifetime cancer risk at a location where people live to 1 in 1 million, as required in section 7(d) of this appendix for carcinogenic chronic inhalation risk.

(7) Comparison of the maximum off-site TOSHI for respiratory effects and CNS effects at a location where people live to the limit of 1.0, as required in section 7(e) of this appendix for noncarcinogenic chronic inhalation risk.

(8) Comparison of the maximum off-site acute inhalation hazard quotient (HQ) for both acrolein and formaldehyde to the limit of 1.0, as required in section 7(f) of this appendix for noncancinogenic acute inhalation effects.

(d) The EPA may request any additional information it determines is necessary or appropriate to evaluate an affected source's low-risk demonstration.

9. Where do I send my low-risk demonstration?

You must submit your low-risk demonstration to the EPA for review and approval. Send your low-risk demonstration either by e-mail to *REAG@EPA.GOV* or by U.S. mail or other mail delivery service to U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), Attn: Group Leader, Research Triangle Park, NC 27711, and send a copy to your permitting authority. Your affected source is not part of the low-risk subcategory of PCWP facilities unless and until EPA notifies you that it has determined that you meet the requirements of section 11 of this appendix.

10. When do I submit my low-risk demonstration?

(a) *Existing affected sources.* If you have an existing affected source, you may complete and submit for approval your low-risk demonstration (including the emission test results, fuel analyses, and emission estimates required in this appendix) any time. Existing affected sources that are not approved by EPA as being part of the low-risk subcategory by October 1, 2008, must comply with the requirements of 40 CFR part 63, subpart DDDD from October 1, 2008, unless and until EPA approves them as part of the low-risk subcategory.

(b) *Sources in compliance with 40 CFR part 63, subpart DDDD.* If you operate an affected source that is already in compliance with 40 CFR part 63, subpart DDDD (including, but not limited to, an existing source, a new or reconstructed affected source starting up before September 28, 2004, or a new source starting up after September 28, 2004, but before February 16, 2006) and wish to become part of the low-risk subcategory, then you may complete and submit for approval your low-risk demonstration (including the emission test results, fuel analyses, and emission estimates required in this appendix) any time. Your affected source will become part of the low-risk subcategory when EPA determines that the requirements in section 11 of this appendix are met.

(c) New or reconstructed affected sources wanting to be part of the low-risk subcategory at startup must comply with the requirements of paragraphs (c)(1) through (c)(3) of this section.

(1)(i) You must complete and submit for review and approval a pre-startup low-risk demonstration no later than nine months prior to initial startup. The pre-startup low-risk demonstration must be based on the information (e.g., equipment types, estimated emission rates, etc.) that you will likely use to obtain your title V permit. You must base your pre-startup low-risk demonstration on the maximum emissions that will likely be allowed when you obtain your title V permit.

(ii) You must request that your affected source become part of the low-risk subcategory based on your pre-startup low-risk demonstration.

(iii) If EPA approves your pre-startup low-risk demonstration, then your affected source will be part of the low-risk subcategory upon approval of the pre-startup low-risk demonstration and you may start up your affected source without complying with the compliance options, operating requirements, and work practice requirements in 40 CFR part 63, subpart DDDD, provided that you operate your affected source consistently with the pre-startup low-risk demonstration until you meet the criteria in section 11 of this appendix based on your verification low-risk demonstration developed according to paragraph (c)(2) of this section. Failure to so operate will render approval of your pre-startup low-risk demonstration null and void from the date you startup your affected source.

(2)(i) You must complete and submit your verification low-risk demonstration, including the results from emission tests (or fuel analyses) required in this appendix, within 240 days following initial startup. The verification low-risk demonstration must demonstrate to EPA's satisfaction that the affected source is low risk. The verification low-risk demonstration may be used to change operating parameters ensuring low-risk status.

(ii) If you do not submit the verification low-risk demonstration as required, or the verification low-risk demonstration does not verify that the affected source is low risk, then approval of your pre-startup low-risk demonstration is null and void from the date you startup your affected source and you must comply immediately with subpart DDDD of 40 CFR part 63.

(3) To incorporate the low-risk parameters from your verification low-risk demonstration into your title V permit, you must submit your application for a significant modification to your title V permit within 1 year following initial startup, or earlier if so required under your State's permit program approved under 40 CFR part 70. The parameters that defined your affected source as part of the low-risk subcategory (including, but not limited to, production rate, emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration, and stack height) must be submitted for incorporation as federally enforceable terms and conditions into your title V permit. You must provide written certification to the permitting authority that your affected source is operating consistently with its EPA-approved pre-startup low-risk demonstration and verification low-risk demonstration, as applicable, from startup until your title V permit revision is issued.

(d) New or reconstructed affected sources that want to operate consistently with a pre-startup low-risk demonstration at startup and become part of the low-risk subcategory based on EPA approval of their verification low-risk demonstration (rather than based on their pre-startup low-risk demonstration), must comply with the requirements in paragraphs (d)(1) through (d)(3) of this section.

(1)(i) You must complete and submit for review a pre-startup low-risk demonstration no later than nine months prior to initial startup. The pre-startup low-risk demonstration must be based on the information (e.g., equipment types, estimated emission rates, etc.) that you will likely use to obtain your title V permit. You must base your pre-startup low-risk demonstration on the maximum emissions that will likely be allowed when you obtain your title V permit.

(ii) If EPA concludes that your pre-startup low-risk demonstration is complete and

sufficiently shows that your affected source appears to be eligible for inclusion in the low-risk subcategory, then you must operate your affected source consistently with the pre-startup low-risk demonstration until EPA determines that you meet the criteria in section 11 of this appendix based on your verification low-risk demonstration developed according to paragraph (d)(2) of this section.

(2)(i) You must complete and submit for EPA review and approval your verification low-risk demonstration, including the results from emission tests (or fuel analyses) required in this appendix, within 240 days following initial startup. The verification low-risk demonstration must demonstrate to EPA's satisfaction that the affected source is low risk.

(ii) You will become part of the low-risk subcategory when EPA determines that you meet the criteria in section 11 of this appendix based upon your verification low-risk demonstration. If you do not submit the verification low-risk demonstration as required, or the verification low-risk demonstration does not verify that the affected source is low risk, then EPA will not approve your low-risk demonstration and you will remain subject to subpart DDDD of 40 CFR part 63.

(3) To incorporate the low-risk parameters from your verification low-risk demonstration into your title V permit, you must submit your application for a significant modification to your title V permit within 1 year following initial startup, or earlier if so required by your State's permit program approved by EPA under 40 CFR part 70. The parameters that defined your affected source as part of the low-risk subcategory (including, but not limited to, production rate, emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration, and stack height) must be submitted for incorporation as federally enforceable terms and conditions into your title V permit. You must provide written certification to the permitting authority that your affected source is operating consistently with its pre-startup LRD and your verification LRD, as applicable, from startup until your title V permit revision is issued.

(e) *Area sources that become affected sources.* If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before September 28, 2004, then you must complete and submit for approval your low-risk demonstration as specified in paragraph (a) of this section. If you have an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP after September 28, 2004, then you must complete and submit for approval your low-risk demonstration as specified in paragraphs (b), (c) or (d) of this section, whichever applies.

11. How does my affected source become part of the low-risk subcategory of PCWP facilities?

For existing sources to be included in the low-risk subcategory, EPA must find that you meet the criteria in paragraphs (a) and (b) of this section. For new sources to be included in the low-risk subcategory, EPA must find that you meet the criteria in paragraph (a) of this section. Unless and until EPA finds that you meet these criteria, your affected source is subject to the applicable compliance options, operating requirements, and work practice requirements in 40 CFR part 63, subpart DDDD.

(a) Your demonstration of low risk must be approved by EPA.

(b) Following EPA approval, the parameters that defined your affected source as part of the low-risk subcategory (including, but not limited to, production rate, emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration, and stack height) must be submitted for incorporation as federally enforceable terms and conditions into your title V permit. You must submit an application for a significant permit modification to reopen your title V permit to incorporate such terms and conditions according to the procedures and schedules of 40 CFR part 71 or the EPA-approved program in effect under 40 CFR part 70, as applicable.

12. What must I do to ensure my affected source remains in the low-risk subcategory of PCWP facilities?

You must meet the requirements in table 2 to 40 CFR part 63, subpart DDDD, for each HAP control device used at the time when you completed your low-risk demonstration. You must monitor and collect data according to § 63.2270 of subpart DDDD to show continuous compliance with your control device operating requirements. You must demonstrate continuous compliance with the control device operating requirements that apply to you by collecting and recording the monitoring system data listed in table 2 to 40 CFR part 63, subpart DDDD for the process unit according to §§ 63.2269(a), (b), and (d) of subpart DDDD; and reducing the monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270 of subpart DDDD; and maintaining the average operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to section 5(e) of this appendix.

13. What happens if the criteria used in the risk determination change?

(a) You must certify with each annual title V permit compliance certification that the basis for your affected source's low-risk determination has not changed. You must submit this certification to the permitting authority. You must consider the changes in paragraphs (a)(1) through (5) of this section.

(1) Process changes that increase HAP emissions, including, but not limited to, a production rate increase, an emission rate increase, a change in type of control device, changes in process parameters reflecting emissions rates used for your approved low-risk demonstration.

(2) Population shifts, such as if people move to a different location such that their risks from the affected source increase.

(3) Unit risk estimate increases posted on the EPA Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) for the pollutants included in table 1 to this appendix.

(4) Reference concentration changes posted on the EPA Web site (*http://www.epa.gov/ttn/atw/toxsource/summary.html*) for the pollutants included in table 1 to this appendix.

(5) Acute dose-response value for formaldehyde or acrolein changes.

(b) If your affected source commences operating outside of the low-risk subcategory, it is no longer part of the low-risk subcategory. You must be in compliance with 40 CFR part 63, subpart DDDD as specified in paragraphs (b)(1) through (3) of this section. Operating outside of the low-risk subcategory means that one of the changes listed in paragraphs (a)(1) through (5) of this section has occurred and that the change is inconsistent with your affected source's title V permit terms and conditions reflecting EPA's approval of the parameters used in your low-risk demonstration.

(1) You must notify the permitting authority as soon as you know, or could have reasonably known, that your affected source is or will be operating outside of the low-risk subcategory.

(2) You must be in compliance with the requirements of 40 CFR part 63, subpart DDDD as specified in paragraph (b)(2)(i) or (ii) of this section, whichever applies.

(i) If you are operating outside of the low-risk subcategory due to a change described in paragraph (a)(1) of this section, then you must comply with 40 CFR part 63, subpart DDDD beginning on the date when your affected source commences operating outside the low-risk subcategory.

(ii) If you are operating outside of the low-risk subcategory due to a change described in paragraphs (a)(2) through (5) of this section, then you must comply with 40 CFR part 63, subpart DDDD no later than 3 years from the date your affected source commences operating outside the low-risk subcategory.

(3)(i) You must conduct performance tests no later than 180 calendar days after the applicable date specified in paragraph (b)(2) of this section.

(ii) You must conduct initial compliance demonstrations that do not require performance tests 30 calendar days after the applicable date specified in paragraph (b)(2) of this section.

(iii) For the purposes of affected sources affected by this section, you must refer to the requirements in paragraph (b) of this section instead of the requirements of § 63.2233 when complying with 40 CFR part 63, subpart DDDD.

14. What records must I keep?

(a) You must keep records of the information used in developing the low-risk demonstration for your affected source, including all of the information specified in section 8 of this appendix.

(b) You must keep records demonstrating continuous compliance with the operating requirements for control devices.

(c) For each THC CEMS, you must keep the records specified in § 63.2282(c) of 40 CFR part 63, subpart DDDD.

15. Definitions

The definitions in § 63.2292 of 40 CFR part 63, subpart DDDD, apply to this appendix. Additional definitions applicable for this appendix are as follows:

Agricultural fiber board press means a press used in the production of an agricultural fiber based composite wood product. An *agricultural fiber board press* is a process unit.

Agricultural fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed agricultural fiber mats by applying heat. An *agricultural fiberboard mat dryer* is a process unit.

Ancillary processes mean equipment and process units that are part of the PCWP affected source that are not defined elsewhere in this section or in section 63.2292 of subpart DDDD. Ancillary processes at a specific facility do not include the equipment and process units identified as insignificant sources of HAP emissions by that facility, and they do not include equipment and process units subject to another standard under 40 CFR part 63. Ancillary processes may be or may not be HAP emissions sources.

Ancillary processes are process units.

Atmospheric refiner means a piece of equipment operated under atmospheric pressure for refining (rubbing or grinding) the wood material into fibers or particles. Atmospheric refiners are operated with continuous infeed and outfeed of wood material and atmospheric pressures throughout the refining process. An *atmospheric refiner* is a process unit.

Blending and forming operations means the process of mixing adhesive and other additives with the (wood) furnish of the composite panel and making a mat of resinated fiber, particles, or strands to be compressed into a reconstituted wood product such as particleboard, oriented strandboard, or medium density fiberboard. *Blending and forming operations* are process units.

Emission point means an individual stack or vent from a process unit that emits HAP required for inclusion in the low-risk demonstration specified in this appendix. Process units may have multiple emission points.

Fiber washer means a unit in which water-soluble components of wood (hemicellulose and sugars) that have been produced during digesting and refining are removed from the wood fiber. Typically wet fiber leaving a refiner is further diluted with water and then passed over a filter, leaving the cleaned fiber on the surface. A *fiber washer* is a process unit.

Finishing sander means a piece of equipment that uses an abrasive drum, belt, or pad to impart smoothness to the surface of a plywood or composite wood product panel and to reduce the panel to the prescribed thickness. A *finishing sander* is a process unit.

Finishing saw means a piece of equipment used to trim or cut finished plywood and composite wood products panels to a certain size. A *finishing saw* is a process unit.

Hardwood plywood press means a hot press which, through heat and pressure, bonds assembled hardwood veneers (including multiple plies of veneer and/or a substrate) and resin into a hardwood plywood panel. A *hardwood plywood press* is a process unit.

Hardwood veneer kiln means an enclosed dryer operated in batch cycles by applying heat to reduce the moisture content from stacked hardwood veneer. A *hardwood veneer kiln* is a process unit.

Hazard Index (HI) means the sum of more than one hazard quotient for multiple substances and/or multiple exposure pathways.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For inhalation exposures, the HQ is calculated as the air concentration divided by the reference concentration (RfC).

Humidifier means a process unit used to increase the moisture content of hardboard following pressing or after post-baking. Typically, water vapor saturated air is blown over the hardboard surfaces in a closed cabinet. A *humidifier* is a process unit.

I-joist curing chamber means an oven or a room surrounded by a solid wall or heavy plastic flaps that uses heat, infrared, or radio-frequency techniques to cure the adhesive. An *I-joist curing chamber* is a process unit.

Log chipping means the production of wood chips from logs.

Log vat means a process unit that raises the temperature of the logs inside by applying a heated substance, usually hot water and steam, to the outside of the logs by spraying or soaking. A *log vat* is a process unit.

Look-up table analysis means a risk screening analysis based on comparing the toxicity-weighted HAP emission rate from the affected source to the maximum allowable toxicity-weighted HAP emission rates specified in tables 3 and 4 to this appendix.

LSL press means a composite wood product press that presses a loose mat of resinated strands into a billet by simultaneous application of heat and pressure. The billet is cut into laminated strand lumber after exiting the press. An *LSL press* is a process unit.

LVL or PSL press means a composite wood product press that presses resinated stacks of veneers into a solid billet by application of heat and/or pressure. The billet is cut into laminated veneer lumber or parallel strand lumber after exiting the press. An *LVL or PSL press* is a process unit.

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Paddle-type particleboard dryer means a dryer to which heat is applied to remove moisture from particles and paddles to advance materials through the dryer. This type of dryer removes moisture absorbed by particles due to high ambient temperature. A *paddle-type particleboard dryer* is a process unit.

Panel-trim chipper means a piece of equipment that accepts the discarded pieces of veneer or pressed plywood and composite wood products panels that are removed by finishing saws and reduces these pieces to small elements. A *panel-trim chipper* is a process unit.

Particleboard extruder means a heated die oriented either horizontally or vertically through which resinated particles are continuously forced to form extruded particleboard products. A *particleboard extruder* is a process unit.

Particleboard press mold means a press that consists of molds that apply heat and pressure to form molded or shaped particleboard products. A *particleboard press mold* is a process unit.

Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C_3H_8.

Radio-frequency veneer redryer means a dryer heated by radio-frequency waves that is used to redry veneer that has been previously dried. A *radio-frequency veneer redryer* is a process unit.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

Resin storage tank means any storage tank, container, or vessel connected to plywood and composite wood product production that holds resin additives (in liquid form) containing any of the HAP listed in table 2A to this appendix. A *resin storage tank* is a process unit.

Rotary agricultural fiber dryer means a rotary dryer operated by applying heat to reduce the moisture of agricultural fiber. A *rotary agricultural fiber dryer* is a process unit.

Softwood plywood press means a hot press which, through heat and pressure, bonds assembled softwood veneer plies and resin into a softwood plywood panel. A *softwood plywood press* is a process unit.

Softwood veneer kiln means an enclosed dryer operated in batch cycles by applying heat to reduce the moisture content from stacked softwood veneer. A *softwood veneer kiln* is a process unit.

Stand-alone digester means a pressure vessel used to heat and soften wood chips (usually by steaming) before the chips are sent to a separate process unit for refining into fiber. A *stand-alone digester* is a process unit.

Target organ specific hazard index (TOSHI) means the sum of hazard quotients for individual chemicals that affect the same organ or organ system (e.g., respiratory system, central nervous system).

Unit Risk Estimate (URE) means the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter ($\mu g/m^3$) in air.

Wastewater/process water operation means equipment that processes water in plywood or composite wood product facilities for

reuse or disposal. Wastewater/process water operations includes but is not limited to pumps, holding ponds and tanks, cooling and heating operations, settling systems, filtration systems, aeration systems, clarifiers, pH adjustment systems, log storage ponds, pollution control device water (including wash water), vacuum distillation systems, sludge drying and disposal systems, spray irrigation fields, and connections to POTW facilities. *Wastewater/process water operations* are process units.

Worst-case operating conditions means operation of a process unit during emissions testing under the conditions that result in the highest HAP emissions or that result in the emissions stream composition (including HAP and non-HAP) that is most challenging for the control device if a control device is used. For example, worst case conditions could include operation of the process unit at maximum throughput, at its highest temperature, with the wood species mix likely to produce the most HAP, and/or with the resin formulation containing the greatest HAP.

TABLE 1 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—HAP THAT MUST BE INCLUDED IN THE DEMONSTRATION OF ELIGIBILITY FOR THE LOW-RISK PCWP SUBCATEGORY

For your analysis of the following effects . . .	You must include the following HAP . . .
(1) Chronic inhalation carcinogenic effects	acetaldehyde, benzene, arsenic, beryllium, cadmium, chromium, lead, nickel, and formaldehyde.
(2) Chronic inhalation noncarcinogenic respiratory effects	acetaldehyde, acrolein, cadmium, formaldehyde, and methylene diphenyl diisocyanate (MDI).
(3) Chronic inhalation noncarcinogenic CNS effects	manganese, lead, and phenol.
(4) Acute inhalation	acrolein and formaldehyde.

TABLE 2A TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units [a]
Agricultural fiberboard mat dryers, Dry rotary dryers, Fiberboard mat dryer (heated zones), Green rotary dryers, Hardboard ovens, Hardwood veneer dryers (heated zones), Paddle-type particleboard dryers, Press predryers, Rotary agricultural fiber dryers, Rotary strand dryers, Softwood veneer dryers (heated zones), Veneer redryers (heated by conventional means).	Test	Test	Test	Test	Test	NA	Test or fuel analysis.
Atmospheric refiners, Conveyor strand dryers, Pressurized refiners.	Test	Test	Test	Test	Test	NA	NA.
Primary tube dryers, Secondary tube dryers.	Test	Test	Test	Test	Test	Test if processing furnish with MDI resin added prior to drying.	Test or fuel analysis.
Agricultural fiber board presses, Reconstituted wood products presses, Reconstituted wood product board coolers.	Test	Test	Test	Test	Test	Test if board contains MDI resin.	NA
Blending and forming operations—particleboard and MDF.	NA	NA	0.060 lb/ODT [b].	NA	NA	Engineering estimate if MDI resin used.	NA.
Blending and forming operations—OSB.	NA	NA	0.0036 lb/MSF 3/8" press throughput.	Engineering estimate.	NA	Engineering estimate if MDI resin used.	NA.
Dry forming—hardboard	Engineering estimate.	NA	Engineering estimate.	Engineering estimate.	NA	NA	NA.
Fiber washers	0.015 lb/ODT	NA	0.0026 lb/ODT.	NA	NA	NA	NA.
Fiberboard mat dryer (fugitive emissions).	0.0055 lb/MSF 1/2".	NA	0.031 lb/MSF 1/2".	NA	NA	NA	NA.

TABLE 2A TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS—Continued

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units [a]
Finishing sanders	0.0031 lb/MSF.	NA	0.0042 lb/MSF.	0.015 lb/MSF	NA	Engineering estimate if MDI resin used.	NA.
Finishing saws	0.00092 lb/MSF 3/8".	NA	0.00034 lb/MSF 3/8".	0.0057 lb/MSF.	NA	Engineering estimate if MDI resin used.	NA.
Hardwood plywood presses	NA	NA	0.0088 lb/MSF 3/8".	0.016 lb/MSF 3/8".	NA	NA	NA.
Hardwood veneer dryer (cooling zones).	0.058 lb/MSF 3/8".	NA	0.013 lb/MSF 3/8".	NA	NA	NA	NA.
Hardwood veneer kilns	0.067 lb/MSF 3/8".	NA	0.016 lb/MSF 3/8".	0.0053 lb/MSF 3/8",.	NA	NA	NA.
Humidifiers	0.0018 lb/MSF 1/8".	0.0087 lb/MSF 1/8".	0.0010 lb/MSF 1/8".	0.00057 lb/MSF 1/8".	0.0000062 lb/MSF 1/8".	NA	NA.
I-joist curing chambers	NA	NA	0.00018 lb/MLF.	NA	NA	Engineering estimate if MDI resin used.	NA.
Log vats	0.0047 lb/MSF 3/8" removed from vat per hour.	NA	NA	NA	NA	NA	NA.
LSL presses	Engineering estimate.	NA	0.029 lb/1000 ft^3.	Engineering estimate.	NA	0.18 lb/1000 ft^3.	NA.
LVL presses	0.29 lb/1000 ft^3.	NA	0.79 lb/1000 ft^3.	NA	NA	NA	NA.
Lumber kilns	0.065 lb/MBF or conduct small-scale kiln testing according to appendix C to subpart DDDD.	0.009 lb/MBF or conduct small-scale kiln testing according to appendix C to subpart DDDD.	0.034 lb/MBF or conduct small-scale kiln testing according to appendix C to subpart DDDD.	0.010 lb/MBF or conduct small-scale kiln testing according to appendix C to subpart DDDD.	NA	NA	Engineering estimate.
Panel-trim chippers	0.00081 lb/MSF 3/8" finished board production.	NA	0.00034 lb/MSF 3/8" finished board production.	0.0019 lb/MSF 3/8" finished board production.	NA	NA	NA.
Particleboard press molds, Particleboard extruders.	0.034 lb/MSF 3/4".	0.0087 lb/MSF 3/4".	0.64 lb/MSF 3/4".	0.024 lb/MSF 3/4".	0.0073 lb/MSF 3/4".	NA	NA.
Radio-frequency veneer redryers.	0.0029 lb/MSF 3/8".	NA	0.00065 lb/MSF 3/8".	NA	NA	NA	NA.
Resin storage tanks—closed roof.	NA	NA	For tanks with resin containing formaldehyde, 0.001 lb/hr per tank OR model using TANKS software[c].	For tanks with resin containing phenol, 0.0002 lb/hr per tank OR model using TANKS software[c].	NA	For tanks with MDI resin, 0.0013 lb/hr per tank OR model using TANKS software[c].	NA.
Resin storage tanks—open roof.	NA	NA	Engineering estimate if resin contains formaldehyde.	Engineering estimate if resin contains phenol.	NA	Engineering estimate if resin contains MDI.	NA.
Softwood plywood presses	0.012 lb/MSF 3/8".	NA	0.0054 lb/MSF 3/8".	0.0022 lb/MSF 3/8".	NA	NA	NA.
Softwood veneer dryers (cooling zones).	0.012 lb/MSF 3/8".	NA	0.0028 lb/MSF 3/8".	0.011 lb/MSF 3/8".	NA	NA	NA.
Softwood veneer kilns	0.097 lb/MSF 3/8".	0.012 lb/MSF 3/8".	0.10 lb/MSF 3/8".	0.020 lb/MSF 3/8".	0.0078 lb/MSF 3/8".	NA	NA.

TABLE 2A TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS—Continued

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units[a]
Stand-alone digesters	0.030 lb/ODT	0.0024 lb/ODT.	0.0045 lb/ODT.	0.0012 lb/ODT.	NA	NA	NA.
Wastewater/process water operations.	Engineering estimate (such as WATER9[c] or other method).	Engineering estimate (such as WATER9[c] or other method).	Engineering estimate (such as WATER9[c] or other method).	Engineering estimate (such as WATER9[c] or other method).	Engineering estimate (such as WATER9[c] or other method).	NA	NA.
Wet forming—fiberboard and hardboard (without PF resin).	0.0075 lb/MSF ½".	NA	0.0036 lb/MSF ½".	NA	NA	NA	NA.
Wet forming—hardboard (PF resin).	0.0067 lb/ODT.	NA	0.00039 lb/ODT.	0.00075 lb/ODT.	NA	NA	NA.
Miscellaneous coating operations, Log chipping, Softwood veneer dryer fugitive emissions.	NA	NA	NA	NA	NA	NA	NA.
Other ancillary processes (not listed elsewhere in this table) that may emit HAP listed in this table.	Engineering estimate.	Engineering estimate.	Engineering estimate.	Engineering estimate.	Engineering estimate.	Engineering estimate.	Engineering estimate.

Test: Emissions testing must be conducted for the process unit and pollutant according to the test methods specified in table 2B to appendix B to subpart DDDD.

NA: Not applicable. No emission estimates or emissions tests are required for purposes of the low-risk demonstration.

lb/MSF: Pounds of HAP per thousand square feet of board of the inches thickness specified (e.g., lb/MSF ¾ = pounds of HAP per thousand square feet of ¾-inch board). See equation in § 63.2262(j) of subpart DDDD to convert from one thickness basis to another.

lb/ODT: Pounds of HAP per oven dried ton of wood material.

lb/MBF: Pounds of HAP per thousand board feet.

lb/MLF: Pounds of HAP per thousand linear feet

[a] Direct-fired process units firing natural gas or propane are NA; thus, no emissions estimates, emissions tests, or fuel analyses are required for the purposes of the low-risk demonstration.

[b] Estimation of formaldehyde emissions is only necessary for facilities that use resin containing formaldehyde.

[c] TANKS and WATER9 software is available at *http://www.epa.gov/ttn/chief/software/index.html.*

TABLE 2B TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS

For . . .	You must . . .	Using . . .
(1) each process unit required to be tested according to table 2A to this appendix.	select sampling ports' location and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) each process unit required to be tested according to table 2A to this appendix.	determine velocity and volumetric flow rate; ...	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) each process unit required to be tested according to table 2A to this appendix.	conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
(4) each process unit required to be tested according to table 2A to this appendix.	measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60.
(5) each process unit required to be tested according to table 2A to this appendix.	measure emissions of acetaldehyde	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14(f)); OR Method 0011 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846); OR ASTM D6348–03[b] (IBR, see 40 CFR 63.14(b)).
(6) each process unit required to be tested according to table 2A to this appendix.	measure emissions of acrolein	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14(f)); OR ASTM D6348–03[b] (IBR, see 40 CFR 63.14(b)).

TABLE 2B TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS—Continued

For . . .	You must . . .	Using . . .
(7) each process unit required to be tested according to table 2A to this appendix.	measure emissions of formaldehyde	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method ISS/FP–A105.01 (IBR, see §63.14(f)); OR the NCASI Method CI/WP–98.01; OR Method 316 in appendix A to 40 CFR part 63; OR Method 0011 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846); OR ASTM D6348–03 [b] (IBR, see 40 CFR 63.14(b)).
(8) each process unit required to be tested according to table 2A to this appendix.	measure emissions of phenol	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method ISS/FP–A105.01 (IBR, see §63.14(f)); OR the NCASI Method CI/WP–98.01; OR ASTM D6348–03 [b] (IBR, see 40 CFR 63.14(b)).
(9) each process unit required to be tested according to table 2A to this appendix.	measure emissions of benzene	Method 18 in appendix A to 40 CFR part 60; OR NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 [b] (IBR, see 40 CFR 63.14(b)).
(10) each process unit that processes material containing MDI resin required to be tested according to table 2A to this appendix.	measure emissions of MDI	Method 320 in appendix A to 40 CFR part 63; OR Method 207 in appendix M to 40 CFR part 51; OR Conditional Test Method (CTM) 031 which is posted on *http://www.epa.gov/ttn/emc/ctm.html*
(11) each direct-fired process unit [a] required to be tested according to table 2A to this appendix.	measure emissions of the following HAP metals: Arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel..	Method 29 in appendix A to 40 CFR part 60 OR fuel analysis (see section 5(m) of this appendix).
(12) each reconstituted wood product press or reconstituted wood product board cooler with a HAP control device.	meet the design specifications included in the definition of wood products enclosure in §63.2292 of subpart DDDD of 40 CFR part 63; or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M to determine capture efficiency (except for wood products enclosures as defined in §63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a PTE are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD.
(13) each reconstituted wood product press or reconstituted wood product board cooler required to be tested according to table 2A to this appendix.	determine the percent capture efficiency	a TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD. Enclosures that meet the design criteria (1) through (4) in the definition of wood products enclosure, or that meet Method 204 requirements for a PTE (except for the criteria specified in section 6.2 of Method 204) are assumed to have a capture efficiency of 100 percent. Measured emissions divided by the capture efficiency provides the emission rate. Fugitive emissions are equal to the difference in the emission rate and measured emissions.

TABLE 2B TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS—Continued

For . . .	You must . . .	Using . . .
(14) each process unit with a HAP control device required to be tested according to table 2A to this appendix.	establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in table 2 to subpart DDDD.	data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

[a] Excludes direct-fired process units fired with only natural gas or propane.
[b] Provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.

TABLE 3 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED CARCINOGEN EMISSION RATE
[(lb/hr)/(μg/m³)]

Stack height (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	8.72E-07	8.72E-07	8.72E-07	9.63E-07	1.25E-06	1.51E-06	2.66E-06	4.25E-06	4.39E-06	4.39E-06	4.39E-06	5.00E-06
10	2.47E-06	2.47E-06	2.47E-06	2.47E-06	2.47E-06	2.61E-06	3.58E-06	5.03E-06	5.89E-06	5.89E-06	5.89E-06	6.16E-06
20	5.81E-06	5.81E-06	5.81E-06	5.81E-06	5.81E-06	5.81E-06	5.90E-06	7.39E-06	8.90E-06	9.97E-06	9.97E-06	1.12E-05
30	7.74E-06	7.74E-06	7.74E-06	7.74E-06	7.74E-06	7.74E-06	8.28E-06	9.49E-06	1.17E-05	1.35E-05	1.55E-05	1.61E-05
40	9.20E-06	9.20E-06	9.20E-06	9.20E-06	9.20E-06	9.20E-06	9.24E-06	1.17E-05	1.34E-05	1.51E-05	1.98E-05	2.22E-05
50	1.02E-05	1.02E-05	1.02E-05	1.02E-05	1.02E-05	1.02E-05	1.02E-05	1.36E-05	1.53E-05	1.66E-05	2.37E-05	2.95E-05
60	1.13E-05	1.13E-05	1.13E-05	1.13E-05	1.13E-05	1.13E-05	1.13E-05	1.53E-05	1.76E-05	1.85E-05	2.51E-05	3.45E-05
70	1.23E-05	1.23E-05	1.23E-05	1.23E-05	1.23E-05	1.23E-05	1.23E-05	1.72E-05	2.04E-05	2.06E-05	2.66E-05	4.07E-05
80	1.34E-05	1.34E-05	1.34E-05	1.34E-05	1.34E-05	1.34E-05	1.34E-05	1.92E-05	2.15E-05	2.31E-05	2.82E-05	4.34E-05
100	1.52E-05	1.52E-05	1.52E-05	1.52E-05	1.52E-05	1.52E-05	1.52E-05	1.97E-05	2.40E-05	2.79E-05	3.17E-05	4.49E-05
200	1.76E-05	1.76E-05	1.76E-05	1.76E-05	1.76E-05	1.76E-05	1.76E-05	2.06E-05	2.94E-05	3.24E-05	4.03E-05	5.04E-05

MIR=1E-06.

TABLE 4 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED NONCARCINOGEN EMISSION RATE
[(lb/hr)/(μg/m³)]

Stack height (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	2.51E-01	2.51E-01	3.16E-01	3.16E-01	3.16E-01	3.16E-01	3.16E-01	3.46E-01	4.66E-01	6.21E-01	9.82E-01	1.80E+00
10	5.62E-01	5.62E-01	5.62E-01	5.62E-01	5.62E-01	5.62E-01	5.62E-01	5.70E-01	6.33E-01	7.71E-01	1.13E+00	1.97E+00
20	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.68E+00	1.83E+00	2.26E+00	3.51E+00
30	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.53E+00	3.04E+00	3.04E+00	3.33E+00	4.45E+00	5.81E+00
40	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.42E+00	4.04E+00	5.07E+00	5.51E+00	6.39E+00	9.63E+00
50	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	4.49E+00	4.92E+00	6.95E+00	7.35E+00	8.99E+00	1.25E+01
60	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	5.56E+00	6.13E+00	7.80E+00	1.01E+01	1.10E+01	1.63E+01
70	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	6.45E+00	7.71E+00	8.83E+00	1.18E+01	1.36E+01	1.86E+01
80	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	7.12E+00	9.50E+00	1.01E+01	1.29E+01	1.72E+01	2.13E+01
100	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.88E+00	1.19E+01	1.37E+01	1.55E+01	2.36E+01	2.89E+01
200	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	2.05E+01	2.93E+01	3.06E+01	4.02E+01	4.93E+01

HI=1.

■ 13. Add appendix C to subpart DDDD to read as follows:

Appendix C to Subpart DDDD of Part 63—Considerations for a Small-Scale Kiln Emission Testing Program

1.0 Purpose

Emissions test data from small-scale lumber kilns can be used to reasonably approximate emissions from full-scale lumber kilns if representative lumber samples are dried and the venting characteristics of the small-scale kiln mimic those of the full-scale kiln. This appendix provides a list of considerations that must be taken into account by facilities conducting small-scale lumber kiln emissions testing to approximate emissions from their full-scale lumber kilns for purposes of the low-risk demonstration described under appendix B to subpart DDDD of part 63.

The considerations described in this appendix apply only for small-scale lumber kiln emissions testing conducted to provide data for the low-risk demonstration described under appendix B to subpart DDDD of part 63. Permitting authorities may require different procedures for testing or estimating lumber kiln emissions for purposes other than the low-risk demonstration described under appendix B to subpart DDDD of part 63.

2.0 Considerations for Lumber Samples

2.1 A written plan must be developed for obtaining representative lumber samples to use as charges at the small-scale kilns. The plan must discuss how the samples are selected and handled and the basis upon which they are considered to be representative. If possible, information on the harvest site, date harvested, segregation from other lumber (if segregated), and processing at the sawmill must be included. If this information is unavailable, a general description of the sawmill's wood procurement and processing practices must be provided. The affected source and testing laboratory must approve the written test plan before beginning the small-scale kiln testing.

2.2 Samples must not be subject to significant air drying during processing, shipping, or storage prior to charging into the small-scale kiln.

2.3 Enough lumber must be collected to provide for extra lumber charges in case of testing failures.

2.4 Information on the lumber used for each small-scale kiln charge must be reported including the items in paragraphs 2.4.1 though 2.4.4 of this section:

2.4.1 Total kiln charge, board feet,

2.4.2 Nominal dimensions of lumber dried (for example, 2x4s),

2.4.3 Moisture content (dry basis) of the green lumber, and

2.4.4 Moisture content (dry basis) of the kiln dried lumber.

3.0 Considerations for Kiln Operating Parameters

The small-scale kiln must operate in a similar manner to the full-scale kilns for items 3.1 through 3.3 of this section. The small-scale kiln must operate in a reasonably consistent manner from charge-to-charge for all items (3.1 through 3.5) listed in this section.

3.1 Air velocity through the kiln charge.

3.2 Temperature profiles or kiln schedules (wet-bulb/dry-bulb temperatures throughout the kiln cycle).

3.3 Ending moisture content (dry basis) of the lumber (may need to be mathematically adjusted for small-scale kilns).

3.4 Kiln venting profile (trend) for the sample event/kiln cycle (normalized to a board foot or thousand board feet).

3.5 Mass emission rate profile (trend) for the sample event/kiln cycle.

4.0 Considerations for Emission Sampling

4.1 Sample equipment must be able to sample gases with high moisture content.

4.2 You must accurately measure/calculate total kiln exhaust and exhaust moisture content. If direct measurements are impractical other methods used must be explicitly discussed in the report.

4.3 You must accurately measure the concentration of the compounds of concern either in the kiln exhaust or at a proper location within the kiln.

5.0 Considerations for Sample Intervals and Sampling Runs

5.1 A minimum of two full kiln cycles or batches must be tested to determine the emissions for a particular wood species or for a facility utilizing only one wood species.

5.2 You may use a single kiln cycle for emission values for wood species that require more than 3 days to dry.

5.3 Since kiln drying cycles typically exceed 20 hours, it is suggested that sampling be conducted in intervals throughout the drying cycle. Three hours provide a reasonable sample interval (sample run), but sampling equipment or manpower may dictate other schedules. Sampling equipment "turnaround" will result in gaps in the kiln emission data. The gaps must not exceed 45% of the kiln cycle. Data for the gaps occurring at certain periods of time in the drying cycle can be calculated by linear interpolation from the sampling values on either side of the gap. Other techniques may be required if the data gap occurs when the measured data exhibit high levels of variability. As a minimum, sampling intervals must include initial hours of the kiln operating cycle once the kiln has warmed to target wet bulb and/or dry bulb temperatures and begins venting, hours of kiln operation during the middle of the kiln drying cycle, and hours of kiln operation towards the end of the kiln drying cycle.

5.4 The final production-based mass emission rate for the small-scale kiln sample event is determined by integrating the area under the mass emission rate profile curve.

6.0 Considerations for Reporting

The emissions report must contain the information in paragraphs 6.1 through 6.9 of this section.

6.1 Graphical, charge-by-charge results for items 3.2, 3.4, and 3.5 above and numerical data for items 3.1 and 3.3. Describe how the full-scale kiln operates in comparison to the small-scale kiln in order to show that the full-scale kiln drying cycle was reasonably reproduced in the small-scale kiln.

6.2 A moisture balance by comparing the water loss (from the green versus dry lumber charge weight difference) to the water exhausted from the kiln (using the exhaust flow rate and moisture content of the exhaust).

6.3 A description of the sampling system and sampling methodology.

6.4 A summary and background data for all quality assurance measures required by the sampling methods.

6.5 Discussion of method detection limits and treatment of values below the detection limit.

6.6 An example of emission rate calculations.

6.7 Explanation or reference to the methodology used to calculate emissions to the target or desired ending lumber moisture content.

6.8 Information outlined in section 2.0 of this appendix, including a discussion of collection and handling of lumber samples.

6.9 Data and show calculations for developed emission factors.

7.0 Guidance

7.1 NCASI Technical Bulletin 845 provides a large amount of detail that can be of assistance in many phases of a small-scale kiln testing program. This report should be viewed as "one way," not "the only way" to conduct testing.

7.2 Oregon State University, Mississippi State University, the University of Idaho, and others have published information regarding operation and testing of small-scale kilns. These publications are a very good source of information on small-scale kilns.

[FR Doc. 06–1071 Filed 2–15–06; 8:45 am]

BILLING CODE 6560–50–P

experienced State inspectors who are responsible for operating State PCB and asbestos compliance monitoring programs. This would not be in the public interest since States with compliance monitoring programs depend on EPA grant funds to retain the skilled personnel needed for effective program implementation. Moreover, in States that scale back programs due to funding reductions, any turnover of experienced inspectors would require EPA to divert its limited grant dollars from high priority compliance monitoring activities to training new inspectors.

2. States with existing TSCA asbestos and PCB compliance monitoring programs depend on EPA grant funding to run these programs and State activities under the grants comprise a significant portion of EPA's national program for ensuring compliance with the TSCA asbestos and PCB requirements. Under a competition, these States may receive zero or reduced funding, which could cause them to discontinue their programs or cut back on inspections, potentially leading to an increased rate of non-compliance with PCB and asbestos regulations. Non-compliance with the regulations would pose a public health risk associated with the improper handling of PCB and asbestos materials.

3. Regions need to be able to work closely with States to ensure that their compliance monitoring programs meet current EPA standards and policies to ensure a cooperative and effective inspection program. Building and maintaining on-going State capacity is an important outcome of this grant program. This is particularly true for States seeking to become waiver States for purposes of the Asbestos Hazard Emergency Response Act (AHERA), which means they run the program entirely including the enforcement component. The need for such intensive interaction both before and during the application process makes it impracticable to compete these grants.

This grant regulatory change is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute and can be taken by EPA as a final action. Accordingly, the text of § 35.312 will read as follows: "EPA will allot and award Toxic Substances Control Act compliance monitoring grant funds to States in accordance with national program guidance." In addition, EPA is renaming the title of this section "Basis for allotment" from "Competitive process".

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Grant programs-environmental protection, Reporting and recordkeeping requirements.

Dated: January 31, 2006.

Stephen L. Johnson,

Administrator.

■ EPA amends 40 CFR part 35 as follows:

PART 35—[AMENDED]

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.;* 33 U.S.C 1251 *et seq.;* 42 U.S.C. 300f *et seq.;* 42 U.S.C. 6901 *et seq.;* 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 42 U.S.C. 13101 *et seq.;* Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

■ 2. Section 35.312 is revised to read as follows:

§ 35.312 Basis for allotment.

EPA will allot and award Toxic Substances Control Act Compliance Monitoring grant funds to States based on national program guidance.

[FR Doc. 06–1309 Filed 2–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0088, FRL–8008–2]

RIN 2060–AM90

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities, which were promulgated on April 16, 2003, under section 112(d) of the Clean Air Act (CAA). The amendments clarify the testing and monitoring requirements and startup and shutdown requirements for batch processes, make certain technical corrections, and add recent changes to be consistent with the NESHAP General Provisions.

DATES: The direct final rule is effective on April 14, 2006 without further notice, unless adverse comments are received by March 15, 2006 or by March 30, 2006 if a public hearing is requested. If we receive such comment, we will publish a timely withdrawal in the Federal Register indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0088, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: *a-and-r-docket@epa.gov* and *fairchild.susan@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5600.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attn: Docket ID No. OAR–2002–0088, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0088, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. OAR–2002–0088. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edkpub/index.jsp,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2002–0088, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edkpub/index.jsp.* Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy form at the EPA Docket Center, Docket ID No. OAR–2002–0088, EPA West Building, Room B–102, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information contact Susan Fairchild, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, NC 27711; telephone number (919) 541–5167; fax number (919) 541–5600; e-mail address: *fairchild.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS*	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.9782 of the Refractory Products Manufacturing NESHAP. 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.

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

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments because the amendments clarify several of the requirements of the NESHAP, bring the NESHAP into consistency with the General Provisions to 40 CFR part 63, and make technical corrections to the NESHAP. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for refractory products manufacturing facilities if adverse comments are filed. If we receive adverse comment on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective, and which amendments are being withdrawn due to adverse comment. We will address all public comments on withdrawn amendments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by April 14, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule which 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 the direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Amendments to 40 CFR Part 63, Subpart SSSSS
A. Emission Testing
B. Control Device Operation
C. Operating Limits
D. Monitoring
E. Other Changes
III. 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 That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

The EPA promulgated the NESHAP for new and existing refractory products manufacturing facilities on April 16, 2003 (68 FR 18730) as 40 CFR part 63, subpart SSSSS. Shortly after promulgation of the Refractory Products Manufacturing NESHAP, EPA also promulgated amendments to the General Provisions to 40 CFR part 63 (68 FR 32586, May 30, 2003). After reviewing the final amendments to the General Provisions and comparing those to the Refractory Products Manufacturing NESHAP, we discovered discrepancies between sections of the General Provisions as cited in the NESHAP and the newly amended sections of the General Provisions. We also identified minor technical errors and other specific sections of the Refractory Products Manufacturing NESHAP that needed clarification. Today's action includes amendments to the Refractory Products Manufacturing NESHAP that clarify the requirements for testing, control device operation, operating limits, and monitoring.

II. Amendments to 40 CFR Part 63, Subpart SSSSS

A. Emission Testing

The Refractory Products Manufacturing NESHAP specify several requirements that pertain to the testing of batch process sources. Because emissions of hazardous air pollutants (HAP) from a batch process source can vary significantly over the course of a batch cycle, the NESHAP specify emission limits in terms of the peak emissions period. In today's action, we are revising the definition of the peak emissions period in terms of the applicable emission limits to include separate definitions for the 3-hour peak total hydrocarbons (THC) mass emissions period, which applies to batch process sources that comply with the THC percentage reduction limit; the 3-hour peak THC emissions concentration period, which applies to batch sources that satisfy the THC emission concentration limit; and the 3-hour peak hydrogen fluoride (HF) mass emissions period, which pertains to the emission limits for batch process clay refractory products kilns. All references to the peak emissions period in the tables to 40 CFR part 63, subpart SSSSS, have been revised for consistency.

The NESHAP include provisions to allow the owner or operator of an affected batch process source to develop an emissions profile and use the profile to limit emissions testing to the peak emissions period. In today's action, we are amending 40 CFR 63.9802 to clarify that emissions profiles for sources subject to the THC emission limits must be developed using data collected at the maximum organic HAP processing rate. This amendment also clarifies that a new emissions profile must be developed if a facility wants to use an emissions profile to limit testing to the peak emissions period at a process, but increases its maximum organic HAP processing rate at that process. In addition, we are amending 40 CFR 63.9802 to clarify that emissions profiles for batch process clay refractory kilns must be developed using data from when the kiln is processing the clay refractory product with the highest uncalcined clay processing rate.

We are amending 40 CRF 63.9798(a) to eliminate the reference to permit renewal, and stating that subsequent performance tests must be conducted at least every 5 years. Item 1(b)(i)(1) of Table 4 to Subpart SSSSS of Part 63 is amended to clarify that a sampling port is also required at the control device inlet if the owner or operator plans to develop an emissions profile or use the provision for reducing the operating temperature of a thermal or catalytic oxidizer on an affected batch process source. In both cases, sampling is required at the control device inlet. Item 8(a)(i)(5) of Table 4 to Subpart SSSSS of Part 63 is amended to specify the THC concentration in terms of the outlet of the control device. We also made other minor changes to this provision in Table 4 to simplify the wording.

Item 13 of Table 4 to Subpart SSSSS of Part 63 is amended to eliminate the reference to the THC percentage reduction limit. We have clarified that regardless of which THC emission limit applies to a specific source, the owner or operator of the source must measure not only the THC concentration, but also the oxygen concentration at the control device inlet for at least the 1-hour period that immediately follows the temperature reduction. This measurement is necessary for demonstrating that the source is meeting the limit of 20 parts per million dry volume (ppmvd) THC, corrected to 18 percent oxygen, after the oxidizer temperature has been reduced.

Item 13.a.5 of Table 4 to Subpart SSSSS of Part 63 is amended to clarify that only the THC emissions concentration limit applies following any reduction in the oxidizer temperature. We received comment on the proposed rule (67 FR 42108, June 20, 2002) requesting a second emission limit be allowed for sources wanting to meet a percentage reduction limit rather than an emission concentration limit. The commenter believed that since EPA had promulgated percentage reduction limits for other MACT standards to reduce emissions of THC, and since air pollution control devices are usually rated and installed with a minimum percent reduction achieved by the devices, that emission limit would be simpler to meet. At promulgation of the final rule (68 FR 18730, April 16, 2003), we changed the rule to allow regulated sources to meet either the percentage reduction limit or the concentration limit.

In the final rule, we allowed the choice between either the percentage reduction limit or the concentration limit, but required owners and operators to meet the selected emission limit during all times of operation. We also allowed owners and operators the option to turn off the control device when it was no longer needed. However, for those owners or operators

meeting the percentage reduction compliance option, it is not possible to meet that limit if the control device is not in operation. We believe that conserving energy is a beneficial option for all owners and operators, and regardless of the compliance option selected, all should have the opportunity to benefit from turning off the control device when it is no longer needed. Thus, we are clarifying that whether an owner or operator shows compliance with the percentage reduction limit or the concentration limit, compliance with the rule for a unit with a control device no longer in operation may only be demonstrated by meeting the concentration limit; that is, when the THC emissions are below 20 ppmvd corrected to 18 percent oxygen from the heated process unit. Owners and operators in this case may choose to meet the percentage reduction limit before turning off the control device and may show compliance with the concentration limit after turning off the control device.

Item 14(a)(i)(1) of Table 4 to Subpart SSSSS of Part 63 is amended to specify that the performance tests must be performed while processing the clay refractory product with the highest uncalcined clay processing rate.

B. Control Device Operation

Refractory products manufacturing plants typically produce a wide range of products, some of which may contain organic HAP binders or additives, while other products may contain only inorganic binders or additives that do not contain or form HAP. Many plants do not have dedicated thermal process units (*e.g.*, dryers and kilns) for each type of product they manufacture and instead, use the same process units to manufacture products that emit HAP and products that do not contain or emit HAP. Recognizing this situation, we are amending 40 CFR 63.9792 of the NESHAP to clarify that control devices used to comply with the emission limits established by 40 CFR part 63, subpart SSSSS, do not have to be operated when an otherwise affected process unit is processing products that do not contain or release HAP. This amendment applies to sources subject to the THC emission limits as well as the emission limits for HF and hydrogen chloride (also known as hydrochloric acid).

Table 3 to Subpart SSSSS of Part 63, which specifies work practice standards, includes several options for controlling emissions of polycyclic organic matter from shape preheaters and pitch working tanks used in the manufacture of pitch-impregnated refractory products. Options include exhausting the affected source to a thermal or catalytic oxidizer that is comparable to a thermal or catalytic oxidizer that is used to meet the emission limits for an affected defumer or coking oven. To clarify what is meant by a "comparable" thermal or catalytic oxidizer, we are amending 40 CFR 63.9824 to include a definition of "comparable control device."

C. Operating Limits

The Refractory Products Manufacturing NESHAP refer to the operating limit as the "maximum allowable organic HAP processing rate." We are amending the definition of maximum organic HAP processing rate in 40 CFR 63.9824 to distinguish between the operating limit and the actual processing rate measured during the performance test.

The Refractory Products Manufacturing NESHAP include several operating limits for clay refractory products kilns that are controlled by dry limestone adsorbers (DLA). We are amending the NESHAP to eliminate the operating limits of maintaining free-flowing limestone throughout the DLA because the term "free-flowing" may not be appropriate for the grade of limestone used in DLA. The remaining operating limits specified for DLA in the NESHAP are adequate for ensuring compliance with the emission limits for clay refractory products kilns.

As specified in Table 2 (Requirements for Establishing Operating Limits) of the rule, Subpart SSSSS of Part 63, owners and operators of certain thermal process sources of organic HAP are required to establish an operating limit for the maximum organic HAP processing rate. The organic HAP processing rate is a function of the amount of organic HAP in the raw materials and the amounts of those raw materials in the refractory product formulation. Because there are minor variations in the content of organic HAP in a specific binder or additive, the operating limit for the maximum organic HAP processing rate can inadvertently be exceeded without changing the product formulation. In today's action, we are amending the procedure for establishing the operating limit and clarifying that minor exceedances of the maximum organic HAP processing rate established during the performance test are not violations of the operating limit. Specifically, we are amending items 3(b) and 8(b) of Table 4 (Requirements for Performance Tests) to Subpart SSSSS of Part 63 to be consistent with the requirements in Table 2 that reflect a 10 percent allowance when calculating the operating limit.

Today's action amends the procedures for determining minimum temperature operating limits for thermal and catalytic oxidizers that are used to control emissions from certain batch process sources of organic HAP as they pertain to sources that comply with the provisions for reducing the operating temperature of a thermal or catalytic oxidizer.

We are also amending subpart SSSSS to clarify that owners or operators of batch process sources controlled with thermal or catalytic oxidizers must measure the oxidizer operating temperature throughout each entire test run.

D. Monitoring

The Refractory Products Manufacturing NESHAP require THC continuous emission monitoring systems on thermal process sources of organic HAP that use process changes or control devices other than thermal or catalytic oxidizers to meet the THC emission limits. We are amending 40 CFR 63.9800(i)(1) by adding a reference to sources that use process changes to meet the emission limits.

We are also amending 40 CFR 63.9800(i) to state that such sources must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

Today's action amends the definition of "deviation" in 40 CFR 63.9824 to include failure to provide adequate continuous monitoring systems (CMS) data for demonstrating compliance with any emission limit or other requirement. In addition, we are amending the requirement that the owner or operator of an affected source that is required to use a CMS to meet an operating limit must report any deviations from those operating limits.

E. Other Changes

We are amending the Refractory Products Manufacturing NESHAP to include definitions for Shutdown and Startup to preclude unnecessary reporting of batch process source operation.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory

action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB approved the information collection requests for the NESHAP for refractory products manufacturing pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB assigned OMB control number 2060–0515 (EPA ICR No. 2040.02) to these information collection requests (ICR). A copy of the ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the NESHAP for refractory products manufacturing and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

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 current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

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 Administrations' 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 direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action includes minor corrections and clarifications to the Refractory Products Manufacturing NESHAP that do not add any additional requirements.

Although the direct final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the direct final rule amendments on small entities. The EPA has limited the amendments to changes that clarify ambiguities of the Refractory Products Manufacturing NESHAP, correct citations to the General Provisions, and clarify the complex batch testing requirements of the Refractory Products Manufacturing NESHAP. The EPA believes that the amendments will simplify the NESHAP and will not add additional burden to regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 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 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's direct final rule amendments 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 1 year, nor do the direct final rule amendments significantly or uniquely impact small governments because there are no requirements that apply to such governments or impose obligations upon them. Thus, today's direct final rule amendments are not subject to the

requirements of sections 202 and 205 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" 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."

The direct final rule amendments 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. None of the affected facilities are owned or operated by State or local governments, and the direct final rule amendments will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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." The direct final rule amendments 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. No tribal governments own or operate refractory products manufacturing facilities. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. In addition, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

This rule is not a "significant regulatory 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. We have concluded that the direct final rule amendments are 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, 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. 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 the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments implement clarifications and corrections to the NESHAP for refractory product manufacturing, but do not change any technical standards. Therefore, EPA did not consider the use of any VCS.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct 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 direct 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). The direct final rule amendments are effective on April 14, 2006.

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: December 7, 2005.

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 SSSSS—[Amended]

■ 2. Section 63.9792 is amended as follows:
■ a. Revising paragraph (b);
■ b. Redesignating paragraph (f) as paragraph (g); and
■ c. Adding a new paragraph (f).

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(b) Except as specified in paragraphs (e) and (f) of this section, 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). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

* * * * *

(f) For any affected source that is subject to any of the emission limits specified in Table 1 to this subpart, you do not have to operate the control device on that affected source under the conditions specified in paragraphs (f)(1) and (2) of this section.

(1) For any source that is subject to the THC emissions concentration limit or the THC percentage reduction limit, you do not have to operate the control device on that source when none of the refractory products that are being processed by that source contain or form an organic HAP.

(2) For any new clay refractory products kiln that is subject to the production-based mass emission limits or the percentage reduction limits for hydrogen flouride (HF) and hydrogen chloride (HCl), you do not have to operate the control device on that kiln when none of the refractory products that are being processed by that kiln are clay refractory products, as defined in § 63.9824.

* * * * *

■ 3. Section 63.9798 is amended as follows:

■ a. Revising paragraph (a);

■ b. Revising paragraph (c) introductory text; and

■ c. Revising paragraphs (c)(2) and (d).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test at least every 5 years following the initial performance test.

* * * * *

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 9 of Table 1 to this subpart, you must conduct a performance test on the source(s) listed in paragraphs (c)(1) and (2) of this section before you start production of any refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate, as defined in items 3(b) and 8(b) of Table 4 to this subpart, established during the most recent performance test on that same source.

* * * * *

(2) Each affected kiln that follows an affected shape dryer or curing oven in the same process line and is used to process the refractory product with the higher organic HAP processing rate.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 5 or 9 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln (*e.g.*, a decrease in the curing cycle time for a curing oven that precedes the affected kiln in the same process line).

* * * * *

■ 4. Section 63.9800 is amended as follows:

■ a. Revising paragraph (g)(1);

■ b. Revising paragraph (g)(3);

■ c. Revising paragraph (i)(1) introductory text; and

■ d. Adding paragraphs (i)(1)(iv) to (vi).

§ 63.9800 How do I conduct performance tests and establish operating limits?

* * * * *

(g) * * *

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC_c} = \frac{2.9 \times C_{THC}}{(20.9 - C_{O_2})} \qquad \text{(Eq. 1)}$$

Where:

C_{THC_c} = THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC} = THC concentration (uncorrected), ppmvd

C_{O_2} = Oxygen concentration, percent

* * * * *

(3) To determine compliance with production-based HF and HCl emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 3)}$$

Where:

MP = mass emissions of specific HAP (HF or HCl) per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER = mass emissions rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour

P = average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour

* * * * *

(i) * * *

(1) For sources subject to the THC concentration limit specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (i)(1)(i) through (vi) of this section.

* * * * *

(iv) You must meet the data reduction requirements specified in § 63.8(g).

(v) You must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

(vi) To calculate the oxygen correction specified in paragraph (i)(1)(v) of this section, you may use oxygen concentration measurements concurrent with THC concentration measurements, the average oxygen concentration measured during the most recent performance test on the affected source, or other oxygen concentration measurements that are representative of normal operation for the affected source.

* * * * *

■ 5. Section 63.9802 is revised to read as follows:

§ 63.9802 How do I develop an emissions profile?

(a) If you decide to develop an emissions profile for an affected batch process source, as indicated in item 8(a)(i)(4) or 17(b)(i)(4) of Table 4 to this subpart, you must measure and record mass emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source according to the procedures described in paragraph (a)(1) or (2) of this section.

(1) If your affected batch process source is subject to the THC concentration limit specified in item 6(a), 7(a), 8, or 9 of Table 1 to this subpart or the THC percentage reduction limit specified in item 6(b) or 7(b) of Table 1 to this subpart, you must measure and record the THC mass emissions rate at the inlet to the control device using the test methods, averaging periods, and procedures specified in items 10(a) and (b) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the maximum organic HAP processing rate.

(2) If your affected batch process source is subject to the HF and HCl percentage reduction emission limits in item 11 of Table 1 to this subpart, you must measure and record the HF mass emissions rate at the inlet to the control device through a series of 1-hour test runs using one of the test methods specified in item 14(a) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the highest uncalcined clay processing rate.

(b) You must develop a new emissions profile if you meet all of the conditions specified in paragraphs (b)(1) through (3) of this section.

(1) You own or operate a batch process source that is subject to the emission limits specified in item 6(a), 6(b), 7(a), 7(b), 8, or 9 of Table 1 to this subpart.

(2) You use an emissions profile to limit emission testing to the 3-hour peak emissions period.

(3) You begin manufacturing a new refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test on that same source.

■ 6. Section 63.9812 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.9812 What notifications must I submit and when?

* * * * *

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003.

(c) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

* * * * *

■ 7. Section 63.9816 is amended by revising paragraph (c)(9) to read as follows:

§ 63.9816 What records must I keep?

* * * * *

(c) * * *

(9) If you operate a source that is subject to the THC emission limits specified in item 2 or 6 of Table 1 to this subpart and is controlled with a catalytic oxidizer, records of annual checks of catalyst activity levels and subsequent corrective actions.

* * * * *

■ 8. Section 63.9824 is amended as follows:

■ a. Revising paragraph (3) and adding paragraph (4) to the definition of *Deviation;*

■ b. Revising the definitions of *Maximum organic HAP processing rate* and *Peak emissions period;* and

■ c. Adding the definitions of *Comparable control device, Shutdown,* and *Startup.*

§ 63.9824 What definitions apply to this subpart?

* * * * *

Comparable control device means, subject to paragraphs (1), (2), and (3) of this definition, a control device with design and operating parameters that are comparable to the reference control device.

(1) For a thermal oxidizer, a comparable control device is either:

(i) A thermal oxidizer with a residence time at least as long as, and a combustion chamber operating temperature at least as high as the reference thermal oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference thermal oxidizer.

(2) For a catalytic oxidizer, a comparable control device is either:

(i) A catalytic oxidizer with a space velocity no greater than, and a catalyst bed inlet temperature at least as high as the reference catalytic oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference catalytic oxidizer.

(3) For other control devices, a comparable control device is one that has been demonstrated either through engineering calculations or emission testing to control emissions to a level that is comparable to or better than the level of control achieved by the reference control device.

* * * * *

Deviation * * *.

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

(4) Fails to provide adequate monitoring data for demonstrating compliance with any emission limitation (emission limit, operating limit, or work practice standard) or other applicable requirement established by this subpart due to a malfunction or failure of any CMS required by this subpart.

* * * * *

Maximum organic HAP processing rate means the maximum rate at which the mass of organic HAP materials in refractory shapes are processed in an affected process unit. (See also the definition of *organic HAP processing rate.*)

* * * * *

Peak emissions period means the period of consecutive hourly average emissions of the applicable pollutant that is greater than any other period of consecutive hourly average emissions for the same pollutant over the course of a specified batch process cycle, as defined in paragraphs (1) through (3) of this definition. The peak emissions period is a function of the rate at which the temperature of the refractory shapes is increased, the mass and loading configuration of the shapes in the process unit, the constituents of the refractory mix, and the type of pollutants emitted.

(1) The 3-hour peak THC mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly THC mass emissions rates is greater than the sum of the uncontrolled hourly THC mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

(2) The 3-hour peak THC emissions concentration period is the period of 3 consecutive hours over which the sum of the THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the THC concentrations at the same sampling location, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the same batch process cycle.

(3) The 3-hour peak HF mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly HF mass emissions rates is greater than the sum of the uncontrolled hourly HF mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

* * * * *

Shutdown means the cessation of operation of an affected source. For an affected batch process source, shutdown means the cessation of operation during a batch cycle. Shutdown does not include normal periods between batch cycles when the batch process source is not in operation.

Startup means the setting into operation of an affected source. For an affected batch process source, startup means the initial startup of the source

or the startup of the source following maintenance, replacement of equipment, or equipment repairs. Startup does not include routine recharging of a batch process source at the start of a batch cycle.

* * * * *

■ 9. Table 1 to subpart SSSSS is amended as follows:

■ a. Revising items 6.a and b;

■ b. Revising items 7.a and b;

■ c. Revising item 8;

■ d. Redesignating items 9, 10, and 11 as items 10, 11, and 12;

■ e. Adding a new clarification as item 9;

■ f. Revising newly redesignated items 11.a and b; and

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

[As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:]

For . . .	You must meet the following emission limits . . .
* * * * * * * *	
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process units that have turned off the control device or are not equipped with a control device.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Batch process kilns that are not equipped with a control device	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
11. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton kiln that is (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent.
* * * * * * * *	

■ 10. Table 2 to subpart SSSSS is amended as follows:
■ a. Revising item 1.c;
■ b. Revising item 4;
■ c. Revising 7;
■ d. Revising items 8.a and b and adding items 8.c through e;
■ e. Revising items 9.a and b, and adding new items 9.d through f; and
■ f. Removing item 11.b and redesignating items 11.c and d as items 11.b and c, respectively.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

[As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart	* * * b. Capture emissions and vent them through a closed system; and c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e) and (f), item 2 of this table, and item 13 of Table 4 to this subpart; and * * *
* * * * * * * * * *	
4. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
* * * * * * * * * *	
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer	a. Except as specified in item 8.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and b. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 8.c. through 8.e. of this table; c. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; d. From the time when the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test; e. For the remainder of the batch process cycle, maintain the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

[As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
9. Batch process units that are equipped with a catalytic oxidizer	a. Except as specified in item 9.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and b. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 9.d through 9.f of this table; and c. Check the activity level of the catalyst at least every 12 months. d. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; e. From the time when the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; f. For the remainder of the batch process cycle, maintain the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

* * * * * * *

■ 11. Table 4 to subpart SSSSS is revised to read as follows:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests.	i. The requirements of the General Provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2 and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR, part 60, appendix A.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, OR to develop an emissions profile, OR to satisfy the requirements of item 13.a. of this table, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; AND (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	Measure gas velocities and volumetric flow rates at 1-hr intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	(i) Method 3, 3A, or 3B of 40 CFR part 60, appendix A; or	As specified in the applicable test method.
		(ii) ASME PTC 19.10–1981—Part 10.	You may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	e. Measure gas moisture content.	Method 4 of 40 CFR part 60, appendix A.	As specified in the applicable test Method.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests. b. Satisfy the applicable requirements listed in items 3 through 13 of this table.	.....	(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1, 4, and 5 of this table.	Each test run must be at least 1 hour in duration.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and. iii. Process feed rate data (tons per hour).	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each binder, or additive, in the product; and the process feed rate; and (2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and (3) Calculate and record the maximum allowable organic HAP processing rate as 110 percent of the average of the processing rates for the three test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Record the operating temperature of the affected source.	Process data	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR Part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR Part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63,9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.	The hourly average concentrati on of THC, corrected to 18 percent oxygen, for each test run.	Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.
5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour block average THC percentage reduction.	i. The hourly THC mass emissions rates at the inlet and outlet of the control device.	(1) Calculate the hourly THC for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.
6. Each continuous process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14 °C (25 °F).
7. Each continuous process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every the 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and (4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14 °C (25 °F).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
8. Each affected batch process unit.	a. Perform a minimum of 2 test runs.	i. The appropriate test methods specified in items 1, 9, and 10 of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a)(1), you can limit each test run to the 3-hour peak THC mass emissions period; and (5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if either of the following provisions are met: (i) you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate at the outlet of the control device or in the stack has not increased during the 3-hour period since maximum process temperature was reached, AND the applicable emission limit specified in items 6 through 9 of Table 1 to this subpart was met during each of the 3 hours since maximum process temperature was reached, OR, (ii) for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and. iii. Batch weight (tons)	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior (2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and (3) Calculate and record the maximum allowable organic HAP processing as 110 percent of the average of the organic HAP processing rates for the two test runs.
	c. Record the batch cycle time.	Process data	Record the total elapsed time from the start to the completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.
9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurement; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. Determine the 3-hour peak THC emissions concentration period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions concentration period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak THC emissions concentration period for each test run.
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for the two test runs.
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour peak THC mass emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC mass emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for the two test runs.
	f. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, measure the oxygen concentration at the inlet to the control device.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Calculate each hourly average oxygen concentration using at least 50 1-minute measurements for each valid hourly average oxygen concentration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average combustion chamber temperature for the applicable 3-hour peak emissions period for each test run using the average hourly combustion chamber temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the average combustion chamber temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average catalyst bed inlet temperature for the applicable 3-hour peak emissions period for each test run using the average hourly catalyst bed inlet temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable catalyst bed inlet operating temperature as the average of the average catalyst bed inlet temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.	.....	(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emissions profile to limit testing to the 3-hour peak THC mass emissions period, as specified in item 8.a.i.4. of this table; (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and (3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 3-hour periods; and (4) The hourly average THC mass emissions rate at the control device inlet did not increase during the 3-hour period that immediately preceded the oxidizer temperature reduction; and (5) The THC concentration at the oxidizer inlet did not exceed 20 ppmvd, corrected to 18 percent oxygen, during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the THC concentration exceeded 20 ppmvd, corrected to 18 percent oxygen, during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the THC concentration at the oxidizer inlet is no more than 20 ppmvd, corrected to 18 percent oxygen, for at least four consecutive 15-minute periods that immediately follow the oxidizer temperature reduction.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL.	i. Method 26A of 40 CFR part 60, appendix A; or 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCL dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1 and 14.a. of this table.	Each test run must be at least 1 hour in duration.
15. Each new continuous kiln that is subject to the production-based HF and HCL emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate.	i. Production data; and ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run.
	b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rate for each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCL mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rate for each test run.
	e. Determine the 3-hour block average production-based HCL emissions rate.	i. The HCl mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCl emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HCl rate as the average of the production-based HCl emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCL percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or. iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HF percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCL mass emissions rates at the inlet and outlet control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rates at the control device inlet and outlet for each test run.
	d. Determine the 3-hour block average HCL percentage reduction.	i. The HCl mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCl percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HCl percentage reduction as the average of HCl percentage reductions for each test run.
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Perform a minimum of 2 test runs.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a)(2), you can limit each test run to the 3-hour peak HF mass emissions period.
	c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.	i. The appropriate test methods specified in items 1 and 71.a. of this table.	Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.
	d. Determine the 3-hour peak HF mass emissions period.	The hourly HF mass emissions rates at the inlet of the control device.	Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	e. Determine the 2-run block average HF percentage reduction for the emissions test.	i. The hourly average HF emissions rates at the inlet and outlet of the control device.	(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); AND (2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF mass emissions period for that run; and (3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.
	f. Determine the 2-run block average HCl percentage reduction for the emission test.	i. The hourly average HCl emissions rates at the inlet and outlet of the control device.	(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); and (2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF mass emissions period for that run; and (3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	a. Establish the operating limit for the minimum pressure drop across the DLA.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the DLA; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.
	b. Establish the operating limit for the limestone feeder setting.	i. Data from the limestone feeder during the performance test.	(1) Establish the limestone feeder setting 1 week prior to the performance test; and (2) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system. b. Establish the operating limit for the lime feeder setting.	Data from the installation and calibration of the bag leak detection system. i. Data from the lime feeder during the performance test.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status. (1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and (2) Record the feeder setting for the two or three runs, whichever applies. (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; and (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pH values for each hour of the performance test; and (4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.
	c. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.
	d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; and (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average chemical feed rate for each hour of the performance test; and (4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.

■ 12. Table 5 to subpart SSSSS is amended as follows:

■ a. Revising items 5 and 6; and

■ b. Revising items 10.a and b.

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* *	* * *	* *
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak THC emissions concentration period measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak THC mass emissions period measured during the performance test using Method 25A is equal to or greater than 95 percent.
* *	* * *	* *
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent.	The 2-run block average HF emission reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 90 percent.
	b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HCl emissions reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 30 percent.
* *	* * *	* *

■ 13. Table 7 to subpart SSSSS is amended as follows:

■ a. Revising item 2;

■ b. Revising item 4 by designating the entry in column 3 as item i and adding item 4.ii;

■ c. Revising item 5 by designating the entry in column 3 as item i and adding item 5.ii; and

■ d. Removing item 9.a.ii and redesignating items 9.a.iii and iv as items 9.a.ii and iii, respectively.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* *	* * *	* *
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 7 of this table	Satisfying the applicable requirements specified in items 3 through 7 of this table.
* *	* * *	* *
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

■ 14. Table 8 to subpart SSSSS is amended as follows:

■ a. Revising item 4.iii and adding item 4.iv;

■ b. Revising item 7.iv and adding item 7.v;

■ c. Revising items 8 and 8.i through v and adding items 8.vi through viii;

■ d. Revising items 9 and 9.i through iv, redesignating items 9.v and vi as items 9.viii and ix, respectively, and adding items 9.v. through vii;

■ e. Revising items 11.a.ii and iii, adding item 11.a.iv, removing item 11.b, and redesignating items 11.c and d as items 11.b and c, respectively; and

■ f. Revising items 13.a.ii and iii, 13.b.ii and iii, 13.c.ii and iii, and 13.d.ii and iii, and adding items 13.a.iv, 13.b.iv, 13.c.iv, and 13.d.iv.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each affected continuous process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	* * * iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test
7. Each affected batch process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	* * * iv. Maintaining the organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and v. Reporting, in accordance with § 63.9814(e), any organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes throughout any period during which the thermal oxidizer is required to be in operation; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature for any period during which the thermal oxidizer is required to be in operation; and iii. Except as permitted by item 8.iv of this table, maintaining throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test; and iv. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 8.vi. through 8.viii. of this table; and v. Reporting, in accordance with § 63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature established during the most recent performance test. vi. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; vii. From the time when the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test; viii. For the remainder of the batch process cycle, maintaining the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes throughout any period during which the catalytic oxidizer is required to be in operation; and ii. Calculating the hourly average temperature at the catalyst bed inlet for any period during which the catalytic oxidizer is required to be in operation; and iii. Except as specified in items 9.a.iv through 9.a.vii of this table, maintaining throughout the entire batch cycle the hourly average operating temperature at the catalyst bed inlet at or above the minimum allowable performance allowable operating temperature established during the most recent performance test; and iv. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 9.a.v. through 9.a.vii. of this table; and v. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and vi. From the time when the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; and vii. For the remainder of the batch process cycle, maintaining the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and viii. Reporting, in accordance with § 63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and ix. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
* * *	* *	* *
11. Each new kiln that is equipped with a DLA	a. Maintain the average pressure drop the DLA for each 3-hour block period at or above the mininum pressure drop established during the most recent performance test.	* * * ii. Calculating the hourly average pressure drop across the DLA; and iii. Maintaining the 3-hour block average pressure drop across the DLA at or above the minimum pressure drop established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average pressure drop across the DLA below the minimum pressure drop established during the most recent performance test.
* * *	* *	* *
13. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	* * * ii. Calculating the hourly average pressure drop across the scrubber; and iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test; and iv. Reporting, in accordance with during the § 63.9814(e), any 3-hour block average most recent pressure drop across the scrubber below the minimum pressure drop established during the most recent performance test.
	b. Maintain the average average scrubber liquid pH for each 3-hour block period at or above the minimum scrubber liquid pH established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber liquid pH; and iii. Maintaining the 3-hour block average scrubber liquid pH at or above the minimum scrubber liquid pH estalbished during the most recent perforamnce test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average scrubber liquid pH below the minimum liquid pH established during the most recent performance test.
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber liquid flow rate; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average established scrubber liquid flow rate below the minimum liquid flow rate established during the most most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber chemical feed rate; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the scrubber minimum scrubber chemical feed rate established during the most recent rate for each performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average scrubber chemical feed rate below the minimum chemical feed rate established during the most recent performance test
* * * * * * *		

■ 15. Table 10 to subpart SSSSS is amended by revising item 1 to read as follows:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.9814, you must comply with the requirements for reports in the following table:]

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(a) through (f)	Semiannually according to the requirements in § 63.9814(b)
* * * * * * *		

■ 16. Table 11 to subpart SSSSS is amended as follows:

■ a. Revising citation § 63.4;

■ b. Adding citations § 63.6(i)(15) and (16);

■ c. Revising citation § 63.7(b)(2);

■ d. Revising citation § 63.7(e)(3); and

■ e. Revising citations § 63.8(c)(1)(i), (ii), and (iii).

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

[As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Subject	Brief description	Applies to subpart SSSSS
* * * * * * *			
§ 63.4	Prohibited Activities	Compliance date; circumvention; fragmentation	Yes.
* * * * * * *			
§ 63.6(i)(15)	[Reserved].		
§ 63.6(i)(16)	Administrator's authority	Granting extension does not abrogate Administrator's authority.	Yes.
* * * * * * *			
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator as soon as is practicable and provide rescheduled date.	Yes.
* * * * * * *			
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain CMS in accordance with § 63.6(e)(1)	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs	Yes.
§ 63.8(c)(1)(iii)	SSMP for CMS	Must develop and implement SSMP for CMS	Yes.
* * * * * * *			

[FR Doc. 06–1218 Filed 2–10–06; 8:45 am]
BILLING CODE 6550–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6029–27; I.D. 020606D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen for 15 days in an area southeast of Portland, ME, totaling approximately 886 nm² to 1,569 nm² (3,039 km² to 5,382 km²), depending on the temporal and spatial overlap with two other DAM zones currently in effect. The two other overlapping DAM zones are in effect from 0001 hours February 3, 2006 through 2400 hours February 17, 2006,and from 0001 hours February 10, 2006, through 2400 hours February 24, 2006. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 15, 2006, through 2400 hours March 1, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 2, 2006, an aerial survey reported a sighting of seven right whales in the proximity 42° 59′ N. lat. and 69° 26′ W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM zone overlaps with two other DAM zones: one in effect from 0001 hours February 3, 2006, through 2400 hours February 17, 2006 (71 FR 5180, February 1, 2006), and the other in effect from 0001 hours February 10, 2006, through 2400 hours February 24, 2006 (70 FR 6396, February 8, 2006). Effective from 0001 hours February 15, 2006 through 2400 hours February 17, 2006, the DAM zone is bounded by the following coordinates when it overlaps these previously established DAM zones:

43° 18′ N., 69° 53′ W. (NW Corner)
43° 18′ N., 69° 15′ W.
42° 49′ N., 69° 15′ W.
42° 49′ N., 68° 58′ W.
42° 39′ N., 68° 58′ W.
42° 39′ N., 69° 32′ W.
43° 00′ N., 69° 32′ W.
43° 00′ N., 69° 53′ W.

Federal Register

Friday,
January 6, 2006

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0005; FRL–8018–9]

RIN 2060–AM28

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for surface coating of metal cans, which were promulgated on November 13, 2003, under section 112 of the Clean Air Act (CAA). The direct final rule amendments correct errors and add clarification to sections of the rule. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the NESHAP for surface coating of metal cans if adverse comments are filed. Any comments on the revisions should be directed to the proposed rule.

DATES: The direct final rule is effective on March 7, 2006 without further notice, unless EPA receives adverse written comment by February 6, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0005, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/edkpub/index.jsp*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov* and *almodovar.paul@epa.gov*.
- Fax: (202) 566–1741 and (919) 541–5689.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2003–0005, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2003–0005, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0005. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/edkpub/index.jsp*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2003–0005, Research Triangle Park, NC 27711. Clearly mark all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hardcopy at the EPA Docket Center, Docket ID No. OAR–2003–0005, EPA West Building, Room B–102, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Paul Almodovar, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, NC 27711; telephone number (919) 541–0283; fax number (919) 541–5689; e-mail address: *almodovar.paul@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	332431	Two piece beverage can facilities.
	332431, 332115, 332116, 332812, 332999	Three piece food can facilities, two piece D&I facilities, one piece aerosol can facilities, etc.
	332431	Can assembly facilities.

Category	NAICS* code	Examples of regulated entities
	332431, 332812	End manufacturing facilities.

*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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.3481 and 40 CFR 63.3482 of the Metal Can NESHAP (68 FR 64432, November 13, 2003). 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.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this Federal Register, we are publishing a separate document that will serve as the proposal to amend the NESHAP for surface coating of metal cans if adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the Federal Register informing the public which amendments will become effective, and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 7, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments which 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted 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.

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

I. Background
II. Amendments to 40 CFR Part 63, Subpart KKKK
III. 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. Congressional Review Act

I. Background

EPA promulgated NESHAP for surface coating of metal cans on November 13, 2003 (68 FR 64432). The final rule (40 CFR part 63, subpart KKKK) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to the standards. After promulgation of the final rule, EPA received numerous questions relating to rule interpretation. The questions pointed out minor inconsistencies in some of the rule language and equations and identified areas where the rule requirements were not clear. Today's action includes direct final rule amendments that resolve inconsistencies and clarify rule language. None of the amendments will have any discernable effect on the stringency of the rule.

II. Amendments to 40 CFR Part 63, Subpart KKKK

In response to the proposed rule (68 FR 2110, January 15, 2003), EPA received a question related to compliance with parametric monitoring after testing but before the compliance date. In the final rule, EPA retained language from the proposed rule that requires affected sources to meet operating limits once the performance test used to establish those limits is complete, even if this occurs before the actual compliance date. EPA failed to make an intended change for the final rule to clarify that existing affected sources do not have to meet the operating limits prior to the compliance date. We have rewritten 40 CFR 63.3492 to state that new and reconstructed sources must meet the operating limits at all times after they have been established during the performance test, and existing sources must meet the operating limits at all times after the compliance date of November 13, 2006.

A question was raised concerning the definition of major source in the final rule versus the definition of major source in the General Provisions of 40 CFR part 63. To be consistent with the definition of major source in 40 CFR 63.2 of the General Provisions, we added the phrase "considering controls" to the description of a major source of HAP emissions in 40 CFR 63.3481(b).

A question was raised about the omission of clarifying text stating that all required calculations and compliance demonstrations may be performed with either metric or English units. In response, we have added language clarifying that all required calculations and all compliance demonstrations may be performed using either metric or English units in 40 CFR 63.3521, 63.3531, and 63.3541, as was intended.

A question was raised about the inclusion of cleaning materials in compliance calculations and equations. EPA erroneously made a change between the proposed and final rule that added cleaning materials as HAP-containing materials and included them in compliance calculations in 40 CFR 63.3541(h). Several other surface coating maximum achievable control technology (MACT) rules include cleaning materials as part of the calculation of total mass of organic HAP; however, as stated in the preamble

to the proposed rule (January 15, 2003, 68 FR 2130), emissions data collected for the metal can industry did not show any significant HAP associated with cleaning materials. Therefore, we have removed references to cleaning materials in the text in 40 CFR 63.3522 and 63.3561, as well as references to cleaning materials in equations which also resulted in modifications to the associated equation numbering in 40 CFR 63.3510, 63.3511, and 63.3512. The term "surface preparation" was removed in 40 CFR 63.3544(b), since this term is defined to mean the use of a cleaning material on a substrate. These revisions are discussed in more detail below.

Section 63.3522, paragraph (c) pertaining to identifying those coating operations for which affected sources use the compliant material option in the semiannual compliance report, was revised to exclude the application of cleaning materials as a coating operation.

Section 63.3561 includes the definition of terms used in this subpart, including the definition of "capture system" which is defined in terms of coatings and cleaning materials. Capture systems will not be required to collect emissions from cleaning materials, so the definition of "capture system" no longer contains a reference to cleaning materials.

Section 63.3510, paragraph (c)(8)(ii), pertaining to the notification of compliance requirements for affected sources using the emission rate without add-on controls option, was revised to reference Equations 1, 1A, 1B, 2, and 3 of 40 CFR 63.3531 for calculating the total mass of organic HAP emissions for each month, the total volume of coating solids used each month, and the 12-month organic HAP emission rate, respectively.

Section 63.3510, paragraph (c)(8)(iii) pertains to affected sources using the emission rate with add-on controls option. The notification of compliance will now require the use of Equations 1, 1A, and 1B of 40 CFR 63.3531 to calculate the total mass of organic HAP emissions for the coatings and thinners used each month. Also, the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices will now be performed by using Equations 1 and 1A through 1C of 40 CFR 63.3541, and Equations 2, 3, 3A, and 3B of 40 CFR 63.3541, as applicable.

In 40 CFR 63.3511, which pertains to reporting requirements for affected sources, references to equations to be used to calculate the total mass of organic HAP emissions for the coatings and thinners used each month were revised in the second sentence of paragraph (a)(6)(ii) to include Equations 1, 1A, 1B, 2, and 3 in 40 CFR 63.3531; and in the second sentence of paragraph (a)(7)(ii) to include Equations 1, 1A, and 1B of 40 CFR 63.3531. In addition, the calculation for the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices will now use Equations 1 and 1A through 1C of 40 CFR 63.3541, and Equations 2, 3, 3A, and 3B of 40 CFR 63.3541, as applicable.

Section 63.3512 contains recordkeeping requirements. References to each equation were revised in paragraph (c)(3) to include Equations 1, 1A, 1B, and 2 of 40 CFR 63.3531 to be used to calculate the total mass of organic HAP emissions for the coatings and thinners used each month for the emission rate without add-on controls option; paragraph (c)(4)(i) was revised to include Equations 1, 1A, and 1B of 40 CFR 63.3531 to be used to calculate the total mass of organic HAP emissions for the coatings and thinners used each month; and paragraph (c)(4)(iii) was revised to include Equations 1 and 1A through 1C, 2, 3, 3A, and 3B of 40 CFR 63.3541 to be used to calculate the mass of organic HAP emission reduction by emission capture systems and add-on control devices.

Section 63.3544, paragraph (b), pertains to measuring capture efficiency during a production run of at least 3 hours and up to 8 hours, where the production run is defined as the time required for a single part to go from the beginning to the end of production. The term production run was redefined to exclude surface preparation activities which involve the use of cleaning materials.

EPA received comments requesting that it include six additional cross-references to the overall subcategory emission limit (OSEL) in the notification, reports, and records sections of this subpart, in 40 CFR 63.3510, 63.3511, and 63.3512, respectively. The OSEL is a 12-month alternative emission limit that can be used if the affected source applies coatings in more than one coating type segment within a subcategory and can be calculated by using Equation 4 in 40 CFR 63.3531(i). We have rewritten five sentences to reference OSEL Equation 4 in addition to the existing formula references and added one new sentence. The same five sentences were also affected by the deletion of the reference to cleaning materials, as discussed above.

A comment was made pertaining to remaining references to 40 CFR 63.3547(g) and 63.3557(g), paragraphs pertaining to requirements for continuous parameter monitoring for emission rate with the add-on controls option and for the control efficiency/outlet concentration option, respectively, that appeared in the proposed rule but were not included in the final rule. We are removing the remaining references to these paragraphs in 40 CFR 63.3547(a) and 63.3557(a). A similar reference to 40 CFR 63.3546(g) remained in Table 4 to Subpart KKKK of Part 63, Item 8.a.i, was also removed.

A comment was made pertaining to redundant language in 40 CFR 63.3547(a)(1) and 63.3557(a)(1), pertaining to continuous parameter monitoring system (CPMS) frequency of data collection. These sections state that the CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. They then state that you must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour. The second sentence is redundant and is now removed from each section.

A comment was made pertaining to the need to clarify the frequency of data collection for CPMS for permanent total enclosure (PTE) capture systems in Table 4 to Subpart KKKK of Part 63, Item 7, and the number of data points needed to establish the 3-hour average for the non-PTE emission capture operating parameters in Table 4, Item 8. For emission capture systems and add-on control devices, the frequency of data collection and the number of data collection points is specified in 40 CFR 63.3547(a)(1) and (2) and 40 CFR 63.3557(a)(1) and (2), which state that the CPMS must complete a minimum of one cycle of operation for each successive 15-minute period, and the average of all recorded readings must be determined for each successive 3-hour period. These sections apply to emission capture systems (PTE and non-PTE) and add-on control devices. We are, therefore, transferring this language and references to 40 CFR 63.3547(a)(1) and (2) and 40 CFR 63.3557 (a)(1) and (2) to Table 4 to Subpart KKKK of Part 63, Items 7 and 8, for clarification.

A question was raised as to whether a bypass line valve indicator or a damper indicator would be acceptable in place of the capture system bypass line flow indicator required in paragraph (b)(1) of 40 CFR 63.3547. The alternate indicators would meet the CPMS requirements by recording the position of the bypass valve damper at least once every 15 minutes to ensure

the bypass line is in the closed position and would not divert emissions away from the add-on control device directly to the atmosphere. We are, therefore, modifying the text to add the two alternate indicators.

A question was raised as to whether static pressure could be measured at the oxidizer inlet as an alternative to the requirement to measure the static pressure in each capture system duct as required by Table 4 to Subpart KKKK of Part 63, Item 8, to show that the capture system is working. EPA agrees that this approach would be acceptable, but consider it critical to address the position of the pressure measurement relative to the flow inducer and that "at the inlet of the oxidizer" is not descriptive enough. We, therefore, added new language requiring measurement of static pressure "upstream of the fan" in the duct of each capture device or "upstream of the fan that is common to multiple capture devices" versus "at the inlet of the oxidizer." Language was also added to differentiate between smaller safety fans (on the outlet of ovens that also act as capture devices) and fans that serve as the primary air movers. This allows for the affected source to monitor pressure downstream of the safety fan, but upstream of the primary fan. Language was also added to refer back to the required performance testing in 40 CFR 63.3546(g) in order to establish the limits for gas volumetric flow rate and duct static pressure. Conforming changes were then made to 40 CFR 63.3546(g).

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved the information collection request (ICR) for the NESHAP for metal can surface coating pursuant to the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0541 (EPA ICR No. 2079.02). A copy of the original ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You may also download a copy from the internet at *http://www.epa.gov/icr*. Include the ICR number in any correspondence.

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.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that the direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 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 1 year. Before promulgating a 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 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 direct final rule amendments 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 1 year. The direct final rule amendments apply only to affected sources in the metal can industry and clarify and correct errors in the final rule and, therefore, add no additional burden on sources. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The direct final rule amendments apply only to affected sources in the metal can industry and clarify and correct errors in the final rule. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 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" 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."

The direct final rule amendments 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. No metal can production facilities subject to the direct final rule amendments are owned or operated by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments, or anyone else, to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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." The direct final rule amendments 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, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments 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 direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are 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 (NTTAA) of 1995, 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. 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 the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments do not involve technical standards; therefore, EPA is not adopting any VCS.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct 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 direct final rule amendments in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on March 7, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: December 29, 2005.

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.*

Subpart KKKK—[AMENDED]

■ 2. Section 63.3481 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 63.3481 Am I subject to this subpart?

* * * * *

(b) * * * A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

* * * * *

■ 3. Section 63.3492 is amended by revising the third sentence in paragraph (b) to read as follows:

§ 63.3492 What operating limits must I meet?

* * * * *

(b) * * * You must establish the operating limits during the initial performance test according to the requirements in § 63.3546 or § 63.3556. New and reconstructed sources must meet the operating limits at all times after they have been established during the performance test, and existing sources must meet the operating limits at all times after the compliance date.

* * * * *

■ 4. Section 63.3510 is amended by revising paragraphs (c)(8)(ii) and (iii) to read as follows:

§ 63.3510 What notifications must I submit?

* * * * *

(c) * * *

(8) * * *

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month, the calculation of the total volume of coating solids used each month, and the calculation of the 12-month organic HAP emission rate, using Equations 1, 1A, 1B, 2, and 3, respectively, of § 63.3531, or Equation 4 of § 63.3531, if applicable.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541, as applicable; and the calculation of the 12-month organic HAP emission rate, using the applicable equation, Equation 5 of § 63.3541 or Equation 4 of § 63.3531.

* * * * *

■ 5. Section 63.3511 is amended by revising the second sentence of paragraph (a)(6)(ii) and the second sentence of paragraph (a)(7)(ii) to read as follows:

§ 63.3511 What reports must I submit?

(a) * * *

(6) * * *

(ii) * * * You must provide the calculations for Equations 1, 1A, 1B, 2, and 3 in § 63.3531 or Equation 4 in § 63.3531, if applicable; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3).

* * *

* * * * *

(7) * * *

(ii) * * * You must provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3541, or Equation 4 in § 63.3531, if applicable. * * *

* * * * *

■ 6. Section 63.3512 is amended by:

■ a. Revising paragraphs (c)(3), (c)(4) introductory text, (c)(4)(i), and (c)(4)(iii); and

■ b. Adding paragraph (c)(4)(vi) to read as follows:

§ 63.3512 What records must I keep?

* * * * *

(c) * * *

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, 1B, and 2 of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3531, or Equation 4 in § 63.3531, if applicable.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (vi) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3).

* * * * *

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable.

* * * * *

(vi) The OSEL calculation, if applicable, using Equation 4 of § 63.3531.

* * * * *

■ 7. Section 63.3521 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 63.3521 How do I demonstrate initial compliance with the emission limitations?

* * * All required calculations and compliance demonstrations may be performed with either metric or English units.

* * * * *

■ 8. Section 63.3522 is amended by revising the second sentence in paragraph (c) to read as follows:

§ 63.3522 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) * * * If there were no deviations from the emission limitations set forth in § 63.3490, submit a statement that th coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.3490, and you used no thinner that containec

organic HAP, as determined according to § 63.3521(a).

* * * * *

■ 9. Section 63.3531 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 63.3531 How do I demonstrate initial compliance with the emission limitations?

* * * All required calculations and compliance demonstrations may be performed with either metric or English units.

* * * * *

■ 10. Section 63.3541 is amended by:
■ a. Adding a sentence to the end of paragraph (a);
■ b. Revising the third sentence and Equation 1 (defined terms) of paragraph (h);
■ c. Removing paragraph (h)(3) and Equation 1C and redesignating paragraph (h)(4) as (h)(3) and Equation 1D as Equation 1C, and revising the newly redesignated paragraph (h)(3); and
■ d. Revising paragraph (i)(5) to read as follows:

§ 63.3541 How do I demonstrate initial compliance?

(a) * * * All required calculations and compliance demonstrations may be performed with either metric or English units.

* * * * *

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* * * * The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. * * *

* * * * *

H_{unc} = Total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1C of this section.

* * * * *

(3) Calculate the mass of organic HAP in the coatings and thinners used in the controlled coating operation during deviations specified in § 63.3542(c) and (d), using Equation 1C of this section.

$$H_{unc} = \sum_{h=1}^{q} (Vol_h)(D_h)(W_h) \qquad \text{(Eq. 1C)}$$

Where:

H_{unc} = Total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg.

Vol_h = Total volume of coating or thinner, h, used in the controlled coating operation during deviations, liters.

D_h = Density of coating or thinner, h, kg per liter.

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

q = Number of different coatings or thinners.

(i) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* * * *

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

* * * * *

■ 11. Section 63.3544 is amended by revising the fifth sentence in paragraph (b) to read as follows:

§ 63.3544 How do I determine the emission capture system efficiency?

* * * * *

(b) * * * For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, and includes drying or curing time, but excludes surface preparation activities.

* * * * *

■ 12. Section 63.3546 is amended by revising paragraphs (g)(1) and (g)(2) as follows:

§ 63.3546 How do I establish the emission capture system and add-on control device operating limits during the performance test?

* * * * *

(g) * * *

(1) During the capture efficiency determination required by § 63.3540 and described in §§ 63.3543 and 63.3544, you must monitor and record either the gas volumetric flow rate at a location upstream of the control device, or the duct static pressure at a location upstream of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices at least once every 15 minutes during each of the three test runs.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device or system of multiple capture devices. The average gas volumetric flow rate is the minimum operating limit for that specific capture device or system of multiple capture devices. The average duct static pressure is the maximum operating limit for that specific capture device or system of multiple capture devices.

■ 13. Section 63.3547 is amended by:
■ a. Revising the first sentence of paragraph (a) introductory text,
■ b. Removing the second sentence of paragraph (a)(1), and
■ c. Revising paragraph (b)(1) to read as follows:

§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

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

* * * * *

(b) * * *

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line. Alternatively, install, maintain, and operate a bypass line valve indicator or damper indicator that indicates valve position.

* * * * *

■ 14. Section 63.3557 is amended by revising the first sentence of paragraph (a) introductory text and removing the second sentence of paragraph (a)(1) to read as follows:

§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

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

* * * * *

■ 15. Section 63.3561 is amended by revising the definition of "capture system" to read as follows:

§ 63.3561 What definitions apply to this subpart?

* * * * *

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings, both at the point of application and at subsequent points where emissions from the coatings occur, such as flash-off, drying, or curing.

* * * * *

■ 16. Table 4 to Subpart KKKK of Part 63 is amended by redesignating Item

7.a.ii as 7.a.iii and adding a new Item 7.a.ii; and revising newly redesignated Item 7.a.iii, and Items 8.a introductory text, 8.a.i, 8.a.ii, and 8.a.iii to read as follows:

Table 4 to Subpart KKKK of Part 63—Operating Limits if Using the Emission Rate With Add-On Controls Option or the Control Efficiency/Outlet Concentration Compliance Option

7. * * *

a. * * *

i. * * *

ii. Reducing the data collected each successive 15-minute period to 3-hour block averages according to § 63.3547(a)(1) and (2) or § 63.3557(a)(1) and (2), as applicable; and

iii. Maintaining the 3-hour block average facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.

8. * * *

a. The average gas volumetric flow rate at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices in each 3-hour period must not fall below the average volumetric flow rate or above the duct static pressure limit established for that capture device in accordance with § 63.3546 or § 63.3556, as applicable.

i. Measuring the gas volumetric flow at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device upstream or upstream of the fan that is common to multiple capture devices; and

ii. Reducing the data collected each successive 15-minute period to 3-hour block averages according to § 63.3547(a)(1) and (2) or § 63.3557(a)(1) and (2), as applicable; and

iii. Maintaining the 3-hour block average gas volumetric flow rate at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices at or above the average gas volumetric flow rate or below the duct static pressure limit established in accordance with the performance test described in § 63.3546(g).

[FR Doc. 06–70 Filed 1–5–06; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–8011–5]

RIN 2060–AM97

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, amendments; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters which EPA promulgated on September 13, 2004. After promulgation of the final rule for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. On July 27, 2005, EPA published a notice of reconsideration and requested public comment on certain aspects of the health-based compliance alternatives, as outlined in 40 CFR 63.7507 and appendix A to the final rule (40 CFR part 63, subpart DDDDD). After evaluating public comment on the notice of reconsideration, we are retaining the health-based compliance alternatives in the final rule in substantially the same form. However, we are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

DATES: The final rule amendments are effective on February 27, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OAR–2002–0058. All documents in the docket are listed in on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, 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 form at the Air and Radiation Docket, Docket ID No. EPA–OAR–2002–0058, EPA/DC, EPA West, Room B102, 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: For information concerning applicability and rule determinations, contact your State or local representative or appropriate EPA Regional Office representative. For information concerning rule development, contact Jim Eddinger, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426, fax number (919) 541–5450, e-mail address: *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS code	Examples of potentially regulated entities
Any industry using a boiler or process heater in the final rule.	24	321	Manufacturers of lumber and wood products.
	26	322	Pulp and paper mills.
	28	325	Chemical manufacturers.
	29	324	Petroleum refiners and manufacturers of coal products.
	30	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	33	331	Steel works, blast furnaces.
	34	332	Electroplating, plating, polishing, anodizing, and coloring.
	37	336	Manufacturers of motor vehicle parts and accessories.
	49	221	Electric, gas, and sanitary services.
	80	622	Health services.
	82	611	Educational Services.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN 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.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule amendments to the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 27, 2006. Only those objections that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Background Information Document. EPA proposed and provided notice of the reconsideration of the NESHAP for industrial, commercial, and institutional boilers and process heaters on June 27, 2005 (70 FR 36907), and received 35 comment letters on the proposal. A memorandum "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to Reconsideration of the Final Rule," containing EPA's responses to each public comment is available in Docket No. OAR–2002–0058.

Organization of this document: The information presented in this preamble is organized as follows:

I. What is the statutory authority for the final rule?
II. Background
III. What revisions were made as a result of the reconsideration?
A. Adoption of a Weighted Average Stack Height Metric for Appendix A to the Final Rule
B. Correction Regarding Sources That May Demonstrate Eligibility for Health-Based Compliance Alternatives
C. Review of Eligibility Demonstrations by Permitting Agencies
D. Clarification of Eligibility Criteria
E. Timeline for New or Reconstructed Sources To Submit Preliminary Submission of Eligibility

F. Requirement for Title V Permit Conditions
G. Health-Based Alternative for Manganese Emissions and Total Selected Metals Standard
IV. What are the responses to significant comments?
A. Methodology and Criteria for Demonstrating Eligibility for the Health-based Compliance Alternatives
B. Tiered Risk Assessment Methodology
C. Look-up Tables
D. Site-Specific Risk Assessment
E. Background Concentrations and Emissions From Other Sources
F. Health-Based Compliance Alternative for Metals
G. Deadline for Submission of Health-Based Applicability Determinations
H. Proposed Corrections to the Health-Based Compliance Alternatives
I. Review of Eligibility Demonstrations and Relationship With Title V
J. Miscellaneous
V. Impacts of the Final Rule
VI. Statutory and Executive Order (EO) 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 and Advancement Act
J. Congressional Review Act

I. What is the statutory authority for the final rule?

Section 112 of the Clean Air Act (CAA) requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Industrial, commercial and institutional boilers (ICI), and process heaters were listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for ICI boilers and process heaters pursuant to section 112 of the CAA. Under section 112(d) of the CAA, the NESHAP must reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as maximum achievable control technology (MACT). However, section 112(d)(4) of the CAA also states that "[w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emissions standards under this subsection."

We proposed standards for ICI boilers and process heaters on January 13, 2003 (68 FR 16660). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We requested comment on incorporating various risk-based approaches (based on section 112(d)(4) and other provisions of the CAA) into the final rule to reduce the cost of regulatory controls on those facilities that pose little risk to public health and the environment. (See 68 FR 1688–1693.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the proposed risk-based approaches. We received a total of 218 public comment letters on the proposed rule during the comment period. We summarized major public comments on the proposed risk-based approaches, along with our responses to those comments, in the preamble to the final rule (69 FR 55239) and in the comment response memorandum, "Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised)" which was placed in the docket for the final rule.

In the final rule, we adopted health-based compliance alternatives for the hydrogen chloride (HCl) emission limit and the total selected metals (TSM) emission limit, based on our authority under section 112(d)(4) of the CAA. Affected sources that successfully demonstrate that they are eligible for the HCl health-based compliance alternative are not required to demonstrate compliance with specific HCl emissions limits in table 1 to the final rule, but are still subject to operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63). Affected sources that demonstrate eligibility for the health-based compliance alternative for TSM are still subject to a technology-based (MACT) TSM emission limit and operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63) except that they may demonstrate compliance with this TSM emission limit based on the sum of emissions for seven metals, instead of the eight selected metals, by excluding manganese emissions.

The methodology and criteria for affected sources to use in demonstrating eligibility for the health-based compliance alternatives were promulgated in appendix A to subpart DDDDD of 40 CFR part 63. (See 69 FR 55282.) Appendix A specifies the process units and pollutants that must be included in the eligibility demonstration, the emissions testing methods, the criteria for determining if an affected source is eligible, the risk assessment methodology (look-up table analysis or site-specific risk analysis), the contents of the eligibility demonstration, the schedule for submission of the self-certified eligibility demonstrations, and the methods for ensuring that an affected source remains eligible. For an affected source to be eligible for the health-based compliance alternatives, the owner/operator of the source must conduct a risk assessment, as described in appendix A to the final rule, and submit the risk assessment, also called the eligibility demonstration, to the permitting authority along with a signed certification that the assessment is an accurate depiction of the affected facility. To ensure the source remains eligible, federally enforceable limits reflecting the parameters used in the eligibility demonstration must be incorporated into its title V permit.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from the Natural Resources Defense Council (NRDC), Environmental Integrity Project (EIP), and General Electric (GE).[1] Under this provision, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period

[1] In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04–1385, D.C. Cir.) and American Municipal Power—Ohio and Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04–1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American Petroleum Institute National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

or that the grounds for the objection arose after the public comment period.

NRDC and EIP initially requested that EPA reconsider seven issues reflected in the final rule that they believe could not have been practicably addressed during the public comment period. EIP also filed a supplement to this petition which raised additional issues for reconsideration. Together, NRDC and EIP requested reconsideration of the following issues: (1) The adoption of "no control" MACT floors for certain subcategories and pollutants; (2) establishing risk-based alternatives on a plant-by-plant basis; (3) the existence of health thresholds for HCl and manganese; (4) consideration of background pollution and co-located emission sources; (5) establishing a health-based compliance alternative for a pollutant (HCl) that serves as a surrogate for other inorganic pollutants; (6) promulgating a health-based compliance alternative that allows low risk sources of manganese emissions to comply with the MACT limitations for metals without counting manganese; (7) the procedures for demonstrating compliance with the health-based alternatives; (8) consideration of emissions during periods of startup, shutdown, malfunction and, (9) the cost effectiveness of the health-based alternatives. The NRDC and EIP petition also requested that EPA stay the effectiveness of the health-based compliance alternatives pending reconsideration. By letters dated January 28, 2005, we informed NRDC and EIP that we intended to grant their joint petition for reconsideration.

On June 27, 2005, we decided to reconsider (70 FR 36907) several of the issues raised in the NRDC and EIP petition pertaining to certain provisions of the health-based compliance alternatives in appendix A to the final rule. We denied the petitioners' request to stay because in this case, a stay was not necessary to protect the public health or provide a more adequate timeline for compliance planning. We are continuing to review the issue raised by GE with respect to the emissions averaging provision of the final rule and published proposed action on that petition on October 31, 2005 (70 FR 62264).[2]

In the June 27, 2005, notice of reconsideration, we specifically solicited comment in the following eight areas: (1) The methodology and criteria for demonstrating eligibility for the health-based compliance alternatives; (2) the use of a tiered analysis in appendix A to the final rule and the application of the principles set forth in the 1994 National Academy of Sciences report, "Science and Judgment in Risk Assessment" (in response to the concerns expressed by the petitioners, we entered this document into the public docket for review); (3) the methodology used to develop the look-up tables including average stack heights, the use of conservative assumptions to account for other variables such as meteorology, and the derivation of different look-up table values based on the distance from the property line; (4) the approach for conducting a site-specific risk assessment and the criteria set forth in section 7 of appendix A to the final rule; (5) the approach for selecting a hazard index (HI) and hazard quotient (HQ) applicability cutoff value of 1.0, exclusive of background or co-located emissions, and the deferral of further consideration of background and co-located sources until we assess facility-wide emissions of HAP in future residual risk actions; (6) the appropriateness of adopting a health-based compliance alternative for manganese and using the same TSM emission limit in table 1 to subpart DDDDD of 40 CFR part 63 as a limitation for seven metals, while excluding manganese from the calculation; (7) whether we should or should not extend the deadline for submission of eligibility demonstrations in light of this reconsidered action; and (8) proposed corrections regarding the scope sources that are able to demonstrate eligibility for the health-based compliance alternatives. The responses to the significant comments received on these eight areas are discussed later in this preamble. A comprehensive response to public comments is also available in a document entitled "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to Reconsideration of the Final Rule," which can be found in the docket for this action (Docket No. OAR–2002–0058).

III. What revisions were made as a result of the reconsideration?

We are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based alternatives contained in the final rule. Overall, however, we are retaining the health-based compliance alternatives in substantially the same form.

A. Adoption of a Weighted Average Stack Height Metric for Appendix A to the Final Rule

Sections 4 and 6 of appendix A to the final rule have been modified to incorporate procedures for calculating a weighted average stack height metric for use in a look-up table analysis. Equation 3 was added to section 6 to calculate a weighted average stack height for determining the maximum allowable HCl-equivalent emission rate in table 2 to the final rule. Equation 4 was also added to section 6 to calculate a weighted average stack height for determining the maximum allowable manganese emission rate in table 3 to the final rule.

The amendments made to incorporate the weighted average stack height metric also required conforming modifications to the format of equations 1 and 2 of appendix A to the final rule. Equation 1 in section 4 of appendix A was amended to clarify the calculation of the maximum hourly emissions.

B. Correction Regarding Sources That May Demonstrate Eligibility for Health-Based Compliance Alternatives

We revised the text of 40 CFR 63.7507(a) and the title of appendix A to the final rule to clarify that all subpart DDDDD, 40 CFR part 63, sources subject to HCl and TSM emission limits may demonstrate eligibility for the health-based compliance alternatives, not just large solid fuel-fired units.

C. Review of Eligibility Demonstrations by Permitting Agencies

Sections 10 and 11 of appendix A to the final rule have been amended to explicitly state that eligibility demonstrations may be reviewed by permitting agencies (i.e., EPA or any State, local, or tribal agency that has been delegated title V permitting authority) to verify that they meet the requirements of appendix A and are technically sound. To accommodate this addition and to clarify appendix A, we also moved some of the provisions in sections 9 and 10 of appendix A to different sections.

We also amended section 6 of appendix A to the final rule to clarify that a look-up table analysis may not be used for the eligibility demonstration if the permitting authority determines it is not appropriate based on site specific factors. A site specific analysis under section 7 of appendix A would be required in these circumstances.

[2] GE requested reconsideration of the emissions averaging provisions of the final rule to address how this provision might apply in the context of emissions units that vent to a single stack.

D. Clarification of Eligibility Criteria

With respect to site-specific compliance demonstration, we revised sections 5(c)(2) and (d)(2) of appendix A to the final rule to clarify the locations where hazards must be assessed. The phrase "where people live" has been changed to indicate that hazards must be assessed where people live or congregate (e.g., including locations such as schools or daycare centers). We also reworded other parts of these two paragraphs to better express our original intent.

E. Timeline for New or Reconstructed Sources To Submit Preliminary Submission of Eligibility

We amended section 9(c)(1) of appendix A to the final rule to specify when new or reconstructed sources that start up after the effective date of subpart DDDDD, 40 CFR part 63, must submit a preliminary eligibility demonstration. New or reconstructed sources must submit this preliminary eligibility demonstration at the same time that the source submits an application for approval of construction or reconstruction.

F. Requirement for Title V Permit Conditions

In conjunction with other revisions to section 10 of appendix A to the final rule discussed above, we moved the existing requirement that sources submit certain parameters for incorporation into a title V permit into section 8 to appendix A to the final rule and clarified that the proposed permit conditions must be submitted at the same time as the rest of the eligibility demonstration. Section 8, which addresses the contents of the eligibility demonstration, is a more natural and logical place to include this requirement. We also expanded the list of parameters that should be considered for inclusion as enforceable permit limits.

G. Health-Based Alternative for Manganese Emissions and Total Selected Metals Standard

We are retaining the health-based compliance alternative to the TSM standard for sources that can demonstrate eligibility based on emissions of manganese. However, we are modifying the language in 40 CFR 63.7507(b) and related parts of appendix A to the final rule slightly to clarify that eligible sources are subject to two alternative requirements—one is the health-based compliance alternative for manganese emissions in appendix A and the other is an alternative MACT emissions limitations for seven selected metals set forth in 40 CFR 63.7507(b).

With respect to manganese emissions, an eligible source must satisfy the requirements of appendix A to the final rule, which include the requirement to submit, for incorporation as conditions in the title V permit, the parameters that make the affected source eligible for the health-based alternative. Compliance with these and other appendix A requirements for manganese represents compliance with the health-based alternative for these manganese emissions.

However, the remaining seven metals that are covered by the technology-based TSM standard must continue to meet a technology-based standard based on MACT. Thus, we are retaining the existing requirement that eligible sources comply with the TSM limit in table 1 to the final rule based on the sum of seven metals rather than eight. Using the same methodology we used to develop the TSM MACT limitation for eight metals, we derived an alternative MACT limitation for seven metals for the final rule promulgated on September 13, 2004. This alternative applies only to those sources that demonstrate eligibility for the health-based alternative for manganese emissions. Because our MACT methodology yielded the same MACT standard for both seven and eight metals, we expressed the alternative MACT standard for seven metals as a requirement to comply with the standard in table 1 based on the sum of seven metals instead of repeating the numerical standard in 40 CFR 63.7507(b).

We explain our basis for these revisions further below in response to individual comments.

IV. What are the responses to significant comments?

We received 35 public comment letters on the proposed rule and notice of reconsideration. Complete summaries of all the comments and EPA responses are found in the Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section). The most significant comments are summarized below.

A. Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

Comment: Two commenters suggested that EPA provide for flexibility and engineering judgment by allowing an applicability cutoff HI or HQ of greater than 1.0 in individual situations. One commenter stated that a value of 1.0 is the most stringent margin of safety required and the Agency could use a HI greater than 1.0 in certain cases. The commenter added that no additional margin of safety is required because the Reference Concentration (RfC) calculation contains many layers of protection, including safety factors to account for uncertainty.

One commenter suggested the use of an applicability cutoff HI or HQ value of at most 0.5 in order to account for cumulative and persistent risk.

Response: We disagree that an HI or HQ value other than 1.0 should be used as an applicability cutoff value for the health-based compliance alternatives. HI and HQ values are based on peer reviewed reference values such as EPA's reference concentrations (RfC). An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure or a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. An HI or HQ less than or equal to 1.0 means that the concentration of the pollutant (in air) is less than or equal to the reference value, and, therefore, is presumed to be without appreciable risk of adverse health effects.

As mentioned by commenters, RfC values contain uncertainty factors in order to account for scientific uncertainties that are identified in the literature. We acknowledge that EPA can consider the uncertainty inherent in these reference values when making risk-based determinations. For the health-based compliance alternatives in this rule, using an HI and HQ of 1.0 as a health-protective default is appropriate and, along with the risk assessment methods specified in appendix A to the final rule, protects public health with an ample margin of safety as required by CAA section 112(d)(4).

Comment: One commenter did not support the use of a HI less than or equal to 1.0 as the applicability cutoff value for determining eligibility with the HCl health-based compliance alternative. The commenter asserted that the HI should be changed to less than 10 but greater than 1.0 due to the additive effect of several health protective factors used for deriving the HCl HI value. Specifically, the commenter highlighted that it is overly conservative to apply the chlorine RfC to evaluate the exposure to chlorine. The commenter added that chlorine reacts in the atmosphere to form HCl, and the commenter requested EPA to evaluate the exposure to chlorine using

the equivalent amount of HCl formed in the atmospheric reactions.

Response: As we argue above, we disagree that an HI or HQ value other than 1.0 should be used as an applicability cutoff value for the health-based compliance alternatives. An HI of 1.0 corresponds to a level of pollutant exposure that is unlikely to result in adverse health effects over a lifetime. We acknowledge that EPA can consider the uncertainty inherent in reference values when making risk-based determinations. However, for the health-based compliance alternatives, using an HI and HQ of 1.0 as a health-protective default is appropriate and helps protect public health with an ample margin of safety.

Additionally, as stated above, we believe that it is appropriate to apply our risk assessment methodology to the health-based alternative compliance options in the final rule. This methodology includes calculating hazard to the individual most exposed to pollutant emissions from the source, which helps ensure that public health is protected with an ample margin of safety.

We also disagree with the commenter's suggestion to account for atmospheric reactions of chlorine to form HCl. Impacts from chlorine can occur shortly after release if a population lives near an emission point. Chlorine has a lower reference value than HCl. Thus, we make the health-protective assumption that people are exposed to chlorine emitted from the source prior to any conversion into the less potent HCl. This approach, along with the other requirements of appendix A to the final rule, helps ensure that public health is protected with an ample margin of safety.

B. Tiered Risk Assessment Methodology

Comment: Multiple commenters supported the flexibility and efficiency of a tiered risk assessment methodology, and these commenters stated that the methodology set forth in appendix A to the final rule provided an appropriate balance of conservatism and accuracy to protect the public health with an ample margin of safety. One commenter added that the tiered approach provides a simple, conservative first tier analysis that companies can achieve without hiring an outside consultant to demonstrate compliance with the health-based compliance alternative. This commenter also feels it is necessary to allow facilities to conduct site-specific analyses in tandem with the look-up analysis so that facilities can still demonstrate compliance with the health-based alternatives in the event that the source fails the look-up analysis. Other commenters added that a tiered approach is less arbitrary than a control-based standard, which requires equivalent controls across the board, without considering the risk of an affected source.

Response: We agree with the flexible, efficient, and health-protective nature of a two-tiered risk approach. We concluded that a tiered risk approach is consistent with both the commenters' support for an approach that minimizes the impact on low-risk facilities and EPA's statutory mandate under CAA section 112.

C. Look-up Tables

Comment: Several commenters disagreed with use of the look-up tables because they believe there is an insufficient level of conservatism inherent in the look-up tables during worse-case scenarios. These commenters emphasized that if the look-up tables remained as a result of the reconsideration, the look-up tables should not be used when unique site-specific factors such as building downwash, rain caps, or complex terrain occur, because these factors are not accounted for in the look-up tables. One commenter requested that EPA clarify that sources must comply with the MACT standard in the event that a permitting agency rejects the use of look-up table analysis for demonstrating eligibility with the health-based compliance alternative.

Response: We continue to believe that the look-up tables can provide an efficient and cost-effective method for sources to comply with the health-based alternative compliance options while also protecting the public health with an ample margin of safety. However, we agree that the protective measures inherent in the look-up tables do not necessarily justify their use in all cases. We developed the look up tables by running the SCREEN3 atmospheric dispersion model with worst-case meteorology defaults, an assumption of flat terrain, an assumption that building downwash effects are not present, and an assumption that the plume does not encounter a raincap or other obstruction. As several commenters identified, we recognize that site-specific factors not accounted for in the SCREEN3 dispersion modeling, such as building downwash, the presence of rain caps, and complex terrain, could make the use of the tables inappropriate for some sources. Therefore, we agree with limiting the use of the look-up tables to those situations where the tables can conservatively represent actual site conditions. In order to prevent the misuse of look-up tables, we are adding language in section 6 of appendix A to the final rule to clarify that, although the lookup tables are presumed to be applicable in each case, permit agencies have the authority to determine on a site-specific basis, that look-up tables may not be used if unique site-specific factors, for which the look-up tables do not account, make their use inappropriate. In such situations, a source would have to demonstrate eligibility using a site-specific risk assessment that does account for these unique factors. If a source is unable to make this demonstration (e.g. if a permitting authority ultimately finds the eligibility demonstration deficient on technical grounds), the source must then comply with the technology-based standards in the NESHAP.

Comment: Three commenters suggested alternatives to the average stack height metric. One commenter proposed an alternate method of four stack height ranges which is currently used in the State's hazardous air pollutant rule. Two commenters requested EPA to consider weighted stack heights and cited the use of a weighted stack height metric in the proposed amendments to the plywood NESHAP. The commenters suggested the weighted stack height more accurately portrays the potential risk than the average stack height metric.

Four commenters expressed concern with the appropriateness and accuracy of using the average stack height metric in the look-up tables. Three of these commenters suggested limiting the use of the look-up tables to facilities with similar stack heights to those assumed in the model.

One commenter disagreed with the use of the average stack height, contending that this approach understates risk and that EPA lacked a justification and documentation on how the EPA chose this metric. According to this commenter, risk is understated when a calculation averages the shortest, most-highly polluting stack located closest to neighboring populations with another emission point that is taller, cleaner, and farther away. The commenter also contended that there is no documentation of the analysis or data at any step of the final rulemaking, including this action, which supports the development of the average stack height metric that would enable a member of the public to evaluate EPA's methodology.

Response: We agree that the average stack height is not the best metric for characterizing risk, and that a more precise approach is the weighted stack

height metric proposed in the Plywood NESHAP amendments. We are changing the stack height metric in the boilers and process heaters rule by adding two equations to appendix A to the final rule, similar to the approach used for equations 3 and 4 listed in appendix B of 40 CFR part 63, subpart DDDD. Equations 1 and 2 of appendix A of 40 CFR part 63, subpart DDDDD, will also be modified to harmonize the existing calculations of appendix A with the new weighted stack height metric. The complete rationale for selecting the weighted stack height metric can be found in the amendments to the plywood NESHAP (70 FR 44021).

There are situations where the average stack height is health protective, (e.g. when most emissions are from the tallest stacks) and situations where the average stack height metric is not health protective, (e.g., when most emissions are from the shortest stacks). The toxicity- and emissions-weighted stack height, which we are incorporating into appendix A to the final rule, is more health protective when most emissions are from the shortest stacks. Further, using this more precise method does not undercut our reliance on health-protective assumptions in the look-up table analysis when most of the emissions come from taller stacks.

Comment: Several commenters suggested that the use of the minimum distance to property boundary metric is overly conservative. Two commenters requested EPA to allow a weighted average for the distance to property boundary when there are multiple emission units. These two commenters argued that this metric would portray more accurate estimates of the potential risk from facilities.

One commenter requested that the modeling protocol for HAP should be consistent with the modeling protocols for criteria pollutants under the PSD protocols found at 40 CFR part 51, appendix W. The commenter expressed concern that the current use of minimum property distance may not be the point of maximum impact.

Response: We disagree with changing the minimum distance to property boundary. We recognize that the minimum distance to property boundary may overestimate the ambient concentration and exposure; however, we emphasize the health-protective nature of the look-up tables and do not believe that it is appropriate to change this metric towards one that would be uniformly less health-protective.

It is incorrect to assert that, when performing a look-up table analysis, the minimum distance to the property boundary may not be the point of maximum impact. For the look-up tables, we developed the allowable emission rate for each property boundary distance from the maximum modeled HAP concentrations beyond that property boundary. As a result, a look-up table analysis necessarily considers the point of maximum pollutant impact outside the source's property boundary. This is consistent with appendix W of 40 CFR part 51.

D. Site-Specific Risk Assessment

Comment: Several commenters disagreed with the level of guidance EPA provided for conducting a site-specific assessment. Three of these commenters added that there is a lack of basic methods or required parameters, such as the years of exposure to an individual which might lead to basing a risk assessment on a 1-year exposure instead of the traditional lifetime exposure. One commenter stated that while EPA has provided some guidance on performing site-specific assessments, EPA has a responsibility to develop constraints on the sources' discretion. The commenter contended that the lack of constraint included in the final rule does not provide specific, knowable, replicable, and enforceable legal standards necessary to govern and enforce the final rule. The commenter added that the loose guidance provided for in selecting a site-specific assessments can be interpreted as unlimited discretion for the affected source, and thus prevent any future efforts for administrative challenge.

Response: We believe that providing sources with the discretion to use any "scientifically-accepted, peer-reviewed risk assessment methodology" is appropriate. However, contrary to the assertions of some commenters, this discretion is not unlimited. In section 7(c) of appendix A to the final rule, EPA has established specific minimum criteria for site-specific compliance demonstrations. In order to demonstrate eligibility for the health-based compliance alternative, the site-specific risk assessment conducted by the facility must meet the following criteria: (1) Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations; (2) estimate the inhalation exposure for the individual most exposed to the facility's emissions; (3) use site-specific, quality-assured data wherever possible; (4) use health-protective default assumptions wherever site-specific data are not available; and (5) contain adequate documentation of the data and methods used.

Furthermore, EPA cited the Air Toxics Risk Assessment (ATRA) Reference Library to provide guidance to the sources and States on developing technically sound site-specific risk assessments. The ATRA Reference Library provides examples of how a risk assessment can be conducted. These examples include instruction in basic risk assessment methodology, in determining what parameters to include in a risk assessment, and in the constraints that should be placed on those parameters. The documents within the ATRA Reference Library have been peer-reviewed and were developed according to the principles, tools and methods outlined in the 1999 EPA Residual Risk Report to Congress. However, the guidance in the ATRA Reference Library may not be appropriate for all sources. For that reason sources may consider alternative analytical tools as long as these alternatives are scientifically defensible, peer-reviewed and transparent.

Finally, the discretion of each source is not unlimited because permitting agencies have the authority to review each site-specific eligibility demonstration to determine if it meets the requirements in section 7(c) of appendix A to the final rule and if the methodology, as applied in the demonstration of eligibility, is technically sound and appropriate. After reviewing a source's compliance demonstration, the permitting authority makes the final determination of whether site-specific assessments are completely and correctly submitted. These authorities may reject site-specific assessments if they do not meet the requirements of section 7 of appendix A or if they contain technical flaws with respect to the risk assessment methodology. Thus, it may be advisable for sources to seek prior approval when using a methodology that deviates from the approach in the ATRA Reference Library. However, we do not feel that it is necessary to require this prior approval.

E. Background Concentrations and Emissions From Other Sources

Comment: Multiple commenters disagreed with EPA's decision not to include background or co-located emissions when determining whether or not a facility qualifies for the health-based compliance alternative standards in the final rule. Several commenters stated that when evaluating whether or not a facility is eligible to comply with the health-based compliance alternatives, the background or co-located emissions should be included in the risk determination.

Several of the commenters that opposed consideration of emissions from background or co-located sources argued that the statutory language in CAA section 112(d) does not provide EPA with the legal authority to consider emissions from other source categories. Many of these commenters also provided counter-examples of sections of the CAA where the Congressional intent was focused on including background or co-located emissions. Several commenters added that background or co-located emissions do not fall into a source category or subcategory of major sources listed for regulation. Two commenters stated that there is no precedent for the consideration of background or co-located emissions during the promulgation of the benzene NESHAP or during the litigation of the vinyl chloride NESHAP.

Three commenters cited a 1990 Senate Report, and concluded that the consideration of background or co-located emission sources would be the kind of lengthy study Congress intended to avoid. Two commenters cited risk documents from the Presidential/Congressional Commission on Risk Assessment and Risk Management, and a paper written by the Residual Risk Coalition to support their position on excluding background and co-located emission sources when evaluating whether or not a facility qualifies for the health-based alternative standard in appendix A to the final rule.

One commenter argued that the public health is most protected when regulations are specific to a source category and provided examples of how the different provisions of the CAA account for different sources of HAP. The commenter added that the consideration of background emissions would over-regulate the affected source category and effectively require certain sources to compensate for other sources of HAP.

Two of the commenters that supported considering emissions from background and co-located sources contended that the major source status is based on facility-wide emissions and limiting the risk analysis to certain sources within the facility presents an unrealistic view of the facility's impact. One commenter added that EPA must meet its duty of providing for an "ample margin of safety" by evaluating the risk of background emissions now as opposed to during the residual risk evaluation. One commenter stated that risk assessment should be done in the context of all HAP sources at the facility and at nearby facilities. One of these commenters disagreed with the health-based compliance alternative for metals because it does not adjust for facility-wide emissions

Three commenters cited the 1996 National Air Toxics Assessment (NATA) for support of the concern of high exposures to air toxics throughout the country and stated a reduction in such exposures will require a general reduction across all sources. These commenters expressed concern that excluding background or co-located emissions ignore cumulative risk and do not protect the public health.

One commenter contended that the tiered risk approach used at this State level correctly considers background emissions, in contrast to the exclusion of these background emissions in the final NESHAP. The commenter added that by excluding these background sources, the final MACT rule identifies low-risk subcategories based on an unrealistic view of the facility impact. The commenter also concluded that the refined site-specific risk screening provides no real measure of health impact without including background or co-located emission sources.

Response: Based on the arguments made by several commenters and our review of the CAA, we believe it is permissible under CAA section 112(d) to limit our analysis to establishing emissions limitations for only those sources in the individual source categories subject to this action. Therefore, in developing emissions limitations under section 112(d), we believe emissions from sources outside of this source category need not be considered to determine eligibility for the health based compliance alternatives for ICI boilers and process heaters. Although we may combine several source categories into one NESHAP rulemaking as we did in this action, we do not construe the CAA to require that we regulate the emissions from all other source categories through an individual section 112(d) rule for particular source categories.

The focus of section 112(d) of the CAA is on establishing emission standards for individual source categories. Section 112(d)(1) indicates that the administrator is to "promulgate regulations establishing emission standards for each category or subcategory of major sources and area source of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedule provided in subsections (c) and (e) of this section." The health-based compliance alternatives are included among the emissions standards we have established for ICI boilers and process heaters under section 112(d). Section 112(d)(4) states that "the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection." The subsection described in this provision of the statute is CAA subsection 112(d). Since the "ample margin of safety" provision is also contained within section 112(d), we do not interpret this part of the CAA to require that we consider emissions from other source categories in establishing a health-based alternative under section 112(d)(4) for one category of sources. Based on the overall focus of section 112(d) on sources in specific categories, we believe the "ample margin of safety" criteria should be applied to the emissions of threshold pollutants from the individual source category subject to each NESHAP rulemaking.

We agree with several commenters that the legislative history supports this view that Congress intended for EPA to focus only on the emissions from sources within a particular category when establishing health-based standards for a particular source category under CAA section 112(d)(4). The Senate Report stated that the following:

> The Administrator is authorized by section 112(d)(4) to use the no observable effects or NOEL (again with an ample margin of safety) as the emissions limitation in lieu of more stringent "best technology" requirements. Following this scenario, only those sources in the category which present a risk to public health (those emitting in amounts greater than the safety threshold) would be required to install controls, even though the general policy is "maximum achievable technology" everywhere.

This statement suggests an intent for EPA to address only whether "sources in the category" present a risk to public health when EPA is determining whether individual sources in the category should have to comply with a technology-based emissions limitation or may avoid installation of controls by demonstrating that the emissions from a source do not present risks greater than an established health threshold.

Thus, we believe it is permissible to conclude that the facility-wide impact is not the focus of the analysis in the development of a CAA section 112(d) rule. Under our interpretation, the appropriate analysis under the CAA is whether the emissions of sources in the applicable category (without consideration of emissions from sources in other categories) are below the health threshold. Under the eligibility demonstration methodology set forth in appendix A of subpart DDDDD of 40 CFR part 63, a source must demonstrate

eligibility based on the emissions from all units in the ICI boilers and process heaters source category. Because all emissions units in the category are covered, any background emissions or emissions from other sources at a particular location would have to be emissions from sources in other categories or emissions that occur naturally.

We do not read CAA section 112(d) to require us to use emissions from sources outside the category to establish health-based alternatives for sources in the ICI boilers category. Likewise, we do not believe eligibility for health-based alternative should be determined by using a sum of emissions from all source categories or by lowering the health threshold for emissions from one source category to account for emissions from other source categories. We believe we should concentrate on only the emissions from each source category to establish health-based emissions limitations for that category and in determining whether sources in that category are eligible to comply with a health-based emissions limitation or must meet a technology-based emissions limitation.

Although a particular facility may be identified as a major source of HAP for purposes of CAA section 112 on the basis of emissions from affected sources in multiple source categories, this does not require that we establish eligibility for a health-based emissions limitation in a particular source category based on emissions from co-located sources outside the category. Emissions units in other source categories located at the same major source site remain subject to the technology-based emissions limitations contained in other NESHAP rulemaking promulgated under section 112(d). The sources covered by these NESHAP rules are not eligible to comply with the health-based alternatives in the ICI boilers and process heaters NESHAP because an ICI boiler or process heater at the same site is eligible for the health-based alternative in the NESHAP for ICI boilers and process heaters.

Under either scenario, each source is subject to regulatory requirements (whether health or technology-based) that address the health risks posed by emissions from that facility. The health-based compliance alternatives in the 40 CFR part 63, subpart DDDDD, are only available for HCl and manganese, and only if emissions of these HAP meet the health-based criteria defined in appendix A to the final rule. Affected sources that can comply with the health-based alternatives in appendix A are still subject to other emissions standards under the NESHAP.

With respect to the concerns about cumulative risk, emission standards under CAA section 112(d) are only one aspect of a broader national air toxics control program. Under the residual risk program, we may consider, as appropriate, risks from other source categories and risks from the total emissions from a particular location. This approach was reiterated in the recently finalized Coke Oven Residual Risk rule where we said we will only consider emissions from the regulated source category when determining "acceptable risk" during the first step of the residual risk analysis. However, during the second step, where we determine the ample margin of safety considering costs and technical feasibility (70 FR 19997), we may consider co-located sources and background levels where appropriate.

Comment: Three commenters agreed with the Agency suggestion to revisit the consideration of background emission during future residual risk evaluations. However, one commenter disagreed with the suggestion to revisit facility-wide residual risk determinations in future residual risk rules and stated that EPA does not have the authority to mandate facility-wide residual risk determinations. The commenter provided an attachment of the Coke Oven Residual Risk rule to support their position. Several commenters stated an intention to address this issue in subsequent residual risk rulemakings if EPA proposes to revisit facility-wide emissions at this stage.

Four commenters expressed concern on considering co-located emissions only during the residual risk analysis. One commenter stated that deferring the risk screening acts is contrary to the intent of the CAA. Three commenters were not satisfied with the residual risk evaluations performed to date. Two commenters specifically cited that background concentrations for benzene or any other HAP were not incorporated into the Coke Oven Residual Risk report. One commenter added that EPA must meet its duty of providing for an "ample margin of safety" by evaluating the risk of background emissions now as opposed to during the residual risk evaluation. The commenter added that in deferring the consideration of these background emission sources until the residual risk evaluation, the agency is acting arbitrary, capricious, and otherwise not in accordance with law.

Response: To the extent necessary, we believe the appropriate stage for considering total facility risk from air toxics emissions is at the residual risk rulemaking stage under section 112(f) of the CAA. As noted above, we do not construe the requirement in CAA section 112(d)(4) to "consider such threshold, with an ample margin of safety, when establishing emission standards" under CAA subsection (d) to require assessment of the cumulative risk at a given location due to the emissions from all source categories at this stage of NESHAP rule development. However, as stated in our recent residual risk rule for coke ovens, we do not agree that CAA section 112(f) entirely precludes EPA from considering emissions other than those from the relevant source category during a residual risk rulemaking analysis for an individual source category. (70 FR 19992, 19998; April 15, 2005) Section 112(f) of the CAA directs EPA to consider whether promulgation of additional standards "is required to provide an ample margin of safety to protect public health."

Although the phrase "ample margin of safety" is used in both CAA sections 112(d)(4) and 112(f), the context surrounding the phrase is different in each section. The context of CAA subsection 112(d) focuses on each individual source category for which we are promulgating a NESHAP rulemaking under CAA subsection (d). Although we agree that the first stage of our section 112(f) analysis should focus on the risks from each individual source category, we believe we may consider cumulative risks to some extent in implementing the "ample margin of safety" requirement in the context of CAA subsection (f) and in evaluating "other relevant factors" under this subsection. (70 FR at 19998). As a result, we believe the appropriate stage for any consideration of cumulative facility risks is this second part of the residual risk analysis rather than in the development and implementation of a health-based alternative under section 112(d)(4) of the CAA.

We do not construe section 112(d)(4) of the CAA to accelerate the residual risk analysis under CAA section 112(f) when we invoke section 112(d)(4) to establish a health-based standard during the first stage or rulemaking under section 112(d). In this action, we are implementing section 112(d) and are no writing a regulation based on section 112(f). Section 112(d)(4) does not call for a residual risk analysis for all sources in the category. Rather, this provision allows EPA to consider the existence of health thresholds (with an adequate margin of safety) for particula pollutants at the first stage of the NESHAP promulgation process.

Comment: Two commenters felt it was unclear how the health-based compliance alternatives will affect CAA section 112(f) residual risk evaluations for HCl and manganese, and asked if these two threshold pollutants will be exempted from residual risk assessments.

Response: HCl and manganese will not be exempted in future CAA 112(f) analyses. Rather, exposure to these two pollutants will be assessed along with exposure to other HAP emitted from the source category.

F. Health-Based Compliance Alternative for Metals

Comment: Multiple commenters agreed with EPA's method for evaluating manganese and the basis of excluding manganese from the TSM emission limit for units that comply with the manganese health-based compliance alternative. These commenters also stated that the health-based compliance alternative adequately protects the public health. One commenter cited EPA re-analysis of the MACT floor based on seven instead of eight metals, and concluded that because manganese was only about 5 percent of the TSM, the MACT floor remained the same.

Several commenters disagreed with the appropriateness and lawfulness of the manganese health-based compliance alternative. Three commenters stated that EPA has not provided a justifiable explanation for the exclusion of manganese from the calculation of TSM. The commenters contended that although EPA found the MACT floor to be the same whether or not manganese was included in the floor analysis, this reasoning does not justify removing manganese from the TSM limit. One commenter stated the mechanism through which the manganese compliance alternative operates unlawfully allows plants with low manganese emissions to avoid controlling the emissions of other non-mercury metals. Further, the commenter suggested that the top-performing sources used to calculate the MACT floor may have low manganese emissions because existing controls at the source may reduce manganese emissions, such that the TSM emission limit would not be affected by the incorporation of manganese concentrations. The commenter emphasized that dirtier sources would also be allowed to exclude manganese from their TSM limit calculations and as a result be allowed to emit higher levels of manganese and the other seven metals included in the TSM standard.

Response: We believe the alternative TSM emissions limit for sources that qualify for the health-based alternative is technically-sound and supported by the record. The alternative emissions limitation set forth in 40 CFR 63.7507(b) subpart DDDDD, is a MACT (technology-based) standard for seven metals (excluding manganese). This alternative MACT emissions limit is applicable only to those sources who qualify for the health-based compliance alternative for TSM based on their emissions of manganese. The manganese emissions from these sources are subject to the health-based alternative standard, which is enforceable through the operating conditions in the title V permit of sources that successfully demonstrate eligibility for the health-based alternative. However, the remaining seven metals that are included in the TSM calculation must still be subject to a MACT (technology-based) emissions limit. As a result, we derived an alternative MACT emissions limit for these seven selected metals using the same MACT methodology that we used for other emissions limits in subpart DDDDD. Only sources that qualify for the health-based alternative for TSM are eligible to apply this alternative TSM MACT limit in 40 CFR 63.7507(b) because the manganese emissions are otherwise controlled to health-based levels through the operating conditions in the title V permit established pursuant to appendix A to the final rule.

The methodology for the MACT floor analysis conducted for establishing this alternative, technology-based TSM limit is described in the memorandum "MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket. When we investigated the possibility of establishing an alternative TSM emission limit for these seven metals, we performed the same MACT floor analysis that we conducted for the TSM emission limit for eight metals. That is, we reexamined the emission test data for solid fuel units that included emissions results for all of the eight total selected metals (arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium) with manganese removed from the summation. The technology-based TSM limit for these seven metals (excluding manganese) resulted in a MACT floor emission level for existing large solid fuel units of 0.001 pound per million British thermal units (lb/mmBtu). This is the same level as the eight-metal (including manganese) TSM MACT emission level proposed and promulgated for existing large solid fuel units. Our MACT floor analysis for new solid fuel units achieved the same result. Thus, rather than repeating the emissions limit already contained in table 1 to the final rule in 40 CFR 63.7507(b), we expressed the alternative, technology-based TSM limit for these seven metals for eligible sources as a requirement to meet the same emissions limitation without counting manganese.

The seven-metal and eight-metal technology-based TSM limit were the same because the manganese emissions from the unit serving as the basis for the limit only accounted for less than 5 percent of the total selected metals. When we conducted our MACT floor analysis for the seven metals standard, we determined that the unit we used as the basis for the setting the TSM limit for eight metals was the same as the unit selected under the analysis for seven metals.

We understand, but do not agree with commenters concerns that allowing sources to exclude manganese from their TSM limit calculation will result in higher emissions of the other seven metals. Based on the available data, we do not expect sources other than biomass-fired sources to qualify for the health-based alternative for manganese and TSM. The record does not indicate that sources using biomass fuels emit significant quantities of metals other than manganese. Thus, while in theory the exclusion of manganese from the TSM limitation could allow an eligible source to increase emissions of the other seven metals, the record does not indicate that eligible sources are capable of doing so.

The TSM limit in the final rule was included at proposal because the Agency was sensitive to the fact that some sources burn fuels (e.g, biomass) that contain very little metals but have sufficient particulate matter (PM) emissions to require control under the PM provision of the final rule. In these cases, we did not think that PM would be an appropriate surrogate for metallic HAP. Under the rules in subpart DDDDD of 40 CFR part 63, a source may choose to comply with the alternative TSM emission limit instead of the PM limit. The eight metals included in the TSM summation represent the most common and the largest emitted metallic HAP from boilers and process heaters. Based on the impacts analysis done for the final rule, the TSM emission limit would minimize the impacts on small entities (e.g., furniture industry, sugar cane industry) since

some of the potential small entities burn biomass.

Biomass (e.g., wood, bagasse, peanut hulls, etc.) generally does not contain measurable amounts of metals except for manganese. For example, fuel analyses of bagasse from sugar cane mills in Louisiana did not detect any of the metals except for manganese. Fuel analyses of bagasse from sugar cane mills in Florida only detected manganese, lead, and selenium, with lead and selenium totaling 0.00032 lb/mmBtu, and this is assuming that all the metals in the fuel is emitted which would not be the case due to some remaining in the bottom ash. Wood also contains little metals except for manganese. Fuel analyses of wood combusted as fuel at three furniture facilities detected only manganese. Fuel analysis at another furniture facility did detect cadmium, chromium, and nickel beside manganese, but the total of those three metals (0.00005 lb/mmBtu) was only 1.3 percent the level of manganese or 5 percent of the TSM limit. Other biomass materials, such as peanut hulls, used as fuel also have similar metals composition. Fuel analysis conducted by EPA on peanut hulls only detected the presence of manganese.

The metal makeup of biomass differs greatly from coal. Coal contains detectable levels of all eight metals. Fuel analyses from six coal-fired facilities indicate that even if a coal-fired facility could demonstrate eligibility with the TSM health-based compliance alternative and may exclude manganese emissions, it would still require high efficient PM control to achieve the TSM limit. Thus, when we promulgated the TSM health-based compliance alternative, we believed, and still believe that only biomass units will seek to demonstrate that they do not need to employ PM controls by showing they qualify to exclude manganese from the TSM compliance demonstration, since manganese is the principal metal in biomass while manganese only makes up a small fraction of the metals contained in coal.

Comment: One commenter stated that EPA cannot adopt risk-based exemptions for pollutants for which no health threshold has been established. The commenter contended, based on documents in EPA's Integrated Risk Information System (IRIS), that no health threshold has been established for manganese. On the contrary, two commenters specified that manganese has long been recognized as a threshold pollutant. Another commenter stated that unlike other metals in the MACT list, manganese is not a carcinogen, rather it is a Class D pollutant.

Response: We agree that health-based compliance alternatives adopted under section 112(d)(4) of the CAA can apply only to pollutants for which a threshold for health effects has been established. For the pollutants for which we have elected to establish health-based compliance alternatives (manganese and HCl), the scientific data support a threshold approach to evaluating the potential for adverse health effects.

For air toxics risk assessments, we identify pertinent toxicity or dose-response values using a default hierarchy of sources to assist us in identifying the most scientifically appropriate benchmarks. EPA's IRIS is the preferred source in this hierarchy. The values in the IRIS database reflect EPA consensus values and their development typically incorporates extensive peer review. When adequate toxicity information is not available in IRIS, we consult other sources in a default hierarchy that recognizes the desirability of peer review and consistency with EPA risk assessment guidelines to ensure that we have consistent and scientifically sound assessments. For substances lacking current IRIS assessments, U.S. Agency for Toxic Substances and Disease Registry (ATSDR) chronic minimal risk levels received next preference, followed by California Environmental Protection Agency (CalEPA) chronic reference exposure levels and unit risk estimates. Furthermore, when there is an IRIS assessment but that assessment substantially lags the current scientific knowledge, we are committed to consider alternative credible and readily available assessments.

Based on our analysis of manganese using this approach, we believe the data currently available show that a health threshold has been established for manganese and that we are therefore authorized under CAA section 112(d)(4) to establish a health-based alternative for this pollutant. Under our default hierarchy approach, we first consulted IRIS. IRIS may be found on Internet at *www.epa.gov/iris*, but we have added the relevant pages in IRIS to the docket for this rulemaking action. As listed in table 4 of the preamble to the rule (68 FR 1690; Jan. 13, 2003), IRIS contains a reference concentration for manganese. However, IRIS does not contain a unit risk estimate, which addresses cancer risk. EPA's assessment in IRIS indicates that there is inadequate evidence of carcinogenicity for manganese. In addition, a cancer assessment for manganese is not available from any of the other sources in our default hierarchy or from another scientifically-credible source. Based on this information, which we believe is the best available at the present time, our judgment is that it is only appropriate for EPA to evaluate manganese with regard to non-cancer effects. In the absence of specific scientific evidence to the contrary, it has been our policy to classify non-carcinogenic effects as threshold effects. RfC development is the default approach for threshold (or nonlinear) effects. Thus, in the absence of adequate evidence that manganese is a carcinogen and based on the presence of a reference concentration in IRIS for non-cancer effects of manganese, our best scientific judgment at this time is that manganese is a threshold pollutant. We also used this approach to reach a similar conclusion with respect to HCl. (See Comment-Response Document, pg. 233 (February 2004.)

Regarding the lowest observable adverse effect level issue, the methodology employed by EPA recognizes that while a no observable adverse effect level is preferable to a LOAEL for use as the point of departure to which uncertainty factors are applied to derive an RfC, a LOAEL may also be used. (U.S. Environmental Protection Agency. 1994. Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry. Office of Research and Development. EPA/600/8–90/066F.) IRIS incorporates factors to account for uncertainties in the scientific database. The use of a LOAEL to derive the RfC for manganese is one of these uncertainties and is appropriately addressed through the application of uncertainty factors as part of the IRIS process.

We disagree with the commenter that we did not consider acute effects. We performed a risk assessment evaluating the potential acute effects of boiler emissions, including manganese (see docket item #OAR–2002–0058–0608). We used acute inhalation reference values, taken from the table on EPA's air toxics Web site (*www.epa.gov/ttn/atw/toxsource/table2.pdf*), for all pollutants in this assessment. Although the commenter is correct that this table does not contain an acute exposure guidelines level (AEGL) value for manganese compounds, the table does contain an immediately dangerous to life and health (IDLH)/10 value of 50 mg/m3. This is the acute dose-response value that we used, as reflected in table 3 (converted to 50000 ug/m^3) of the screening assessment memorandum (OAR–2002–0058–0608). Thus, the commenter's assertion that the table on the Web site contains no acute dose-response value or that EPA does not know what that value might be is

incorrect. As described in the screening assessment memorandum, for HAP with more than one acute dose-response value, the most health-protective value was chosen. EPA has not prioritized these values. Since we only had one value for manganese, we used that value in our acute assessment. The results indicate that HAP emissions, including manganese, from the industrial boilers source category are unlikely to pose acute risks to human health.

G. Deadline for Submission of Health-Based Applicability Determinations

Comment: Numerous commenters did not deem it as necessary for the Agency to extend the deadline for the submission of eligibility or final compliance dates provided that certain timelines and components of the health-based compliance alternatives were maintained as a result of this reconsideration.

Several commenters requested that the Agency consider including an extension of at least 1 year to both the submission of eligibility and final compliance dates in the final rule. These commenters added that the uncertainties resulting from the reconsideration and ongoing litigation made the original deadlines impractical.

One commenter disagreed with extending the submission of eligibility demonstration or compliance dates of affected sources under any circumstances. The commenter contended that an extension will only further delay the installation of the pollution controls that are required by the CAA. The commenter added that it is unlawful to extend compliance dates of affected sources.

Response: We do not believe it is appropriate at this time to adjust the deadline for submitting eligibility demonstrations. Most commenters representing the regulated industry believed that they would not need an extension if EPA met certain conditions.

EPA has met the conditions outlined by these commenters. We have completed the reconsideration in a timely manner and have not made significant changes to the rule. As stated in the notice of reconsideration as proposed (70 FR 36913), we did not anticipate that significant revisions would be made as a result of the reconsideration, and we advised affected sources to "proceed to prepare their eligibility demonstrations under the existing process promulgated in the final rule." Although we are making some clarifying amendments, we are not changing the final rule substantially. Thus, this action will not have the impact on the eligibility-demonstration process that concerned several other commenters. Therefore, we do not believe an extension is necessary in order for sources to complete their eligibility demonstrations by September 2006.

In addition, we do not have cause to extend the compliance date for existing sources. Section 112(i)(3)(A) of the CAA specifies that NESHAP for existing sources can have compliance dates of no more than 3 years. For the ICI boiler and process heater NESHAP, EPA provided the maximum 3 years for covered sources to comply with the new standards.

It is not unusual for promulgation of CAA standards to be followed by litigation or petitions for reconsideration. Section 307(b)(1) of the CAA specifically provides that the filing of a petition for reconsideration of a rule does not postpone the effectiveness of a rule. To date, EPA has not, during the pendency of a reconsideration request, extended the compliance deadlines for promulgated MACT standards to provide compliance periods in excess of the statutory 3-year maximum. In contrast, where the Agency has amended a MACT standard in a significant way, we have found it appropriate to set a new compliance date for the rule that takes into account new requirements not contained in the original rule.

In this action, we are making relatively minor clarifying amendments to the eligibility demonstration methodology for the health-based alternatives and have not reconsidered or changed any aspect of the technology-based MACT standards. EPA indicated in the reconsideration notice, as proposed, that we were unlikely to change the compliance deadline and that the petitions for reconsideration had not provided new information suggesting a need for significant revisions to the applicability demonstration methodology for the health-based alternatives. (70 FR 36910, 36913) Thus, affected sources were on notice that significant revisions to health-based alternatives were not anticipated, Furthermore, we indicated that we intended to complete this reconsideration action expeditiously to shorten any uncertainty that may have been created by our partial granting of these petitions for reconsideration. (7 FR 36910) The time required to complete the reconsideration process has not been extraordinarily lengthy.

We disagree with the request to provide a blanket compliance date extension for all sources in the category under section 112(i)(3)(B) of the CAA. The granting of an extension under this provision is up to the individual permitting authorities, and is restricted to specific situations where a source can demonstrate that such time is necessary for the installation of controls. We have not been provided with sufficient evidence to show that all sources in the category would be able to (or even have a need to) make such a showing.

H. Proposed Corrections to the Health-Based Compliance Alternatives

Comment: Three commenters disagreed with the proposed correction to extend the risk-based exemptions beyond the large solid-fuel subcategory. These commenters believed the expansion of the health-based compliance alternative to other subcategories to be a significant rule change that would require a separate formal rulemaking process with public notice and a comment period. These commenters expressed concern that this correction will allow more sources, specifically smaller sources with shorter stacks that tend to be located closer to populous regions, to become eligible for the risk-based exemptions. One commenter added that the analysis of TSM contained in the docket was specific to large solid fuel units and not all units for which the proposed correction seeks to offer applicability. One commenter cited sections within the final preamble language that indicated the alternatives applied to large solid fuel-fired sources.

Two commenters contended that there is no technical reason why the type of unit or fuel burned should restrict a facility from the right to demonstrate eligibility.

Response: We do not agree that a separate rulemaking proceeding is necessary to adopt the proposed correction to clarify that sources in all subcategories may demonstrate eligibility for the health-based compliance alternatives. Although this correction was coupled with EPA's response to a petition for reconsideration, EPA provided notice and opportunity to comment on the proposed revisions to the text of the final rule in accordance with the rulemaking requirements of section 307(d) of the CAA. Commenters have not cited legal authority in the CAA or elsewhere that requires EPA to address an allegedly "significant" change to a rule in a separate or independent rulemaking action.

We acknowledge that our original intent with respect to the scope of the health-based compliance alternatives is unclear and contradictory. EPA included language in 40 CFR 63.7507(a) that limits the applicability of the

health-based compliance alternative for HCl to sources in the large solid fuel-fired subcategory. We also made several statements in the preamble, highlighted by the commenters, which indicate an intent to limit one or both health-based alternatives to large solid fuel sources. These statements were made because the existing solid fuel-fired units at major sources are the main category of sources potentially affected by the health-based compliance alternatives. Furthermore, the number of new small solid fuel-fired units at major sources projected in the future (see Docket OAR–2002–0058) is relatively small. However, we also took certain actions in the final rule which show an intent to allow sources in all subcategories to demonstrate eligibility for the health-based compliance alternatives. For example, we did not include language in 40 CFR 63.7507(b) that limits the health-based alternative for TSM to sources in the large solid fuel subcategory. Likewise, we did not include any language in section 2 of appendix A to the final rule limiting the health-based alternative for HCl to just sources in the large solid-fuel subcategory. In that provision, we said that "each new, reconstructed, or existing source may demonstrate that they are eligible for the health-based compliance alternatives." Thus, the bottom line is that various portions of the final rule and preamble are inconsistent on the intended scope of eligibility for the health-based compliance alternatives.

As a result of these inconsistencies, we proposed a correction that would make these elements of the final rule consistent. Although we indicated in the proposal that this correction was intended to reflect our original intent, we agree that this terminology was imprecise. Given the conflicting statements and regulatory text in the final rule cited above, we concede that the Agency's original intent was not clear one way or the other. To remedy this confusion, we are resolving the inconsistency by eliminating regulatory language that could be read to limit one or both of the health-based alternatives to only sources in the large solid fuel category. Thus, we are taking the action we proposed, which is to remove the words "for large solid fuel boilers located at a single facility" from 40 CFR 63.7507(a) and the words "Specified for the Large Solid Fuel Subcategory" from the title of appendix A to the final rule.

Because large solid fuel-fired units are not the only units that have applicable manganese and HCl MACT limits, we believe it is technically correct, and appropriate, to allow all affected sources with manganese and HCl limits the opportunity to demonstrate eligibility for the health-based compliance alternatives. Where EPA has determined that no adverse health effects are expected below a certain threshold level of exposure, there is no reasoned basis for precluding smaller industrial boilers and process heaters from using the health-based compliance alternative so long as their emissions do not result in human exposure above the designated threshold value. To the extent we are expanding the availability of the health-based compliance alternative to all sources, this will not subject the public to adverse health effects.

We do not believe health risks are increased by allowing smaller sources to qualify for the health-based compliance alternatives, even if the commenters are correct that these sources tend to have shorter stacks and are closer to populous areas. The amendments we are making in the final rule do not automatically make all small sources eligible for the health-based compliance alternatives. Such sources must still demonstrate eligibility under the procedures and criteria in appendix A to the final rule, which consider stack heights and distance to populated areas in determining eligibility. If these characteristics indicate that a particular source has emissions that pose risks above the threshold levels, the source will not be eligible for the health-based compliance alternative. In addition, emissions rates are also part of the analysis under appendix A. Because small sources have lower emissions rates, all other things being equal, small sources present less risk than large sources.

We do not believe this correction to the rule requires an extensive re-analysis of the cost or emissions reduction impacts of the health-based compliance alternatives. We have sufficient information to conclude that this correction will not result in a meaningful change to the cost or emissions impacts of the final rule.

In the final rule, the cost and economic analyses developed as part of the final MACT rule were based on the estimated costs for all affected sources to install, maintain, and operate controls and to comply with MACT requirements. Costs were not based on the health-based compliance alternatives since the cost of compliance with controls is significantly higher than the cost to comply with the health-based compliance alternatives. The costs associated with voluntarily conducting risk analyses were not analyzed and, therefore, not re-analyzed to account for this correction to the applicability of the health-based alternatives to all affected units.

Our supplemental analysis of the impact on control costs and emissions reductions resulting from adoption of the health-based alternatives cited by commenter showed that the estimated costs of the final rule would be lower if the health-based provisions were adopted. This "rough assessment" of the number of sources that would qualify for the health-based alternatives focused on large sources because these sources were the sources most likely to seek to demonstrate eligibility to comply with the health-based alternatives.

Based on the available information on sources in the category, we do not expect this correction to enable a significant number of additional sources to qualify for the health-based alternatives. Thus, this correction to the final rule will not result in a dramatic difference in our rough control cost and emissions reduction estimates. Since we evaluated the costs of the final rule without the health-based compliance alternatives, we have no reason to believe this amendment will increase compliance costs above these high-end estimates. The analysis we conducted in this reconsideration proceeding is sufficient to enable us to conclude that compliance costs will not be significantly different if a few additional sources are able to demonstrate eligibility as a result of this correction. For similar reasons, we do not have a basis to believe this change dramatically alters the emissions reductions that will be achieved under the final rule.

We adopted the health-based alternatives in part to reduce the compliance costs of the NESHAP while continuing to maintain the health protection called for in the Clean Air Act. The potential for this correction to reduce compliance costs further does not undermine this reason for adopting health-based compliance alternatives. We did not rely on these cost and emission reduction estimates as a basis for establishing technology-based MACT emissions limitations or the eligibility criteria for the health-based compliance alternatives. We conducted the cost and emission reduction estimates in order to present a summary of the environmental and economic impacts of final rule. The estimates included in our supplemental analysis of the impact on control costs and emissions reductions were presented in order to provide a comparative summary of impacts of the final rule based on a rough estimate of facilities that might opt to comply with the health-based compliance alternatives. Additionally, these cost estimates are necessary in order

complete several Statutory and Executive Order Reviews including: the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995.

I. Review of Eligibility Demonstrations and Relationship With Title V

Comment: Several commenters pointed out that the health-based compliance alternative is dependent on the approval from a permitting authority via issuance of a title V permit that includes enforceable alternative limits. These commenters stated that the proposed process for reviewing and incorporating the health-based compliance alternatives into the permits is unworkable because many parameters that affect air dispersion modeling and risks are not required to be incorporated into the title V permit.

One commenter requested EPA to clarify in sections 9 and 10 of appendix A to the final rule that a facility's compliance with the health-based compliance alternatives is dependent on the approval from a permitting authority via issuance of a title V permit that includes the alternative limits. The commenter added, if the eligibility determination is not approved, the facility must comply with the final NESHAP rule requirements.

One commenter opposed a requirement to obtain EPA or State agency approval of the site-specific risk assessments as currently stated in the hazardous waste combustion rule (HWC) rule. The commenter believed that requiring approval would likely create delays in the eligibility process and result in very short compliance timelines if a reviewing authority rejected a site-specific assessment or did not complete the review in a timely manner. The commenter added there is no technical justification for requiring approval in the final HWC MACT rule and recommended not doing so in the final boiler and process heater rule.

Response: We agree that the preferred approach is to not require affirmative approval by the permitting authority of each risk assessment before a source is eligible to comply with the health-based alternative. Thus, under the procedures in appendix A of subpart DDDDD of 40 CFR part 63, as amended in this action, a source becomes eligible to comply with the health-based alternatives at the time it submits an eligibility demonstration meeting the requirements of section 8 of appendix A to the final rule.

However, for a source to remain eligible to comply with the health-based alternatives the eligibility demonstration must be complete and the application for a permit modification must ultimately be approved by the permitting authority. Thus, as part of this process, permitting agencies do have the authority to review eligibility demonstrations to verify that they meet the requirements of appendix A to the final rule and are technically sound. For example, a permitting authority may notify a source that its eligibility demonstration is deficient if the demonstration is incomplete or if a look-up table analysis is performed in a situation when site-specific conditions exist that make the use of the look-up tables inappropriate. Based upon the technical findings of the review, permitting agencies have the authority to inform a source that it is no longer eligible for the health-based alternative if the eligibility demonstration is deficient. EPA will also review some demonstrations as part of an audit program.

This review authority derives from the title V permit program through which the health-based compliance alternatives are implemented, and it was inherent in the final rule when promulgated on September 14, 2004. Subpart DDDDD of 40 CFR part 63 contains applicable requirements that are incorporated in title V permits. The title V permit program provides a process for identifying and consolidating all of the applicable requirements for each source. Through this process, the permit authority reviews each application to verify the applicable requirements for each source. Thus, when a source submits a demonstration of eligibility for the health-based alternatives in subpart DDDDD, the title V permitting authority has the ability to review this submission to determine whether the applicable requirements for that source are the health-based or the technology-based requirements in subpart DDDDD.

However, to clarify this issue, we are adding explicit language in sections 10 and 11 of appendix A to the final rule to make clear that permitting agencies may review each facility's eligibility demonstration. If the permitting authority identifies deficiencies with the eligibility determination or the permit modification is eventually disapproved based on problems with the eligibility demonstration, then the facility is no longer eligible for the health-based alternative and must comply with the MACT emission standards by the compliance dates specified in 40 CFR 63.7495.

For new sources, we are establishing a slightly different procedure because new sources will be relying upon the health-based alternative at start-up. In these cases, the source will have a grace period of 30 to 90 days to correct any deficiencies before ceasing to be eligible for the health-base alternative. This grace period is not needed for existing sources because their eligibility demonstrations must be submitted 12 months prior to the compliance date. We believe this provides sufficient time for permitting authorities to notify sources of any deficiencies and for a source to correct any deficiencies.

Comment: Several commenters requested that EPA specify additional process and non-process related parameters under section 11 of appendix A to the final rule to clarify the enforceable requirements for the facility. One commenter specifically requested that "emission rate" be added to the list of parameters. Three commenters requested that non-process parameters that can affect air dispersion modeling be included, such as stack height, exit gas temperature, distance to the plant property line, and changes in RfC or land-use.

Response: We recognize that a large number of parameters can affect continuous compliance with the health-based compliance alternatives. These parameters include, but are not limited to, HAP emission rates, fuel type, type of control device, stack parameters, reference values, and location of local residences. Some of these parameters are appropriate for incorporation into title V permits (e.g., HAP emission rates or a surrogate for emission rate such as production volume) while others are not (e.g., reference values). However, changes in any of these parameters can trigger the need for a re-assessment. Therefore, we are adding language to appendix A to the final rule expanding the list of parameters that should be considered for inclusion as enforceable permit limits. In section 11 of appendix A, we are also expanding the list of parameters that, if changes occur, could also necessitate a re-assessment.

Comment: Three commenters requested that EPA clarify the deadline for compliance for sources whose health-based eligibility determination is found to be deficient. These commenters also suggested an allowance period of 12 months after the facility receives notice of a deficiency in their health-based eligibility determination.

Two commenters stated that the health-based compliance alternative will delay compliance with MACT for sources that attempt to unsuccessfully demonstrate eligibility with the health-based compliance alternatives.

Response: We disagree that there will be a delay in compliance caused by the health-based compliance alternatives. Sources that submit eligibility demonstrations in an attempt to comply with the health-based compliance alternative but do so unsuccessfully must still be in compliance within 3 years after the rule was promulgated. We do not believe it is appropriate to automatically extend the compliance date in these situations. As noted above, for existing sources, there is a 1-year window in which permitting authorities and sources can work out any deficiencies in an eligibility demonstration. The health-based compliance alternative is an optional compliance approach. Some risk is involved in electing to comply with the MACT standard via the health-based compliance alternatives. This assumed risk could include a shorter amount of time to install the controls that are required to meet technology standards in the event that a source does not submit a health-based eligibility demonstration that meets the requirements of Appendix A to the final rule. We do not necessarily endorse the use of CAA section 112(i)(3)(B) to grant compliance date extensions in these circumstances. However, we will leave the decision of whether to grant such a compliance date extension on a site-specific basis to permitting authorities.

J. Miscellaneous

Comment: Two commenters addressed the vagueness of the criteria for determining the location at which the affected source must demonstrate that the HI for HCl and chlorine (Cl_2) and the HQ for manganese is less than or equal to 1.0. One commenter requested to incorporate potential land use changes where people could reasonably be expected to live in the future into the demonstrations of eligibility. The commenter stated that the rule language "where people live" does not account for the individual most exposed in the future for a location that was not residentially zoned at the time of the risk assessment. One commenter suggested replacing "where people live" with the "point of maximum impact beyond the facility's property boundary."

Response: We agree that there is a need clarify the wording of the phrase "where people live" in section 5 of Appendix A. To address some of the commenters concerns, we are changing the phrase to "where people live or congregate (e.g. including schools or daycares)." We believe that this a an appropriate approach given that, as described in EPA's Air Toxics Risk Assessment Reference Library, sources can deviate from the default assumption that an exposed individual remains at the location of highest exposure for 24 hours per day, 365 days per year.

We do not believe any additional changes are needed in section 5 of Appendix A to account for future land use changes. The final rule requires that a source complying with a health-based compliance alternative must resubmit their demonstration of eligibility if process or non-process parameters change in a way that could increase public health risk. Thus, if people have moved into an area, or if schools or daycare centers are constructed, the demonstration of eligibility must be resubmitted with a new risk assessment that incorporates updated parameters to account for the public health risk of these new populations. This resubmission of the eligibility demonstration is part of the existing requirements of Appendix A to the final rule for maintaining continuous compliance. If a source is no longer in compliance with the health-based alternative due to changes in land use, that source must comply with the technology standards in the MACT.

V. Impacts of the Final Rule

The revisions incorporated as a result of the final rule amendments do not change any of the impacts presented in section V of the preamble to the final rule which was published at 69 FR 55218 (September 13, 2004).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's action is a "significant regulatory action" because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under Executive Order 12866. Revisions made in response to OMB suggestions or recommendations are documented in the public record (see ADDRESSES section of this preamble).

B. Paperwork Reduction Act

Today's final rule amendments impose no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the final rule amendments, the information collection request has not been revised. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060–0551 (EPA No. 2028.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's final rule amendments.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business' 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 that is not dominant in its field.

We conclude that the final rule amendments will not have a significant economic impact on a substantial number of small entities. This rule will not impose additional regulatory requirements on small entities. After evaluating public comment on the notice of reconsideration, we are retaining the health-based compliance alternatives in the final rule in substantially the same form. However, we are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the 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 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's final rule amendments 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 1 year. Although the final rule have annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today's final rule amendments do not add new requirements that would increase this cost. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule amendments do not significantly or uniquely affect small governments because there are no new requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments 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."

The final rule amendments do 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. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's action will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." The final rule amendments do not have tribal implications, as specified in Executive Order 13175.

The final rule amendments do not significantly or uniquely affect the communities of Indian tribal governments. We do not know of any ICI boilers or process heaters owned or operated by Indian tribal governments. However, if there are any, the effect of these rules on communities of tribal governments would not be unique or disproportionate to the effect on other communities. EPA specifically solicited additional comment on the final rule from tribal officials, but received none. Thus, Executive Order 13175 does not apply to today's final rule amendment.

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 we have reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, we 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 we considered.

We interpret 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. Today's final rule amendments are not subject to the Executive Order because eligibility demonstrations submitted in support of the health-based alternative compliance options will be based on noncancer human health reference values (e.g., reference concentrations) that are designed to be protective of sensitive subpopulations, including children.

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

Today's final rule amendments are not a "significant energy actions" 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 today's final rule amendments are 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 in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (69 FR 55251, September 13, 2004). Today's final rule amendments do not involve the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA did not consider the use of any additional voluntary consensus standards.

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 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 rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 27, 2006.

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: December 15, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 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 DDDDD—[Amended]

■ 2. Section 63.7507 is revised to read as follows:

§ 63.7507 What are the health-based compliance alternatives for the hydrogen chloride (HCl) and total selected metals (TSM) standards?

(a) As an alternative to the requirement to demonstrate compliance with the HCl emission limit in table 1 to this subpart, you may demonstrate eligibility for the health-based compliance alternative for HCl emissions under the procedures prescribed in appendix A to this subpart.

(b) As an alternative to the requirement to demonstrate compliance with the TSM emission limit in table 1 to this subpart based on the sum of emissions for the eight selected metals, you may demonstrate eligibility for the health-based alternative for manganese emissions under the procedures prescribed in appendix A to this subpart and comply with the TSM emission standards in table 1 based on the sum of emissions for seven selected metals (by excluding manganese emissions from the summation of TSM emissions).

* * * * *

■ 3. Appendix A to subpart DDDDD is amended as follows:

■ a. By revising the heading.

■ b. In Section 4 by revising paragraph (g).

■ c. In Section 5 by revising paragraphs (c)(2) and (d)(2).

■ d. In Section 6 by revising the introductory text and paragraphs (a) and (b).

■ e. In Section 8 by revising paragraphs (b)(1) and adding paragraph (d).

■ f. In Section 9 by revising paragraphs (b), (c)(1) and (c)(2).

■ g. Revising Section 10.

■ h. Revising Section 11.

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

* * * * *

4. How do I determine HAP emissions from my affected source?

* * * * *

(g) You must determine the maximum hourly emission rate for each appropriate emission point according to Equation 1 of this appendix. An appropriate emission point is any emission point emitting HCl, Cl_2, or Manganese from a subpart DDDDD emission unit.

$$E_{i,s} = \sum_{j=1}^{j} \left(R_{i,j} \times I_j \right) \qquad \text{(Eq. 1)}$$

Where:

$E_{i,s}$ = maximum hourly emission rate for HAP i at each emission point s associated with a subpart DDDDD emission unit j, lbs/hr

i = applicable HAP, where i = (HCl, Cl_2, or Manganese) s = individual emission point

j = each subpart DDDDD emission unit associated with an emission point, s

t = total number of subpart DDDDD emission units associated with an emission point s

R_{ij} = emission rate (the 3-run average as determined according to table 1 of this appendix or the pollutant concentration in the fuel samples analyzed according to § 63.7521) for HAP i at subpart DDDDD emission unit j associated with emission point s, lb per million Btu.

I_j = Maximum rated heat input capacity of each subpart DDDDD unit j emitting HAP i associated with emission point s, million Btu per hour.

5. What are the criteria for determining if my facility is eligible for the health-based compliance alternatives?

* * * * *

(c) * * *

(2) Your site-specific compliance demonstration indicates that none of your HI values for HCl and CL_2 are greater than 1.0 at locations where people live or congregate (e.g., schools, daycare centers, etc.);

(d) * * *

(2) Your site-specific compliance demonstration indicates that none of your HQ values for manganese are greater than 1.0 at locations where people live or congregate (e.g., schools, daycare centers, etc.).

6. How do I conduct a look-up table analysis?

You may use look-up tables to demonstrate that your facility is eligible for either the compliance alternative for HCl emissions limit or the compliance alternative for the TSM emissions limit, unless your permitting authority determines that the look-up table analysis in this section is not applicable to your facility on technical grounds due to site-specific variations that are not accounted for in the look-up table analysis (e.g. presence of complex terrain, rain caps, or building downwash effects).

(a) *HCl compliance alternative.* (1) Using the emission rates for HCl and Cl_2 determined according to section 4 of this appendix, calculate, using equation 2 of this appendix, the toxicity-weighted emission rate (expressed in HCl-equivalents) for each emission point that emits HCl or Cl_2 from any subpart DDDDD sources. Then, calculate the weighted average stack height using equation 3 of this appendix.

$$TW_s = E_{HCl,s} + E_{Cl_2,s}\left(\frac{RV_{HCl}}{RV_{Cl_2}}\right) \qquad \text{(Eq. 2)}$$

Where:

TW_s = the toxicity-weighted emission rate (in HCl-equivalent) for each emission point s, lb/hr.

s = individual emission points

$E_{HCl,s}$ = the maximum hourly emission rate for HCl at emission point s, lb/hr

$E_{Cl2,s}$ = the maximum hourly emission rate for Cl_2 at emission point s, lb/hr

RV_{Cl2} = the reference value for Cl_2

RV_{HCl} = the reference value for HCl (reference values for HCl and Cl_2 can be found at *http://www.epa.gov/ttn/atw/toxsource/summary.html*).

$$H_{HCl} = \frac{\sum_{s=1}^{n}(TW_s \times H_s)}{TW_T} \qquad \text{(Eq. 3)}$$

Where:

H_{HCl} = weighted average stack height for determining the maximum allowable HCl-equivalent emission rate (in Table 2 to this appendix), m.

s = individual emission points

n = total number of emission points

TW_s = toxicity-weighted HCl-equivalent emission rate from each emission point (from equation 2), lb/hr.

H_s = height of each individual stack, m

TW_T = total toxicity-weighted HCl-equivalent emission rate from the source (summed for all emission points), lb/hr.

(2) Calculate the total toxicity-weighted emission rate for your affected source by summing the toxicity-weighted emission rate for each appropriate subpart DDDDD emission point.

(3) Using the weighted average stack height and the minimum distance between any appropriate subpart DDDDD emission point at the source and the property boundary, identify the appropriate maximum allowable toxicity weighted emission rate for your affected source, expressed in HCl-equivalents, from table 2 of this appendix. Appropriate emission points are those that emit HCl or Cl_2, or both, from subpart DDDDD units. If one or both of these values does not match the exact values in the look-up tables, then use the next lowest table value. (Note: If your weighted average stack height is less than 5 meters (m), you must use the 5 meter row.) Your affected source is eligible to comply with the health-based alternative for HCl emissions if the value calculated in paragraph (a)(2) of this section, determined using the methods specified in this appendix, does not exceed the appropriate value in table 2 of this appendix.

(b) *TSM Compliance Alternative.* Using the emission rates for manganese determined according to section 4 of this appendix, calculate the total manganese emission rate for your affected source by summing the maximum hourly manganese emission rates for all your subpart DDDDD units. Identify the appropriate allowable emission rate in table 3 of this appendix for your affected source using the weighted average stack height value and the minimum distance between any appropriate subpart DDDDD emission point at the facility and the property boundary. Appropriate emission points are those that emit manganese from subpart DDDDD units. If one or both of these values does not match the exact values in the look-up tables, then use the next lowest table value. (Note: If your weighted average stack height is less than 5 meters, you must use the 5 meter row.) Your affected source is eligible to comply with the health-based alternative for manganese emissions and may exclude manganese when demonstrating compliance with the TSM emission limit if the total manganese emission rate, determined using the methods specified in this appendix, does not exceed the appropriate value specified in table 3 of this appendix.

$$H_{Mn} = \frac{\sum_{s=1}^{n}(E_{Mn,s} \times H_s)}{E_{Mn,T}} \qquad \text{(Eq. 4)}$$

Where:

H_{Mn} = weighted average stack height for determining the maximum allowable emission rate for manganese (in table 3 to this appendix), m.

s = individual emission points

n = total number of emission points

$E_{Mn,s}$ = maximum hourly manganese emissions from emission point s, lbs/hr.

H_s = height of each individual stack s

$E_{Mn,T}$ = total maximum hourly manganese emissions from affected source (sum emission rates from all emission points), lb/hr

* * * * *

8. What Must My Health-Based Eligibility Demonstration Contain?

* * * * *

(b) * * *

(1) Calculations used to determine the weighted average stack height of the subpart DDDDD emission points that emit manganese, HCl, or Cl_2.

* * * * *

(d) To be eligible for either health-based compliance alternative, the parameters that defined your affected source as eligible for the health-based compliance alternatives must be submitted to your permitting authority for incorporation into your title V permit, as federally enforceable limits, at the same time you submit your health-based eligibility demonstration. These parameters include, but are not limited to, fuel type, fuel mix (annual average), emission rate, type of control devices, process parameters (e.g., maximum heat input), and non-process parameters (e.g., stack height).

9. When Do I Have to Complete and Submit My Health-Based Eligibility Demonstration?

* * * * *

(b) If you have a new or reconstructed affected source that starts up before the effective date of subpart DDDDD, or an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before the effective date of subpart DDDDD, then you may submit an eligibility demonstration at any time after September 13, 2004 but you must comply with the emissions limits in table 1 to this subpart and all other requirements of subpart DDDDD until your eligibility demonstration is submitted to your permitting authority in accordance with the requirements of section 10 of this appendix.

(c) * * *

(1) You must complete and submit a preliminary eligibility demonstration based on the information (e.g., equipment types, estimated emission rates, process and non-process parameters, reference values, etc.) that will be used to apply for your title V permit. This preliminary eligibility demonstration must be submitted with your application for approval of construction or reconstruction. You must base your preliminary eligibility demonstration on the maximum emissions allowed under your title V permit. If the preliminary eligibility demonstration indicates that your affected source facility is eligible for either compliance alternative, then you may start up your new affected source and your new affected source will be considered in compliance with the alternative standard and subject to the compliance requirements in this appendix.

(2) You must conduct the emission tests or analyses specified in section 4 of this appendix upon initial startup and use the results of these emissions tests to complete and submit your eligibility demonstration within 180 days following your initial startup date.

10. When Do I Become Eligible for the Health-Based Compliance Alternatives?

(a) For existing sources, new sources, or reconstructed sources that start up before the effective date of subpart DDDDD, or an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before the effective date of subpart DDDDD, you are eligible to comply with a health-based compliance alternative upon submission of a complete demonstration meeting all the requirements of paragraph 8 for the applicable alternative. However, your eligibility demonstration may be reviewed by the permitting authority or by EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified by the permitting authority or by EPA of any deficiencies in your submission, then you are not eligible for the health-based compliance alternative until the permitting authority or EPA verifies that the deficiencies are corrected.

(b) For new or reconstructed sources that start up after the effective date of subpart DDDDD, you are eligible to comply with a the health-based compliance alternatives upon submission of a complete preliminary eligibility determination in accordance with paragraph (c)(1) of section 9 that demonstrates your affected source is eligible for the applicable alternative. You may then start up your source and conduct the necessary testing in accordance with paragraph (c)(2) of section 9. The eligibility demonstration submitted in accordance with paragraph (c)(2) of section 9 may be reviewed by the permitting authority or by EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified in writing by the permitting authority of any deficiencies in your submission, then you have 30 days to correct the deficiencies unless the permitting authority agrees to extend this time to a period not to exceed 90 days. If the deficiencies are not corrected within the applicable time period, you will not be eligible for the health-based compliance alternative until the permitting authority verifies that the deficiencies are corrected.

(c) If the title V permit conditions requested in accordance with paragraph (d) of section 8 are disapproved by the permitting authority, then your affected source must comply with the applicable emission limits, operating limits, and work practice standards in subpart DDDDD by the compliance dates specified in § 63.7495. Until the requested conditions (or alternative conditions meeting the requirements of paragraph (d) of section 8) are incorporated into the permit, compliance with the proposed conditions shall be considered compliance with the health-based alternative.

11. How Do I Ensure That My Facility Remains Eligible for the Health-Based Compliance Alternatives?

(a) You must update your eligibility demonstration and resubmit it each time that any of the parameters that defined your affected source as eligible for the health-based compliance alternatives changes in a way that could result in increased HAP emissions or increased risk from exposure to emissions. These parameters include, but are not limited to, fuel type, fuel mix (annual average), type of control devices, HAP emission rate, stack height, process parameters (e.g., heat input capacity), relevant reference values, and locations where people live).

(b) If you are updating your eligibility demonstration to account for an action in paragraph (a) of this section that is under your control (e.g. change in heat input capacity of your boiler), you must submit your revised eligibility demonstration to the permitting authority prior to making the change and revise your permit to incorporate the change. If your affected source is no longer eligible for the health-based compliance alternatives, then you must comply with the applicable emission limits, operating limits, and compliance requirements in subpart DDDDD prior to making the process change and revising your permit. If you are updating your eligibility demonstration to account for an action in paragraph (a) of this section that is outside of your control (e.g. change in a reference value), and that change causes your source to no longer be able to meet the criteria for the health-based compliance alternatives, your source must comply with the applicable emission limits, operating limits, and compliance requirements in subpart DDDDD within 3 years.

(c) Your revised eligibility demonstration may be reviewed by the permitting authority or EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified by the permitting authority or EPA of any deficiencies in your submission, you will not remain eligible for the health-based compliance alternatives until the permitting authority or EPA verifies that the deficiencies are corrected.

* * * * *

[FR Doc. 05–24299 Filed 12–27–05; 8:45 am]

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Federal Register

Wednesday,
December 21, 2005

Part V

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0178; FRL–8011–6]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On May 13, 2005 (70 FR 25676), EPA issued direct final rule amendments and a parallel proposal to provide additional compliance options for the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Coating Manufacturing. One proposed amendment specified that compliance with the weight percent hazardous air pollutant (HAP) limit in coatings products may be demonstrated based on formulation data. However, the proposed amendment did not include *de minimis* limits for HAP in formulation data as allowed in other surface coating NESHAP. Due to adverse comment, we withdrew that provision of the direct final, and we are now issuing final amendments to specify that certain raw material formulation data as supplied to coating manufacturers may be used to demonstrate compliance with the weight percent HAP limit.

DATES: *Effective Date:* December 21, 2005.

ADDRESSES: Docket ID No. OAR–2003–0178 contains supporting information used in developing the NESHAP. All documents in the docket are listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), Office of Air Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of the rule, as well as in today's amendment to the definitions sections. If you have questions regarding the applicability of the amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule amendments will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule amendments will be posted 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 21, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments 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 the final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Response to Comments
III. 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 for Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

On December 11, 2003, we issued the NESHAP for miscellaneous coating manufacturing (40 CFR part 63, subpart HHHHH). Subpart HHHHH applies to equipment and processes involved in the manufacturing of coatings, such as paints, inks, and adhesives.

On May 13, 2005, we issued direct final rule amendments (70 FR 25676) and a parallel proposal (70 FR 25864) to amend subpart HHHHH. We stated in the direct final rule that if we received adverse comment by June 13, 2005, we would publish a timely withdrawal in the **Federal Register**.

We subsequently received adverse comments from two commenters on one provision and, accordingly, withdrew paragraph (b)(4) in 40 CFR 63.8055 (70 FR 38780). The remaining provisions, for which we did not receive any adverse comments, became effective on July 12, 2005. After consideration of the comments, we are promulgating the final rule amendments based on the parallel proposal published on May 13, 2005.

II. Response to Comments

The direct final rule amendments published on May 13, 2005, included amendments that allow formulation data to be used as an alternative to test data for demonstrating compliance with the 5 weight percent HAP limit in '63.8055 of 40 CFR part 63, subpart HHHHH. The intent was to make the compliance options for the miscellaneous coating manufacturing NESHAP consistent with options for other surface coating rules. For example, 40 CFR part 63, subpart MMMM, the NESHAP for surface coating of miscellaneous metal parts and products, has a compliant materials option that requires the owner or operator of the surface coating operation to determine the mass fraction of organic HAP for each coating. One method of determining this mass fraction is to use formulation data from the supplier or manufacturer. However, unlike the option in the other surface coating rules, the formulation data option in the direct final rule amendments to subpart HHHHH did not have mass cutoffs of 0.1 percent for carcinogens as defined by Occupational Safety and Health Administration (OSHA) or 1 percent for other HAP because subpart HHHHH does not establish cutoffs for trace materials or impurities.

The commenters objected to this direct final rule amendments and pointed out that the amendments did not allow for mass cutoffs reported in Material Safety Data Sheets (MSDS), which require reporting of quantities of materials based on limits of 0.1 percent for carcinogens and 1 percent for other HAP; and/or other technical reports supplied by the coating manufacturers that use these reporting quantities. These limits account for trace constituents and impurities in materials. These reporting limits are used when raw material and product formulations are supplied to paint and coating manufacturers and, in turn, supplied to their customers. One of the commenters also pointed out that to disallow the use of these *de minimis* reporting levels effectively renders the option useless because raw material data and manufacturer formulations are not reported below these limits. Further, without this allowance, the miscellaneous coating manufacturing NESHAP would create an inherent inconsistency between manufacturer=s certifications under the surface coatings NESHAP (recordkeeping and reporting for downstream users) and potential certification (recordkeeping and reporting) for this option under the miscellaneous coating manufacturing NESHAP.

We appreciate the commenter's request to minimize the compliance burden and allow exemptions for impurities and trace constituents. We agree that the proposed rule amendment allowing formulation data should be a practical option that reduces the compliance burden on both the regulated industry and the permitting authorities.

We do not agree with the commenter regarding consistency between compliance with other surface coating NESHAP and the miscellaneous coating manufacturing NESHAP. The formats of the standards in other surface coating rules are different than the format of the standard in the coating manufacturing rule. Although we considered formulation data in development of the standards for the other surface coating NESHAP, for coating manufacturing, we only considered emissions reduction techniques in development of standards. The 5 percent HAP limit in the miscellaneous coating manufacturing NESHAP was intended as a pollution prevention option that provides a level of control more stringent than the emissions standards. Nevertheless, we have considered lessons learned in the development of surface coating rules and, in that light, we tried to be consistent. In the other surface coating rules, we have not required raw material providers to perform complete analyses of their products to quantify impurities or trace constituents, nor have we considered any requirements that might force raw material providers to change their raw material specifications. We understand that use of MSDS sheets as formulation data would mean that a HAP, such as toluene at 0.5 percent of the material by mass, may be present in the raw material yet not be considered in the 5 percent HAP limit compliance demonstration. However, because a limited number of trace HAP are used in coating manufacturing and trace compounds in raw materials will only become more dilute in the final coating, we believe formulation data with the MSDS *de minimis* limits for trace compounds are adequate to conform with the intended pollution prevention alternative and demonstrate compliance with the 5 percent HAP limit.

We do not agree, however, that the MSDS information for a coating product provided by the coating manufacturer is a legitimate basis for determining compliance with the 5 percent HAP limit. A manufacturer can estimate the HAP content of the coating by formulation data from the raw material supplier.

Therefore, we are promulgating a final rule amendment that allows compliance with the 5 percent HAP limit using formulation data from suppliers, if the formulation data represent each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, and at 1.0 percent by mass or more for other HAP. Only formulation data from raw material suppliers shall be used to demonstrate compliance with the 5 percent HAP limit.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action gives a source owner or operator the option of using vapor balancing to comply with the standards. Since it is only an option, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0535 (EPA ICR No. 2115.01).

Copies of the information collection request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, 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. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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

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

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325 that has up to 500; (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 amendments on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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. The final rule amendments will not impose any requirements on small entities. The final rule amendments add a compliance option granting greater flexibility to small entities subject to the final rule that may result in a more efficient use of resources for them and, therefore, impose no additional regulatory costs or requirements on owners or operators of affected sources.

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, the 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 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.

The EPA has determined that the final rule amendments 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 1 year. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments. The final rule amendments provide a source owner or operator with additional options to comply with the standards and contain no requirements that apply to small governments. Therefore, the final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the 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."

The final rule amendments 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. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the final rule amendments.

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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today=s final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are 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 the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the final rule amendments. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the final rule amendments.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the 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 direct final rule in the **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments are effective on December 21, 2005.

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: December 15, 2005.

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.*

Subpart HHHHH—[Amended]

■ 2. Section 63.8055 is amended by adding paragraph (b)(4) to read as follows:

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

* * * * *

(b) * * *

(4) You may rely on formulation data from raw material suppliers if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If the HAP weight percent estimated based on formulation data conflicts with the results of a test conducted according to paragraphs (b)(1) through (3) of this section, then there is a rebuttal presumption that the test results are accurate unless, after consultation, you demonstrate to the satisfaction of the permitting authority that the test results are not accurate and that the formulation data are more appropriate.

[FR Doc. 05–24300 Filed 12–20–05; 8:45 am]

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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.

X. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's rule delays the compliance date of new or more stringent requirements and will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

XI. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular (and, as noted, exceptional) circumstances.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule is effective on February 17, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: December 12, 2005.

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 by revising paragraphs (a)(1)(i)(A) and (a)(1)(i)(B)(*1*) to read as follows:

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

(a) * * * (1) * * * (i) * * * (A) *Compliance dates for existing sources.* You must comply with the emission standards under §§ 6312.03, 63.1204, and 63.1205 and the other requirements of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213, except:

(*1*) Cement kilns are exempt from the bag leak detection system requirements under paragraph (c)(8) of this section;

(*2*) The bag leak detection system required under § 63.1206(c)(8) must be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter unless you demonstrate under § 63.1209(g)(1) that a higher detection limit would adequately detect bag leaks, in lieu of the requirement for the higher detection limit under paragraph (c)(8)(ii)(A) of this section; and

(*3*) The excessive exceedances notification requirements for bag leak detection systems under paragraph (c)(8)(iv) of this section are waived.

(B) * * * (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraphs (a)(1)(i)(A)(*1*) through (*3*) and (a)(1)(i)(B)(*2*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

* * * * *.

[FR Doc. 05–24198 Filed 12–16–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0028, FRL–8009–5]

RIN: 2060–AI72

List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the list of hazardous air pollutants (HAP) contained in section 112 of the Clean Air Act (CAA) by removing the compound methyl ethyl ketone (MEK) (2-Butanone) (CAS No. 78–93–3). This action is being taken in response to a petition submitted by the Ketones Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of MEK producers and consumers to delete MEK from the HAP list. Petitions to remove a substance from the HAP list are permitted under section 112 of the CAA.

Based on the available information concerning the potential hazards of and projected exposures to MEK, EPA has made a determination pursuant to CAA section 112(b)(3)(C) that there are "adequate data on the health and environmental effects [of MEK] to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects."

EFFECTIVE DATE: December 19, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0028 and A–99–03. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. 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. Mark Morris, Office of Air Quality Planning and Standards, Emission Standards Division, C404–01, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5416; fax number: 919–541–0840; e-mail address: *morris.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially affected by this action are those industrial facilities that manufacture or use MEK. This action amends the HAP list contained in section 112(b)(1) of the CAA by removing the compound MEK. The decision to issue a final rule to delist MEK removes MEK from regulatory consideration under section 112(d) of the CAA.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by 60 days from publication in the Federal Register. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

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

I. Introduction
A. The Delisting Process
B. The Present Petition and Rulemaking
II. Completion of Final Inhalation Reference Concentration
III. Acute Effects From Exposure to MEK
IV. Voluntary Children's Chemical Evaluation Program Peer Review
V. Adverse Comments and EPA Responses
VI. Final Rule
A. Rationale for Action
B. Effective Date
VII. References
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
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 & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction

A. The Delisting Process

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) includes an initial HAP list that is composed of specific chemical compounds and compound classes to be used by EPA to identify source categories for which EPA will subsequently promulgate emissions standards.

CAA section 112(b)(2) requires EPA to make periodic revisions to the initial HAP list set forth in CAA section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise. * * *

To assist EPA in making judgments about whether a pollutant causes an adverse environmental effect, CAA section 112(a)(7) defines an "adverse environmental effect" 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.

Section 112(b)(3) establishes general requirements for petitioning EPA to modify the HAP list by adding or deleting a substance. Although the Administrator may add or delete a substance on his own initiative, in the case where a party petitions the Agency to add or delete a substance, the burden has historically been on the petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in CAA section 112(b)(3)(B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt of a complete petition. If the Administrator decides to grant a petition, EPA publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. If the Administrator decides to deny the petition, EPA publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the DC Circuit Court of Appeals under CAA section 307(b).

To promulgate a final rule deleting a substance from the HAP list, CAA section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

EPA will grant a petition to delete a substance and publish a proposed rule to delete that substance if it makes an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criterion has been met.

EPA does not interpret CAA section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that EPA must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if EPA can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude

of projected exposure may be mitigated if EPA can determine that the levels that might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to resolve any critical uncertainties associated with missing information. EPA will not grant a petition to delete a substance if there are major uncertainties that need to be addressed before EPA would have sufficient information to make the requisite determination.

B. The Petition and Rulemaking

On November 27, 1996, the American Chemistry Council's Ketones Panel submitted a petition to delete MEK (CAS No. 78–93–3) from the HAP list in CAA section 112(b)(1). Following the receipt of the petition, EPA conducted a preliminary evaluation to determine whether the petition was complete according to EPA criteria (58 FR 45081). To be deemed complete, a petition must consider all available health and environmental effects data. A petition must also provide comprehensive emissions data, including peak and annual average emissions for each source or for a representative selection of sources, and must estimate the resulting exposures of people living in the vicinity of the sources. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions.

EPA published a notice of receipt of a complete petition to delist MEK in the **Federal Register** on June 23, 1999 (64 FR 33453), and requested information to assist us in technically reviewing the petition in addition to other comments. In response to the request for comment, EPA received ten submissions that included information to aid in the technical review of the petition.

Based on a comprehensive review of the data provided in the petition and from other sources, EPA made an initial determination that the statutory criterion for deletion of MEK from the HAP list had been met. EPA, therefore, granted the petition by the American Chemistry Council's Ketones Panel and issued a proposed rule to delist MEK on May 30, 2003 (68 FR 32608). EPA responded to substantive comments on the notice of receipt of a complete petition in the preamble to the proposed rule. The delay between receiving a complete petition and publishing the proposal to delist was due, in part, to the time it took to reevaluate and update the human health toxicity value for MEK.

EPA received a total of 57 comments on the proposed rule and responds to the substantive comments below. There was no request for a public hearing.

II. Completion of the 2003 Inhalation Reference Concentration

In the preamble to the proposed rule, EPA stated that it would not make the final decision whether to delist MEK until it considered the inhalation reference concentration (RfC) resulting from an updated Integrated Risk Information System (IRIS) review. This review was completed in 2003. The MEK RfC is a peer-reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The 2003 RfC was not yet finalized when EPA received the petition. However, to support statutory requirements and assist in the determination of the technical merits of the petition to delist MEK, EPA's Office of Research and Development derived an interim health effects threshold for MEK inhalation exposure that considered current data and current EPA science policy. That process resulted in the derivation of a prospective RfC of 9 milligrams per cubic meter (mg/m^3). The analysis underlying the development of the prospective RfC can be found in "A Prospective Reference Concentration for MEK (78–93–3)," which is in the docket. In the preamble to the proposed rule, EPA stated that while it would base its initial determination to delist MEK on the prospective RfC, it would rely on the RfC and other information resulting from the completed IRIS assessment in making its determination whether to delist MEK.

The 2003 RfC was published in IRIS on September 26, 2003. Where the prospective RfC was 9 mg/m^3, the 2003 RfC is slightly lower at 5 mg/m^3 because of a difference in dose-response methodology and interpretation of remaining uncertainties. To evaluate the potential impact of the 2003 RfC on the decision to delist, EPA recalculated the inhalation hazard quotient (HQ) using the 2003 RfC and the estimate of maximum exposure cited in the proposed rule. Whereas the HQ calculated in the proposed rule was 0.1, the new HQ is 0.2, or 20 percent of the RfC. EPA still finds the recalculated HQ to be below a level of concern. Thus, the 2003 RfC did not change the scientific basis of EPA's determination that emissions, ambient concentrations, bioaccumulation, or deposition of MEK may not reasonably be anticipated to cause adverse human health or environmental effects.

III. Acute Effects From Exposure to MEK

In the preamble to the proposed rule, EPA addressed acute exposure from MEK using the Dick *et al.* (1992) study (Dick study), which assessed neurotoxic effects. EPA concluded that the Dick study indicated that exposures to MEK of up to 200 parts per million (ppm) (590 mg/m^3) for up to 4 hours would be an appropriate no-adverse-effect concentration for the general population for both subjective effects (such as objectionable odor or irritancy) and for neurobehavioral effects.

EPA used the Dick study to examine the potential effects of short-term exposure to MEK because no short-term human health values have been finalized for MEK. The Dick study is the best study in the MEK database with which to assess short-term effects of MEK exposure.

During public comment, EPA did not receive any negative comment on our interpretation of the Dick study. EPA did, however, receive a request to address the potential for developmental effects as a result of short-term exposure because the RfC that EPA used to assess long-term exposure to MEK was based on a developmental endpoint.

EPA agrees that this is appropriate to do since the Agency, thus far, has not finalized an acute reference exposure methodology. EPA is in the process of developing this methodology and sought the Science Advisory Board's (SAB) review of the draft methodology in 1998 (The SAB report is available at: *http://www.epa.gov/sab/pdf/ehc9905.pdf*). Thus, EPA considered several types of analysis. One type of analysis EPA considered was a general approach consistent with that used for the chronic RfC and based on the developmental study that was the basis for the RfC.

The quantitative aspect of EPA's RfC methodology is a two-step approach that distinguishes analysis of the dose-response data from inferences made about lower doses. The first step is an analysis of dose and response in the range of observation of the experimental and/or epidemiologic studies. The modeling or statistical significance testing yields a point of departure (POD) from the range of observation. The second step is extrapolation to lower doses. Thus, the RfC is derived from the POD (in terms of human equivalent

exposure) for the critical effect by consistent application of uncertainty factors (UFs). The UFs are applied to account for recognized uncertainties in the extrapolations from the experimental data conditions to an estimate appropriate to the assumed human scenario (U.S. EPA, 1994).

The POD from the developmental study is a 24-hour human equivalent exposure concentration of 1,517 mg/m^3. In the derivation of the chronic RfC, this POD was divided by a cumulative UF of 300. The cumulative factor comprised three UFs, accounting for uncertainties in interspecies (3) and intraspecies (10) extrapolation, as well as uncertainty in the database with regard to chronic exposures (10). In calculating an acute reference value, the latter would not be relevant, resulting in a cumulative UF of 30. Thus, one analysis of the short-term exposure potential might result in a short-term (24 hour) reference value of 50 mg/m^3 by dividing 1,517 mg/m^3 by a cumulative UF of 30. The petitioner's maximum modeled 24-hour average MEK concentration in air of 10 mg/m3 is lower than this potential short-term reference value by a factor of 5.

An alternate approach is that routinely employed by EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS), which involves consideration of the margin of exposure (MOE) between the POD and the estimated exposure concentration of interest (67 FR 60886). For decision-making purposes, the OPPTS MOE level of concern is the value derived from multiplicative factors representing key outstanding areas of uncertainty with regard to the chemical's toxicity. Given the available data for MEK, which includes an animal study on developmental toxicity, the predominant outstanding areas of uncertainty with regard to short-term toxicity are the potential for interspecies and intraspecies differences in susceptibility. Assigning them each the traditional default value of 10 yields a MOE of 100.[1] Therefore, in evaluating the potential for adverse human health effects to occur from acute exposures to MEK from inhalation, EPA considers adverse effects to be unlikely if the MOE is at least 100.

Using the petition's maximum modeled 24-hour average MEK concentration in air of 10 mg/m^3, and the 24-hour human equivalent exposure concentration at the POD from the study used to develop the RfC of 1,517 mg/m^3, EPA calculates a margin of exposure of 152. Therefore, based on either of the two approaches outlined above, the predicted 24-hour exposures to MEK may not reasonably be anticipated to pose appreciable risk of adverse developmental health effects. This conclusion, when added to the previous conclusions described in the preamble to the proposed rule, further supports our determination that emissions of MEK may not reasonably be anticipated to cause adverse health or environmental effects.

Since proposal, EPA's OPPTS has proposed several Acute Exposure Guideline Levels (AEGLs) for MEK. The AEGLs represent threshold exposure limits for the general public for various degrees of severity of toxic effects, and are applicable to emergency exposure periods ranging from 10 minutes to 8 hours. It is believed that the recommended exposure levels are applicable to the general population including infants and children, and other individuals who may be susceptible.

The AEGL value for the lowest severity level, the AEGL–1, is the airborne concentration 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. With increasing airborne concentrations above each AEGL, there is a progressive increase in the likelihood of occurrence and the severity of effects described for each corresponding AEGL. Although the AEGL values represent threshold levels for the general public, including susceptible subpopulations, such as infants, children, the elderly, persons with asthma, and those with other illnesses, it is recognized that individuals, subject to unique or idiosyncratic responses, could experience the effects described at concentrations below the corresponding AEGL.

The interim AEGL–1 value for MEK is 200 ppm (for all exposure periods up to 8 hours). This is the same concentration as the no-adverse-effect concentration for the general population derived from the Dick Study, which provides further support for the use of the Dick study for assessing short-term exposures.

IV. Voluntary Children's Chemical Evaluation Program Peer Review

In the preamble to the proposed rule, EPA stated that it would not make the final decision whether to delist MEK until it considered the results of the peer consultation of the industry's tier 1 submission for MEK under the Voluntary Children's Chemical Evaluation Program (VCCEP). The VCCEP is intended to provide information to enable the public to understand the potential health risks to children associated with exposures to certain chemicals. Under the VCCEP, EPA has asked industries that manufacture or import certain chemicals to sponsor these chemicals to develop assessments regarding the potential health effects, exposures, and risks of those chemicals to children (see *http://www.epa.gov/chemrtk/vccep/index.htm*).

EPA received the industry's submission under the VCCEP on December 1, 2003. The peer consultation meeting for MEK was held on February 19, 2004. On April 19, 2004, EPA received the report of the peer consultation. Peer consultation panel members concluded that the MEK database and submission were adequate, and the key areas of hazard, exposure, and risk were sufficient to characterize risks to children for the purposes of the VCCEP. None of the panelists thought that further data or analyses were needed to characterize MEK's risks to children for the purposes of the VCCEP. Subsequent to completion of the final meeting report, EPA requested additional MEK exposure information from the industry sponsors. This information was provided to EPA on January 12, 2005 (see *http://www.tera.org/peer/vccep/MEK/MEKwelcome.html*).

The only substantive issue raised by the peer consultation that is relevant to the final rule pertains to acute exposures to MEK. To characterize potential impacts from short-term exposures to MEK, the VCCEP submission took much the same approach that EPA took in the proposed rule. That is, they estimated maximum short-term exposures and compared them to a short-term health value that was based on irritation. Like the public commenter, the VCCEP peer consultation panel requested that the sponsor compare the short-term exposures to a developmental endpoint because the RfC was based on a developmental endpoint.

The sponsors proposed one of the approaches EPA considered above, the approach based on the RfC. The sponsors proposed to begin with the 2003 RfC of 5 mg/m^3, then remove the 10-fold database uncertainty factor. This results in a 24-hour value of 50 mg/m^3. The reason given for the removal of the

[1] Note that the value of 10 that EPA assigned here for interspecies variability is greater than the value of 3 that EPA assigned in developing the RfC for MEK. This adds another layer of conservatism to our evaluation of the potential for MEK to cause acute effects.

uncertainty factor is that it was applied to the RfC to account for the lack of chronic studies. Since considering chronic studies is not relevant to the development of a short-term health value, there is no need for the 10-fold database uncertainty factor. EPA agrees with the approach submitted to the VCCEP and, as described above, EPA considered this approach as well as other methods.

V. Adverse Comments and EPA Responses

Of the 57 written comments EPA received pertaining to the proposed delisting of MEK, 42 supported the proposal to delist, 13 opposed the proposal to delist and 2 comments neither supported nor opposed the proposal. EPA received comments on the development of the RfC used in the decision and on the exposure assessment.

EPA has considered carefully all the comments, focusing in particular on comments which suggested potential deficiencies in the substantive rationale upon which EPA based its initial determination that the criterion in CAA section 112(b)(3)(C) had been met. A summary of the comments and EPA responses has been included in the docket. In this preamble, EPA will discuss adverse comments received and our responses to them.

The proposed rule invited comment from interested parties on the proposal to delist MEK. In addition, EPA specifically requested comments on our prospective RfC for MEK (the interim health value EPA developed for the proposal). EPA also solicited comment on the portion of our human health risk characterization based on this prospective RfC. In addition, EPA requested comment on whether it would be appropriate to delist MEK if the RfC resulting from an updated IRIS review differed from the prospective RfC; for example, EPA requested comment on the appropriateness of delisting if the RfC were 3 mg/m^3, the level suggested by industry in its petition, or if it remained unchanged from the 1992 RfC of 1 mg/m^3.

Comment: One commenter asserted that the 1992 RfC of 1 mg/m^3 was set to protect against birth defects and it should not be changed. Another commenter stated that the 2003 RfC (external review draft), which was based on the same study from 1991, does not adequately provide an estimate "likely to be without an appreciable risk of deleterious effects during a lifetime."

Response: The RfC is designed to consider all adverse noncancer effects associated with lifetime exposure to a chemical. The 2003 RfC is also based on developmental effects, and is based on the methodologies that were in place at the time of derivation, including (1) the methods for the use of inhalation dosimetry to extrapolate from animal to human exposures (U.S. EPA, 1994) and (2) benchmark dose methods (U.S. EPA, 2000, external review draft). Those methods have been subject to peer review.

Comment: One commenter asserted that the toxicological database is not complete regarding developmental effects, and stated that there is inadequate evidence to assess the carcinogenic potential of MEK (i.e., there are no 2-year animal cancer bioassays).

Response: There are adequate data on developmental effects and on cancer effects to support a decision to delist MEK. The principal study (Schwetz *et al.*, 1991), a developmental toxicity study in the mouse, is well-designed and tests several exposure concentrations over a reasonable range that include maximum tolerated doses for dams and fetuses. Also, animal studies in a second species (rats) corroborate the effect level for developmental toxicity (Deacon *et al.*, 1981; Schwetz *et al.*, 1974).

Regarding carcinogenicity, the current IRIS file (completed in September of 2003) states that the data for MEK are characterized as "inadequate for an assessment of human carcinogenic potential." The "Toxicological Review of Methyl Ethyl Ketone" (U.S. EPA, 2003) (Toxicological Review of MEK), upon which the IRIS file is based states, "Under EPA's draft revised cancer guidelines (U.S. EPA, 1999), data are inadequate for an assessment of human carcinogenic potential for MEK because studies of humans chronically exposed to MEK are inconclusive, and MEK has not been tested for carcinogenicity in animals by the oral or inhalation routes." Recent revision of these guidelines does not materially affect this conclusion.

The traditional 2-year animal cancer study has not been conducted for MEK, nor is EPA aware of any organization planning to conduct one. EPA believes one reason no cancer assay has been done is that the results from the majority of the genotoxicity tests (which are often used as an indicator of the need to pursue a 2-year cancer study) are negative, indicating that MEK is a low priority for further study. In 1997, the Organization for Economic Cooperation and Development (OECD) reached this conclusion. OECD's report states that "MEK is not genotoxic and is not likely to be carcinogenic." (OECD, 1997). The report also states that MEK is "* * * currently of low priority for further work." (OECD, 1997).

The general descriptors recommended by EPA's "Guidelines for Carcinogen Risk Assessment" (U.S. EPA, 1999) for characterizing the weight of evidence with regard to a chemical's potential for human carcinogenicity did not explicitly recognize this situation. The descriptor applied to MEK in the 2003 IRIS assessment (i.e., "data are inadequate for an assessment of human carcinogenic potential") pertains to cases where "* * * there is a lack of pertinent or useful data." (U.S. EPA, 1999). While lacking data or studies that would clearly support their placement in other categories (e.g., the traditional 2-year rodent study), chemicals included within this broad category may, however, have pertinent or useful data which do not indicate any potential for carcinogenicity, consequently providing no support for the performance of the traditional, resource-intensive studies.

Accordingly, EPA's Toxicological Review of MEK also states, "the majority of short-term genotoxicity testing of MEK has demonstrated no activity, and the Structure Activity Relationship (SAR) analysis suggests that MEK is unlikely to be carcinogenic." (U.S. EPA, 2003). One study (Woo *et al.*, 2002) has given MEK and other unsubstituted mono-ketones (a compound class to which MEK belongs) a low concern rating (unlikely to be of cancer concern) because these chemicals lack electrophilic activity (*i.e.*, a structural alert of carcinogenicity) and are generally not associated with carcinogenicity.

There is an absence of positive results in the majority of mutagenicity and genotoxicity tests which are designed to indicate the potential for carcinogenicity. Methyl ethyl ketone has been tested for activity in an extensive spectrum of *in vitro* and *in vivo* genotoxicity assays and has shown no evidence of genotoxicity in most conventional assays (National Toxicology Program, no date; World Health Organization 1992; Zeiger *et al.*, 1992). Methyl ethyl ketone tested negative in bacterial assays (both the *S. typhimurium* (Ames) assay, with and without metabolic activation, and *E. coli*), the unscheduled deoxyribonucleic acid (DNA) synthesis assay, the assay for sister chromatid exchange (SCE) in Chinese hamster ovary (CHO) cells, the mouse lymphoma assay, the assay for chromosome aberrations in CHO cells, and the micronucleus assay in the mouse and hamster. The only evidence of mutagenicity was mitotic

chromosome loss at high concentrations in a study of aneuploidy in yeast *S. cerevisiae* (Zimmerman *et al.*, 1985), but the relevance of this finding to humans is questionable. Overall, studies of MEK yield little or no evidence of genotoxicity.

However, the finding of low potential for genotoxicity alone is not the sole criterion for an assessment of carcinogenic potential, as non-genotoxic mechanisms can also result in carcinogenesis. While developing the final rule, EPA learned that preliminary results of a recent cancer bioassay by the National Toxicology Program suggested that methyl isobutyl ketone (MIBK) appears to be a weak or marginally active carcinogen in rats and mice, possibly by a nongenotoxic mode of action. Both MEK and MIBK are small molecular weight alkyl ketones, and this similarity raised some questions regarding the possible relevance of the preliminary MIBK results to MEK. To investigate this further, EPA undertook SAR analysis of MIBK and MEK. These two ketones have a key difference in their chemical structure: MIBK is branched, while MEK is linear. EPA's SAR analysis indicates that MIBK's toxicity and possible carcinogenicity are likely due to its branched alkyl structure. Methyl ethyl ketone, like acetone, is linear and lacks this structure. Thus, the analysis concluded that in analogy to acetone and its metabolite isopropanol (which has shown no evidence of carcinogenicity), MEK and its metabolite (2-butanol) are linear and, therefore, have low concern for carcinogenicity potential. A short document describing the analysis, "Acetone, MEK, and MIBK—SAR Analysis on Carcinogenicity/Toxicity," is included in the docket. Subsequently, EPA conducted an external peer review of this document. All three reviewers found the reasoning to be sound and supported the conclusions of the analysis. These reviews are also included in the docket. Thus, EPA concludes that the available scientific evidence shows a low potential for carcinogenicity in MEK.

Comment: One commenter suggested that the UFs for the prospective RfC were not adequate. The commenter disagreed with the reduction of the interspecies UF and stated that it should have remained at 10 because there are no developmental and reproductive studies available for humans and animals. Another commenter suggested that the human equivalent concentration (HEC) resulted in low confidence because it was based on the same mouse study (1991) as the 1992 RfC, and the prospective RfC was not robust enough to warrant decreasing the interspecies UF from 10 to 3. This commenter also asserted that the chronic and reproductive studies are still missing and, therefore, EPA's proposal of reducing the database UF is not valid. The commenter contended that the lack of current information results in continued low confidence in the database because the data used are from the original studies used to develop the 1992 RfC. The commenter believes that the Dick study did not provide adequate statistical power. Consequently, the commenter believes that the lack of toxicity was not demonstrated, and that the modifying factor should be maintained at 3. The commenter concluded that the "absence of data should not conclude an absence of toxicity."

Response: An interspecies UF of 3 was applied in deriving both the prospective RfC and the 2003 RfC, consistent with EPA guidance for deriving RfCs in effect at the time (U.S. EPA, 1994). The UF for interspecies extrapolation is not intended to address database deficiencies. A database UF of 10 was used in developing the 2003 RfC to account for the lack of a chronic inhalation toxicity study and multigeneration reproductive toxicity study.

Modifying factors have been used in the past in RfC derivations, where the magnitude of the factor reflected the scientific uncertainties of the study and database that were not explicitly treated with standard uncertainty factors. For the 2003 RfC, the default modifying factor of one was used because EPA concluded that the modifying factor was sufficiently subsumed in the general database UF.

Comment: The petitioner stated that EPA did not present adequate scientific justification for applying a duration adjustment to the inhalation developmental toxicity study and, at the very least, the additional conservatism added by the application of this factor should be explicitly recognized. The commenter pointed to the draft Toxicological Review that indicated that MEK was rapidly absorbed, distributed, and metabolized, suggesting that the duration adjustment may be inappropriate.

Response: Duration adjustment of the exposure concentrations in the developmental study of MEK (Schwetz *et al.*, 1991) was performed consistent with the EPA Risk Assessment Forum RfD/RfC Technical Panel report, "A Review of the Reference Dose and Reference Concentration Processes" (U.S. EPA, 2002). The report recommends that procedures for adjusting to continuous exposure based on the product of concentration and time be used as a default for inhalation developmental toxicity studies as it is for other health effects from inhalation exposure. While the recommendation is based on evidence that shows that some agents cause developmental toxicity more as a function of peak concentration, the effects of other agents are related to area-under-the-curve (AUC). The latter is true even of some developmental toxicants with a short half-life. In the absence of data that support peak concentration or AUC as more closely correlated with developmental toxicity, EPA's 2002 review document recommends duration adjustment as the more health-protective default procedure. As noted in the Toxicological Review of MEK, because the data are insufficient to argue convincingly for either peak exposure level or AUC as the most appropriate metric, the more health-protective procedure (duration adjustment) was applied as a policy matter.

Comment: The petitioner commented on our interpretation of the Cavender *et al.* (1983) study. They stated that EPA regarded 5,000 ppm in a 90-day inhalation study as the Lowest Observed Adverse Effect Level (LOAEL) based on reduced weight gain, increased liver weight, and decreased brain weight. The commenter stated that this was inconsistent with the 1992 IRIS database where EPA indicated that a change in liver weight may not be conclusively caused by MEK inhalation. The petitioner recommended that 5,000 ppm be the No Observed Adverse Effect Level (NOAEL).

Response: In the 2003 IRIS assessment, EPA gave further consideration to the biological significance of the findings in the 5,000 ppm animals in the Cavender *et al.* (1983) study, specifically the organ weight findings. Although the decrease in brain weight in female high-dose animals is of some concern, EPA agrees that this effect, in the absence of corresponding histopathology and functional abnormalities, cannot be clearly characterized as being of toxicological relevance. In light of these uncertainties, characterization of the effects associated with the 5,000 ppm exposure level as adverse, use of that level as a LOAEL, and the use of mid-dose group (2,518 ppm) as a NOAEL were dropped.

Comment: Three commenters suggested that the actual emissions of MEK may result in environmental concentrations below the RfC, but allowable emissions would not. This

means that should the emissions reach allowable limits, then the concentrations of MEK will be above the RfC. One commenter provided an example of a facility that emits 500 tons per year (tpy) of MEK but is permitted to emit up to 2,200 tpy. The commenter states that a simple screening model run (most likely similar to the tier 1 or tier 2 analysis submitted by the petitioner) of this facility at the allowable emission rate predicts 24-hour peak concentrations to be about 75 mg/m^3, which is above the maximum predicted 24-hour average concentration of 10 mg/m3 that EPA cited in the preamble.

Response: The maximum offsite 24-hr MEK concentration for the worst-case facility in the petition as predicted by the Industrial Source Complex Short Term 3 (ISCST3) model was 10 mg/m^3. The maximum annual concentration was 1.2 mg/m^3. This facility emits about 500 tpy MEK. The maximum offsite concentration occurs within a few hundred meters of the facility.

The commenters provided limited information on the facility that has the potential to emit 2,200 tpy. EPA contacted the commenter in order to understand how they estimated the value of 75 mg/m^3. EPA was told that the SCREEN3 model was used to estimate this concentration. However, EPA was unable to obtain the modeling runs which would contain important model input data (e.g., stack heights and distances from stacks to fence lines). From the comment, EPA does know that the maximum offsite concentration for this facility as predicted by the SCREEN3 model was 75 mg/m^3 for a 24-hr average and 1.1 mg/m^3 for an annual average. If this facility were modeled with a more refined dispersion model, such as the ISCST3 model, EPA would expect impacts that are considerably lower than those predicted with the more conservative SCREEN3 model. Most likely, the maximum offsite concentration for the facility would be much closer to 10 mg/m^3 for a 24-hr average near the facility, and well below 1 mg/m^3 for the annual average. EPA would suspect that the facility to which the commenter refers has much better dispersion characteristics than the petitioner's worst-case facility, which had a very low stack and nearby fenceline.

Comment: Three commenters stated that EPA failed to meet the CAA deadline (18 months) for adding or deleting a substance from the HAP list, instead taking 78 months total. Therefore, the commenters believed the 1994 Toxic Release Inventory (TRI) data used in the assessment were not appropriate and that current TRI data should have been used. These commenters also contended that the calculations in the petition did not consider potential increases in MEK use once MEK is delisted, and that EPA should base its decision to delist MEK on emission levels and locations expected after delisting.

Response: EPA interprets the CAA to require consideration of current emissions. It is not appropriate to make a decision on what can only be speculative emissions. EPA states in the final rule to delist caprolactam (61 FR 30816, June 18, 1996) that "EPA does not interpret section 112(b)(3)(C) to require consideration of hypothetical emissions from facilities that might be constructed in the future. The logical consequence of such an expansive construction would be that no substance could ever be delisted, due to the hypothetical possibility of some future facility that has uncontrolled emissions large enough to cause adverse effects. In the event some future facility has uncontrolled caprolactam emissions great enough to change the conclusion of the current EPA risk assessment, EPA can revisit its decision to delist caprolactam at that time." It is not the case, however, that EPA can never take potential increases in emissions into account. For example, such consideration is appropriate where EPA has information regarding specific facilities, such as the information it considered in denying the methanol delisting petition (66 FR 21929, May 2, 2001).

Using similar logic in this case, EPA does not interpret CAA section 112 (b)(3)(C) to require consideration of hypothetical emissions from facilities that might be constructed in the future, nor projections of increases in emissions from existing facilities.

There are several reasons why EPA does not expect that increases in emissions of MEK will cause health or environmental concerns. With regard to increased emissions themselves, EPA believes that such increases will be limited by good housekeeping practices which are designed to save product. Methyl ethyl ketone is an effective solvent, but one that evaporates readily. Employing techniques to prevent wasting the product also results in decreased emissions.

Due to the health-protective nature of the analysis upon which the decision to delist is based, EPA concludes that the potential risks from outdoor exposures to MEK are overestimated. It is unlikely that future emissions increases will result in unacceptable risk. For example, the petitioner based the risk assessment on 1994 TRI total air emissions of MEK, which were 628 tpy for the worst-case facility. This facility's modeled annual average concentration is only 20 percent of the RfC. This facility could increase emissions significantly before the concentration would be above a level of concern. The highest-emitting facility in the 2003 TRI emits 638 tpy of MEK, only slightly higher than the 1994 TRI emissions for the worst-case facility.

In addition, the national trend in MEK emissions is distinctly downward. Comparing the 1994 and 2003 TRI MEK air emissions data for the 100 highest-emitting facilities indicates that emissions have decreased by approximately 20 percent during that nine year period.

The risk assessment was based on a maximum off-site concentration. The assessment did not consider the amount of time people would be at that location, or other factors that address the amount of exposure faced by actual individuals. Further, this maximum concentration was located at the entrance to a facility in an industrial park. The probability that an individual would live at this location in the future is extremely low.

Given the low hazard presented by the worst-case facility, the health-protective nature of the analysis, and the overall downward trend of MEK emissions over the last several years, EPA believes that emissions of MEK may not reasonably be anticipated to cause adverse human health effects.

The preamble to the proposed rule discussed the March 30, 1998, Federal Register notice (63 FR 15195) in which EPA issued a Denial of Petition entitled "Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know." The denial was in response to a petition from the Ketones Panel of the Chemical Manufacturers Association (CMA) that requested the deletion of MEK from the list of chemicals reportable under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act.

The American Chemistry Council (formerly the Chemical Manufacturers Association) filed suit challenging EPA's decision in the United States District Court for the District of Columbia. Subsequently, the court granted summary judgment in favor of EPA (*American Chemistry Council* v. *Whitman*, 309 F.Supp. 2d 111 (D.D.C. 2004)). On appeal, the Court of Appeals for the District of Columbia Circuit reversed the lower court's decision, vacating the lower court's decision, and directed the district court to issue an order to "direct EPA to delete MEK from

the TRI" (406 F.3d 738, 742 (DC Cir. 2005)). The circuit court issued its mandate on June 13, 2005 and, accordingly, on June 30, 2005, EPA issued a final rule (70 FR 37698) revising the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to delete MEK.

The deletion of MEK from the EPCRA section 313 list eliminates the main source of data EPA uses to track MEK emissions. However, there are other data sources available to estimate MEK emissions, including market research data on MEK production, import, export, and consumption. Consumption of MEK should provide an adequate surrogate for emissions to determine whether significant increases in emissions are occurring. If data indicate that MEK emissions are increasing significantly, EPA has the option to add MEK back on the HAP list.

Comment: One commenter suggested that the risk was not adequately identified because the industry was not studied comprehensively enough to determine chronic exposure.

Response: In order to determine the risks from emissions of MEK, the petitioner used the 1994 TRI as the basis of an emissions inventory intended to quantify annual emissions of MEK, to identify and locate emissions sources, and to acquire some facility-specific emissions information. The 1994 TRI shows that there are over 2,000 sources with reported emissions of MEK. The petition states that over 85 percent of these facilities (approximately 1,700) emit 25 tpy or less. The petition also states that approximately 800 facilities emit between 10 and 200 tpy, and 27 facilities emit 200 tpy or more. In addition to using the 1994 TRI, the petitioner queried a subset of individual sources to obtain site-specific source, release, and facility information for the purpose of conducting more detailed risk assessments. EPA has determined that this approach to establishing reasonable worst-case exposures to MEK emissions is an adequate basis upon which to base a decision to delist MEK. EPA states in the preamble to the proposed rule that it does not interpret CAA section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms "adequate and "reasonably" indicate that EPA must weigh the potential uncertainties and likely significance. In this case, the uncertainty in the predicted exposure levels is biased toward protecting public health. Therefore, EPA concludes that delisting MEK is appropriate.

Comment: Several commenters contended that chronic effects of MEK had not been adequately studied or evaluated, and that the delisting was not supported by new or compelling scientific evidence. One commenter requested that EPA conduct long-term health effects studies. Additionally, the commenters stated that there were no lifetime-chronic studies included, no studies evaluating developmental effects, nor studies concerning reproductive toxicity. Moreover, these commenters asserted, there were no multigenerational studies included, and the evaluation of the carcinogenic potential was not adequate.

Response: EPA's RfC methodology (U.S. EPA, 1994) does not always require a complete database in order to develop an RfC; however, the database must at least meet minimum data requirements. For MEK, "* * * confidence in the database is medium * * *." (U.S. EPA, 2003). "The subchronic study by Cavender *et al.* (1983) satisfies the minimum inhalation database requirements for derivation of an RfC." (U.S. EPA, 2003).

In the case where there are enough quality data with which to set an RfC, but where the database is less than complete, EPA adds a database uncertainty factor to account for the lack of data. For MEK, that factor is 10. EPA acknowledges the lack of a chronic toxicity bioassay and an inhalation multigeneration reproductive toxicity study (an oral multigeneration is available), but notes that contrary to the commenters' statements, the developmental toxicity of MEK has been well studied.

As stated above, the RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. Because maximum expected ambient air concentrations are well below the RfC, EPA does not expect adverse noncancer effects to result.

In addition, the health-protective nature of the assessment described above adds to our confidence that no adverse health effects will occur from ambient exposures to MEK.

Comment: One commenter asserted that the appropriate averaging time for assessing the potential for adverse developmental effects to occur is the 24-hour average, not an annual average. The commenter held that evaluating developmental toxicity on a 24-hour basis is supported by EPA guidelines for evaluating developmental risk. This issue was also raised by the VCCEP review panel as they considered the information industry submitted on MEK and children's health.

Response: EPA agrees with the commenter that potential concern for developmental effects from short-term exposures should be addressed, and EPA did so elsewhere in this preamble. With regard to the use of endpoint-specific reference values, EPA's review of the RfD/RfC processes recommended against the use of endpoint-specific reference values, and instead recommended that duration-specific reference values be derived in consideration of the full range of adverse effects.

Comment: A commenter remarked that EPA did not take into account all routes of exposure to MEK and, therefore, did not adequately identify the risk.

Response: MEK is neither bioaccumulative nor persistent. It has a half-life of approximately 9 days. The releases of MEK to air are unlikely to result in elevated concentrations in surface water, ground water, or the food supply. Therefore, the route of exposure EPA is concerned with is direct inhalation of MEK released to the ambient air. For this reason, inhalation was the focus of the analysis. The petitioner also assessed the potential for risks due to ingestion of water contaminated with MEK. In both cases, the risks were below a level of concern.

Comment: One commenter asserted that the risk assessment did not fully address: (1) Other solvents released from stationary and area sources of MEK, (2) actual ambient concentrations near stationary and area sources (only modeled concentrations were used), and (3) the human health effects within the facilities as opposed to fenceline ambient concentrations.

Response: The maximum annual average air concentration resulting from emissions of MEK is not expected to exceed an HQ of 0.2. This value, which is 20 percent of the RfC, is quite low. EPA believes that there is a large enough margin of exposure to preclude a need to address any other emitted HAP that may affect the same target organ as MEK.

The petitioner did not monitor ambient air around actual MEK-emitting facilities. Such an effort would not add to the analysis, or change EPA's conclusion with regard to delisting. This is because the maximum monitored concentration EPA found in the U.S. was over two orders of magnitude below the maximum modeled concentration, and because the modeling conducted was designed to over-estimate ambient concentrations. For example, the model

assumed that individuals are continuously exposed to the maximum modeled concentrations of MEK in air for 70 years, and EPA used the maximum annual average concentration as a surrogate for long-term exposure. Also, the model used 1994 emission rates which are significantly higher than current emissions for the facility with the highest estimated HQ of 0.2. EPA believes that the health-protective air dispersion modeling performed as part of the petition and described in detail in the proposed rule resulted in higher concentrations than would monitoring around facilities.

EPA cannot consider the health effects of emissions within facility boundaries. That is the purview of the Occupational Safety and Health Administration.

Comment: One commenter recommended that a comparative analysis with the 1998 Office of Pollution Prevention and Toxics (OPPT) assessment (located in the docket) be done to fully assess the risks of MEK.

Response: EPA agrees with the comment, and EPA conducted a comparison of the 1998 OPPT assessment and the assessment in the proposal to delist MEK.

The assessment presented in the petition to delist MEK estimated a maximum annual average MEK concentration of 1.2 mg/m^3. It used the ISCST3 model, which is a refined air dispersion model that predicts an annual average by averaging 8,760 hours of real time meteorological data. The ISCST3 model predicted a maximum 24-hour average MEK concentration of 10 mg/m^3.

The 1998 OPPT study estimated maximum 24-hour average concentrations of 100–200 mg/m^3. It used a screening model similar to the SCREEN3 model and predicted 1-hour average concentrations under defined meteorological conditions with the assumption that the receptor is always directly downwind from the source. Such screening model runs typically result in high air concentrations as compared to the ISCST3 model. EPA would expect the difference in concentrations to be as high as a factor of 10. In addition, the OPPT study applied a multiplicative factor to predict typical (5), stagnant (10), and maximum (60) acute impacts. Thus, the difference between the two model results can be attributed to the multiplicative factors and differences between a refined and screening model.

Comment: One commenter recommended that EPA not wait for the formal IRIS review of MEK or the VCCEP results to make a final decision regarding delisting of MEK, as there was enough evidence to delist MEK without the additional information. Another commenter asserted that if the RfC resulting from the completed IRIS assessment is different from the prospective RfC, then the petition should be reconsidered and an additional public comment period should be allowed giving the public an opportunity to comment on EPA's decision. This commenter also stated that the results of the VCCEP should be concluded before the comments on the delisting are due.

Response: Regarding the first comment, EPA waited to make a final decision to delist MEK until the 2003 IRIS RfC was determined and until the information submitted by industry under the VCCEP was reviewed in case the results of each of these processes altered our decision to remove MEK from the HAP list.

Regarding the second comment, EPA considers an additional comment period unnecessary for a number of reasons. First, EPA explicitly solicited comment on the effect of a difference between the prospective RfC and the RfC resulting from the completed IRIS assessment. EPA specifically requested comments on the decision in light of potential values for the RfC of 9 mg/m^3, 3 mg/m^3 and 1 mg/m^3. The 2003 RfC of 5 mg/m^3 is in the middle of the range upon which EPA solicited comment. Second, while the 2003 RfC is lower than the prospective RfC, the result of this change was only to increase the HQ for the maximum annual average ambient exposure from 0.1 to 0.2 (20 percent of the RfC). This HQ is well below a level of concern.

In addition, EPA judges that the exposures to MEK of actual persons living in the immediate vicinity of an MEK emission source would more typically be at least a factor of 2 to 10 less than the predicted maximum ambient concentration presented in the petition of 1 mg/m^3. This is because the concentration of MEK declines very rapidly as the plume disperses, and the analysis showed that people do not live at the point of maximum concentration. Therefore, actual exposed individuals would be subject to MEK concentrations less than 1 mg/m^3. If EPA were to replace the maximum ambient concentration with a more realistic exposure scenario, it would yield an HQ less than 0.2. Based on the current information, and given the conservative nature of the parameters used to estimate the maximum exposure, and because the petition and subsequent analyses characterize the vast majority of MEK exposures from stationary sources, EPA concludes that by applying the RfC of 5 mg/m^3, potential ambient exposures to MEK may not reasonably be anticipated to cause adverse human health effects.

With respect to the results of the VCCEP, EPA found it unnecessary to extend the public comment period until after the review of the industry-submitted information was complete. This is because the industry provided no new information to EPA that was not already available. Therefore, there was no new information upon which to solicit comments.

Comment: Many commenters noted that the interactions with n-hexane and other ketones have not been sufficiently investigated should the MEK emissions increase. These commenters stated that MEK interactions with n-hexane have been shown to increase neurotoxicity of n-hexane.

Response: EPA stated in the preamble to the proposed rule that MEK has been shown to potentiate the neurotoxicity of other solvents in experiments with laboratory animals when both MEK and the other solvent are present in high concentrations. EPA also stated that studies of occupationally-exposed populations (as reviewed by Noraberg and Alien-Soborg, 2000) provide some evidence of possible interactions in humans. EPA reviewed the occupational epidemiology literature in more depth during the development of the 2003 RfC for MEK. These findings are summarized in the Toxicological Review for MEK (*http://www.epa.gov/iris/toxreviews/0071-tr.pdf*, section 4.4.4). Available occupational studies involving multiple chemical exposures do not provide information adequate to clearly establish an interaction between MEK and other neurotoxic solvents in humans. In studies suggesting a potential interaction, neurotoxicity has been observed only in workplace populations exposed to solvent mixtures where reported MEK air concentrations reached levels at or above the Threshold Limit Value (TLV) (200 ppm or 590 mg/m^3). EPA concluded that the concerns for chemical interactions are especially diminished at the low levels seen in this assessment: Less than 1 mg/m^3 for chronic exposures, 10 mg/m^3 for 24-hour exposures and 25 mg/m^3 for a 1-hour exposure. These exposures are all well below the reversible effects level of 590 mg/m^3. Therefore, EPA does not expect possible potentiation of n-hexane by MEK at the low environmental concentrations that would be associated with industrial releases.

Comment: One commenter was concerned that MEK was detected by

the National Health and Nutrition Examination Survey in biomonitoring programs.

Response: EPA acknowledged in the preamble to the proposed rule that MEK has been reported to be found in blood. EPA also stated that the data indicated the source of the MEK is likely a by-product of normal human metabolism, and it is reasonable to expect it did not result from an air exposure to MEK at the concentrations seen in the ambient air.

Comment: One commenter requested that EPA consider the role of MEK as an ozone precursor in deciding the petition.

Response: EPA stated in the preamble to the proposed rule that it was inappropriate to consider the role of MEK as an ozone precursor because the "dual structure (differentiating between HAP and criteria pollutants/precursors) would lose its significance if EPA were to include substances on the HAP list solely as a result of their contribution to concentrations of criteria air pollutants." Specifically, the structure of the CAA is best protected by including compounds on the HAP list only where such inclusion is warranted based upon the HAP noncriteria pollutant related effects. This interpretation is supported by the following prohibition related to listing of new HAP contained in CAA section 112(b)(2): "No air pollutant which is listed under section 7408(a) of this title [the criteria pollutant list] may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) * * *."

Comment: One commenter stated that decisions to list or delist are governed by the precautionary principle. The commenter stated that, "in considering whether a petitioner has met the heavy burden of demonstrating that a substance should be removed from the hazardous air pollutant list, the precautionary principle requires that EPA resolve uncertainty in favor of more protection, not less. The recognition of uncertainty in the listing and delisting process does not give EPA discretion to delist a chemical based on incomplete and outdated information as it has proposed to do with MEK."

Response: EPA does not believe it is appropriate to require that all uncertainty be resolved in favor of not delisting. Such a requirement of absolute certainty is inconsistent with our interpretation of the requirement that to delist a HAP, EPA must determine that there are "adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effect to human health or adverse environmental effects." As explained in denying the petition to delist methanol, EPA does "not interpret CAA section 112(b)(3)(C) to require absolute certainty that the pollutant will not cause adverse effects on human health * * * before it may be deleted from the list. The use of the terms 'adequate' and 'reasonably' indicate that EPA must weigh the potential uncertainties and their likely significance." (See 66 FR 21929–21930, May 2, 2001.) For the reasons explained above, EPA determined that this burden has been met here. Responses with respect to the contention that the database was outdated and/or incomplete are also addressed elsewhere is this preamble.

Comment: One commenter asserted that EPA has not adequately considered the odor problems associated with MEK. The commenter stated that odors can cause neurological problems such as fatigue, dizziness, headache, and nausea resulting in a diminished quality of life. The commenter also stated that odor thresholds for MEK have been reported in the range of 6–250 mg/m^3, and the estimates presented in the proposed rule for a 1-hour maximum concentration near MEK sources is 25 mg/m^3, which is within the range of the reported odor thresholds. The commenter also suggested that EPA recognize that the risk to sensitive individuals could increase after delisting.

Response: While EPA does not expressly consider odor as a health endpoint, EPA considers the physiological effects of chemical exposures, including the neurological effects that the commenter described. In the proposed rule, EPA stated the following, "The IRIS assessment of MEK states that at present, there is no convincing experimental evidence that MEK is neurotoxic * * * other than possibly inducing CNS (central nervous system) depression at high exposure levels." The IRIS documentation shows that no peripheral neurohistopathological changes were reported in rats exposed continuously to 3,320 mg/m^3 of MEK for up to 5 months (Saida *et al.*, 1976). No treatment-related central or peripheral neurohistopathology was observed in rats exposed for 90 days (6 hours/day, 5 days/week) at concentrations of MEK as high as 14,865 mg/m^3, even among animals in animal tissues specifically prepared and examined for neurohistopathology (Cavender *et al.*, 1983). Also, ten of ten rats exposed to MEK at 17,700 mg/m^3 and higher for 8 hours/day, 7 days/week, died in the seventh week of exposure without neurological symptoms or histopathology (Altenkirch *et al.*, 1978).

Regarding sensitive individuals, EPA could not identify any specific data that address the potential differences in susceptibility to adverse effects from MEK exposure. In the MEK Toxicological Review in support of the IRIS assessment, EPA did note that "The potential exists for increased susceptibility to neurotoxicity, hepatotoxicity, and renal toxicity following exposure to MEK in combination with certain other solvents * * *." The potentiating effects of MEK on the toxicity of other solvents have only been demonstrated at relatively high exposure concentrations (200–1,000 ppm or 590–2950 mg/m^3).

Comment: One commenter recommended changing the hazardous waste regulations that apply to MEK as follows: Remove MEK as a listed toxicity characteristic in 40 CFR 261.64; remove MEK as a toxic constituent in part 261, appendix VIII; and remove MEK from the F005 listing, but it may be appropriate to add it to F2003 listing.

Response: EPA was petitioned under CAA section 112(b)(3) to remove MEK from the CAA section 112 HAP list. This is the only action under consideration as part of the final rule.

VI. Final Rule

A. Rationale for Action

The detailed factual rationale for supporting EPA's initial determination that the criterion in CAA section 112(b)(3)(C) had been met is set forth in the proposed rule published in the **Federal Register** on May 30, 2003 (68 FR 32606). Although, as described above, EPA has done some additional analysis pursuant to public comments received on the subsequent action, none of those comments nor EPA analyses have caused EPA to revise the scientific basis upon which that initial determination was predicated. Except as modified or clarified above, EPA hereby incorporates into its rationale for the final rule the substantive assessment of potential hazards, projected exposures, human risk, and environmental effects set forth in the proposed rule to delist MEK. Based on that assessment, EPA's evaluation of the comments and additional information submitted during the rulemaking process (as summarized above), and on other materials, EPA has made a determination that there are

adequate data on the health and environmental effects of MEK to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the compound may not reasonably be anticipated to cause adverse human health or environmental effects.

B. Effective Date

The final rule will be effective on December 19, 2005. Although section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that substantive rules must be published at least 30 days prior to their effective date, this requirement does not apply to this action. First, the final rule was promulgated pursuant to CAA section 307(d), and that provision expressly states that the provisions of section 553 of the Administrative Procedure Act do not apply to this action. Second, even under section 553, the requirement that a rule be published 30 days prior to its effective date does not apply to a rule, "which grants or recognizes an exemption or relieves a restriction."

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VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

Today's final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final action will remove MEK from the CAA section 112(b)(1) HAP list and, therefore, eliminate the need for information collection under the CAA. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. 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 Administrations' 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, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may conclude 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.

The final rule will eliminate the burden of additional controls necessary to reduce MEK emissions and the associated operating, monitoring and reporting requirements. EPA has, therefore, concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, 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 final 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 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.

Today's final rule contains no Federal mandates for State, local, or tribal governments or the private sector. The final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the 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 the private sector in any 1 year. Because the final rule removes a compound previously labeled in the CAA as a HAP, it actually reduces the burden established under the CAA. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. Since the final rule contains no Federal mandates and imposes no enforceable duties on any entity, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely 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."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule removes the substance MEK from the list of HAP contained under section 112(b)(1) of the CAA. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175.

A review of the available emission inventory does not indicate tribal MEK emissions sources subject to control under the CAA and, therefore, the final rule is not anticipated to have tribal implications. In addition, the final rule will eliminate control requirements for MEK and, therefore, reduce control costs and reporting requirements for any tribal entity operating a MEK source subject to control under the CAA which EPA might have missed. Thus, Executive Order 13175 does not apply to the final rule.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is based on the fact that the RfC is determined to be protective of sensitive sub-populations, including

children. Also, the single study cited during public comment to indicate a potential effect on children has been reviewed during this petition process and found to be limited in design and execution. Consequently, EPA determined that the study was of insufficient quality to provide information regarding health risks (leukemia) of MEK to children. Also, EPA evaluated industry's submission to the first tier of the VCCEP program and has determined that there are no data which specifically indicate that the RfC will not be protective of children.

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

The final 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 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's 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 rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on December 19, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: December 13, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 63, title 40, chapter I 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 C—[Amended]

■ 2. Subpart C is amended by adding § 63.61 to read as follows:

§ 63.61 Deletion of methyl ethyl ketone from the list of hazardous air pollutants.

The substance methyl ethyl ketone (MEK, 2-Butanone) (CAS Number 78–93–3) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[FR Doc. 05–24200 Filed 12–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2004–0106; FRL–7743–9]

RIN 2070–AC61

TSCA Inventory Update Reporting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations. The IUR currently requires manufacturers (including importers) of certain chemical substances listed on the TSCA Chemical Substances Inventory to report data on chemical manufacturing, processing, and use every 4 years. In this amendment, EPA is extending the reporting cycle, modifying the timing of the submission period, further clarifying the new partial exemption for specific chemicals for which certain IUR data are of low current interest, amending the petroleum refinery process streams partial exemption, amending the list of consumer and commercial product categories, revising the manner in which production volume would be reported, restricting reporting of processing and use information to domestic processing and use activities only, clarifying the polymer exemption definition, and removing a provision regarding the confidentiality of production volume within specified ranges.

DATES: This final rule is effective on January 18, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2004–0106. All documents in the docket are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will not be placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Room B102, 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 EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact:*

Colby Lintner, Regulatory Coordinator, Environmental Assistance

Federal Register

Monday,
December 19, 2005

Part III

Environmental Protection Agency

40 CFR Parts 63, 70, and 71
Exemption of Certain Area Sources From Title V Operating Permit Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 70, and 71

[OAR–2004–0010; FRL–8008–5]

RIN 2060–AM31

Exemption of Certain Area Sources From Title V Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to national emission standards for hazardous air pollutants (NESHAP). The EPA is making a finding for these categories, consistent with the Clean Air Act requirement for making such exemptions, that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the source categories. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. The EPA declines to make a finding for a sixth category, area sources subject to the NESHAP for secondary lead smelters. A previous deferral from permitting for this category expired on December 9, 2004, subjecting all such sources to the title V program.

DATES: This final rule is effective on December 19, 2005.

ADDRESSES: *Docket.* Docket No. OAR–2004–0010, containing supporting information used to develop the proposed and final rules, is available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday (except government holidays) at the Air and Radiation Docket (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, or electronic mail at *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The entities affected by this rulemaking are area sources subject to a NESHAP promulgated under section 112 of the Clean Air Act (Act) since 1990, listed in the table below. An "area source" under the NESHAP regulations is a source that is not a "major source" of hazardous air pollutants (HAP). A "major source" under the NESHAP regulations is "any stationary source or 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] * * *" See definitions of "area source" and "major source" at 40 CFR 63.2.

This final rule affects only whether area sources regulated by certain NESHAP are required to obtain a title V operating permit and whether title V permits may be issued to these and other area sources once EPA has promulgated exemptions from title V for them. It has no other effect on any requirements of the NESHAP regulations, nor on the requirements of State or Federal title V operating permit programs.

The affected categories are:

Category	NESHAP	Estimated number of sources[1]
Perchloroethylene dry cleaning	Part 63, Subpart M	[2] 28,000
Hard and decorative chromium electroplating and chromium anodizing	Part 63, Subpart N	5,000
Commercial ethylene oxide sterilization	Part 63, Subpart O	100
Halogenated solvent cleaning	Part 63, Subpart T	3,800
Secondary aluminum production	Part 63, Subpart RRR	1,316
Secondary lead smelting	Part 63, Subpart X	3

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2004–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents are available both electronically and in hard copy. Electronic documents may be obtained through EDOCKET. Hard copy documents may be viewed at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 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 telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/* or the federal-wide eRulemaking site at *http://www.regulations.gov.*

An electronic version of a portion of the public docket is available through EDOCKET at *http://www.epa.gov/edocket/.* To view public comments, review the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Publicly available docket materials that are not available electronically may be

[1] This estimated number includes both major and area sources, even though only area sources will be affected by this rulemaking. Almost all dry cleaners are area sources. Also, EPA believes less than half of EO sterilizers are area sources (see docket item 106). For other categories listed here, EPA does not have information on the number of area sources.

[2] The proposal of March 25, 2005 estimated up to 30,000 dry cleaners would be affected by this rulemaking. Based on new information available to EPA, we now believe up to 28,000 dry cleaners are potentially affected by this rulemaking.

viewed at the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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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 Covering Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

II. Background

Section 502(a) of the Clean Air Act (Act) sets forth the sources required to obtain operating permits under title V. These sources include: (1) Any affected source subject to the acid deposition provisions of title IV of the Act; (2) any major source; (3) any source required to have a permit under Part C or D of title I of the Act; (4) "any other source (including an area source) subject to standards or regulations under section 111 [new source performance standards] or 112 [NESHAP]" and (5) any other stationary source in a category designated by regulations promulgated by the Administrator. See 40 CFR 70.3(a) and 71.3(a). The requirements of section 502(a) are primarily implemented through the operating permit program rules: Part 70, which sets out the minimum requirements for title V operating permit programs administered by State, local, and tribal permitting authorities (57 FR 32261, July 21, 1992), and part 71, the federal operating permit program requirements that apply where EPA or a delegate agency authorized by EPA to carry out a Federal permit program is the title V permitting authority (61 FR 34228, July 1, 1996). The area sources subject to NSPS under section 111 or NESHAP under section 112 [addressed in category (4) above] are identified in §§ 70.3(a)(2) and (3) and §§ 71.3(a)(2) and (3) as among the sources subject to title V permitting requirements.

Section 502(a) of the Act also provides that "the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of [the Clean Air Act], promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements [of title V] 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 requirements."

In the part 70 final rule of July 21, 1992, EPA permanently exempted from title V two categories of area sources that are subject to section 111 and 112 standards established prior to the part 70 rule (pre-1992 standards): New residential wood heaters subject to subpart AAA of part 60 (NSPS), and asbestos demolition and renovation operations subject to subpart M of part 61 (NESHAP). See §§ 70.3(b)(4) and 71.3(b)(4). The EPA also allowed permitting authorities under part 70 the option to defer permitting for other area sources subject to pre-1992 standards, while for part 71 purposes, we simply deferred issuing permits to them. See 57 FR 32261–32263 (July 21, 1992), and §§ 70.3(b)(1) and 71.3(b)(1).

The post-1992 standards, including the NESHAP for area sources that are the subject of today's final rule, previously have been addressed in §§ 70.3(b)(2) and 71.3(b)(2), which state that EPA will determine whether to exempt from title V permitting any or all area sources subject to post-1992 NSPS or NESHAP at the time each new standard is promulgated. Subsequently, EPA issued title V exemptions for several area sources subject to NESHAP in final rules under part 63:

- All area sources within the NESHAP for publicly owned treatment works (POTW), Subpart VVV. See § 63.1592 (63 FR 64742, October 21, 2002).
- Those area sources conducting cold batch cleaning within the NESHAP for halogenated solvent cleaning, Subpart T. See § 63.468(j) (59 FR 61802, December 2, 1994).
- Three types of area sources within the NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks, Subpart T. See § 63.340(e)(1) (61 FR 27785, June 3, 1996).

The EPA has issued three post-1992 NESHAP that defer the requirement for area sources to obtain title V permits:

- Area sources subject to the NESHAP for perchloroethylene dry cleaning, subpart M; chromium electroplating and anodizing, subpart N; commercial ethylene oxide sterilization, subpart O; and secondary lead smelting, subpart X. See 61 FR 27785, June 3, 1996;
- Area sources subject to the NESHAP for halogenated solvent cleaning, subpart T. See 59 FR 61801, December 2, 1994, as amended by 60 FR 29484, June 5, 1995; and
- Area sources subject to the NESHAP for secondary aluminum production, subpart RRR. See 65 FR 15690, March 23, 2000.

The first two rules established deferrals of area source permitting, which expired on December 9, 1999. The expiration date for these deferrals was extended to December 9, 2004 in another final rule (64 FR 69637, December 14, 1999). The third rule provided deferrals for secondary aluminum area sources, which also expired on December 9, 2004. Thus, today's final rule addresses all six categories of area sources subject to a post-1992 NESHAP that were subject to deferrals from permitting that expired on December 9, 2004.

The EPA published a notice of proposed rulemaking on March 25, 2005 (70 FR 15250), where we proposed to exempt from title V five categories of area sources subject to NESHAP: Dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. As support for the proposed exemptions, we discussed why compliance with title V appeared to be impracticable, infeasible, or unnecessarily burdensome on the area sources, consistent with the exemption criteria of section 502(a) of the Act. Also, we discussed a sixth category, area sources subject to the NESHAP for secondary lead smelters, but we did not propose to exempt them.

Today's final rule is unchanged from the proposal, except for a revision to § 63.360(f), which sets forth the title V exemption for area sources subject to the NESHAP for EO sterilizers. The change to the EO sterilizer rule is needed to clarify which sources under the NESHAP are subject to today's title V exemptions, and it is discussed further in section VIII.J of this preamble.

III. What Does Today's Action Involve?

A. What Revisions Are Being Made to Part 63?

Today's final rule exempts five categories of area sources from title V by revising certain language in the NESHAP rules under part 63, as we proposed on March 25, 2005 (70 FR 15250). This is achieved through two types of changes to the NESHAP rules.

First, we have revised each of the five NESHAP to say that area sources subject to the NESHAP are exempt from the obligation to obtain permits under parts 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in the part 70 or 71 rules, such as when the source triggers another applicability provision of §§ 70.3(a) or 71.3(a). For example, if an exempt area source increases its HAP emissions such that it becomes a major source, the former area source will be required to get a title V permit because it is a major source, consistent with §§ 70.3(a)(1) and 71.3(a)(1). Consequently, when a former area source becomes a major source, the major source permit must include all NESHAP requirements that apply to the major source, including the requirements of the NESHAP that formerly provided for the title V exemption.[3] This is so because §§ 70.3(c)(1) and 71.3(c)(1) require permits for major source to include "all applicable requirements for all relevant emissions units in the major source." Also, we added a second sentence to each NESHAP to say "notwithstanding the previous sentence," the source "must continue to comply with the provisions of this subpart applicable to area sources." The purpose of this sentence is to explain that area sources that are exempted from title V are not exempted from any emission limitations, standards, or any other requirements of the NESHAP.

Second, we have revised the table in each NESHAP that shows how the general provisions of subpart A of part 63 apply to that particular NESHAP, except for the dry cleaning NESHAP, which has no such table. For sources other than dry cleaners, the "comment" column for the § 63.1(c)(2) entry in the tables simply states that area sources subject to the subpart are exempt from title V permitting obligations.

[3] Note that when an area source becomes a major source, depending on the specific requirements of the NESHAP, the emissions standards may change from generally achievable control technology (GACT), which may be established for area sources, to maximum achievable control technology (MACT), which is required for major sources, but also may be established for area sources. Also, see § 63.1(c)(5).

We have made one change to the rule language of the proposal. In the final rule, we have revised the regulatory language of § 63.360(f), which sets forth the title V exemption for EO sterilizers. For more discussion of the proposed regulatory language and why we are changing it in the final rule, see section VIII.J below.

Also, we are not making any changes to the NESHAP for secondary lead smelters, consistent with our proposal, because we are not establishing a title V exemption for area sources subject to it. See section V below for a more detailed explanation of our decision regarding lead smelters.

B. What Revisions Are Being Made to Parts 70 and 71?

Today's final rule also revises parts 70 and 71, as we proposed, to make the rules more consistent with our interpretation that State and local agencies, tribes, and EPA (permitting authorities) may not issue title V permits to area sources after we promulgate title V exemptions for them. In the proposal, we explained that section 502(a) of the Act provides that only those area sources required to get permits, and not exempted by EPA through notice and comment rulemaking, are properly subject to title V requirements. Also, we explained that section 506(a) of the Act, which provides that permitting authorities "may establish additional permitting requirements not inconsistent with this Act," does not override the more specific language of section 502(a). We also explained that section 506(a) preserves the ability for permitting authorities to establish additional permitting requirements, such as procedural requirements, for sources properly covered by the program, and that section 116 of the Act allows State and other non-federal permitting agencies (State agencies) to issue non-title V permits to area sources that have been exempted from title V. See section VI below for further discussion of our interpretations of the Act in this regard.

First, we proposed to delete the "at least" language of § 70.3(a) that has been interpreted to allow State agencies to require permits from area sources, once we have exempted the area sources from title V, because this language is inconsistent with section 502(a) of the Act. No similar changes are necessary for part 71. Second, we proposed to delete language in § 70.3(b)(3) and § 71.3(b)(3) that allows exempt sources to "opt to apply for a permit under a part 70 program," as it is inconsistent with section 502(a) to let exempted area sources volunteer for a title V permit.

Third, we proposed to delete the prefatory phrase of § 70.3(b)(4), "Unless otherwise required by the state to obtain a part 70 permit," because it suggests that States agencies may require title V permits for exempted area sources, such as for residential wood heaters and asbestos demolition and renovation, which would be inconsistent with section 502(a) of the Act. Today's rule makes these revisions final, unchanged from the proposal.

IV. What Are the Reasons for the Title V Exemptions?

A. General Approach

In the proposal of March 25, 2005 (70 FR 15250), we explained our general approach to implementing the exemption criteria of section 502(a) of the Act. Section 502(a) of the Act provides, in part, that the Administrator may "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 requirements." In addition, EPA explained that the legislative history of Section 502(a) suggests that EPA should not grant exemptions where doing so would adversely affect public health, welfare, or the environment. See Chafee-Baucus Statement of Senate Managers, Environment and Natural Resources Policy Division 1990 CAA Leg. Hist. 905, Compiled November, 1993 (in that "[t]he Act requires EPA to protect the public health, welfare and the environment, * * * this provision of the permits title prevents EPA from exempting sources or source categories from the requirements of the permit program if such exemptions would adversely affect public health, welfare, or the environment").

In developing this rulemaking, EPA sought and relied on information from State and local agencies on the level of oversight they perform on these area sources. They responded with information on whether they issue permits, perform routine inspections, provide compliance assistance, and on compliance rates for them. We also received input from State small business ombudsmen and several trade associations representing dry cleaning, metal finishing, solvent cleaning, and the aluminum industry, including information on the sources and the compliance assistance programs currently available for them. In addition, the proposal provided a 60-day public comment period and public citizens, non-profit organizations, State agency representatives, and affected industry representatives responded with comments, which are included in the docket.

In the proposal, we discussed 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 15253, March 25, 2005.

One commenter said we should have evaluated and discussed all four factors for each category of area sources, suggesting that we ignored factors that did not support title V exemptions for each category of area sources. In response, we have considered, and discuss in this preamble, all four factors for each category of area sources for today's final rule. See the explanation below for an overview of our analysis of each factor. Also, see section IV.B through F for detailed discussion of the four factors for each category of area sources, section VIII.A for detailed EPA response to this comment, and section VIII.D, which provides detailed EPA response to this comment, and other comments, on proposed factor four.

The first factor discussed in the proposal is whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are already required by the NESHAP. This preamble refers to this evaluation as probing whether title V is "unnecessary" to improve compliance for these NESHAP requirements at area sources. Thus, a finding that title V does not result in significant improvements to compliance, as compared to operating subject to the NESHAP without a title V permit, is described as supporting a conclusion that title V permitting is "unnecessary" for area sources in that category, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act. Title V provides authority to add monitoring requirements in permits in appropriate circumstances, and also imposes a number of monitoring, recordkeeping and reporting requirements that are designed to enhance compliance. We analyze below the extent to which Title V could improve compliance for the area sources covered by today's rule.

Part 70 and 71 set forth, in three principal sections, monitoring requirements that may be included in title V permits for area sources. Section 70.6(a)(3)(i)(A) requires that title V permits include "[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements." This means, for example, that monitoring required by a NESHAP must be included in a title V permit issued to a source covered by a NESHAP. Second, § 70.6(a)(3)(i)(B) goes further, and provides that "[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" may be included in a title V permit. Importantly, however, where periodic monitoring exists in the underlying requirement, such as a NESHAP, permit writers are not authorized by this regulation to add additional periodic monitoring in a permit. See *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000). Finally, § 70.6(c)(1), provides that permits must contain "consistent with [the periodic monitoring rule in § 70.6(a)(3)], compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." [4]

The EPA's interpretation of § 70.6(c)(1) has evolved over time. In November and December 2000, EPA partially granted two petitions for objections to State-issued part 70 permits. See In the Matter of Pacificorp, Petition No. VIII–00–1 (November 16, 2000); In the Matter of Fort James Camas Mill, Petition No. X–19999–1 (December 22, 2000). In both decisions, EPA held that § 70.6(c)(1) empowers State permitting authorities to review, on a case-by-case basis, the sufficiency of each permittee's monitoring requirements, independent of the authority provided by the periodic monitoring rule. On September 17, 2002, EPA published a proposed rule that would have codified this interpretation of § 70.6(c)(1). See 67 FR 58561. After considering comments, however, EPA issued a final rule (the "umbrella monitoring rule") providing that § 70.6(c)(1) does not allow permit writers to add monitoring requirements beyond those that are authorized by the periodic monitoring rule. See 69 FR

[4] Similar provisions appear in EPA regulations in Part 71 stipulating monitoring provisions for federally-issued title V permits.

3202, 3204 (January 22, 2004). This rule was the subject of litigation in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit), and the Court recently vacated and remanded the rule on the basis that EPA failed to provide adequate notice in its proposal of the option that it adopted in its final rule. See *Environmental Integrity Project* v. *EPA*, 205 U.S. App. LEXIS 21930 (D.C. Cir. 2005).

In EPA's March 25, 2005 proposal to exempt five categories of area sources from title V requirements, EPA explained that "under the umbrella monitoring rule and the periodic monitoring rule, title V permits would not typically add any new monitoring requirements for post-1992 NESHAP, including the NESHAP addressed in today's proposal." See 70 FR 15254. The recent decision in *Environmental Integrity Project* vacating the umbrella monitoring rule does not change our view that subjecting these area sources to title V will not likely lead to monitoring beyond that required by the underlying NESHAP. All of the NESHAP were issued after the 1990 amendments to the Act, and were therefore designed to meet all of the Act's current monitoring requirements. Interested parties that believed those regulations failed to provide for sufficient monitoring had an opportunity to comment on the proposed NESHAP and to challenge EPA's rulemaking decisions in court. Any such opportunity has now passed. Thus, even if § 70.6(c)(1) is interpreted to allow "sufficiency" monitoring independent of the authority that exists through the periodic monitoring rule, EPA is confident that no such additional monitoring would appropriately be added in title V permits issued to the five categories of area sources we exempt from title V today.[5] Therefore, the monitoring component of the first factor favors title V exemptions for all of the categories of sources for which exemptions are provided in this rule, because title V is "unnecessary" to provide adequate monitoring for them. Also, see EPA response to comment that title V permits are needed to define monitoring for electroplaters, in section VIII.G.

[5] It has been EPA's consistent position that post-1990 NESHAP include all monitoring required under the Act. See, *e.g.*, the preamble to EPA's compliance assurance monitoring rule, 64 FR 54940 (October 22, 1997) and EPA's advance notice of proposed rulemaking soliciting comments on Clean Air Act requirements that may include inadequate monitoring requirements, 70 FR 7905 (February 16, 2005) (specifically not soliciting comment on standards promulgated after 1990 because they contain adequate monitoring under the Act).

As part of the first factor, we have also considered the extent to which title V could potentially enhance compliance for area sources covered by today's rule through recordkeeping or reporting requirements, including requirements for a six-month monitoring report, deviation reports, and an annual compliance certification. See §§ 70.6(a)(3) and 71.6(a)(3), §§ 70.6(c)(1) and 71.6(c)(1), and §§ 70.6(c)(5) and 71.6(c)(5). In the proposal, we stated that the recordkeeping and reporting requirements of the NESHAP for electroplaters, EO sterilizers, and secondary aluminum smelters are substantially equivalent to those of title V. After considering comments received on the proposal, we continue to believe the compliance requirements for these NESHAP are substantially equivalent to those of title V. Also, see EPA response to comments on issues related to factor one, including section VIII.I, concerning comment that the compliance requirements for EO sterilizers and secondary aluminum are not substantially equivalent to those of title V.

In the proposal, we did not discuss recordkeeping and reporting in the context of factor one for dry cleaners or degreasers, but we do so in today's final rule in response to comment. As mentioned above, these NESHAP have monitoring requirements consistent with the title V monitoring requirements. However, they do not contain reporting requirements that are identical to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).]

The NESHAP for dry cleaners requires a log to be keep on-site to document the dates that weekly leak detection and repair activities are conducted, the results of weekly monitoring of temperature and perchloroethylene concentrations, and a rolling monthly calculation of annual perchlorethylene consumption. It does not require a 6-month monitoring report, "prompt" deviation reports, or annual compliance certification, directly comparable to the compliance requirements of § 70.6(a)(3)(iii)(A) and (B), and § 70.6(c)(5).

The NESHAP for degreasers requires exceedances of monitoring parameters to be reported at least semiannually and it requires an annual compliance report, which for most sources, is composed of a statement that operators have been trained on operation of cleaning machines and their control devices and an estimate of solvent consumption on an annual basis, but it does not require a 6-month monitoring report, "prompt" deviation reports, or annual compliance certification, directly comparable to the requirements of § 70.6(a)(3)(iii)(A) and (B), and § 70.6(c)(5).

Although the reporting requirements of these two NESHAP are not directly comparable to those of title V, this does not mean that the reporting requirements of these two NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. The EPA acknowledges these additional title V reporting measures may provide some marginal compliance benefits. However, EPA believes that they would not be significant. Because the monitoring required by the two NESHAP is consistent with the monitoring requirements of title V, and because each NESHAP has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that the first factor supports a title V exemption for these sources. [See additional explanation for dry cleaners and degreasers in sections IV.B and D below.]

The second factor considered in determining whether title V is "unnecessarily burdensome" for these categories is whether title V permitting would impose significant burdens on these area sources and whether these burdens would be aggravated by difficulty they may have in obtaining assistance from permitting agencies. We used this factor to assess whether title V satisfies the "burdensome" component of the "unnecessarily burdensome" criterion of section 502(a) of the Act. We discussed this factor in the proposal as supporting our exemption findings for dry cleaners, chrome electroplaters, solvent degreasers, and secondary aluminum smelters, but we did not specifically discuss it with respect to EO sterilizers. However, in the proposal, we stated a belief that title V burdens and costs would be significant for all five categories of area sources, and this statement included EO sterilizers. See discussion of the second factor in the proposal, 70 FR 15254.

To help us assess factor two, we collected information on the burdens and costs of title V and economic data for the area sources, and we placed this information in the docket prior to our proposal. See economic information for the five industry groups (docket item 04), and information on burdens and costs of title V in the information

collection requests (ICRs) for part 70 and 71 (docket items 80 and 81). Note that the economic information is for the broad industry group, which includes both area sources and major sources under title V. However, despite this, certain assumptions about their economic characteristics are possible because almost all of them are small businesses with limited resources. For example, many dry cleaners are small "mom-and-pop" retail establishments, which will have greater difficulty in meeting regulatory demands than large corporations with trained environmental staffs and greater resources. The ICRs for part 70 and 71 describe title V burdens and costs in the aggregate, they are not designed for use in estimating title V burdens and costs for any particular sources. The ICRs do not include specific estimates of burdens and costs for area sources because area sources were subject to title V deferrals at the time the ICRs were approved. However, the ICRs describe in detail various activities undertaken at title V sources, including activities for major sources with standard permits, and certain activities for major sources with general permits, and area sources may be issued either standard or general permits, so many of the same burdens and costs described in the ICRs will also apply to these area sources. See general permit rules, §§ 70.6(d) and 71.6(d). In the proposal, we included a list of source activities associated with part 70 and 71 that impose title V burdens and costs, whether the source has a standard or general permit, and we described how permits for area sources may have a somewhat reduced scope, based on §§ 70.3(c)(2) and 71.3(c)(2), compared to major source permits. Despite the potential for reduction of burdens for area sources, we proposed finding that the burdens and costs of title V would be significant for these area sources, similar to those for major sources. Thus, we proposed finding that V is "burdensome" for these area sources, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

Our review of comments and further consideration of these issues has not led us to a different view for all categories of area sources. For EO sterilizers, as in the proposal, EPA has no reliable information on the economic resources of area sources but, as described below, believes that a number of area sources are small businesses with limited economic resources. See section IV.E. Given the lack of specific economic information for EO sterilizers, EPA is not making a specific finding as to whether factor two supports an exemption for this source category. Thus, we find today that factor two supports title V exemptions for all categories of area sources, except for EO sterilizers, where other factors support the exemption. See 70 FR 15258–15259 for more on the burdens of general permitting for area sources. Also, see sections VII and VIII.K below for more on our alternative proposal to require general permits for area sources in lieu of exempting them, section VIII.C below for more on title V cost estimates for area sources, and section VIII.L below for more on title V costs estimates for sources with general permits.

EPA's general belief, stated in the proposal, that title V burdens and costs would be significant for EO sterilizers was not based on any particular study or docket support, but instead on a general assessment of the types of smaller establishments likely to meet the "area source" definition of part 63 and conduct EO sterilization activities, e.g., small contract sterilization businesses, conducting off-site sterilization services for manufacturers of medical equipment and supplies, pharmaceuticals, spices, and cosmetics. See docket items 88 and 106.

In response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, we note that the docket does not contain reliable information on the economic resources of area sources in this category, but EPA reaffirms the general belief that there are area sources in the EO sterilizer category that would be small businesses or other small establishments with limited economic resources. Nevertheless, because specific information on the economic resources of EO sterilizers is lacking, EPA is basing its decision to exempt this category from title V on its assessment of the other three factors and additional rationale noted in its evaluation of the legislative history of title V. [See section IV.D.] Also, see section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions.

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 discussed factor three in the proposal as supporting our exemption findings for dry cleaners, but we did not discuss it with respect to the other four categories of area sources we proposed for title V exemption. See more discussion on factor three in the proposal, including a detailed listing of many of the mandatory activities imposed by title V for area sources, 70 FR 15254. As described above in the context of our discussion of factor two, we find that costs of title V are significant for all categories except for EO sterilizer, where sufficient economic data are lacking for such a finding. Nevertheless, the types of enterprises within the EO sterilizer category are strongly suggestive that title V would be an economic burden for some, if not all, of the area sources. Also, through factor one and/or revised factor four for each category of area sources in the proposal, both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, we established that title V is "unnecessary" for NESHAP compliance. Although there may be some compliance benefits from title V for some area sources, we believe they will be small, and not justified by title V costs and burdens for them.

Accordingly, for all categories of area sources we exempt today, we conclude that title V costs are not justified considering the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for all five categories of area sources, consistent with section 502(a) of the Act. See economic data for all industry groups, docket item 04, and information on title V burdens and costs, docket items 80 and 81. See section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions.

The fourth factor considered in the proposal is whether oversight, outreach, and compliance assistance programs by the EPA, or a delegate State or local agency, primarily responsible for implementing and enforcing the NESHAP, could achieve high compliance with particular NESHAP, without relying on title V permitting. We used this factor to help examine whether title V is "unnecessary" for NESHAP compliance for these area sources. See the discussion of factor four in the proposal, 70 FR 15254, March 25, 2005. We discussed this factor as supporting our exemption findings of the proposal for dry cleaners, solvent degreasers and EO sterilizers, but we did not discuss it for electroplaters and secondary aluminum.

To help us assess this factor we collected information from State and local air pollution control agencies (State agencies), summarized in the "State survey" which we placed in the docket for this rulemaking (docket item

02). The State survey shows that many State agencies have compliance oversight programs that result in high compliance for the dry cleaners, solvent degreasers and EO sterilizers, and that high compliance for them does not necessarily depend on title V. This point was repeated by State and local agencies who submitted comments on the proposal, all of which are in support of the proposed exemptions for the five categories of area sources, see docket items, 11, 16, 59, 61, and 65.

One commenter opined that factor four is inconsistent with Congressional intent concerning the "unnecessarily burdensome" criterion of section 502(a) of the Act, because it examines the future possibility that a State might adopt alternatives to title V that are sufficient to achieve compliance with the NESHAP, without title V, rather than examining whether actual programs are in place to achieve compliance with the NESHAP, without title V permits. In response, we have revised factor four in the final rule, and we have analyzed all five categories of area sources based on the revised factor. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the NESHAP for all five categories of area sources addressed in today's final rule, in all parts of the nation, without title V permits. These programs take several forms, including programs of implementation and enforcement conducted by EPA under the statutory authority of sections 112, 113, and 114, and State delegation of this responsibility under section 112(l) of the Act, implemented through subpart E of part 63. Second, section 507 of the Act requires a small business assistance program (SBAP) for each State and for EPA, and these programs are in place, and they may be used to assist area sources subject to NESHAP that have been exempted from title V permitting. Third, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. The statutory requirements for implementation and enforcement of NESHAP in section 112 apply to NESHAP that regulate all sources, including area sources. Thus factor four is satisfied for each of these categories of area sources by the statutory requirements alone. However, additional voluntary programs conducted by State and local agencies supplement the mandated programs and enhance the success of the programs.

We used the compliance rate information in the State survey as a check on our assumption that the statutory programs for implementation and enforcement of NESHAP, together with other efforts by State agencies would result in adequate compliance for these sources, without relying on title V permits. The State survey lists various State oversight programs, without indicating whether they are conducted voluntarily or under statutory authority. Also, the compliance rate information in the survey suggests that adequate compliance is being achieved in practice for all of these categories of area sources (with more than half of the agencies that responded reported high compliance for each category). [See the State survey, docket item 02.]

However, for secondary aluminum, fewer State and local agencies responded with examples of compliance oversight programs and information on compliance rates, compared to other categories. We believe these data are explained by the timing of the State survey relative to the effective date of the secondary aluminum standard, rather than suggesting any deficiencies in State implementation and enforcement for the NESHAP. The earliest date that compliance with the secondary aluminum NESHAP was required for sources was about the same time as the data collection phase of the State survey, and thus, State and local agencies did not have much experience with compliance oversight for them, or much compliance data upon which to base their survey responses for secondary aluminum. The secondary aluminum NESHAP did not require sources to be in compliance until March 24, 2003 (all other NESHAP were effective much earlier than this), while the majority of State and local input for the State survey occurred from March to June of 2003. [See the final rule for secondary aluminum, 65 FR 15690, March 23, 2000, docket item 77, and documentation of the data collection phase of the State survey, docket items 93 and 94.] We believe that State agencies are implementing this NESHAP in the same manner as others and, based on that belief, the statutory program, and the information in the State survey, we conclude that factor four supports title V exemptions for area sources subject to the secondary aluminum NESHAP.

The analysis of factor four we performed for the final rule continues to support title V exemptions for dry cleaners, degreasers, and EO sterilizers, as we proposed, and it additionally supports exemptions for electroplaters and secondary aluminum smelters. Thus, for the final rule, factor four helps to demonstrate that title V is "unnecessary" for NESHAP compliance, consistent with the "unnecessarily burdensome" criterion of section 502(a) for all area sources we exempt today. Also, see section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, and section VIII.D for additional EPA responses to comments on proposed factor four.

In the proposal, we stated our belief that exempting these five categories of area sources from title V permitting would not adversely affect public health, welfare, or the environment, consistent with the legislative history of section 502(a). The reasons EPA explained in the proposal were the factors supporting exemptions discussed above and two other reasons: (1) That placing all requirements for these sources in permits would do little to help improve their compliance with the NESHAP, because of the simplicity of the sources and the NESHAP, and the fact that these sources are not typically subject to more than one NESHAP, and few other requirements under the Act, and (2) because requiring permits for them 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 continue to believe that title V exemptions for these five categories of area sources will not adversely affect public health, welfare, or the environment for the same reasons discussed in the proposal. See the proposal, 70 FR 15254–15255, and EPA response to comments on this issue in section VIII.E below.

In conclusion, the four factors and other rationale of the final rule are appropriate to analyze whether title V permitting is "unnecessarily burdensome" for these five categories of area sources, and we finalize title V exemptions for them based on our analyses of these four factors and other rationale. The clarification of the factors we did not discuss in the proposal, including the revision of factor four, contained in today's final rule, does not change our view, as stated in the

proposal, that title V is "unnecessarily burdensome" for the five categories of area sources we exempt today. Thus, for these reasons we are exempting from title V area sources subject to the part 63 NESHAP for dry cleaners, halogenated solvent degreasers, chrome electroplaters, EO sterilizers and secondary aluminum smelters. See sections IV.B through F, below for more detail on our analysis of the four factors for each category of area sources we exempt today.

B. Dry Cleaners

In the proposal, we described how factors two, three, and four support title V exemptions for area sources subject to the NESHAP for perchlorethylene dry cleaners, subpart M. We did not discuss factor one for dry cleaners, other than to note that title V would not result in additional monitoring for these sources, but we do so today below in response to comment. See the general discussion of monitoring and the specific discussion of dry cleaners in the proposal, 70 FR 15254–15256, March 25, 2005.

First, in the proposal, we explained that title V burdens and costs are significant for dry cleaners (factor two), and thus title V will be "burdensome" for them. Dry cleaners are typically small "mom and pop" retail establishments employing only five people on average, with extremely limited technical and economic resources, and low profit margins, and title V costs would represent an excessively high percentage of sales for them. See the economic profile for dry cleaners, docket item 04. In addition, concerning factor two, the burdens of title V for dry cleaners would not likely be mitigated by assistance from permitting authorities because the authorities would likely not be able to meet the high demand caused by title V permitting for up to 28,000 dry cleaners nationally. Thus, we believe title V costs are significant for dry cleaners, and that title V is "burdensome" for them, because most are small businesses with limited resources, that would be subject to numerous mandatory source activities under part 70 or 71 that would represent significant costs to them in light of their resources, whether they have standard or general permits.

Second, as described in the proposal, factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports a conclusion that title V will be "unnecessary" for NESHAP compliance, and thus, that title V exemptions are appropriate for dry cleaners. However, in response to comments, we have revised factor four (explained below), and revised factor four continues to support the conclusion that title V is "unnecessary" for compliance with the NESHAP for dry cleaners. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the dry cleaning NESHAP, without title V, in all parts of the nation. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for dry cleaners Also, many State and local agencies reported to us that compliance with the dry cleaning NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, including such tools as calendars designed to schedule NESHAP compliance activities, and inspection checklists for the NESHAP, rather than by using title V permits. See State and local input on compliance assistance programs for area sources, including dry cleaners (docket items 02, 03, 06, and 08); an example of a compliance calendar for dry cleaners (docket item 90), and an inspection checklist for dry cleaners (docket item 95); and State and local agency comments in support of the proposed exemptions (docket items 11, 16, 59, 61, and 65). The EPA agrees with those commenters who stated that non-title V compliance approaches are more likely to be successful for implementing the dry cleaning NESHAP. Also, see section VIII.D below for more on our decision to revise factor four.

Third, in the proposal, we explained that the costs of title V for dry cleaners are not justified taking into consideration the potential gains in compliance likely to occur from title V (the third factor). Consistent with the explanation above of factor two for dry cleaners, title V costs will be significant for them. Also, consistent with revised factor four for dry cleaners, title V is "unnecessary" for NESHAP compliance for them, so it follows that the potential for gains in compliance is low. Thus, for dry cleaners, title V costs are high and the potential for compliance gains from title V are low. Although there may be some compliance benefits from title V for dry cleaners (discussed below), we believe they will be small, and not justified by title V costs and burdens for them. Accordingly, for dry cleaners, we conclude that title V costs are not justified taking into consideration the potential for gains in compliance from title V.

In addition, as we explained in the proposal, the large number of dry cleaners that are area sources (up to 28,000 nationally) makes it likely that permitting them would strain the resources of State agencies, potentially reducing overall air program effectiveness, and thus, potentially adversely affecting public health, welfare, or the environment.

With respect to factor one for dry cleaners, we explained in the proposal that title V would not result in additional monitoring for these sources, and we have reaffirmed this conclusion today. See section IV.A. We did not discuss the recordkeeping and reporting component of factor one in the proposal, but we do so here in response to comment. As discussed in section IV.A, the dry cleaning NESHAP does not contain reporting requirements that are directly comparable to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).] However, this does not mean that the reporting requirements of the NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. [See 58 FR 49354, September 22, 1993.] We acknowledge that the additional reporting requirements that would be provided through title V may have some marginal compliance benefits, however, we believe they would not be significant. Because the monitoring required by the NESHAP is consistent with the monitoring requirements of title V, and because the NESHAP itself has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that factor one supports an exemption for dry cleaners Also for dry cleaners, factor four (described above) independently supports that title V is "unnecessary" for NESHAP compliance. Consequently our view of the appropriateness of a tit V exemption for dry cleaners is unaffected by our expanded analysis o

factor one for them, and we exempt them in today's final rule.

Thus, factors one, two, three, and revised factor four, support the exemption findings of the proposal, and EPA concludes that title V exemptions are appropriate for area sources subject to the NESHAP for dry cleaners, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

C. Chrome Electroplaters

In the proposal we described how factors one and two support title V exemptions for area sources subject to the NESHAP for hard and decorative chrome electroplating and chromic acid anodizing (electroplaters), subpart N. We did not discuss factors three and four for electroplaters in the proposal, but we do so below in response to comment. See the discussion of electroplaters in the proposal, 70 FR 15256, March 25, 2005.

First, in the proposal, we stated that title V would impose significant burdens (including costs) for electroplaters (the second factor), and thus, title V will be "burdensome" for them. We based this view on our review of economic information (docket item 04), and information on title V burdens and costs (docket items 80 and 81). After viewing the comments received, and upon further consideration we continue to believe that title V burdens and costs are significant for electroplaters that are area sources because most are small businesses with limited resources, that would be subject to numerous mandatory activities under parts 70 or 71, that would impose significant costs in lights of their resources, whether they had a general or standard permit. Also, see discussion of the second factor in section IV.A above.

Second, in the proposal, we explained that the compliance requirements of title V and the NESHAP for electroplaters are substantially equivalent, so title V will not result in any new significant compliance requirements over those already required by the NESHAP (the first factor), and thus, title V will be "unnecessary" for NESHAP compliance. We reaffirm this finding today with respect to monitoring, in section IV.A. See section VIII.B for response to a comment that the interpretation of title V's monitoring requirements in the proposal was flawed, and section VIII.G below for EPA response to a comment that title V permits are needed to define monitoring requirements for electroplaters. With respect to recordkeeping and reporting, the electroplating NESHAP requires area sources to submit on-going compliance status reports, including a description of the NESHAP emission limitations or work practice standards, the operating parameters monitored to show compliance, information about the results of monitoring, including about excess emissions and exceedances of monitoring parameters, and a certification by a responsible official that work practices are followed. This report is required on an annual or six-month basis, depending on the frequency of periods of excess emissions. These reports result in information that is substantially equivalent with respect to assuring compliance as that required in six-month monitoring reports, deviation reports, and annual compliance certification reports under title V.

In the proposal, we did not discuss factor three, whether title V costs are justified, for electroplaters, taking into consideration any potential gains in compliance likely to occur through title V, but our analysis of factor three for the final rule is that it supports title V exemptions for them. Consistent with the explanation above of factor two, title V costs are significant for electroplaters. Also, for electroplaters, consistent with factors one (discussed above) and revised factor four (discussed below), both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance from title V will be low. Thus, for electroplaters, title V costs are high and the potential for gains in compliance from title V is low. Although there may be some compliance benefits from title V for electroplaters, we believe they will be small, and not justified by title V costs and burdens for them. Accordingly, for electroplaters, we conclude that title V costs are not justified considering the potential for gains in compliance from title V.

Also, in the proposal, we did not discuss factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, for electroplaters. In response to comments, we have revised factor four, and revised factor four supports the title V exemption findings of the proposal for electroplaters. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the electroplating NESHAP, in all part of the nation, without title V. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the electroplating NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for electroplaters. Also, many State and local agencies reported to us that compliance with the NESHAP for area sources, including for the electroplating NESHAP, can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs for area sources (docket items 02, 03, 06 and 08); and State and local agency comments on the proposal, all of which are in support of the proposed title V exemptions for the five categories of area sources (docket Items, 11, 16, 59, 61, and 65). Also, see section VIII.D below for EPA response to comments on factor four.

Thus, factors one, two, three, and revised factor four, support the exemption findings of the proposal, and consequently, title V exemptions are appropriate for area sources subject to the NESHAP for electroplating, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

D. Solvent Degreasers

In the proposal, we discussed how factors two and four support title V exemptions for area sources subject to the NESHAP for halogenated solvent degreasing, subpart T. With respect to factor one, we explained that title V would not result in additional monitoring for these sources, and we have reaffirmed this conclusion today. See Section IV.A. We did not discuss the recordkeeping and reporting component of factor one or factor three for degreasers, but we do so below in response to comment. See the discussion of degreasers in the proposal, 70 FR 15256–15257, March 25, 2005.

First, in the proposal, we explained that requiring title V permits would impose a significant burden on degreasers that they will have difficulty meeting with current resources (factor two), and thus, title V will be "burdensome" for them. Area source degreasers are typically small operations

employing only a few people, with limited technical and economic resources, and little experience in environmental regulations. Also, unlike the larger major sources, area source degreasing operations typically have no staff trained in environmental requirements and are generally unable to afford to hire outside professionals to assist them with understanding and meeting the permitting requirements. See the economic profile for degreasers, docket item 04. We received comment supporting this view (see docket item 31), and now we conclude that degreasers are small businesses with limited resources, subject to numerous mandatory activities under parts 70 or 71, that will be burdensome for them to meet, whether they have a general or standard permit; and that this means title V is "burdensome" for them. Also, see discussion of the second factor in section IV.A above.

Second, in the proposal, we explained that factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports title V exemptions for degreasers. In response to comments, we have revised factor four and revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the solvent degreasing NESHAP for area sources, without relying on title V permits. The EPA concludes that there are implementation and enforcement programs in place sufficient to assure compliance with the degreasing NESHAP, in all parts of the nation, without title V (further described in section VIII.D below). Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the degreasing NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for degreasers. In addition, many State and local agencies reported to us that compliance with the degreaser NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. [For example, see docket item 92, an inspection checklist for degreasers developed by a local air pollution control agency.] Thus, for the final rule, revised factor four supports that title V is "unnecessary" for NESHAP compliance for degreasers. See State and local agency input on compliance assistance programs (docket items 02, 03, 06, and 08), and State and local agency comments submitted in support of the proposed exemptions (docket items 11, 16, 59, 61, and 65). Also, see section VIII.D below for more on our decision to revise factor four; and section VIII.H below for EPA's response to comment on the appropriateness of title V exemptions when multiple applicable requirements apply to degreasers.

We did not thoroughly discuss factor one for degreasers in the proposal, but we do so here in response to comment. For the reasons explained in section IV.A, the degreasing NESHAP contains monitoring requirements for area sources that satisfy the requirements of the Act, and are sufficient to assure compliance with the NESHAP. However, as discussed in section IV.A, the degreasing NESHAP does not contain reporting requirements that are directly comparable to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).] However, this does not mean that compliance requirements of the NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. [See 59 FR 61801, December 2, 1994.] The EPA acknowledges these additional title V reporting measures may provide some marginal compliance benefits, however we believe they would not be significant. Because the monitoring required by the NESHAP is consistent with the monitoring requirements of title V, and because the NESHAP itself has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that the first factor supports a title V exemption for degreasers. Also, factor four (described above) independently supports the conclusion that title V is "unnecessary" for NESHAP compliance for degreasers, and thus, that a title V exemption is appropriate for them.

Also, in the proposal, we did not discuss factor three, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur for degreasers, but our analysis of factor three for the final rule is that it supports title V exemptions for them. Consistent with our analysis of factor two for degreasers (discussed above), title V costs are significant for them. Also, for degreasers, revised factor four (discussed above), which examines the ability of title V permits to improve compliance over that required by the NESHAP, supports that title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance from title V are low. Although there may be some compliance benefits from title V for degreasers, we believe they will be small, and not justified by title V burdens and costs for them. Accordingly, for degreasers, title V costs are not justified taking into consideration the potential for gains in compliance from title V, and thus, factor three also supports title V exemptions for degreasers.

Thus, factors one, two, three, and four support the exemption findings of the proposal, and EPA concludes that title V exemption is appropriate for area sources subject to the NESHAP for solvent degreasing, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

E. EO Sterilizers

In the proposal, we described how factors one and four support a title V exemption for area sources subject to the NESHAP for EO sterilizers, subpart O. We did not discuss factors two and three for EO sterilizers, but we do so below in response to comments. See the discussion of EO sterilizers in the proposal, 70 FR 15256, March 25, 2005.

First, in the proposal, we compared the monitoring and reporting requirements of the EO sterilizer NESHAP with those of title V, and we stated that the requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as thermal oxidizers. Also, we said that sources that use scrubbers employ noncontinuous monitoring methods (e.g., weekly readings of glycol levels in tanks), and thus, the recordkeeping and reporting requirements for them would not be substantially equivalent to title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under the NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. In addition, we noted that the EO sterilizer NESHAP does not require an annual compliance certification (as does title V), and we asked for comment on

the extent to which the lack of an annual compliance certification report requirement in the NESHAP would negatively affect compliance with the NESHAP.

For the final rule, we reviewed the EO sterilizer NESHAP once again, and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP, and therefore, that the recordkeeping and reporting requirements of title V and the NESHAP are substantially similar for all sources in the category. The EO sterilizer NESHAP at § 63.363(f) requires all sources to demonstrate continuous compliance, and it sets forth the monitoring requirements for demonstrating continuous compliance when the source employs scrubbers as emissions controls at § 63.364(b). [See Table 1 of § 63.360, for a list of the general provisions, subpart A of part 63, including definitions and reporting requirements, that apply for this NESHAP.] Because they conduct "continuous" monitoring, they are required to submit excess emissions and continuous monitoring system performance report and summary reports, to assess their compliance status on a semiannual basis, consistent with § 63.10(e)(3), the same as sources that use thermal oxidizers as emissions controls under the NESHAP. These reports provides compliance information that is substantially equivalent to that of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see explanation below).

The EO sterilizer NESHAP requires sources to submit considerable information to EPA, or its delegate agency, to assess compliance with its emission limitations and standards. Section 63.366(a)(3) requires an excess emissions and continuous monitoring system performance report and summary report of all sources with a continuous monitoring system (CMS), on a semiannual basis, consistent with § 63.366(e)(3). The excess emissions and continuous monitoring system performance report requires information on periods when the CMS is inoperative, periods of excess emissions and parameter monitoring exceedances, the nature and cause of each malfunction, any corrective actions taken, including repairs or adjustment made, and a certification of accuracy by a responsible official. The summary report, consistent with § 63.10(e)(3), is required to include an emissions data summary for control system parameters and a CMS performance summary, which provides detailed information on periods of monitoring system downtime and the reasons the system was inoperative, including a certification of accuracy by a responsible official. [See § 63.10(c)(5) through (13); and Table 1 of § 63.360.]

As described above, the compliance information already required to be reported by the EO sterilizer NESHAP is substantial, and it is similar to that required for annual compliance certification under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the NESHAP require certification by a responsible official, which is defined similarly in the two programs (see § 63.2, and §§ 70.2 and 71.2). For these reasons, we conclude that the lack of an annual compliance certification report under title V will not have a significant impact on compliance for the EO sterilizer NESHAP. In addition, as described in section IV.A, title V would not add any monitoring requirements for these sources.

Accordingly, we conclude that the EO sterilizer NESHAP provides compliance information that is substantially equivalent to the information required under title V. Thus, our analysis of factor one for the final rule is that it supports that title V is "unnecessary" for NESHAP compliance for EO sterilizers. Also, see section VIII.I below for EPA response to comments on EPA's analysis of the compliance requirements of the EO sterilizer NESHAP.

Second, in the proposal, we explained that factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports title V exemptions for EO sterilizers. In response to comment, we have revised factor four (explained below), and revised factor four continues to support that title V is "unnecessary" for compliance with the NESHAP for EO sterilizers, and thus, it supports title V exemptions for them. In the final rule, revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the EO sterilizer NESHAP, in all parts of the nation, without relying on title V permits. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the EO sterilizer NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for EO sterilizers. Also, many State and local agencies reported that compliance with the EO sterilizer NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs (docket items 02, 03, 06, and 08); and comments submitted by State and local agencies, all of which are in support of the proposed exemptions for the five categories of area sources (docket items 11,16, 59, 61, and 65). Also, see section VIII.D below for more on our decision to revise factor four, and section VIII.H and VIII.J below for EPA responses to comments on the proposed exemption for EO sterilizers.

In the proposal, concerning factor two, whether title V is a significant burden for these area sources, we stated a general belief that title V burdens and costs would be significant for all five categories of area source, and this statement included EO sterilizers. For EO sterilizers, this general belief was not based on any particular study or docket support, but instead on a general assessment of the types of smaller establishments likely to meet the "area source" definition of part 63 and conduct EO sterilization activities, *e.g.*, libraries and museums conducting fumigation of books and artifacts for conservation purposes, and small contract sterilization businesses, conducting off-site sterilization services for manufacturers of medical equipment and supplies, pharmaceuticals, spices, and cosmetics. See docket items 88 and 106.

In response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, we note that the docket does not contain reliable information on the economic resources of area sources in the EO sterilizer category, but EPA reaffirms the general belief that these types of sources are likely to include relatively small businesses or other establishments with limited economic resources. EPA is basing its decision to exempt EO sterilizer area sources from title V on a consideration of the limited information in the record on the types of establishments subject to the area source rule, and on its assessment of the other three factors and additional rationale noted in its evaluation of the legislative history of title V. [See section

IV.D.] EPA believes title V would be "unnecessarily burdensome" for EO sterilizer area sources, because title V would impose burdens that EPA believes would significantly outweigh the small compliance benefits expected from title V permitting for this category, satisfying the exemption criterion in section 502(a).

Also, in the proposal, we did not discuss factor three, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur, for EO sterilizers, but we clarify in today's final rule that factor three supports title V exemptions for them. We described above in the context of factor one and revised factor four, both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, why we believe that title V is "unnecessary" for NESHAP compliance for them, so it follows that the potential for gains in compliance is low. Although there may be some compliance benefits from title V for EO sterilizers, we believe they will be small, and not justified by title V costs and burdens for them. Although we do not have reliable data on the economic resources of EO sterilizers, the costs of title V will be the same for these sources as other area sources addressed in this rule. In light of the low compliance benefits provided by title V for these sources, we do not believe that those costs are justified. Accordingly, for EO sterilizers, we conclude that title V costs are not justified taking into consideration the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for them.

Thus, factors one, three, and four support the title V exemption findings of the proposal for area sources subject to the EO sterilizers NESHAP. There is insufficient information to conclude that factor two supports an exemption for EO sterilizers, but title V will impose some burdens regardless of the financial resources of EO sterilizers, and any burdens associated with title V compliance will be unnecessary, since title V will not provide any significant compliance benefits for them. Therefore, a title V exemption is appropriate for them, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

F. Secondary Aluminum

In the proposal, we described how factors one and two support title V exemptions for area sources subject to the NESHAP for secondary aluminum, subpart RRR. We did not discuss factors three and four for them, but we do so below in response to comment. See the discussion of secondary aluminum in the proposal, 70 FR 15258, March 25, 2005.

First, in the proposal, we compared the recordkeeping and reporting requirements of the secondary aluminum NESHAP with those of title V, and we stated that the requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as when sources use thermal oxidizers for emission controls. Also, we said that sources that use scrubbers as emissions control do not employ continuous methods, and thus, the compliance requirements for them are not substantially equivalent to title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under the NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. In addition, we noted that the secondary aluminum NESHAP does not require an annual compliance certification (as does title V), and we asked for comment on the extent that the lack of an annual compliance certification report requirement in the NESHAP would negatively affect compliance with the NESHAP.

For the final rule, we reviewed the secondary aluminum NESHAP once again and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP. The secondary aluminum NESHAP requires CMS for each add-on control device, including for scrubbers, when they are approved as an alternative monitoring method [*e.g.*, § 63.1510(w)]. [See Appendix A of subpart RRR, for a list of the general provisions of subpart A of part 63, including definitions and reporting requirements, that apply for this NESHAP; and the preamble for the final secondary aluminum NESHAP, 65 FR 15693, March 23, 2000, for more on the requirement for continuous compliance under the NESHAP.] Because they conduct "continuous" monitoring, they are required to submit excess emissions/summary reports to assess their compliance status, on a semiannual basis, consistent with § 63.10(e)(3), the same as other sources that use add-on controls, such as thermal oxidizers, under the NESHAP. These reports provide compliance information that is substantially equivalent to the requirements of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see detailed explanation below).

The secondary aluminum NESHAP requires sources to submit considerable information to EPA, or its delegate agency, to assess compliance with its emission limitations and standards. Section 63.1516(b) of the NESHAP requires an excess emissions/summary report for all sources with a CMS, on a semiannual basis, consistent with §§ 63.10(e)(3) and 63.10(c). The excess emissions report requires all monitoring data, information on periods when the CMS is inoperative, periods of excess emissions and parameter monitoring exceedances, the nature and cause of each malfunctions, any corrective actions taken, including repairs or adjustment made, certifications by a responsible official that certain work practices were performed, and the results of any performance tests conducted during the reporting period. The summary report, consistent with § 63.10(e)(3), is required to include an emissions data summary for control system parameters and a CMS performance summary, which provides detailed information on periods of monitoring system downtime and the reasons the system was inoperative, including a certification of accuracy by a responsible official. [See §§ 63.1516(b)(2) and (3); and § 63.1518].

As described above, the compliance information already required to be reported by the secondary aluminum NESHAP is substantial, and similar to that required for annual compliance certification under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the NESHAP require certification by a responsible official, which is defined similarly in the two programs (see § 63.2; and §§ 70.2 and 71.2). Because of the substantial information concerning compliance required to be reported by the secondary aluminum NESHAP, the lack of an annual compliance certification report under title V will not have a significant impact on compliance for the NESHAP, and we are satisfied that the recordkeeping and reporting component of factor one supports an exemption for area sources subject to this NESHAP. [Also, see docket item 89, a summary in tabular form of the monitoring, recordkeeping, reporting, and other compliance requirements of the secondary aluminum NESHAP.] As discussed in Section IV.A, the monitoring component of factor one also supports a title V exemption for secondary aluminum smelters.

Accordingly, we conclude that the secondary aluminum NESHAP provides compliance information that is

substantially equivalent to the information required under title V. Thus, our analysis of factor one for the final rule is that it supports that title V is "unnecessary" for NESHAP compliance for secondary aluminum. [Also, see section VIII.I below for EPA's response to significant comments on the proposed exemption for secondary aluminum smelters.]

Second, in the proposal, we discussed that title V permitting would impose a significant burden on these area sources that would be difficult for them to meet with current resources (the second factor). In 2001, there were over 1,300 facilities in the secondary aluminum industry. Half of these facilities employed fewer than 20 employees. These small sources will likely 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. Accordingly, we conclude that title V is "burdensome" for them because almost all of them are small businesses with limited resources, and they will be subject to numerous mandatory sources activities under part 70 and 71, that it will be burdensome for them to meet, whether they have a standard or general permit. Thus, for the final rule, we believe factor two supports title V exemptions for secondary aluminum smelters.

We did not discuss factor three in the proposal, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur, for area sources subject to the NESHAP for secondary aluminum, but we clarify in today's final rule that factor three supports title V exemptions for them. We explained above that title V imposes significant burdens and costs on these area sources (factor two). Also, for secondary aluminum area sources, consistent with factor one (described above) and revised factor four (discussed below), both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance for them is low. Although there may be some compliance benefits from title V for secondary aluminum area sources, we believe they are small, and not justified by title V costs and burdens for them. Accordingly, for secondary aluminum, title V costs are not justified for area sources taking into consideration the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for them.

In the proposal, we did not discuss factor four for secondary aluminum smelters, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, for secondary aluminum. In response to comments, we have revised factor four, and revised factor four supports the conclusion that title V is "unnecessary" for compliance with the NESHAP for secondary aluminum, and thus, it supports a finding that title V exemptions are appropriate for them. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the secondary aluminum NESHAP, in all parts of the nation, without relying on title V. These programs take several forms, including programs conducted under the statutory authority of sections 112, 113, and 114 of the Act, State delegations under section 112(l), SBAP under section 507, and voluntary compliance assistance, outreach, and education programs. Factor four is satisfied for this category by the statutory requirement for implementation and enforcement of NESHAP in section 112, which applies to all NESHAP, including this one. For secondary aluminum, the State survey confirms that adequate compliance is being achieved in practice by States (more than half of the agencies that reported compliance rate information reported high compliance), but there were fewer examples of compliance oversight programs and fewer responses to the compliance rate question for this category, compared to other categories. We believe these data are explained by the timing of the State survey relative to the effective date of the secondary aluminum standard, rather than suggesting any deficiencies in State implementation and enforcement for the NESHAP. The timing of the State survey explains the response to questions concerning secondary aluminum because the earliest date that compliance with the secondary aluminum NESHAP was required was about the same time as the data collection phase of the State survey. Thus, State and local agencies did not have much experience with compliance oversight for secondary aluminum, or much compliance data upon which to base their survey responses for this category at the time the State survey was conducted. The secondary aluminum NESHAP did not require sources to be in compliance until March 24, 2003 (all other NESHAP were effective much earlier than this), while the majority of State and local input for the State survey occurred from March to June of 2003. [See the final rule for secondary aluminum, 65 FR 15690, March 23, 2000, docket item 77, and documentation of the data collection phase of the State survey, docket items 93 and 94.] Also, many State and local agencies reported to us that compliance with the NESHAP for area sources, including for the secondary aluminum NESHAP, can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs for area sources (docket items 02, 03, 06 and 08); and State and local agency comments on the proposal, all of which are in support of the proposed title V exemptions for the five categories of area sources (docket Items, 11, 16, 59, 61, and 65). For these reasons, we conclude in the final rule that factor four supports title V exemptions for area sources subject to the secondary aluminum NESHAP. [Also, see section VIII.D for EPA response to comments on proposed factor four.]

Thus, factors one, two, three, and four support the title V exemption findings, and, consequently, title V exemptions are appropriate for area sources subject to the NESHAP for secondary aluminum, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

V. What Is EPA's Decision for Secondary Lead Smelters?

In the proposal, we declined to make a finding that title V permitting for area sources subject to the NESHAP for secondary lead smelting would be impracticable, infeasible, or unnecessarily burdensome, and we asked for comment to help us determine if we should make such a finding. We considered the same factors for these area sources as we did for other categories of area sources, but we did not have a basis for finding that an exemption was warranted, as for the other area sources addressed in this rulemaking. We did not receive any information or data during the comment period sufficient to support a finding that permitting these area sources would be "impracticable, infeasible, or unnecessarily burdensome" on such sources or that exemptions would "not adversely affect public health, welfare,

or the environment," nor did we receive any comments in opposition to our proposal not to exempt secondary lead area sources. For these reasons, the final rule will not exempt these area sources from title V requirements. See 70 FR 15259.

Any area source subject to the secondary lead NESHAP that has not already applied for a title V permit is required to submit a title V permit application by December 9, 2005, as provided in § 63.541(c) of subpart X. Also, as provided in § 70.3(c)(2) and § 71.3(c)(2), assuming the source is an area source and not subject to title V for another reason, the permit must include the requirements of subpart X and all other applicable requirements that apply to emissions units affected by subpart X, while any units not subject to subpart X may be excluded from the permit. (See 68 FR 57518, October 3, 2003, footnote #7 on page 57534.)

VI. May Title V Permits Be Issued to Exempt Area Sources?

In the proposal, we explained and sought comment on our proposed interpretation of the Act as allowing only those area sources required to be permitted under section 502(a), and not exempted by EPA through notice and comment rulemaking to be subject to title V requirements. We are finalizing that interpretation in today's final rule. Thus, after the effective date of today's final rule, permitting authorities, including State and local agencies, tribes, and EPA, may not issue title V permits, including general permits, to area sources we exempt in today's final rule. This interpretation of the Act means that permitting authorities must stop issuing new title V permits to area sources we exempt today, unless they are subject to title V for another reason. Also, this means that any existing title V permits for such exempted area sources must be revoked or terminated after the effective date of today's final rule. However, to avoid disruptions to State programs, States may wait until renewal to end the effectiveness of such permits, unless an area source requests that this be done expeditiously. The EPA believes that State issuance of title V permits to area sources that EPA has exempted from title V permitting requirements would conflict with Congress's intent that EPA define the universe of sources subject to title V, and through inappropriate focus on sources that qualify for an exemption, would be an obstacle to implementation of the title V program. Even if the statute were ambiguous in this regard, EPA would exercise its discretion to interpret it this way to promote effective title V implementation. The proposal included a discussion of these issues, and in the final rule, EPA's interpretation of the Act in this regard is unchanged from the proposal. See section VI below for more on EPA's interpretation of these Act provisions. Note, however, that EPA interprets Section 116 of the Act to allow permitting authorities to issue non-title V permits to area sources that we have exempted from title V permitting. Such permits may include preconstruction permits, FESOPS or other State operating permits, or other permits not issued pursuant to an approved part 70 program.

VII. May General Permits Be Issued as an Alternative to Title V Exemptions?

The EPA has decided not to adopt the alternative, discussed in the proposal, of allowing permitting authorities to issue general permits to these area sources. The proposal discussed general permitting as a streamlined process for issuing title V permits to a large number of similar sources, and it stated that these area sources may be good candidates for such permits. The proposal also analyzed the factors and other rationale we used for title V exemptions against the requirements for general permits, and we stated our belief that potential reductions in costs and burdens from requiring general permits would not be sufficient to alter our findings. [See this discussion in the proposal at FR 15258–15259.] With respect to the first factor, the proposal said that general and standard permits are subject to the same permit content requirements under §§ 70.6 and 71.6, so title V would affect units to which the NESHAP applies in the same manner for general permits, as for standard permits. For the second factor, the proposal stated that general permits would potentially simplify the permit application process, but general permits would require area sources to conduct many of the same mandatory activities as sources with standard permits, and thus, impose many of the same title V burdens and costs as standard permits. [See the list of source activities in the discussion of factor two in the proposal, 70 FR 15254.] For the third factor, the proposal observed that general permits may reduce the costs of applying for a permit, but the remaining costs to meet the permit requirements will continue to be a burden for these area sources. This is so because general permits reduce some burdens, but other significant burdens remain. And, we explained that EPA's outreach in recent years has shown that most State agencies generally do not believe that implementing NESHAP for area sources through permits will result in increased compliance, and that this would be true for general permits, as with standard ones. This point was also made in comments submitted by State and local agencies, all of which are in support of the proposed title V exemptions for the five categories of area sources, see docket items, 11, 16, 59, 61, and 65. For the fourth factor discussed in the proposal, we said the permit content requirements of §§ 70.6 and 71.6 are identical for general and standard permits, and the ability of State agencies to ensure NESHAP compliance outside of the title V programs will apply with equal force for general permits. Nevertheless, we offered general permitting as an alternative to title V exemptions in the proposal, and we sought comment on this alternative.

Some commenters expressed the view that general permitting should be required as an alternative to title V exemptions because they believe title V is critical for compliance with the NESHAP. Today's final rule does not require general permits for these area sources as an alternative to exempting them for several reasons. First, through factors one and revised factor four, which we use to examine the ability of title V permits to improve compliance over that required by the NESHAP, we established that title V is "unnecessary" for NESHAP compliance for these area sources, whether they have a general or standard permit. [See detailed analysis of the factors one and four in sections IV.A, VIII.A, and VIII.D.] Second, under section 504(d) of the Act, issuing general permits to sources subject to title V is an option for State and local agencies; an EPA decision not to exempt these sources does not provide a means of ensuring that they would then receive general permits. Also, because general permits are an option, State and local permitting authorities would not be required to issue them to area sources that request them. Because of this, the best course of action to avoid unnecessary burdens for these area sources, and to promote a focus by regulatory agencies on the type of oversight we believe will be most effective in achieving compliance, is to exempt them from title V in today's final rule. See section VII below for more on EPA's decision to not require general permits for these area sources.

VIII. What Are EPA's Responses to Significant Comments?

This section of today's preamble discusses the more significant comments received on our March 25, 2005 proposal that are not addressed elsewhere in today's preamble, and

EPA's responses to these comments. The EPA's response to all comments (significant comments and other comments) is included in a response to comment document which is in the docket for this rulemaking.

A. Is EPA's General Approach to Exemptions Consistent With the Act?

Many commenters disagreed with the proposed title V exemptions because they did not agree that the four factors and other rationale we used to justify the exemptions were consistent with the Act. In response, the four factors and other rationale referred to in the proposal, and again in this final rule, are not intended to replace the statutory criteria for a title V exemption, but instead assist EPA in evaluating whether the statutory criteria are satisfied. Section 502(a) of the Act gives EPA discretion to exempt from title V area sources subject to NESHAP, if permitting them would be "impractical, infeasible or unnecessarily burdensome" on the area sources, while the legislative history for this provision suggests the EPA should also consider whether an exemption would "adversely affect public health, welfare, or the environment." The EPA used the four factors to analyze whether title V would be "unnecessarily burdensome" on the area sources, consistent with section 502(a). (See the explanation of the four factors and other rationale of the proposal at 70 FR 15253–15255, March 25, 2005.)

Factor one was used to analyze whether title V is "unnecessary" for NESHAP compliance by examining whether title V would add substantial compliance requirements over those already required by the NESHAP. Factor two was used to analyze whether title V will impose significant burdens on area sources and whether these burdens will be aggravated by difficulties area sources will experience in obtaining assistance from State agencies. Factor three was used to analyze whether title V costs are justified considering potential gains in compliance from title V. If the costs of title V are high, burdens are also high because costs are burdens; and if potential compliance gains derived from title V are low, title V is more likely to be considered "unnecessary" for NESHAP compliance. Factor four was used in the proposal to analyze whether adequate oversight by State agencies could achieve high compliance with NESHAP without title V permits. If high compliance with NESHAP can be achieved without title V, title V will more likely be considered "unnecessary" for NESHAP compliance. We have revised factor four in response to comments received on the proposal. See more on revised factor four below.

In addition to the four factors, the EPA considered whether exempting these area source from the need for title V permits could cause adverse effects on public health, welfare, or the environment, at least on a temporary basis, or whether requiring title V permitting could have such adverse effects because of shifts in the resources of State agencies away from assuring compliance for major sources with existing permits to issuing new permits for these area sources. We do not believe that exemptions from title V permitting for these area sources will have adverse effects on public health, welfare or the environment. First, as we explained in section IV above, through our analysis of factors one and/or four for each of the five categories of area sources, we established that title V is "unnecessary" for compliance with the NESHAP, for each category of area source. Second, as we explained in the proposal, the vast majority of these area sources are typically subject to no more than one NESHAP, and few other requirements under the Act. Also, the area sources are simple sources with few emissions units and the NESHAP are relatively simple in how they apply to these area sources. Because of these characteristics, the likelihood that multiple NESHAP apply to the same area source is low, and thus the need for a title V permit to clarify multiple or overlapping NESHAP is also low. (See docket item 08 for State input on the likelihood that multiple requirements will apply and the relative simplicity of these sources.) Also, see EPA response to comments on whether title V permit are needed to define monitoring for electroplaters, section VIII.G, and EPA response to comment on whether degreasers should be exempted when there are multiple applicable requirement that apply to them, section VIII.H. In sum, EPA believes that the factors and additional rationale that it has considered in evaluating whether title V exemptions should be issued for the area sources covered by today's rule appropriately probe whether title V is "unnecessarily burdensome" for the area sources, and whether an exemption could cause adverse effects on public health, welfare or the environment.

Several commenters were concerned that title V exemptions for these area sources would result in the loss of certain title V benefits with respect to State implementation plan (SIP) requirements, and that this would result in adverse affects on public health, welfare, and the environment. We disagree with this comment because we do not believe title V exemptions for these area sources will have the effects suggested by the commenter to any significant extent for the reasons explained below.

First, the majority of area sources we exempt today (all of the dry cleaners and many solvent degreasers), emit HAP that are not a criteria pollutant subject to regulation under a SIP, so such adverse effects for SIP requirements could not occur for these sources. This is the case because § 51.100(s), which defines VOC for purposes of SIP, specifically excludes perchloroethylene (also known as tetrachloroethylene), methylene chloride (dichloromethane), and 1,1,1-trichloroethane (methyl chloroform) from the definition of VOC. Because the only HAP regulated by subpart M is perchloroethylene, all area source dry cleaners regulated under the NESHAP (estimated at up to 28,000 area sources) do not emit VOC. Also, many degreasers subject to subpart T use perchloroethylene, methylene chloride, or 1,1,1,-trichloroethane (including any combination of these), and if they emit no other HAP that are VOC, then they also would not be subject to SIP requirements for VOC. We estimate that there are up to 3,800 area source degreasers subject to the NESHAP, but we have no estimate of how many of these solely emit HAP that is not VOC. Also, EPA has focused on VOC in this discussion because we are unaware of any other criteria pollutant definitions that would be met by these three HAP.

Second, title V permits for area sources are limited in scope by §§ 70.3(c)(2) and 71.3(c)(2), which only require the emission units that cause the source to be subject to title V (in this case the units subject to NESHAP) to be included in the permit. Under these regulations, if SIP requirements apply to an emissions unit, and NESHAP does not, the unit is not required to be included in the area source permit. For example, for a dry cleaner, the permit would only address dry cleaning equipment, not other emissions units that may be collocated at the area source, such as comfort heating systems subject only to SIP requirements. This is quite different than for major sources because §§ 70.3(c)(1) and 71.3(c)(1) requires major source permits to include all emissions units at the source, even those that would not be subject to NESHAP. Thus, the extent that title V exemptions for area sources would result in loss of compliance benefits for SIP requirements is quite limited by the permit content requirements for area sources, as compared to major sources.

Third, in our experience the NESHAP are more stringent than typical SIP

requirements that would apply to these area sources. Because of this, if a SIP and NESHAP apply to the same unit, any deficiencies in the SIP requirements are likely to be corrected by the more stringent NESHAP requirements, without the need for title V permits. Also, these NESHAP compliance requirements are consistent with the Act, such that title V permits are not needed to improve the compliance requirements of NESHAP (this is described in more detail in section VIII.B below).

The commenter submitted no specific examples where emission units subject to NESHAP are also subject to SIP requirements, but two scenarios may be helpful in analyzing their claims, which we believe are without merit. Both examples involve the so-called "generic applicable requirements" that we believe would most commonly apply to these area sources. These are relatively simple requirements that apply identically to all emissions units at a facility. Also, both are examples where the HAP meets the definition of VOC under § 51.100(s) and potentially is subject to regulation under a SIP (although we are not sure all SIPs regulate such units). The first scenario is where a HAP, such as carbon tetrachloride, is regulated by the degreaser NESHAP, and it is also VOC regulated under the SIP by a pound per hour limit.[6] The second is where a HAP, such as dioxin/furan, is regulated by the secondary aluminum NESHAP,[7] and it is also PM regulated under the SIP by a process weight limit. In both cases, EPA believes the NESHAP will be far more stringent than the SIP requirements in terms of emission controls and compliance requirements. Because of this, the NESHAP requirements will ensure that the area source also meets the SIP requirements, and the compliance requirements of the NESHAP will be consistent with the compliance requirements of the Act, including title V. In addition, EPA has previously advised States that "generic" requirements of the SIP (described above), that are less stringent than other applicable requirements addressing the same units and pollutants may be omitted from title V permits, provided that the resulting "streamlined" terms and conditions achieve compliance with all the applicable requirements. [See discussion of treatment of "generic" requirements in White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 6, 1996, docket item 100; and discussion of factor one in section IV.A of this preamble.]

In addition, we explained in the proposal that requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits, to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment. See docket item 08, where State officials explain that permitting all the area sources proposed for exemption would triple the number of title V permits issued in the State, and that it would be difficult for them to obtain approval to obtain additional full-time employees. Although State title V programs are required to have authority to raise title V fees as necessary to cover the costs of the program, in most States the program must seek budget and fee increases through the State legislature as part of the State budget process, which can lead to significant delays in getting approval to increase fees or resources to meet new demands. Also, see EPA response to comments on the legislative history guidance that title V exemptions for area sources should not cause adverse effects on public health, welfare, or the environment, in section VIII.E below.

One commenter said we should have discussed all four factors for each category of area sources, suggesting that we ignored factors that did not support the proposed title V exemptions for each category of area sources. In response, we did not discuss all four factors for each category of area sources in the proposal because we thought those factors we identified as present supported a finding that title V was "unnecessarily burdensome," regardless of any determinations that could be made regarding factors not analyzed. Nevertheless, in response to this comment, and to provide a full discussion of all issues potentially relevant to this rulemaking, we discuss the four factors for each category of area sources elsewhere in the preamble for today's final rule.

B. Does the First Factor Acknowledge Key Title V Requirements?

One commenter thought the first factor, whether title V adds significant compliance requirements beyond those required by a NESHAP, was not appropriate for analyzing the exemption criterion of section 502(a) of the Act because it fails to acknowledge key title V requirements that would be lost under a title V exemption, directly at odds with sections 504(a) and 504(c) of Act.

In response, the proposal's discussion of factor one focused on the key compliance requirements of title V that are most likely to add significant compliance benefits for area sources subject to NESHAP. We explained that title V imposes a number of monitoring, recordkeeping, and reporting requirements for compliance. We focused our review on the requirements for monitoring, and the recordkeeping/reporting requirements for prompt reports of deviations from permit requirements (deviation reports) and for reports of required monitoring every six months (six-month monitoring reports) under §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii), and the requirement for an annual compliance certification by a responsible official under §§ 70.6(c)(5) and 71.6(c)(5). Nevertheless, to provide a more complete response to the comment in the final rule, we describe below several other compliance aspects of title V that we were silent on in the proposal, including the requirements of section 504(a) for the permit to include "a schedule of compliance," and "such other conditions as necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan [*e.g.*, SIP]," and the requirement of section 504(c) for permits to contain "inspection" and "entry * * * requirements to assure compliance with the permit terms and conditions."

Concerning the requirement of section 504(a) for schedules of compliance, there is independent authority for establishing schedules of compliance to bring noncompliant sources back into compliance under the general enforcement authority of section 113 of the Act, which applies to these NESHAP. Also, the approval criteria for delegation requests for NESHAP requires the Attorney General's written finding to say that the delegate agency has enforcement authorities that meet the requirements of § 70.11, which requires them to have authority to obtain an order, pursue a suit in court, or seek injunctive relief for violations, and this may result in a schedule of compliance, where appropriate, equivalent to any that may be obtained through title V. Thus, a title V permit is not necessary to establish a schedule of compliance for any of the area sources

[6] Note that these are the same emissions under different definitions, so if you control one, you control the other.

[7] The secondary aluminum NESHAP only regulates dioxin/furan emissions for a limited set of emission units for area sources, while additional HAP are regulated at additional emission units for major sources. [See § 63.1500(c).]

we exempt today, in the event of noncompliance with these NESHAP.

Concerning the requirement of section 504(a) that permits contain "enforceable emission limitations and standards," the five NESHAP addressed in today's final rule establish such emission limitations and standards, and they are independently enforceable outside of title V permits. Also, title V does not contain authority for creating new emission limitations and standards under section 112 in title V permits, so no such emission limitations or standards would be lost through title V exemptions for these area sources.

Concerning the requirement of section 504(a) that permits include conditions to assure compliance with the requirements of the applicable implementation plan (the SIP, for example), we described in section VIII.A above why exempting these area sources from title V would not significantly affect compliance with SIP requirements that may also apply to such area sources. Also, we add that these SIP requirements are independently enforceable under the authority of section 110 of the Act, so their implementation and enforcement does not depend on title V.

Concerning the requirements of section 504(c) for permits to contain inspection and entry requirements, when EPA is responsible for implementation and enforcement of the NESHAP such requirements would be met under the authority granted EPA by section 114 of the Act. State and local agencies or tribes are required to have such authority as a condition of approval for any delegation request they make, consistent with section 112(l) of the Act. For example, agencies requesting delegation of NESHAP are required to submit, as part of their delegation request, a written finding by the State Attorney General (or General Counsel for local agencies and tribes) that they have legal authority "to request information from regulated sources regarding their compliance status," under § 63.91(d)(3)(i)(B), and "to inspect sources and any records required to determine a source's compliance status," under § 63.91(d)(3)(i)(C). In addition, as part of their delegation requests, agencies are required to submit a plan that "assures expeditious compliance by all sources," including a description of "inspection strategies."

Also related to the comment and response above, several commenters said our analysis of factor one in the proposal was inadequate because we relied on an illegal interpretation of the Act's monitoring requirements through our reliance on the "umbrella monitoring" rule of January 22, 2004. These commenters argue that §§ 70.6(c)(1) and 71.6(c)(1) impose an additional case-by-case monitoring review called "sufficiency monitoring," that is independent from the requirement for "periodic monitoring" under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). Also, they believe that if EPA conducted such a review, the result would be a determination that the compliance requirements of title V and the NESHAP are not substantially equivalent.

We disagree with this comment. As described more fully in section IV.A, even if "sufficiency monitoring" were required, additional monitoring requirements would not be imposed in title V permits for the area sources addressed by today's rule, because the NESHAP for them were all promulgated after the 1990 Clean Air Act amendments, and therefore contain all monitoring necessary to meet current requirements under the Act. In finalizing each of the NESHAP under part 63, EPA solicited and responded to comments on the adequacy of the monitoring, reporting, and recordkeeping provisions required by the NESHAP. Any opportunity to challenge the compliance requirements imposed through the five NESHAP has passed, and this rulemaking does not create new grounds for such challenges.

C. Does This Rulemaking Adequately Address Title V Costs?

Several commenters thought the costs of title V permitting for these area sources described in the proposal, relevant to factors two and three, were inflated and not representative, and instead, that the true costs of title V permitting for them would be much lower and not significant for them. Also, these commenters stated that the costs for title V for area sources would be a fraction of the costs for major sources because area sources have fewer emissions units, their operations are less complex, and they are simpler to permit.

In the discussion of factor two in section IV.A above, we described the information we used for the proposal, including economic information on the five industry groups (docket item 04) and information on title V burdens and costs from the ICRs for part 70 and 71 (docket items 80 and 81), to evaluate the impact of title V on these categories of area sources, including limitations on this information, and the assumptions we made for them concerning title V burdens and costs. Also, in the proposal, we acknowledged that these sources would generally have fewer emissions units, that their operations are less complex, and they would be simpler to permit, and we took these facts into consideration in our analyses. During the public comment period, no one submitted any information related to the area source categories to substantiate their claims that title V burdens and costs would not be significant for these area sources. Our review of comments and further consideration of these issues has not led us to a contrary view from the proposal. Thus, we find that factor two supports title V exemptions for the categories of area sources addressed in today's final rule.

Also relevant to factor two and three in the proposal, one commenter said that the EPA ignored Clean Air Act provisions designed to limit title V costs for small sources, while another commenter said States agencies are expected to have resources to meet this workload and fees to offset costs. Section 502(b)(3)(A) of the Act requires title V sources to pay annual fees, while section 507(f) of the Act, concerning SBAP, provides that the permitting authority may reduce any fee required under this Act to take into account the financial resources of small business stationary sources. In response, title V fees vary greatly from State to State, but because area sources have small emissions by definition and most State agencies charge emissions-based fees (on a per ton basis), fees would not comprise a substantial portion of the overall costs and burdens for these area sources. As the EPA explained in the proposal, there are many other burdens and costs of title V, unrelated to fees, such that whether fees are reduced or not, significant burdens and cost of title V would remain for these area sources. Section 502(b)(3)(A) of the Act requires fees to be charged that are sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the title V program. However, there are practical limitations on the ability of State agencies, tribes, and EPA to increase fees and provide additional resources for title V implementation, especially in a relatively short period of time. In many States, fee increases must typically be approved by the State legislature within the State budget process, and this may lead to significant delays in implementing new fee schedules to meet new demands. This limitation could lead to significant, albeit temporary, impairment of the title V programs for major sources, given the large workload a requirement to permit

these area sources would impose on State agencies. For example, if all these area sources were required to be permitted, up to 38,000 title V permit applications would be due by December 9, 2005, and title V permits for these sources would have to be issued or denied within 18 months of receipt of the applications, as required by section 503(a) and 503(c) of the Act.

Also relevant to factor two, one commenter pointed out that difficulties in obtaining compliance assistance from State agencies will be temporary. In response, EPA notes that even though such difficulties may be temporary, they would come at a critical time for sources and permitting authorities. For example, immediately upon becoming subject to title V, an area source which does not typically have employees trained in such matters, would need to quickly become familiar with the critical and pressing step of completing and submitting a permit application, required under § 70.5 and § 71.5. Since such applications are provided by individual permitting agencies, access to the agency to obtain assistance and guidance on completing the forms will be essential for area sources in order for them to complete and submit them by the mandatory deadline, currently December 9, 2005, in most jurisdictions. See 64 FR 69637, December 14, 1999, (setting the deadline of December 9, 2004 for deferrals to end). In addition, before applications are distributed to area sources, certain agencies may need to translate forms and other information into foreign languages, which in the EPA's experience, is often needed for small businesses, such as dry cleaners, in large urban communities, but not typically necessary for major sources. [For example, see a fact sheet developed for dry cleaners in Vietnamese, docket item 96 and the equivalent form in English, docket item 97.]

Another commenter thinks the title V costs would not be significant for area sources because they would merely be passed on to consumers. In response, no economic data for these categories of area sources were submitted by the commenter or otherwise available to the EPA to support this point, and any such assertion is entirely speculative. Costs cannot necessarily be passed on to consumers in highly competitive industries, or where there are highly price-responsive consumers. EPA believes that these situations may exist for these sources, and that passing prices on to consumers may, therefore, not be feasible for them. The commenter provided no information on competition in these industries, or on price-responsiveness of their consumers to support his assertions.

D. What Is Our Analysis of Factor Four for the Final Rule?

Commenters opposed to the EPA's reliance on the fourth factor in the proposal, whether adequate oversight could achieve high compliance with the NESHAP without title V, cited perceived flaws in the State survey (docket item 02), including that it does not contain representative data, that it has missing data, and that this missing data means that existing compliance with the NESHAP is not high. The proposal explained that information in the docket, including the State survey, shows that many permitting authorities have alternative compliance oversight programs that result in high NESHAP compliance without title V. During the public comment period, the EPA received comments from State and local agencies confirming this point. [See docket items 11, 16, 59, 61, and 65]. The EPA undertook the survey to collect information we thought would be relevant in our consideration of possible title V exemptions, and we believe State and local agencies made reasonable efforts to complete it. There is no definition for "high" compliance in the Act or EPA regulations, nor did the EPA suggest one to State agencies. States are primarily responsible for enforcement of the vast majority of Act requirements, including NESHAP, through delegation of EPA responsibilities, approved State programs, the SIP process, and other mechanisms, and we give considerable weight to their judgement on questions concerning the compliance status of sources. Moreover, even without such input from States, the EPA would have reached the same conclusion regarding high compliance absent title V because NESHAP are based on section 112 of the Act, which imposes stringent compliance requirements, independent of title V, and because States and EPA have adequate authority and actual implementation and enforcement programs in place sufficient to assure compliance with NESHAP, independent of title V.

Also concerning factor four of the proposal, one commenter said they believe Congressional intent was that these exemptions would only apply when a reasonable alternative to title V permitting is actually in place and achieving results, specifically citing the 1990 legislative history that the EPA "is authorized to exempt sources from the new permit program if the exemption would be consistent with the Act's purposes. For example, the EPA may exempt certain small but numerous sources from the requirement to obtain a permit if a reasonable alternative is developed." S. Rep. No. 101–228, at 349 (1990). In response, the plain wording of the Senate Report is that it is an "example" of a justification for a title V exemption. Title V does not require EPA to develop such alternative programs as a prerequisite to granting exemptions. In any event, as described below, we believe there is existing authority in the Act and actual implementation and enforcement programs in place, as required under section 112, that are sufficient to assure compliance with these NESHAP, and thus, high compliance can be achieved with the NESHAP without title V in all jurisdictions where such sources may reside in the nation.

First. Statutory programs of implementation and enforcement of NESHAP are conducted by EPA under the authority of sections 112, 113, and 114 of the Act, while State and local agencies or tribes may be granted delegation of this responsibility under section 112(l) of the Act (implemented through subpart E of part 63). The EPA has primary responsibility for implementation and enforcement of all NESHAP under section 112 of the Act in all parts of the nation. Section 112(l) allows EPA to delegate to State or local agencies or tribes certain of its implementation and enforcement duties for NESHAP, based on a State request to do so, and satisfaction of certain criteria. There are several types of delegations, including "straight delegation," which is adoption of the NESHAP without change, or the delegate agency may establish a program or rules to operate in place of the NESHAP, provided the program or rules are "no less stringent" than the NESHAP, and the delegate agency has adequate authority and resources to implement and enforce the delegated NESHAP (under all delegation options). Section 63.91(d) defines criteria that State and local agencies or tribes are required to meet prior to approval of requests for any type of NESHAP delegation, including that the request contain: (1) Written findings from the Attorney General (or General Counsel for local agencies and tribes) that they have certain legal authorities concerning enforcement and compliance, (2) a copy of the State statutes, regulations, and requirements that grant authority for them to implement and enforce the NESHAP, (3) a demonstration that they have adequate resources to implement and enforce all aspects of their NESHAP program, except for authorities retained by EPA, and (4) a plan that assures expeditious

compliance by all sources subject to the program. Also, depending on the type of delegation requested, §§ 63.92 through 63.95, and § 63.97 specify additional approval criteria. [Also, see section 112(l)(5), and the final rule for subpart E, 58 FR 62262, November 26, 1993, amended by 65 FR 55810, September 14, 2000]. In addition, under section 112(l)(6) EPA has authority to withdraw its approval of a delegation, or approval of an equivalent program or rule, if the delegate agency is not adequately implementing or enforcing the NESHAP; and under section 112(l)(7) EPA may enforce any NESHAP, including those it has delegated. Thus, even if a State does not have adequate authority to implement and enforce any NESHAP in their jurisdiction, EPA does have such authority, consequently, there can be no gap in implementation and enforcement for NESHAP that apply to area sources in any jurisdiction. [For example, see EPA's final rule approving the request of Indiana for delegation of all NESHAP for all sources not covered by the State's part 70 program, 62 FR 36460, July 8, 1997, docket item 98.]

Second. The EPA has general authority for enforcement of NESHAP under section 113, including authority to (1) issue an order requiring compliance or assessing an administrative penalty; (2) bring a civil action seeking to enjoin violations or the assessment of penalties; or (3) bring a criminal action to punish knowing violations. Section 114 allows the EPA to determine if violations have occurred through inspection, auditing, monitoring, recordkeeping, reporting, and entry onto premises.

Third. All States have established non-title V permitting programs, which may include operating and preconstruction permitting programs for minor sources, under section 110(a)(2)(C) of the Act. However, the EPA notes that several States have reported that their non-title V permits do not currently include NESHAP, so such permits would not always be immediately available for this purpose. Although some State agencies have established permitting programs under State law that include NESHAP for area sources, some have not, either because they do not have explicit State authority, or they have State authority, but they have chosen to not implement such a program so far. See the State survey [docket item 02], where States noted that they issue non-title V permits for certain of these area sources.

Fourth. All States and EPA are required to establish a small business assistance program (SBAP) under section 507 of the Act. These programs are required to assist small business with technical and environmental compliance assistance, and they are not limited to title V sources. Any activities for non-title V sources conducted by a SBAP may be funded by non-title V fees at State option, and EPA matching grants under section 105 of the Act may also be used for this purpose.[8] State SBAP programs are required by section 507 to provide information on compliance methods, to have a small business ombudsman, to provide assistance in determining applicable requirements and permitting requirements under the Act, and to refer sources to compliance auditors, or at State option, provide auditors for small sources. [For example, see docket item 91, a fact sheet concerning an SBAP implemented by a local air pollution control district.]

Finally. States may have voluntary compliance assistance programs in place for NESHAP requirements, such as the environmental results programs (ERP) or other similar programs. The EPA has encouraged States to adopt voluntary programs in the past, and the ERP, in particular, has been successful in assisting small sources with compliance in fourteen States across nine business-dominated sectors, including dry cleaners in Massachusetts and Michigan. See 70 FR 15260. In addition to the State survey, which includes information concerning State permitting programs, inspection, and compliance assistance programs, several permitting agencies submitted comments to describe their alternative programs for non-title V sources in additional detail. [See State and local comments, docket items 11, 16, 59, 61, and 65.] Importantly, no comments were received from State agencies saying that they would not be able to ensure compliance for these area sources if we promulgate title V exemptions for them.

E. Are These Exemptions Consistent With the Legislative History of The Act?

Several commenters expressed concern that exemptions from title V would adversely affect public health, welfare, or the environment by weakening air quality standards, increasing HAP emissions, and by increasing morbidity in human populations, and that this would be inconsistent with the legislative history of section 502(a).

In response, section 112 of the Act, which authorizes NESHAP, is the primary vehicle under the Act for HAP reduction, not title V. See sections 112(b)(2), 112(c)(3), 112(d), 112(f), and 112(k) of the Act. For an overview of the EPA's national effort to regulate air toxics under section 112, see a July 19, 1999 notice (64 FR 38705), which includes a description of the EPA's integrated urban air toxics strategy, a strategy to address public health risks posed by air toxics from the large number of smaller area sources in urban areas. Today's rulemaking is not exempting any area sources from any section 112 requirements, such as those described in the July 19 notice, and section 112 gives the EPA, or its delegate agency, responsibility to implement and enforce section 112 standards, independent of title V. Thus, consistent with the legislative history and the EPA's analysis for each category of area sources addressed in this rulemaking, title V exemptions for these particular area sources will not thwart or in any way interfere with the implementation and enforcement of section 112 of the Act, and today's action should not adversely affect public health.

The EPA does not believe HAP increases will occur from title V exemptions for these area sources. The Act does not require emission reductions through title V permits. As we explained in the proposal (70 FR 15255), the EPA's outreach in recent years has shown that several State agencies believe, in their experience, implementing emissions standards for area sources through permits did not result in increased compliance with the emissions standards. EPA has evaluated the extent to which title V could improve compliance for these NESHAP, and EPA believes that successful implementation at such sources is better achieved through compliance assistance efforts, such as compliance outreach and education programs, rather than title V permits.

One commenter asserted that title V permitting will not divert resources from more significant sources because the Act requires State and local agencies to charge adequate fees to cover the costs of the title V program, including the costs of small business assistance programs under section 507 of the Act, and adequate personnel to administer the program, and because fees may be reduced for small sources. This commenter apparently was taking issue with EPA's statement in the proposal

[8] For more on the use of matching grants, see a August 4, 1993 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permit Programs under Title V," and a July 21, 1994 memorandum from Mary D Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, "Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants."

that "requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of the States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment." In response, EPA notes that there are practical limitations on the ability of State agencies, tribes, and EPA to increase fees and provide additional resources for title V implementation, especially in a relatively short period of time. As we described in the proposal (70 FR 15255), in many States, fee increases must typically be approved by the State legislature within the State budget process, and this may lead to significant delays in implementing new fee schedules to meet new title V demands. This limitation could lead to significant, albeit temporary, impairment of the title V program for major sources, given the large workload a requirement to permit these area sources would impose on State agencies. For example, if all these area sources were required to be permitted, up to 38,000 title V permit applications would be due by December 9, 2005, and title V permits for these sources would have to be issued or denied within 18 months of receipt of the applications, as required by section 503(a) and 503(c) of the Act.

F. Is It Reasonable for EPA To Rely on the Information Cited in Support of the Proposal?

Several commenters complained about the information EPA collected to support the findings of the proposal, particularly the State survey, concluding that it was so flawed that the findings are arbitrary and capricious under the APA or otherwise inconsistent with administrative rulemaking requirements. We disagree. In developing the proposal, EPA sought and relied on information from State agencies on the level of oversight and compliance rates for the area sources addressed in today's proposal. The results are summarized for each category of area sources in the State survey (docket item 02). The EPA also sought input from State small business ombudsmen and several trade associations, and they responded with information on the area sources and compliance assistance programs currently available to them. This information is also in the docket. See docket items 03, 06, and 08.

We have collected information we believe is useful and appropriate under the statute to establish a rational basis for evaluating whether the area sources addressed in today's rule satisfy the exemption criteria of section 502(a) of the Act. We summarized our outreach efforts and we collected cost and economic data, which we placed in the docket prior to the proposal. We considered all information available to us for this rulemaking, including that submitted during the public comment period, in making our exemption findings. Also see section X below for additional discussion of how this rulemaking satisfies administrative rulemaking requirements.

As to comments that the State survey is not complete, we believe much of the missing information can be explained by two factors: (1) State agency participation was voluntary, and (2) some States have more or less of these area sources, so experience with them varies. We did not base our decisions on missing data but on the data we have and our judgement as air quality experts, and we did not assume any particular meaning for missing data. Commenters had an opportunity to submit what they consider to be more complete or accurate information on compliance rates and the oversight activities of State agencies for these area sources during the comment period, but they did not do so.

Also, concerning information on burdens and costs of title V, for the current ICR, we provided the public with our draft analysis of burdens and costs under title V, including for general permits, and we received no comments.

G. Are Permits Necessary To Define Monitoring for Chrome Electroplaters?

One commenter stated that the monitoring requirements of the chrome electroplating NESHAP vary based on the type of control technique employed and the range of acceptable values, or a minimum and maximum, for each monitoring parameter at each area source, and that it would be useful for the public, regulatory agencies, and the source for its specific obligations to be spelled out in a permit.

The chrome electroplating NESHAP has extensive requirements for monitoring, recordkeeping, and reporting, including for monitoring system performance tests, and a written report to document the results of the performance test, which will document the monitoring techniques employed and the parameter ranges that show compliance. The NESHAP requires the source to conduct the performance tests needed to define the monitoring parameters that assure compliance by the source with its emissions limitations or standards, and this report is submitted to EPA or a delegate agency with such responsibilities, as defined at § 63.347(f), so neither the source or the regulatory agency will be confused about the specific monitoring that applies to area sources, absent a title V permit. Also, there is independent authority for public disclosure of information related to compliance with NESHAP under section 114(c) of the Act, which does not rely on title V for implementation. Public disclosure authority under section 114(c) of the Act extends to all information collected under NESHAP, even information required to be kept on-site, rather than submitted directly, except for trade secrets which may not be released to the public. Thus, if a member of the public wants information on compliance with the NESHAP, he or she may get it from the agency responsible for implementation and enforcement of the NESHAP (either EPA, or the State or local agency, or tribe), whether there is a title V permit or not. In addition, State or local agencies, or tribes, are required to submit, as part of their delegation request, a written finding by the State Attorney General (or General Counsel for local agencies and tribes) that the State has legal authority "to request information from regulated sources regarding their compliance status," under § 63.91(d)(3)(i)(B), and legal authority "to inspect sources and any records required to determine a source's compliance status," under § 63.91(d)(3)(i)(C). Therefore, title V is not necessary for State and local authorities to obtain compliance information from regulated sources. While it is helpful for the public, regulatory agencies, and the source for the specific requirements to be defined in a permit, we do not believe it is necessary for adequate compliance to occur, and we believe we have shown in today's final rule that title V would be unnecessarily burdensome on these area sources.

H. May Degreasers Be Exempted When There Are Multiple Applicable Requirements?

One commenter supports an exemption for degreasers, but only when they are not subject to other applicable requirements. They think the compliance requirements of the NESHAP will be substantially equivalent to title V only when the source is subject to only this NESHAP and the source is not subject to other NESHAP. In response, the EPA does not agree with this comment for the

following reasons. First, there are cases where more than one NESHAP for which a title V exemption is being finalized applies to degreasers, for example, where a degreaser is located at a chrome electroplater. But the requirements of the chrome electroplating and degreasing NESHAP do not significantly overlap for the emission units at such facilities, so this would not present a significant problem of complexity that would justify the burdens associated with issuing title V permits for such sources. Second, such concerns are largely offset by the relative simplicity of the emission control requirements of the degreaser NESHAP, which involves primarily work practice standards. For example, lids are required to be kept on containers at all times when not in use. However, EPA notes that where a degreaser is otherwise subject to title V, it will not be exempt from permitting. Thus, because degreasers are often collocated with major sources, as an adjunct to the primary activity occurring at the major source, many degreasers will be included in the major source permit for the collocated major source. This is so because, as we have clarified elsewhere in this preamble, major source permits must include all applicable requirements, and these exemptions are only for title V requirements at area sources.

I. Are the Compliance Requirements of the EO Sterilizer and Secondary Aluminum NESHAP Substantially Equivalent to Title V?

One commenter opined that the compliance requirements of the EO sterilizer and secondary aluminum NESHAP are not substantially equivalent to the compliance requirements of title V with respect to our analysis of factor one for area sources subject to these NESHAP because the EPA has no data to show how many sources employ continuous monitoring methods, and even if continuous methods are used, the reporting is not equivalent to title V reporting. Also, the commenter pointed out that the EO sterilizer and secondary aluminum NESHAP do not require an annual compliance certification (as does title V), and that this is another reason why the compliance requirements of the NESHAP and title V are not substantially equivalent as EPA proposed. Also, responding to a specific request of the proposal for input on the value of annual compliance certifications and the threat of enforcement for false certification for area sources subject to these NESHAP, the commenter said that completing a compliance certification will be important in bringing about better compliance because the act of signing one is not taken lightly and will produce positive results, including greater compliance efforts, and the submittal of more compliance plans.

In the proposal, we compared the compliance requirements of the EO sterilizer and secondary aluminum NESHAP with those of title V, and we stated for both that the recordkeeping and reporting requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as when sources use thermal oxidizers for emission controls. Also, we said that sources that use scrubbers as emission controls under both of these NESHAP employ noncontinuous monitoring methods, and thus, the recordkeeping and reporting requirements for them would not be substantially equivalent to the compliance requirements of title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under either of the two NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. See the March 25, 2005 proposal's discussion of EO sterilizers (70 FR 15256) and secondary aluminum (70 FR 15258).

For the final rule, we reviewed the EO sterilizer and secondary aluminum NESHAP once again, and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP. Also, both of these NESHAP require sources that conduct "continuous" monitoring to submit excess emissions and continuous monitoring system performance report and summary reports to assess their compliance status on a semiannual basis, consistent with § 63.10(e)(3). These NESHAP require these reports for sources that use scrubbers for emissions controls, the same as they require them for sources that use thermal oxidizers as emissions controls. Under the two NESHAP, these reports provides compliance information that is substantially equivalent to the requirements of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see explanation below). [Also, see discussion of factor one for these area sources in sections IV.A, IV.E and IV.F, and more on why title V monitoring and the monitoring in these NESHAP are equivalent in section VIII.E.]

The compliance information already required to be reported by these two NESHAP is substantial, and similar to that required in annual compliance certifications under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the two NESHAP require certification by a responsible official, which is defined similarly in the two programs [see § 63.2, and §§ 70.2 and 71.2]. For these reasons, we conclude that the lack of an annual compliance certification report under title V will not have a significant impact on compliance for these NESHAP.

Also, in response to the comment that the act of signing the compliance certifications is valuable because it produces positive compliance results and that these results will be lost if we exempt these area sources from title V, we disagree that the title V exemptions will have this effect for these NESHAP. We conclude this in today's final rule because the EO sterilizer and secondary aluminum NESHAP both require the excess emissions and continuous monitoring system performance report and summary reports (described above) to be certified by a responsible official, similar to how this is done for title V. [See the requirements for certification by responsible official of § 63.363(a)(3) for EO sterilizers and § 63.10(e)(3)(v) for secondary aluminum.]

In the final rule, we conclude that the overall differences in compliance requirements, after considering all monitoring, recordkeeping, and reporting requirements, including the lack of annual compliance certification, are not great enough to have a significant impact on compliance for the EO sterilizer and secondary aluminum NESHAP, and we conclude that the compliance requirements of the NESHAP and title V rules are substantially equivalent. Thus, our analysis of factor one for the final rule is that it supports a finding that title V is "unnecessary" for compliance for area sources subject to the EO sterilizer and secondary aluminum NESHAP, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

J. Are the Proposed Revisions to EO Sterilizer NESHAP Appropriate?

Several commenters were concerned that the proposed revision to § 63.360(f) would redefine what an "area source" is under the EO sterilizer NESHAP, resulting in fewer area sources. Also, they stated that the proposed rule change is inconsistent with the definition of "major source" and "area source" in section 112 of the Act, and

that it contradicts the proposed wording of Table 1 of § 63.360, which exempts "area sources" regardless of EO usage. Another commenter recommended that the rule language be revised to be consistent with parallel rule language for other subparts, which refers to "area sources."

In the final rule, § 63.360(f) has been revised to specify that exemptions from title V are for "area sources," rather than "sources using less than 10 tons [of EO]," as we proposed. The intent of the proposal was to exempt area sources subject to the NESHAP from title V, not to change the applicability of the NESHAP. The EPA's March 2004 implementation guidance for this NESHAP (docket item 88) is clear that the definition of "area source" is the definition of § 63.2, which is based on actual emissions or potential to emit, and this definition should be used for title V purposes under the NESHAP.[9] Also, the guidance explains that usage of EO is the basis for applicability of the emission standards for various types of vents, under the NESHAP. Nevertheless, we are changing the rule language today to clarify that "area sources" subject to this standard are exempted from title V, and this change will not affect the NESHAP requirements that apply to any existing sources. With this change, § 63.360(f) is now also consistent with Table 1 of § 63.360, in the same subpart, and with the rule language of subparts M, N, T and RRR, that also refers to "area sources."

K. Are Title V Permits Allowed for Area Sources Exempted From Title V?

Several commenters disagreed with the EPA's proposed approach of not allowing permitting authorities to issue title V permits to area sources that EPA has exempted from title V. These commenters did not agree with EPA's proposed reading of section 502(a), 506(a), and 116 of the Act as requiring this result. Also, they did not agree that existing title V permits for such sources should be terminated, suspended, or revoked after exemptions from title V take effect.

Several commenters opined that EPA's proposed approach is inconsistent with section 502(a) of the Act. The proposal explains that section 502(a) of the Act grants the Administrator alone discretion to define the universe of area sources subject to title V. It follows that once the EPA exempts area sources through rulemaking, they may not be permitted under title V. No other provision of the Act is more specific on this matter than section 502(a). Similarly, an existing title V permit for an area source that has been exempted from title V must be revoked, terminated, or denied because the permit would conflict with our interpretation of section 502(a) of the Act. We also believe allowing title V permitting for area sources we have exempted would be an obstacle to the implementation of title V both because of the confusion and frustration such a situation would cause for the area sources, based on the common sense meaning of the term "exemption," and because State efforts at title V permitting would be better spent addressing major sources and non-exempt area sources.

Several commenters were concerned that EPA's interpretation of section 502(a) of the Act is illegal because it conflicts with section 506(a), which allows States to have "additional permitting requirements not inconsistent with this chapter." In light of the structure of section 502(a), EPA believes that section 506(a) is best read as allowing States to establish additional permitting requirements for sources that are already subject to title V permitting. Thus, under the EPA's interpretation, there is no conflict between the two sections because section 502(a) of the Act defines what sources must get a permit, while section 506(a) of the Act allows States flexibility in establishing permit requirements for sources properly subject to the program.

Several commenters stated that EPA's proposed reading of section 502(a) is illegal because it conflicts with section 116, which allows States to issue title V permits to exempted area sources. We explained in the proposal that section 116 of the Act allows State agencies to issue non-title V permits to area sources that have been exempted from, or are outside the scope of, the title V program. However, even if the Act were ambiguous in this regard, EPA would exercise its discretion in interpreting the Act to reach the same result. The EPA would do so to avoid confusion for area sources, as described above, and to achieve the policy benefits associated with having States direct their title V efforts to major sources and non-exempt area sources.

L. Does This Rulemaking Disregard Cost Estimates for General Permits?

Several commenters were concerned that we disregarded prior estimates of title V costs for general permits and they believe that these estimates show that title V costs would be sufficiently low that title V would not be "unnecessarily burdensome" for the area sources addressed in the proposal.

In the discussion of burdens and cost of title V permitting in the proposal (section II.A of the proposal), we stated that we did not have specific estimates for the burdens and costs associated with general permits for sources, but we described certain source activities associated with the part 70 and 71 rules that would apply to sources, whether they have a general or standard permit. Also, in section III of the proposal we said that general permits would reduce burdens to some extent for area sources but that the potential burden and cost reductions would not be sufficient to alter our findings that title V would be significant for area sources. To explain this last point in more detail in the proposal, we reviewed each of the four factors we used in our exemption analysis with respect to general permits, and we concluded that title V will be "unnecessarily burdensome" for area sources that are issued general permits, rather than standard permits. (See 70 FR 15254 and 15258–15259.)

One commenter pointed to a regulatory impact analysis (RIA) for operating permits issued in 1992, saying we should have used the estimate of $154 per year in that document in analyzing the costs associated with general permits. In response, the RIA (Regulatory Impact Analyses and Regulatory Flexibility Act Screening for Operating Permits Regulations, U.S. EPA, Office of Air Quality Planning and Standards, EPA–450/2–91–011, June 1992) did contain an estimate of $154 for the total annual costs for general permits, but it is inaccurate and outdated because it was not based on actual implementation experience, such as the cost estimates contained in the more recent 2004 ICR, which is based on actual implementation experience, and which suggests significantly higher costs for general permits, on the order of half the cost of standard permits (see more on the 2004 ICR below). The part 70 rule was not effective until July 21, 1992, and consequently, no State title V programs were approved until December of 1994, and no part 70 permits were issued in any jurisdiction until late 1996. [Also, the part 71 rule was not effective until July 31, 1996].

One commenter said we disregarded information in the current ICR for part 70 (issued in 2004), including "re-application of general permits" at 2 burden hours for each title V source with a general permit, compared to the estimate of "permit renewal" at 200 burden hours for each title V source with a standard permit, which they believe shows that title V costs for area

[9] U.S. EPA, Office of Air Quality Planning and Standards, EPA–456/R–97–004, September 1997 (Updated March 2004), Ethylene Oxide Commercial Sterilization and Fumigation Operations NESHAP Implementation Document.

sources with general permits would not be significant (thus, not "burdensome" for them). In response, it was an oversight for us to refer in the proposal to cost estimates in the 2000 ICR for part 70, when an updated one, the 2004 ICR, was available; however, the 2004 ICR does not support the commenter's claim that title V costs would not be significant for these area sources. We referenced the 2000 ICR in our proposal as indicating an average title V cost of $7,700 per source per year, and noted that there were no specific estimates for general permits. Similarly, the 2004 ICR indicates an average title V cost of $7,300 per source per year, and, although it contains specific estimates of title V costs for certain activities required for sources with general permits, it does not provide specific estimates of title V costs for all activities that would occur for such sources. For example, the 2004 ICR lists twelve different activities that title V sources would experience (see table 2, average source burden by activity, page 16). The ICR lists all activities that may apply to a typical source, not all that will necessarily apply to every source. For example, there are burden hour estimates for three different types of permit revisions, but not all sources may need any of these permit revisions in any given year. The commenter is correct that the activity of "re-application of general permits" at 2 burden hours per year would only apply to sources with general permits, and that another activity, "permit renewal" at 200 burden hours per year, would only apply to sources with standard permits. Both of these activities reflect the requirements of title V for sources to prepare permit applications for permit renewals, which for general permits, may be streamlined, compared to standard permits. [See § 70.6(d)(2), which allows applications for general permits, including permit renewal applications, to "deviate from the requirements of § 70.5," which applies for standard permits.] However, title V sources are subject to many other activities the commenter did not acknowledge. For example, another activity listed in the table, "prepare monitoring reports" at 80 hours per source per year, would apply to sources with general permits and standard permits. [See the assumption section of the ICR (page 36), which specifies that "[a]ll sources with issued permits (including those covered by general permits) will report monitoring data semi-annually and compliance certifications annually."] Also, the 2004 ICR is silent with respect to whether the remaining activities in the table would be required of sources with general permits, but many of them would apply to such sources because § 70.6(d) requires general permits to "comply with all requirements applicable to other part 70 permits." Certain of these remaining activities may be streamlined or simplified for sources with general permits, compared to sources with standard permits, but the ICR does not provide different burden hour estimates to acknowledge these differences. For example, sources with general permits would have to prepare an initial permit application when they apply for coverage under the general permit, consistent with § 70.6(d)(2), but the ICR lists the activity of "prepare application" at 300 hours per source per year, without estimating the potential reduction in burdens and costs that may occur through streamlined permit applications for general permits. Although the information in the 2004 ICR is more detailed, our analysis for the final rule results in the same conclusion as our review of the 2000 ICR for the proposal: That title V costs would be somewhat lower for sources with general permits, compared to sources with standard permits. Thus, the view of the commenter that title V costs would not be significant for area sources with general permits is not supported by the 2004 ICR.

Another commenter criticized our reference in the proposal of the $7,700 average cost estimate for title V sources, taken from the 2000 ICR, because that value reflects an average from among all sources, including the biggest industrial facilities in the country, and the costs to a smaller source obtaining either an individual or general permit should be less. In response, EPA agrees that costs for area sources are likely to be lower than the average cost of issuing all title V permits to all sources, for the reasons indicated by the commenter. EPA referenced the average cost of title V for all sources in the proposal because the cost estimates of the ICRs are the best estimates of title V costs available, even though they suffer from the limitations noted by the commenter. EPA's assessment of costs and burdens of title V for area sources covered by today's rule assumed that costs would be lower than the average for all sources, but still significant in light of the characteristics of the area sources. The 2004 ICR estimates average annual title V costs for all sources at $7,300, and it also does not provide all the information one would need to determine specific costs for area sources, whether they have general or standard permits.

Each ICR developed by EPA is based on the best information available to the Agency at the time it is prepared, such that more realistic estimates of burdens and costs for title V sources in general would be found in more recent ICRs, as implementation experience is gained. In addition, each ICR is approved by OMB for a set period of time in the future (typically three years), until the next ICR is approved, or the current ICR is extended.

EPA relied to some extent on the information in the ICRs for this rulemaking because it is the best information available on title V burdens and costs and no one submitted any better information to analyze title V burdens and costs for these area sources. EPA has conducted outreach and provided a 60-day public comment period to collect information on the costs and burdens for these sources for this rulemaking, and we provided a similar opportunity for the current ICR. No one submitted, or cited to, any more accurate and complete cost estimates for general permits under title V than those available to EPA. See the notice of March 23, 2004 (69 FR 13524) soliciting comment on the current ICR (Attachment 1 of the current ICR).

IX. Effective Date of Today's Final Rule Under the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (APA) generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. However, section 553(d)(1) of the APA, provides that a substantive rule which grants or recognizes an exemption or relieves a restriction, may take effect earlier. Today's final rule grants an exemption from title V permitting requirements for a large number of area sources, so we make this final rule effective immediately.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

1. Have an annual effect on the economy of $100 million or more, adversely affecting in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

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

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

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

Under Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises important legal and policy issues. As such, this rule was submitted to OMB for review. Because this rule exempts area sources that would be subject to title V requirements absent this final rule, this final rule reduces burdens on area sources, and thus it is not economically significant. Also, area sources subject to the secondary lead NESHAP are already subject to title V (since their earlier deferral has expired) and this final rule does not change this, so this final rule does not change burdens for them. The final rule does not impose any burdens and therefore a detailed economic analysis is unnecessary.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, it reduces such burdens by exempting a large number of area sources from title V requirements. However, the information collection requirements in the existing regulations (parts 70 and 71) were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The existing ICR for part 70 is assigned EPA ICR number 1587.06 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.05 and the OMB control number is 2060–0336. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20004 or by calling (202) 566–1672. 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.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements 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 not-for-profit enterprises, 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 that meets the Small Business Administration size standards for small businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, 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. 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 analyses 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.

This rule reduces economic impacts on small entities by exempting certain categories of "non-major" industrial sources from the permitting requirements under title V of the Clean Air Act (Act). These sources tend to be smaller businesses and there are estimated at up to 38,000 small entities. They are currently subject to title V permitting (40 CFR parts 70 and 71) under previous rulemaking actions, and they will remain subject to these requirements until we exempt them. We have therefore concluded that today's final rule will relieve regulatory burden for these affected small entities.

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 a 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 where 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, 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 our regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's 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. Today's final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This final rule exempts a large number of sources from title V operating permit programs, which will reduce the duties government entities with title V programs would be required to perform and it will remove the requirement for many private sector entities to obtain operating permits under title V programs. Therefore, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule exempts a large number of area sources from the requirement to obtain operating permits under title V. As such it also removes the requirements for small governments with approved operating permit programs to issue permits to those area sources. Therefore, today's final rule is not subject to the requirements of 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" is defined in the Executive Order to include regulations that have "substantial direct effects on 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. Today's rule will not impose any new requirements under title V of the Clean Air Act, and it will not affect the ability of States to issue non-title V permits to these area sources, if they so choose. Accordingly, it will not substantially alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. 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, "Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

This final rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements on Indian tribal governments under title V of the Clean Air Act. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations 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. This final rule exempts a large number of small sources from the obligation to obtain an operating permit under title V of the Clean Air Act and 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, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this final rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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 the Congress and to the Comptroller General of the United States. We 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 December 19, 2005.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 9, 2005.

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 set forth below.

PART 63—[AMENDED]

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

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

Subpart M—[Amended]

■ 2. Section 63.320 is amended by revising paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) 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.

Subpart N—[Amended]

■ 3. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of source.

* * * * *

(e) 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.

■ 4. Table 1 to Subpart N is amended by revising the entry for § 63.1(c)(2) to read as follows:

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

General provisions reference	Applies to subpart N	Comment
*	*	*
§ 63.1(c)(2)	Yes	§ 63.340(e) of Subpart N exempts area sources from the obligation to obtain Title V operating permits.
*	*	*

Subpart O—[Amended]

■ 5. Section 63.360 is amended by:

■ a. Revising the entry for § 63.1(c)(2) in Table 1; and

■ b. Revising paragraph (f).

The revisions read as follows:

§ 63.360 Applicability.

* * * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
*	*	*	*
63.1(c)(2)	Yes		§ 63.360(f) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	*

* * * * *

(f) 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.

* * * * *

Subpart T—[Amended]

■ 6. Section 63.460 is amended by adding paragraph (h) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(h) 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.

§ 63.468 [Amended]

■ 7. Section 63.468 is amended by removing and reserving paragraph (j).

■ 8. Appendix B to Subpart T is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX B TO SUBPART T OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART T

Reference	Applies to subpart T		Comment
	BCC	BVI	
*	*	*	* * * *
§ 63.1(c)(2)	Yes	Yes	Subpart T, § 63.460(h) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	* * * *

Subpart RRR—[Amended]

■ 9. Section 63.1500 is amended by revising paragraph (e) to read as follows:

§ 63.1500 Applicability.

* * * * *

(e) 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.

* * * * *

■ 10. Appendix A to Subpart RRR is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
*	*	*	* * * *
§ 63.1(c)(2)	.....	Yes	§ 63.1500(e) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	* * * *

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Section 70.3 is amended as follows:
■ a. By revising paragraph (a) introductory text.
■ b. By removing and reserving paragraph (b)(3).
■ c. By revising paragraph (b)(4) introductory text.

§ 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of the following sources:

* * * * *

(b) * * *

(4) The following source categories are exempted from the obligation to obtain a part 70 permit:

* * * * *

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.3 [Amended]

■ 2. Section 71.3 is amended by removing and reserving paragraph (b)(3).

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BILLING CODE 6560–50–P

miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones established by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor in any of the areas described by paragraph (a) of this section unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations (14 CFR parts 91 and 99) regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: December 8, 2005.

C.D. Wurster,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. 05–24195 Filed 12–16–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–8009–3]

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors which were issued October 12, 2005, under section 112 of the Clean Air Act. In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when the sources begin complying with the revised emission standards under the NESHAP for hazardous waste combustors. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources, which cannot readily be complied with on short notice, and because these provisions are inextricably tied to the revised emissions standards. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: This direct final rule will be effective on February 17, 2006 without further notice, unless EPA receives adverse written comment by January 18, 2006, or by February 2, 2006 if a public hearing is requested. If adverse comments are received, EPA will publish a timely withdrawal notice in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Email: *a-and-r-docket@epa.gov* and *behan.frank@epa.gov*.
- Fax: 202–566–1741.
- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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 B–102, 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.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.	562211	4953	Incinerator, hazardous waste.
	327310	3241	Cement manufacturing, clinker production.
	327992	3295	Ground or treated mineral and earth manufacturing.
	325	28	Chemical Manufacturers.
	324	29	Petroleum Refiners.
	331	33	Primary Aluminum.
	333	38	Photographic equipment and supplies.
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials.
	422	51	Chemical and Allied Products, N.E.C.
	512, 541, 561,	73	Business Service, N.E.C.
	812	89	Services, N.E.C.
	512, 514, 541,	95	Air, Water and Solid Waste Management.
	711		
	924		

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1200. 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule will also be available on the WWW at *http://www.epa.gov/hwcmact.*

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for hazardous waste combustors if adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of a final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), published October 12, 2005 (70 FR 59402). In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when the sources begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources and these sources will need three years to comply with these more stringent requirements.

II. What Are the Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)?

The final standards for hazardous air pollutants for hazardous waste combustors (HWC) are NESHAP that establish controls on toxic emissions from the burning of hazardous waste in incinerators, cement kilns, lightweight aggregate kilns, liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces. The standards replace existing NESHAP for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—and establish new NESHAP for Phase II sources—liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces.

These NESHAP create a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112(d) of the Clean Air Act (CAA) requires NESHAP to be based on the performance of the Maximum Achievable Control Technology (MACT). These NESHAP are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year by these sources.

Additionally, these NESHAP satisfy our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on these NESHAP is available electronically from the World Wide Web at *http://www.epa.gov/hwcmact.*

Part Two: Amendments to the HWC NESHAP

I. Compliance Date for Cement Kilns To Use a Bag Leak Detection System

This amendment establishes an October 14, 2008 compliance date for cement kilns equipped with fabric filters to comply with the bag leak detection system (BLDS) requirements under § 63.1206(c)(8). See amended § 63.1206(a)(1)(i).

The HWC NESHAP revised the bag leak detection system (BLDS) requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—to require cement kilns equipped with a fabric filter to use a BLDS to ensure compliance with the particulate matter and nonmercury metal emission standards. Prior to this revision, only incinerators and lightweight aggregate kilns equipped with a fabric filter were required to use a BLDS. 64 FR 52827 (September 30, 1999); 67 FR 6967 (February 14, 2002). Cement kilns were subject to an opacity standard in lieu of the BLDS. In the October 12, 2005 HWC NESHAP, however, we concluded that a BLDS provided better compliance assurance than an opacity standard and required cement kilns to use a BLDS in lieu of compliance with the opacity standard. 69 FR at 21346–47. That rule also subjected Phase II sources—liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces—equipped with a fabric filter to the same BLDS requirements.

We intended for cement kilns to begin complying with this new requirement when they begin complying with the revised emission standards under § 63.1220—not later than October 14, 2008. Cement kilns need time to design, install, and address start-up problems with the BLDS. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the BLDS requirement for cement kilns would be applicable immediately—on December 12, 2005.

We note that § 63.1209(a)(1)(ii)(A and B) indicate that we had intended for cement kilns to comply with the BLDS requirement when they begin complying with § 63.1220. Paragraph (a)(1)(ii)(A) states that cement kilns subject to the emission standards under § 63.1204 continue to be subject to the opacity standard, while paragraph (a)(1)(ii)(B) states that, when complying with the revised emission standards under § 63.1220, only those cement kilns that are not equipped with a BLDS or particulate matter detection system continue to be subject to the opacity standard. Thus, we had intended to subject cement kilns to the BLDS requirements when they begin complying with the revised standards under § 63.1220. Cement kilns must comply with those revised standards by October 14, 2008 unless a time extension is granted under § 63.6(i) or § 63.1213. See § 63.1206(a)(1)(ii).

II. Compliance Date for the Bag Leak Detection System Excessive Exceedances Notification

This amendment establishes an October 14, 2008 compliance date for the excessive exceedances notification requirement for bag leak detection systems (BLDS) under § 63.1206(c)(8)(iv). See amended § 63.1206(a)(1)(i).

The October 2005 rule establishes an excessive exceedances notification requirement for bag leak detection systems (BLDS). See § 63.1206(c)(8)(iv). If the alarm level is exceeded for more than five percent of the time in a 6-month block, the source must notify the permitting authority.

We intended for Phase I sources to begin complying with this new requirement when they begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221—not later than October 14, 2008. Phase I sources need time to install the data logging and recording equipment to aggregate the time that the source is operating when the alarm level is exceeded. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the excessive exceedances notification requirement would be applicable immediately—on December 12, 2005.

III. Compliance Date for the Revised Detection Limit Requirement for Bag Leak Detection Systems

This amendment establishes an October 14, 2008 compliance date for the revised detection limit requirement for bag leak detection systems (BLDS) under § 63.1206(c)(8)(ii)(A). See amended § 63.1206(a)(1)(i).

The October 2005 rule revised the detection limit for BLDS for Phase I sources to require a 1.0 mg/acm detection limit for the BLDS unless you demonstrate in an alternative monitoring petition under § 63.1209(g)(1) that a higher detection limit would routinely detect particulate matter loadings during normal operations. See § 63.1206(c)(8)(ii)(A). The previous detection limit requirement applicable to Phase I sources allowed a higher detection limit under § 63.1209(g)(1) if you demonstrate "that a higher sensitivity would adequately detect bag leaks." The revised detection limit requirement is applicable to both Phase I and Phase II sources.

We revised the detection limit requirement as an outgrowth of our reconsideration of the BLDS detection limit for Phase I sources. When investigating whether it was appropriate to continue allowing sources to petition under § 63.1209(g)(1) to use a detector with a detection limit higher than 1.0 mg/acm, we concluded that the basis for approving a higher detection limit should be more prescriptive. 69 FR at 21340. Thus, the October 2005 rule requires the detector to be able to detect increases in normal emissions rather than simply being able to detect bag leaks.

We intended for the revised detection limit requirement to become applicable to Phase I sources when they begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221—not later than October 14, 2008. Phase I sources that were granted approval under § 63.1209(g)(1) to use a bag leak detector with a detection limit greater than 1.0 mg/acm may be required to resubmit the alternative monitoring petition to document that the detector can detect particulate matter loadings under normal operations. In addition, some sources may be required to upgrade their BLDS to ensure that it can detect particulate matter loadings during normal operations. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the revised detection limit would be applicable immediately—on December 12, 2005.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866: Regulatory Planning and Review

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

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final amendments do not constitute a "significant regulatory action" because this action creates no new regulatory requirements that meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

II. Paperwork Reduction Act

The information collection requirements in the final rule (70 FR 59402, October 12, 2005) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control number 2050–0171. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1773.08) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (ME–2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*.

Today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

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.

III. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 the field.

After considering the economic impacts of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action does not create any new regulatory requirements. Rather, they continue to apply existing requirements by delaying the compliance date for new or more stringent requirements. After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

IV. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 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 the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Thus, today's action is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's direct final rule amendments are not subject to the requirements of section 203 of the UMRA no new enforceable duty on any State, local or tribal governments or the private sector.

V. 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 action delays the compliance date of new or more stringent requirements. Thus, Executive Order 13132 does not apply to this rule.

VI. 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. This action delays the compliance date of new or more stringent requirements. Thus, Executive Order 13175 does not apply to this rule.

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

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

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The rule simply delays the compliance date of new or more stringent requirements.

VIII. 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.

IX. National Technology Transfer and Advancement Act

As noted in the proposed rule, 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 adopte by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

X. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's rule delays the compliance date of new or more stringent requirements and will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

XI. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular (and, as noted, exceptional) circumstances.

A major rule cannot take effect until 60 days after it is published in the Federal Register. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule is effective on February 17, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: December 12, 2005.

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 by revising paragraphs (a)(1)(i)(A) and (a)(1)(i)(B)(*1*) to read as follows:

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

(a) * * * (1) * * * (i) * * * (A) *Compliance dates for existing sources.* You must comply with the emission standards under §§ 6312.03, 63.1204, and 63.1205 and the other requirements of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213, except:

(*1*) Cement kilns are exempt from the bag leak detection system requirements under paragraph (c)(8) of this section;

(*2*) The bag leak detection system required under § 63.1206(c)(8) must be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter unless you demonstrate under § 63.1209(g)(1) that a higher detection limit would adequately detect bag leaks, in lieu of the requirement for the higher detection limit under paragraph (c)(8)(ii)(A) of this section; and

(*3*) The excessive exceedances notification requirements for bag leak detection systems under paragraph (c)(8)(iv) of this section are waived.

(B) * * * (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraphs (a)(1)(i)(A)(*1*) through (*3*) and (a)(1)(i)(B)(*2*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

[FR Doc. 05–24198 Filed 12–16–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0028, FRL–8009–5]

RIN: 2060–AI72

List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the list of hazardous air pollutants (HAP) contained in section 112 of the Clean Air Act (CAA) by removing the compound methyl ethyl ketone (MEK) (2-Butanone) (CAS No. 78–93–3). This action is being taken in response to a petition submitted by the Ketones Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of MEK producers and consumers to delete MEK from the HAP list. Petitions to remove a substance from the HAP list are permitted under section 112 of the CAA.

Based on the available information concerning the potential hazards of and projected exposures to MEK, EPA has made a determination pursuant to CAA section 112(b)(3)(C) that there are "adequate data on the health and environmental effects [of MEK] to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects."

EFFECTIVE DATE: December 19, 2005.

colors the manufacturers choose. According to the commenter, EPA's suggestion that changes in airflow might affect brick color is only speculation, based on unsubstantiated and self-serving assertions by industry.

Previous comments submitted at proposal related to DLA control technology and referenced by this commenter are in the official public docket (Docket ID No. OAR–2002–0054). The commenter's Petition to Reconsider letter is part of the docket at OAR–2002–0054–0010. As mentioned previously, one issue from that letter is the focus of this reconsideration action.

In response to these comments, we reviewed our MACT floor analysis and its factual and statutory basis. Contrary to the commenter's claims, there is ample support in the rulemaking record for the concerns expressed by the brick industry about the feasibility of retrofitting existing kilns with DIFF, DLS/FF or WS (unless the existing kiln had been designed and built with that technology). As explained in more detail below, the attempts that have been made to retrofit using DIFF or DLS/FF have not met with success, and we do not have a basis for concluding that the technological obstacles that have been encountered to date can be overcome in the 3 years that existing sources have to comply with the NESHAP.[4] While sources subject to NESHAP typically face challenges in meeting the applicable requirements, here the concern is whether existing BSCP kilns can retrofit APCD without changing the very products they make. As for WS, we continue to believe that retrofits using that technology are only feasible for kilns having access to a sewer system for wastewater disposal. Indeed, a WS system that includes the type of wastewater treatment that would be required in the absence of sewer system access has never been built or demonstrated in the BSCP industry. Based on our review of the rulemaking record, we again conclude that DLA are the only currently available technology that can be used to retrofit existing tunnel kilns without potentially significant impacts on the production process and the resulting product of many kilns.

We also believe that the MACT floor analysis upon which we based the promulgated standards for existing tunnel kilns in the BSCP industry properly took into account the technical obstacles to retrofitting those kilns with available APCD. We disagree that the ability to retrofit a technology to an existing source is irrelevant to the MACT floor. Under CAA section 112(d)(2), EPA is required to set NESHAP that reflect the "maximum degree of reduction in emissions" of the relevant HAP that the Agency, considering various factors, "determines is *achievable*" (emphasis added). In surveying existing tunnel kilns, we found that DIFF, DLS/FF and WS were used almost exclusively by kilns that had been designed and built to work with those technologies. Kilns which had been retrofitted with ACPD primarily used DLA because, among other things, that technology, unlike DIFF and DLS/FF, does not affect airflow crucial to product quality and color, and, unlike WS, does not generate large quantities of wastewater. As described in detail below, the kilns that had been retrofitted with DIFF or DLS/FF experienced serious and so far insurmountable problems.

While kilns using DIFF, DLS/FF or WS technologies achieve lower emission rates than kilns using DLA, the CAA does not require that we turn a blind eye to compelling evidence that kilns not already equipped with DIFF, DLS/FF or WS cannot be reliably retrofitted with those technologies without significantly affecting the kiln's production process and its product. On its face, CAA section 112(d) repeatedly calls for "achievable" standards. BSCP facilities that are otherwise similar in terms of kiln type and size are demonstrably dissimilar in their ability to be retrofitted with the various APCD. EPA may appropriately account for technological differences that affect whether a control technology can be feasibly applied to all existing sources that will require additional controls to lower their HAP emissions.

Recognizing these technological issues, we clearly laid out in the final rule preamble the four basic steps taken in determining the MACT floor control level:

(1) We reviewed available data on pollution prevention techniques (including substitution of raw materials and/or fuels) and the performance of add-on control devices to determine the techniques that were viable for and effective at reducing HAP emissions;

(2) For each subcategory, we ranked the kilns from the best performing to the worst performing based on the emission reduction technique used on the kilns;

(3) For each subcategory, we then identified the 94th percentile kiln and the emission reduction technique that represented the MACT floor technology; and

(4) For each subcategory, we then selected production-based or percent-reduction emission limits that correspond to the 94th percentile kiln and emission reduction technique, and we based our selections on the available data while considering variability in the performance of a given emission reduction technique.

A full explanation of the MACT floor and MACT determination is provided in the promulgation preamble (see 68 FR 26698, May 16, 2003).

Key points and information provided by the commenters after proposal included the following: (1) DIFF, DLS/FF, and WS are not demonstrated technologies for retrofitting BSCP kilns; kilns that have used those technologies for a retrofit have experienced significant problems, as explained further below; (2) different products require different airflows to produce distinctive characteristics of the product; (3) DIFF, DLS/FF, and WS require minimum airflow rates to operate properly; (4) DIFF, DLS/FF, and WS affect the product line when process/kiln airflow rates must be changed to accommodate control device operation; (5) DIFF, DLS/FF, and WS result in kiln downtime and reductions in kiln production capabilities; (6) during kiln slowdowns, DIFF, DLS/FF, and WS APCD may not be able to operate at all; (7) DIFF, DLS/FF, and WS produce large amounts of solid waste and wastewater that pose environmental issues of their own; (8) most BSCP facilities are located in areas that do not have available sewer access for WS wastewater; (9) few DIFF, DLS/FF, and WS systems have been developed specifically for brick kilns; (10) DLA do not require minimum airflow rates; (11) lower airflow rates increase the control efficiency of DLA; (12) DLA do not impact kiln operation, airflow, and production level; (13) DLA do not generate PM emissions; (14) DLA do perform over the life of the sorbent; (15) DLA limestone is continually replaced and HF and HCl control efficiencies are maintained; and (16) DLA control technology is applied to brick kilns all over the world, and vendors are experienced in applying the technology to the BSCP industry.

Commenters noted that most of the DIFF, DLS/FF, and WS in place in the BSCP industry have been installed on new kilns, and those that were installed on existing kilns have created problems with kiln operation. Commenters pointed out that all injection and wet control devices need a certain airflow to operate, and because the airflow rate within a brick kiln can vary by 50 percent or more, depending primarily

[4] Consistent with CAA section 112(i), EPA's final rule provided existing covered sources with the maximum allowable lead time of 3 years to comply with the BSCP NESHAP.

on the size of the product, control systems with any type of injection are problematic. Each product has a given set of kiln operating parameters, and the airflow varies from product to product. Balancing airflow in the kiln is critical to the operation of the kiln. Any changes to the firing characteristics and/or airflow rate that result from the use of DIFF, DLS/FF, and WS controls have an impact on the quality and aesthetic value of the product. If these control devices are used, then the control devices will dictate how the kiln is operated.

Commenters shared their actual experience with DIFF, DLS/FF and WS technologies in retrofit applications. In the case of WS, they noted that short-term pilot tests of WS had encountered significant problems and that full-scale WS had never been used on BSCP kilns (with the exception of one facility, discussed below, that operates two WS). Multiple commenters stated that, rather than being reduced, PM was generated by WS during pilot tests. One commenter stated that, during the 3-month pilot test, the longest time of continuous operation of the WS was 6 days. Following the pilot tests, the facilities chose not to install a full scale WS due to the insurmountable issues. The one facility operating WS has a permit to discharge untreated wastewater to the local sewer system, thus making wet scrubbing a feasible option for that facility. According to a letter submitted by the company, one of the WS at this facility has ongoing problems with fouling of scrubber packing.

With respect to DIFF, commenters explained that the only commercially available retrofit DIFF installation was problematic and still not operating correctly more than 2 years after installation. This system had problems with the dampers and reagent feeding systems. Commenters noted that the original cost for this DIFF was $1 million; however, the facility spent over $2 million without achieving successful operation. Furthermore, another retrofit DIFF installation changed the kiln draft enough to result in kiln capacity reduction from 13.5 to 12.2 cars/day; this was a loss in revenue of $1 million per year. According to commenters, the vendor who installed this DIFF system is no longer in business.

Commenters indicated that the only DLS/FF retrofit that has been attempted is also problematic and led to product quality problems and kiln downtime. This system was a prototype and so had no operational, troubleshooting, or maintenance history, leaving the facility to diagnose operational problems. The vendor who installed this DLS/FF is no longer providing systems to the BSCP industry according to the commenters.

In sum, the commenters provided information showing that few injection (*i.e.*, DIFF and DLS/FF) or WS systems have been developed specifically for brick kiln operations, and retrofit experience shows that vendors have been unable to successfully design these systems for retrofit applications in the BSCP industry. Commenters charged that EPA did not account for retrofitting problems associated with installing DIFF, DLS/FF, and WS on older kilns and the costs associated with these problems. Commenters described how attempts at retrofitting kilns with these APCD have resulted in significant kiln downtime and permanent reductions in kiln production capacities. Commenters stated that DIFF and DLS/FF systems produce large amounts of solid waste that is difficult and expensive to dispose of, and use of WS is not practical for most facilities because the facilities have no viable options for wastewater disposal. Commenters also pointed out that there are high costs and marginal additional emissions reductions associated with replacing an existing DLA with a DIFF system.

Based on the many comments received following proposal regarding retrofit concerns with DIFF, DLS/FF, and WS and our own review of all the available information, we concluded that retrofitting existing kilns with these technologies is not feasible in most cases. We note that in addition to comments received from brick manufacturers, we received comments from a kiln vendor and APCD vendors explaining the importance of airflow to kiln operation, product quality and color, and for proper APCD operation; these comments further substantiated many of the claims submitted by industry representatives. We find it particularly compelling that: (1) Attempts to retrofit older kilns with injection systems (*i.e.*, DIFF and DLS/FF) have been unsuccessful due to interference with the kiln airflow, such that product quality cannot be maintained, and (2) injection system retrofits have experienced operational problems (*i.e.*, settling of lime sorbent in the ductwork and subsequent APCD malfunction, early and unanticipated fabric filter bags failure) during the airflow variations that are necessary for various products. We also find quite compelling the argument that WS are not an option for most BSCP facilities because of limited or no sewer access. Although we also received many comments after proposal regarding the cost of control technologies, our MACT floor decisions are based on what is technically achievable and demonstrated as opposed to cost as section 112(d)(3) of the CAA does not allow consideration of cost when determining MACT floors.

As described above, in the reconsideration proposal notice we asked for additional comments and information on technical issues related to the performance of control technologies, including DLA, DIFF, DLS/FF, and WS. We also requested information on the successful retrofit of DIFF, DLS/FF, and WS on existing tunnel kilns. We received no additional information that would lead us to different conclusions today regarding the MACT floor for existing large tunnel kilns. Therefore, we continue to believe that DLA are the only currently available technology that can be used to retrofit existing large tunnel kilns without potentially significant impacts on the production process.

One commenter also took issue with EPA's decisions on reconstructed sources. Specifically, the commenter rejected as irrelevant EPA's arguments that it would not be technologically and economically feasible for the following reconstructed sources to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS: (1) An existing small tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2, and whose design capacity is increased such that it becomes a large tunnel kiln; and (2) an existing large DLA-controlled tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2. The commenter argued that EPA is not relieved of its statutory obligation to set new source floors reflecting the performance of the best-performing source based on the possibility that some sources may incur costs or have to overcome technological obstacles to match the performance of the relevant best source. According to the commenter, such a possibility also does not allow EPA to simply declare that certain reconstructed BSCP are not subject to these requirements, which the commenter argued would contravene the CAA's definition of "new source" and statutory mandate requiring reconstructed sources to meet new source MACT. The commenter argued that this decision is nothing more than an attempt by EPA to substitute its own views for the plainly expressed intent of Congress. The commenter also argued that EPA missed the point in basing the MACT floor for new small tunnel kilns on the alleged performance of DLA (with EPA concluding that "DLA are the

only APCD that have been demonstrated on small tunnel kilns") because the floor must reflect the actual performance of the single best kiln, not what EPA thinks is achievable through the use of DLA.

Based on the retrofit comments discussed above, the same technological retrofit concerns for existing sources are also relevant to (1) existing small tunnel kilns that are rebuilt such that they become large kilns and (2) existing large DLA-controlled tunnel kilns that are rebuilt. Retrofitting these types of existing kilns with DIFF, DLS/FF, or WS is not feasible. The only currently available technology that can be used to retrofit these reconstructed kilns without potentially significant impacts on the production process is DLA. Additionally, DIFF, DLS/FF, and WS have not been demonstrated for small kilns. Smaller kilns have even smaller airflow rates than larger kilns, and any fluctuations in airflow rates have significant impact on the ability of the DIFF, DLS/FF, or WS to operate correctly. DLA are the only APCD that have been demonstrated on small tunnel kilns, and, therefore, the requirements for new and reconstructed small tunnel kilns were based on the level of control that can be achieved by DLA.

With respect to the commenter's argument that EPA must meet the statutory mandate requiring reconstructed sources to meet new source MACT, we point out that the definition of "Reconstruction" at 40 CFR 63.2 includes the text "* * * to such an extent that * * * it is *technologically* and *economically feasible* for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act." (emphasis added) This regulatory definition, which was promulgated on March 16, 1997 (59 FR 12430) and amended on April 5, 2002 (67 FR 16595), reflects EPA's view that the statutory requirements for reconstructed sources allow for the consideration of both technological and economical issues. In view of the regulatory definition, we believe we correctly identified the MACT floors and standards for reconstructed sources and for new small tunnel kilns.

Multiple commenters expressed concern about EPA's statement in the reconsideration notice that no change in the compliance date is warranted. The commenters argued that the reconsideration process has been slow, and EPA reopened the rule because it did not follow its own proper procedures, neither of which is due to any fault or action by industry. According to these commenters, EPA will have used more than two-thirds of the compliance period for existing sources just to process this reconsideration petition. With the compliance date less than 1 year away, the commenters stated that it may not be possible for the limited number of vendors worldwide to supply every company that needs an APCD in time. One commenter argued that the 1-year case-by-case extension offered by the General Provisions is not a reasonable solution to a systemic problem and creates another burden for industry to apply for and obtain this extension. The commenters argued that EPA should not rely on past precedents for not providing compliance extensions when litigation occurs on a rule, because this is not litigation but reconsideration and because EPA has determined that its rulemaking process has deficiencies that must be corrected. Commenters noted that their industry is composed primarily of small businesses, where a single financial decision, such as which control to install, can have profound impacts on the facility's viability. In light of these concerns, multiple commenters argued that EPA should set a compliance date 3 years from the date that EPA publishes its conclusions on the reconsideration, while other commenters suggested 1-year or 2-year extensions of the compliance date. One commenter indicated that neither EPA nor environmental groups would be affected by an extension.

As mentioned above, section 112(i)(3) of the CAA specifies that NESHAP for existing sources can have compliance deadlines of no more than 3 years. For the BSCP NESHAP, EPA provided the maximum 3 years for covered sources to comply with the new standards. It is not at all unusual for promulgation of CAA standards to be followed by litigation or petitions for reconsideration. CAA section 307(b)(1) specifically provides that the filing of a petition for reconsideration of a rule does not postpone the effectiveness of the rule. The final BSCP rule was effective as of the date of its promulgation and it has remained in effect during the reconsideration period. Sources covered by the final rule have thus remained subject to its requirement for compliance to be achieved by May 16, 2006.

EPA made it clear in its reconsideration notice that the Agency did not believe a change in the compliance date was warranted. We noted that Sierra Club, in its petition for reconsideration, "has not provided information which persuades us that our decision to base the MACT floors on DLA technology is erroneous or inappropriate." (See 70 FR 21094, April 22, 2005.) We explained that "[i]f we decide to amend the final rule as a result of the reconsideration process, we will reevaluate the compliance date as early as possible." Covered sources were thus on notice that we were unlikely to change the compliance deadline unless we determined that the final rule should be amended based on new information, and that the petition for reconsideration had not provided any new information.

To date, EPA has not, during the pendancy of a reconsideration request, extended the compliance deadlines for promulgated MACT standards to provide compliance periods in excess of the statutory 3 year maximum. In contrast, only where the Agency has amended a MACT standard in a significant way have we found it appropriate to set a new compliance date for the rule that takes into account new requirements not contained in the original rule. In this case, we decided that no amendments to the standards are warranted, so the final rule and its compliance deadline remain unchanged.

EPA acknowledges that the time to complete the reconsideration has been lengthy, and has comprised approximately 2.5 years of the 3-year compliance period. To the extent any covered source finds it cannot comply with the BSCP NESHAP in the 3 years of lead time provided, it may seek an extension in accordance with 40 CFR 63.6(i)(3). We understand that the majority of the affected businesses are small businesses for which installation of the requisite emission controls entails a significant investment in time and money. The process to install equipment involves the evaluation and selection of a control device and a control device vendor, the application and issuance of a permit from the regulatory authority, the installation of the controls and the potentially lengthy process of insuring that the installed control can meet the MACT limits while still maintaining product quality. Given the small number of controls that have been installed in this industry prior to the standards, and the relatively small number of vendors with an understanding of this industry, some individual facilities may require an extension to come into compliance. We encourage States to make appropriate use of the extension authority granted t them under 40 CFR 63.6(i)(3).

Although commenters acknowledged that we stated in the April 22, 2005, reconsideration notice that we would only address comments on our decisio to base MACT for certain tunnel kilns

on DLA, they offered comments on other issues as well. These issues are outside the scope of this reconsideration, but we would like to offer a few thoughts on two of the issues raised: The requirement for a daily visual limestone check and the start-up definitions.

Regarding the first of these issues, commenters specifically requested that EPA change the requirement for the daily visual check of the limestone level in the DLA, and cited significant safety hazards and the generation of minimal information associated with climbing to the top of the limestone hopper each day, especially on days with wet, freezing, or windy weather. According to the commenters, better, safer approaches are available to confirm the adequacy of limestone present (*e.g.*, monitoring the amount of limestone added and removed from the system, installing numerous level indicators throughout the storage bins to ensure that limestone is flowing, monitoring pressure drop on the scrubber on a daily basis, and monitoring flow as an alternative in systems with recycle). They argued that requesting an alternative monitoring plan under the General Provisions was an avoidable financial burden for each facility when EPA could easily add compliance alternatives to the rule.

Commenters also requested clarification on the start-up definition with respect to the timing of the requirement to vent through a DLA. The commenters disagreed with the dual definition of start-up in the final rule, which depended on the type of control device used, because a facility may not know which control will ultimately be needed for its system. At a minimum, the commenters believed the DLA-based definition should be clarified because there is the potential for confusion. While the kiln may be considered to have reached "initial start-up" at 260 °C (500 °F), there are no known HAP emissions from bricks at this temperature. However, there is still moisture in the exhaust when the kiln first reaches this temperature, and venting through the control device at this temperature could create devastating clogging of the limestone. According to the commenters, bricks are not a source of HAP emissions until they reach a temperature at which dehydroxylation occurs (500–600 °C (932–1112 °F)). At a minimum, the commenters believed EPA should clarify that, while the kiln may be considered "started," this does not mean that the exhaust must be vented through the control device.

We would like to address these issues at least to some extent in this action since they pertain to compliance with the promulgated MACT standards. The compliance requirement to verify that the limestone hopper and storage bin contain adequate limestone by performing a daily visual check is not limited to being met only by climbing to the top of the limestone hopper each day. Other methods of visually confirming that the hopper and storage bin contain adequate limestone could include some type of visual access point (*e.g.*, a window) on the side of the hopper, installing a camera in the hopper that provides continuous feed to a video monitor in the control room (a common practice in other mineral products industries), or confirming that load level indicators in the hopper are not indicating the need for additional limestone. With respect to the start-up definitions, the final rule's definitions of start-up are based on public comments regarding DIFF-, DLS/FF-, and WS-controlled kilns and information from an owner of DLA-controlled kilns. If in the future it is determined that revisions to the compliance requirements or start-up definitions in the final rule are warranted, they will be addressed at that time in a rule amendment.

IV. Statutory and Executive Order Reviews

On May 16, 2003, we published the final NESHAP for BSCP manufacturing pursuant to section 112 of the CAA. With today's action, we are promulgating no changes to the final rule. Accordingly, we believe that the rationale provided with the final BSCP rule is still applicable and sufficient.

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's action does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's final action. The OMB has previously approved the information collection requirements contained in the final rule (40 CFR part 63, subpart JJJJJ) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0508 (EPA ICR number 2022.02) for the BSCP rule. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

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. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the reconsideration of one issue arising from the final rule, since the reconsideration did not result in a proposed change to final 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, the 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 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action 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 1 year. At promulgation of the BSCP rule, we estimated a total annual cost of $24 million for any 1 year. Because today's action results in no changes to the final rule, the estimated total annual cost for the final BSCP rule remains the same, and today's action will not increase regulatory burden to the extent of requiring expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that today's action contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's action is not subject to the requirements of 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." Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's action does not have federalism implications. It 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. Because we are not promulgating any changes to the final rule, today's action will not increase regulatory burden to the extent that it would result in substantial direct effects on the States. Thus, the requirements of Executive Order 13132 do not apply to today's action.

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." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's action does not have tribal implications. The final BSCP rule, which today's action does not change, 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. No

tribal governments are known to own or operate BSCP manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule or today's action.

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 the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's action is not subject to Executive Order 13045 because the final BSCP rule, which today's action does not change, 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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

Today's action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866 nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 in its regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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: November 10, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–22805 Filed 11–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[OAR–2002–0030; FRL–7997–3]

RIN 2060–AK01

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are amending the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. Under the authority of section 231 of the Clean Air Act (CAA), 42 U.S.C. 7571, the Environmental Protection Agency (EPA) is establishing new emission standards for oxides of nitrogen (NO_x) for newly certified commercial aircraft gas turbine engines with rated thrust greater than 26.7 kilonewtons (kN). This action adopts standards equivalent to the NO_x standards of the United Nations International Civil Aviation Organization (ICAO), and thereby brings the United States emission standards into alignment with the internationally adopted standards (ICAO standards for newly certified engines were effective beginning in 2004). In addition, today's action amends the test procedures for gaseous exhaust emissions to correspond to recent amendments to the ICAO test procedures for these emissions.

On December 19, 2005, the new NO_x standards will apply to newly certified gas turbine engines—those engines designed and certified after the effective date of the regulations (for purposes of this action, the date of manufacture of the first individual production model means the date of type certification). Newly manufactured engines of already certified models (*i.e.*, those individual engines that are part of an already certified engine model, but are built after the effective date of the regulations for such engines and have never been in service) will not have to meet these standards.

Today's amendments to the emission test procedures are those recommended by ICAO and are widely used by the aircraft engine industry. Thus, today's action will help establish consistency between U.S. and international standards, requirements, and test procedures. Since aircraft and aircraft engines are international commodities, there is commercial benefit to consistency between U.S. and international emission standards and control program requirements. In addition, today's action ensures that domestic commercial aircraft meet the current international standards, and thus, the public can be assured they are receiving the air quality benefits of the international standards.

DATES: This final rule is effective December 19, 2005.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of December 19, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2002–0030. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available,

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0054; FRL–7997–9]

RIN 2060–AM94

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action on reconsideration.

SUMMARY: On May 16, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at brick and structural clay products (BSCP) manufacturing facilities (the final rule). Subsequently, the Administrator received a petition for reconsideration of the final rule. On April 22, 2005, EPA announced its reconsideration of one issue arising from the final rule. Specifically, we (EPA) requested public comment on our decision to base the maximum achievable control technology (MACT) requirements for certain tunnel kilns on dry limestone adsorption technology. As a result of this reconsideration process, we have concluded that the MACT floors and standards determined at promulgation are correct, and no changes to the final rule are warranted. We, therefore, are taking no amendatory action with respect to these requirements.

DATES: This final action is effective on November 17, 2005.

ADDRESSES: *Docket.* EPA has established an official public docket for the NESHAP for brick and structural clay products manufacturing including both Docket ID No. OAR–2002–0054 and Legacy Docket ID No. A–90–30. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the BSCP rulemaking and the reconsideration action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they are aware of all materials relevant to the BSCP rulemaking and this action. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; fax number: (919) 541–5450; e-mail address: *johnson.mary@epa.gov.*

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

I. General Information
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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 and Advancement Act

I. General Information

A. What is the source of authority for the reconsideration action?

EPA is reconsidering one aspect of its final BSCP rule under sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 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 entities are potentially affected by the reconsideration action?

Entities potentially affected are those industrial facilities that manufacture BSCP. Brick and structural clay products manufacturing is classified under Standard Industrial Classification (SIC) codes 3251, Brick and Structural Clay Tile; 3253, Ceramic Wall and Floor Tile; and 3259, Other Structural Clay Products. The North American Industry Classification System (NAICS) codes for BSCP manufacturing are 327121, Brick and Structural Clay Tile; 327122, Ceramic Wall and Floor Tile Manufacturing; and 327123, Other Structural Clay Products. The categories and entities that include potentially affected sources are shown below:

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	3251	327121	Brick and structural clay tile manufacturing facilities.
Industrial	3253	327122	Extruded tile manufacturing facilities.
Industrial	3259	327123	Other structural clay products manufacturing facilities.

The reconsideration action does not concern the NESHAP for clay ceramics manufacturing facilities (40 CFR part 63, subpart KKKKK), which were published with the final BSCP rule (40 CFR part 63, subpart JJJJJ).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the reconsideration action. To determine whether your facility may be affected by the reconsideration action, you should examine the applicability criteria in 40 CFR 63.8385 of the final BSCP rule. If you have any questions regarding the applicability of the final rule to a particular entity or the implications of the reconsideration action, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

C. How do I obtain a copy of this action?

In addition to being available in the dockets, an electronic copy of today's action also will be available on the Worldwide Web (WWW). Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

A. History

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 and under common control that emit or have the potential to emit considering controls, in the aggregate, 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more of any one HAP or 22.68 Mg/yr (25 tpy) or more of any combination of HAP. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor is the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor is the level of emission control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources is 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, as in the case of each BSCP subcategory).

In developing MACT standards, we also consider control options capable of achieving a level of emission control more stringent than the floor. We establish more stringent standards where we find greater reductions are achievable, taking into consideration the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

We proposed NESHAP for major sources manufacturing BSCP on July 22, 2002 (67 FR 47894), and we published the final BSCP rule on May 16, 2003 (68 FR 26690). Following promulgation, the Administrator received a petition for reconsideration (dated July 15, 2003) filed by Earthjustice on behalf of Sierra Club pursuant to section 307(d)(7)(B) of the CAA. The petition requested reconsideration of three aspects of the final rule. We also received a letter (dated October 10, 2003) from counsel for the Brick Industry Association (BIA), commenting on the Sierra Club's petition for reconsideration. On April 19, 2004, EPA issued a letter to the Sierra Club's counsel granting its petition for reconsideration with respect to one issue. On April 22, 2005, we announced our reconsideration of and requested public comment on that issue, specifically our decision to base the MACT requirements for certain tunnel kilns on DLA technology.

In addition to the petition for reconsideration, three petitions for judicial review of the final NESHAP for BSCP manufacturing and clay ceramics manufacturing (40 CFR part 63, subparts JJJJJ and KKKKK, published together on May 16, 2003) were filed with the U.S. Court of Appeals for the District of Columbia Circuit by the Sierra Club, BIA, and two clay ceramics manufacturers (Monarch Ceramic Tile, Incorporated and American Marazzi Tile, Incorporated).[1] The litigation has been stayed to enable EPA to act on Sierra Club's petition for reconsideration prior to briefing. On May 10, 2005, the Court issued its most recent order, holding the case in abeyance until November 10, 2005.

B. Overview of Decisions at Promulgation

In the proposed rule, the MACT floors for the kiln exhaust from certain tunnel kilns were based on the use of dry lime injection fabric filters (DIFF), dry lime scrubber fabric filters (DLS/FF), or wet scrubbers (WS). Dry limestone adsorber (DLA) technology, which is the most prevalent type of air pollution control device (APCD) used to control emissions from existing brick kilns, was not proposed as a MACT floor technology because we had questions and concerns about DLA based on the information we had at the time. In response to the proposed rule, however, we received numerous comments from industry representatives, kiln manufacturers, and APCD vendors on issues related to the application and performance of the APCD discussed in the preamble. Many commenters reported technical obstacles to the use of DIFF, DLS/FF, and WS technologies, particularly for retrofitting BSCP kilns, as well as other disadvantages of those technologies, and provided information to address our questions and concerns about DLA technology.

As a result of these public comments, we realized that there was more information on DLA technology to be considered and that we did not fully understand the limitations of applying the other technologies that were the focus of our MACT floors analysis at proposal. After reviewing all of the available information, we determined that MACT for some new tunnel kilns should be based on DIFF, DLS/FF, and WS technologies, but that for existing tunnel kilns retrofitting with DIFF, DLS/FF, or WS is not feasible or practical in many cases. We concluded that retrofitting existing BSCP tunnel kilns with certain APCD would likely alter brick quality and color for many kilns, resulting in changes to the product that are central to its character and value. We also determined that our principal concerns with DLA at proposal (*i.e.*, generation or no control of particulate matter (PM) emissions and consistency of performance) had been allayed by the information we received in response to the proposal.

In light of the public comments received regarding technical features and limitations of DIFF, DLS/FF, WS, and DLA technologies, we came to new conclusions regarding the effective application of these technologies. We concluded that DLA are the only currently available technology that can be used to retrofit existing tunnel kilns without potentially significant impacts on aspects of the production process that affect the character of the product itself. In the final BSCP rule, we thus allowed existing large tunnel kilns to use the DLA technology.

In addition, we concluded that, because of retrofit concerns, it is not technologically or economically feasible for an existing small tunnel kiln that would otherwise meet the criteria for reconstruction and whose design capacity is increased such that it becomes a large tunnel kiln to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS. We also similarly concluded that it is not technologically and economically feasible for an existing large DLA-controlled tunnel kiln that would otherwise meet the criteria for reconstruction to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS.

[1] The cases, which have been consolidated, are: *Brick Industry Association* v. *EPA*, No. 03–1142 (D.C. Cir.); *Sierra Club* v. *EPA*, No. 03–1202 (D.C. Cir.); and *Monarch Ceramic Tile, Inc.* v. *EPA*, No. 03–1203 (D.C. Cir.).

However, we determined that it is technologically and economically feasible for these types of kilns, whether existing or reconstructed, to retrofit or continue operating with a DLA, and the final rule required that such kilns meet the emissions limits that correspond to the level of control provided by a DLA.

In the final rule, we concluded that DIFF, DLS/FF, and WS are appropriate technologies for new large tunnel kilns and for reconstructed large tunnel kilns that were equipped with DIFF, DLS/FF, or WS prior to construction. For small tunnel kilns, however, we concluded that DLA are the only APCD that have been adequately demonstrated, and, therefore, we based the final requirements for new and reconstructed small tunnel kilns on DLA control.

III. Today's Action

A. Final Action

At this time, we are announcing our final action regarding the one issue in the Sierra Club's petition for reconsideration that we agreed to reconsider. The petition sought reconsideration of three issues relating to EPA's promulgation of final MACT floor standards based on DLA technology. One of the concerns was whether EPA had adequately complied with public notice and comment requirements. Noting that EPA had proposed MACT floor standards based on three different technologies, DIFF, DLS/FF and WS, the Sierra Club argued that EPA had provided no opportunity to comment on either the final DLA-based floors or the final floor approach. Pursuant to section 307(d)(7)(B) of the CAA,[2] we granted the Sierra Club's petition for reconsideration only with respect to that one issue "namely, the Sierra Club's claim that the MACT floors (and MACT standards based on the floors) at promulgation were set using a different control technology than those proposed and that EPA did not provide adequate opportunity for public comment on the revised MACT floors.[3]

As stated in the April 22, 2005, notice announcing reconsideration of one aspect of the final rule, the arguments Sierra Club presented in the petition for reconsideration did not persuade us that our MACT floor determination for the final BSCP rule was erroneous or inappropriate. However, because we changed the technological basis of the MACT floors and standards between proposal and promulgation in response to comments received on the proposed rule, we decided to grant reconsideration on this issue and provide an opportunity for public comment on the DLA-based floors and standards reflected in the final rule.

In our notice of reconsideration, we requested comment on the DLA-based floors and standards, including technical issues related to the performance of DLA as compared to DIFF, DLS/FF, and WS; the ability to retrofit existing kilns with DLA, DIFF, DLS/FF, and WS; and whether this should be a consideration when selecting MACT control options. We also specifically requested (1) additional information regarding whether there have been technical difficulties associated with DIFF, DLS/FF, WS, and DLA; (2) additional information on how these control devices have performed at plants operating these technologies; and (3) additional information on the successful application of these technologies to existing kilns. We received 15 responses to our request for public comment. These comment letters are available in the official public docket (Docket ID No. OAR–2002–0054).

The comments we received provided limited new information related to APCD technology performance, including retrofitting issues, technical difficulties, overall performance, or successful application of the control technologies. Instead, the commenters generally referred to comments they had previously submitted on the proposed rule. Overall, the reconsideration notice did not bring to light additional technical information for EPA to weigh in revisiting its original MACT floor and standard-setting decisions. While one commenter argued that the CAA does not permit EPA to consider the feasibility of retrofitting existing kilns with APCD when determining the MACT floor, we disagree with the commenter's legal analysis for the reasons discussed below. Since the reconsideration comments did not provide a basis for us to conclude that our prior analysis was incorrect or flawed, we reaffirm the validity of the determinations we made at promulgation and are making no changes to the final rule. A summary of major comments received on the reconsideration issue and EPA's responses to those comments are provided below.

B. Comments Received on Reconsideration Issue

We received both comments in support of and comments objecting to the DLA-based MACT floors and standards in the final rule. Multiple industry commenters supported our decision to include DLA as a retrofit technology in the MACT floor analyses for BSCP manufacturing. They also agreed with our statement in the April 22, 2005, notice that the petitioners did not provide sufficient information in their petition for reconsideration to warrant any changes to the final rule; indeed, they argued that the final rule should not even be subject to reconsideration. These commenters stated that the comments EPA received on the proposed rule specifically addressed the use of DLA, and thus, inclusion of DLA could have been anticipated by anyone following the public record. The commenters also asserted that the ability to retrofit certain APCD to an existing kiln has not been demonstrated to be achievable. They considered unreasonable the petitioner's assertion that the ability to retrofit a control is irrelevant to the determination of MACT and is equivalent to considering costs. The commenters stated that EPA cannot set a standard that has not been demonstrated as achievable. According to the commenters, under MACT, when the existing sources included in the top 12 percent have controls in place but these controls have not been demonstrated as a "retrofitable" device (*i.e.*, they were installed when designing and building the kiln rather than after it was built), then they are not a retrofit control device for that process. In addition, the commenters argued that if the same products cannot be produced after the installation of the control device, then it is not the same process. The commenters could think of no MACT standard where EPA added

[2] Section 307(d)(7)(B) of the CAA provides that if a person raising an objection to a rule during judicial review "can demonstrate to the Administrator that * * * 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, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed." 42 U.S.C. 7607(d)(7)(B).

[3] In its petition for reconsideration, the Sierra Club also raised two issues relating to our overall MACT approach, which was the same at proposal and promulgation. Specifically, the Sierra Club argued: that "in setting floors, EPA unlawfully considered more kilns than the best performing twelve percent of sources for which it had emissions information"; and that "EPA's floors do not reflect the average emission level achieved by the best performing twelve percent of kilns for which the Administrator has emissions information." We addressed these issues in the response to Earthjustice's comments on the proposal (See p. 2–44, EDOCKET document no. OAR–2002–0054–0005). Therefore, they do not meet the criteria for reconsideration under CAA section 307(d)(7)(B), and they are not discussed in this action.

controls that changed the targeted industry's products.

Industry commenters highlighted major points made regarding DLA in previous comments on the proposed rule, including: (1) DLA are viable controls and have been demonstrated as a retrofit technology; (2) DLA are the most prevalent control in the industry because DLA achieve essentially the same reductions in emissions (*e.g.*, of hydrogen fluoride (HF)), but do not present the same retrofit issues, as the other controls; (3) contrary to previous concerns raised by EPA, DLA have the potential to reduce PM emissions; (4) the small amount of PM that comes from these units has not been shown to contain any significant HAP emissions, and is likely significantly smaller than the already low amount in kiln exhaust; and (5) DLA have been demonstrated as a control that does not interfere with the operation of the kiln (*i.e.*, airflow within the kiln). This last point is particularly important to the brick industry, which raised concerns with the other control devices that were considered by EPA. Industry commenters noted that among the controls considered for retrofit purposes, only DLA do not impact the types of products that can be produced, and not impacting the products is critical to the ongoing viability of a brick plant.

Multiple industry commenters agreed with key EPA statements made in the promulgation preamble, specifically where EPA: (1) Concluded that "retrofitting existing kilns with DIFF or DLS/FF systems is not feasible in many cases;" (2) acknowledged that "retrofitting existing BSCP kilns with certain APCD (particularly those that affect kiln airflow) can alter time-honored recipes for brick color, thereby changing the product;" (3) concluded that "DLA are the only currently available technology that can be used to retrofit existing kilns without potentially significant impacts on the production process;" (4) concluded that "it is not technologically and economically feasible for an existing large DLA-controlled kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 * * * to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS;" and (5) concluded that "DIFF and DLS/FF systems, if attempted on smaller kilns, would experience more difficulties with respect to airflow than systems on larger kilns because as the design airflow decreases, the acceptable operating range also would be expected to decrease." According to the commenters, the petitioners have provided no arguments or technical information that would change these conclusions.

In response, we agree that our decisions at promulgation were a natural progression based on the comments received after proposal regarding the control technologies used in the industry. The comments and additional technical information not available to EPA prior to proposal provided a more complete explanation of the application of DLA and other control technologies to existing kilns in the BSCP source category. The previous comments submitted and referenced by these commenters are included in the official public docket (Docket ID No. OAR–2002–0054). We also agree that there is no new technical information relevant to the MACT floor analysis in the final rule.

Some industry commenters also argued that if EPA does reconsider the DLA-based MACT for the BSCP industry, then decisions at promulgation that stemmed from the DLA-based MACT must also be reviewed. Specifically, EPA must: (1) Reevaluate the use of risk-based alternatives for this rule, and (2) revisit the issue of removing existing DLA from revised MACT determinations. In addition, they stated that EPA must re-propose the rule if the Agency concludes that MACT must be based on anything other than DLA. According to the commenters, numerous facilities have begun to comply with the promulgated rule by installing or committing to install DLA. The commenters stated that the large costs that would be incurred by ripping out a DLA and replacing it with a DIFF, DLS/FF or WS would be unreasonable, unwarranted, and not justified by the minimal benefits that would accrue, assuming the other APCD could be made to work. According to the commenters, those facilities most impacted and penalized would be the environmentally proactive facilities that have installed DLA to reduce emissions even before required by MACT, because they would be ripping out controls less than 2 years old.

As explained further below, based on our evaluation of the reconsideration comments received, EPA is not making any changes to the MACT floors and standards. We acknowledge that changes to the promulgated MACT floor and standards based on DLA control technology could necessitate reevaluation of related decisions; however, since EPA is not making any changes, these comments are not relevant to this action.

Earthjustice, in its comments on behalf of Sierra Club, reiterated its objection, originally stated at proposal, that EPA's decision to base MACT floors on the alleged performance of a control technology is unlawful, arbitrary and capricious. The commenter resubmitted its comments on the proposed rule and its Petition to Reconsider letter. The commenter argued that EPA's decision to base MACT floors on the alleged performance of DLA-equipped kilns contravenes the CAA MACT floor mandate because DLA-equipped kilns are not the best-performing kilns for which EPA has information. The commenter referenced EPA's own data, which indicated that (1) kilns equipped with other control technologies are achieving better emission levels than DLA-equipped kilns, (2) DLA have low hydrogen chloride (HCl) removal efficiencies, (3) DLA do not provide a mechanism for PM removal, and (4) DLA may actually create PM in some instances.

This commenter argued that EPA's statement that "DLA are the only currently available technology that can be used to retrofit existing large kilns without potentially significant impacts on the production process" is statutorily irrelevant. According to the commenter, the CAA requires EPA to set MACT floors regardless of what control equipment the best-performing kilns are using, and EPA cannot choose to ignore that mandate based on its policy preference for setting floors that allegedly reflect what is achievable through using DLA. The commenter stated that EPA's argument that DLA is the only available technology depends largely on arguments irrelevant to MACT floor calculations, *e.g.*, that retrofitting kilns with other technologies (1) would create solid waste or wastewater that is difficult or expensive to dispose of, and (2) could require kilns to change their recipes or incur downtime or reduction in capacity. The commenter argued that the possibility that other technologies may cost more or require sources to overcome technological difficulties does not support EPA's refusal to consider the performance of kilns equipped with those technologies. The commenter further argued that the record does not support or explain EPA's claim that those technologies may have technical difficulties, *e.g.*, that they need a different airflow, which might affect brick color. The commenter noted that many existing kilns already are using those other technologies, which shows that it is possible to maintain the airflows and still produce bricks in the

(ii) Additional materials.

(A) An August 2, 2005 letter from Richard Sprott, Utah Department of Environmental Quality, to Jerry Grover, Utah County Commission, addressing limits on Utah County authority to revise vehicle emission cut-points.

(B) An August 19, 2005 letter from Richard Sprott, Utah Department of Environmental Quality, to Richard Long, EPA Region VIII, providing supplemental Technical Support Documentation to Volumes 11 and 12 of the State's Technical Support Document for the Provo area's carbon monoxide attainment demonstration and maintenance plan that was submitted by Governor Walker on April 1, 2004.

(C) A September 8, 2005 letter from Jan Miller, Utah Department of Environmental Quality, to Kerri Fiedler, EPA Region VIII, to address typographical errors in "Section X, Part D, Utah County Vehicle Emissions Inspection and Maintenance Program" that was submitted by Governor Walker on April 1, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.345, the table entitled "Utah-Carbon Monoxide" is amended by revising the entry for "Provo Area" to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Provo Area				
Utah County (part) city of Provo	1/3/06	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 05–21837 Filed 11–1–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0031; FRL–7992–8]

RIN 2060–AK50

National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: EPA is amending the national emission standards for hazardous air pollutants (NESHAP) for primary aluminum reduction plants. The amendments will revise the emission limit for polycyclic organic matter (POM) applicable to one potline subcategory. The amendments will revise the compliance provisions to clarify the dates by which all plants must meet the NESHAP requirements, and to specify the time allowed to demonstrate initial compliance for a new or reconstructed potline, anode bake furnace, or pitch storage tank as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. We are making these amendments to reduce compliance uncertainties and improve understanding of the NESHAP requirements.

EFFECTIVE DATE: November 2, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2002–0031. All documents in the docket at listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp*. Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the EPA Docket Center, Docket ID Number OAR–2002–0031, EPA West Building, Room B102, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Lee Jones, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–5251, fax number (919) 541–3207, e-mail address: *Jones.DonnaLee@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331312	Establishments primarily engaged in producing primary aluminum by electrolytically reducing alumina.
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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.840 of subpart LL (NESHAP for Primary Aluminum Reduction Plants). 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 (General Provisions).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is achievable only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 3, 2006. Under CAA section 307(d)(7)(B), only an objection to the amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under CAA section 307(b)(2), the requirements that are established by this final action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Summary of the Final Amendments
A. What Is the Final POM Emission Limit for VSS2 Potlines?
B. What are the final changes to the compliance provisions?
III. Response to Comments on the Proposed Amendments
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 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. Congressional Review Act

I. Background

Section 112 of the CAA establishes a technology-based program to reduce stationary source emissions of hazardous air pollutants (HAP) from major sources. Major sources of HAP are those that have the potential to emit greater than 10 tons/year of any one HAP or 25 tons/year of any combination of HAP. The CAA requires the national emission standards to reflect the maximum degree of reduction in HAP emissions that is achievable. This level of control is commonly known as the maximum achievable control technology (MACT).

We issued the NESHAP for primary aluminum plants (40 CFR part 63, subpart LL) on October 7, 1997 (62 FR 52384). The NESHAP contain emission limits and standards for total fluorides (TF), which is a surrogate for hydrogen fluoride, and POM. These limits apply to each new or existing potline, paste production plant, and anode bake furnace and to each new pitch storage tank associated with primary aluminum production and located at a major source.

After promulgation, industry representatives identified two significant compliance-related issues:

- Review of the POM emission limit for the vertical stud Soderberg-2 (VSS2) subcategory of existing potlines, based on the availability of additional data; and
- The date by which the owner or operator must conduct a performance test to demonstrate initial compliance for an existing potline or anode bake furnace that has been shut down and subsequently restarted.

We received a petition from the industry requesting amendments to revise the POM emission limits for VSS2 potlines. As part of the request, the petition included additional test data (collected from 1999 through 2000) for all VSS2 potlines. We agreed to analyze the additional data and evaluate the achievability of the existing MACT limit for POM.

We proposed amendments to the existing rule on March 17, 2003 (68 FR 12645). We provided a 60-day comment period for the proposed amendments and received a total of five comment letters. Three of the comment letters were from interested private citizens, one was unrelated to this rulemaking, and one was from the industry trade association. A copy of each of these comment letters is available in the docket for this rulemaking (Docket ID No. OAR–2002–0031). The final amendments reflect full consideration of all the comments we received.

II. Summary of the Final Amendments

A. What Is the Final POM Emission Limit for VSS2 Potlines?

The VSS2 subcategory includes all existing vertical stud Soderberg potlines. Section 63.843(a)(2)(i) of the existing rule limits POM emissions from each existing VSS2 potline to 1.8 kilograms per Megagram (kg/Mg) or 3.6 pounds per ton (lb/ton) of aluminum produced for each potline. The final amendments change the POM limit to 2.85 kg/Mg (5.7 lb/ton) of aluminum produced. Table 2 to subpart LL gives the POM emission limits for potlines at those plants that comply by emissions averaging. The final POM emission averaging limits for VSS2 potlines are:

QUARTERLY POM LIMIT (LB/TON)

[For a given number of potlines]

2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
5.0	4.7	4.5	4.4	4.3	4.2	4.1

B. What are the final changes to the compliance provisions?

Section 63.847(a) of the existing rule currently requires the owner or operator to demonstrate initial compliance by specified dates. The final amendments clarify the introductory text of paragraph (a) by replacing the phrase "demonstrate initial compliance" with the word "comply." This change distinguishes the compliance date of the rule from the date by which a plant

must actually conduct their initial performance test.

Section 63.847(c) of the existing rule currently requires the owner or operator to conduct an initial performance test during the first month following the applicable compliance date. For a new or reconstructed affected source, the final amendments require that the owner or operator conduct the initial performance test by:

- The 180th day after startup for a potline (or potroom group). The 180-day period starts when the first pot in a potline (or potroom group) is energized.
- The 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).
- The 30th day after startup for a pitch storage tank (if the owner or operator elects to conduct an initial performance test rather than a design evaluation).

Today's final amendments will not change the timing of the initial performance test for existing affected sources (*i.e.*, the initial performance test must still be conducted during the first month after the compliance date).

We are also adding performance test dates following startup of an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and subsequently restarted. Again, the final amendments will require 180 days after startup for a potline (or potroom group) and 45 days from the start of the second anode bake cycle (but no later than 180 days from the startup of the anode bake furnace). The amendments will also change the notification requirements in 40 CFR 63.850(a) of the existing rule to require advance notice to the Administrator at least 30 days before restart of an affected source that has been shut down.

Appendix A to 40 CFR part 63, subpart LL, shows the requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) that do not apply to primary aluminum reduction plants. We are also amending appendix A to reflect the changes in performance test dates and the new notification requirement.

III. Response to Comments on the Proposed Amendments

We received only two substantive comments on the proposed amendments. Two other commenters simply stated a concern that the proposed emission limit for VSS2 potlines was too high. However, these commenters provided no additional information or rationale that would allow further consideration.

Comment: One commenter stated the 45-day period to complete startup and performance tests for an anode bake furnace is insufficient to ensure testing under normal operating conditions. The startup typically includes a refractory drying/curing cycle that may take from 45 to 120 days, depending on several factors. During the drying/curing cycle, firing rates are retarded, and in some cases, the drying cycle is performed with baked or partially-baked anodes, which results in POM emissions that are lower than normal. Consequently, a performance test conducted during the refractory drying/curing cycle is not representative of normal operation. The commenter offered two options to ensure testing under normal operating conditions: (1) start the 45-day period at the beginning of the "first anode bake cycle," which is defined as the cycle that occurs after the "refractory drying/curing cycle"; or (2) define "anode bake cycle" to include the curing/drying step and start the 45-day period at the beginning of the second anode bake cycle.

Response: We agree with the commenter's suggestion for clarifying the time period for startup of anode bake furnaces to ensure that the performance tests are performed under normal operating conditions. We agree that anode production during the drying/curing cycle is not representative of normal operating conditions. Consequently, we changed the rule provisions in 40 CFR 63.847(c)(2)(ii) and (c)(3)(ii) to state that the 45-day period starts at the beginning of the second anode bake cycle instead of the first anode bake cycle. However, we believe that performance testing should always be completed within 180 days from the beginning of the first anode bake cycle. With this change, performance testing will occur during normal anode production after the refractory has dried and cured. We also added a definition of "anode bake cycle" to the existing rule. "Anode bake cycle" means the period during which the regularly repeated sequence of loading, preheating, firing, cooling, and removing anodes from all sections within an anode bake furnace occurs one time.

Comment: One commenter stated that increased POM emissions are not justifiable because of the serious human health effects and the potential environmental and ecological effects due to POM's persistence in the environment, potential for accumulation, and toxicity. This commenter estimates that the revised VSS2 limit will increase POM emissions by 5.6 million lbs/year based on nationwide aluminum production of 2.7 million tons/year. The commenter asks how such emissions can be considered "not economically significant" and not in need of an environmental health assessment.

Response: We do not agree with the commenter's estimate of increased POM emissions. No increase in POM emissions will occur because the limit reflects the actual level of control that has been achieved by the one plant in the VSS2 category. The POM emissions limit will ensure that this plant's POM emissions do not increase in the future. In addition, the commenter's use of total nationwide aluminum production to generate emission estimates is inappropriate because the POM limit for VSS2 potlines will affect only one plant out of over 20 primary aluminum plants. Consequently, the commenter's assertion of increased emissions from primary aluminum plants has no basis in fact.

The revised emission limit correctly reflects MACT for potlines in the VSS2 subcategory based on CAA requirements. Our rationale for the revised POM limit for VSS2 potlines is detailed in the preamble to the proposed amendments (51 FR 12645, 12648; March 17, 2003), and a copy of our analysis of the data is included in the docket.

We understand the commenter's concern about the potential health effects of POM. Section 112(f) of the CAA requires that we evaluate health risks and ecological effects within 8 years after the promulgation of the MACT standards. If the technology-based standards are found not to be protective of public health and the environment, CAA section 112(f) requires us to promulgate more stringent standards that protect the public health with an ample margin of safety and reasonably prevent adverse environmental effects. These potential impacts will be fully evaluated in our upcoming review of the existing rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that the final amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The requirement for advance notification of startup for an existing affected source that has been shut down has no impact because similar advance notification is already required for a new or reconstructed affected source. However, OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart LL) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0360, EPA Information Collection Request (ICR) No. 1767.04. A copy of the OMB-approved ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division, EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, or by calling (202) 566–1672.

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; 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.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final amendments. For the purposes of assessing the impact of today's final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small government 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 that is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The final amendments will not impose any requirements on small entities. None of the plants in this industry is classified as a small entity.

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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 amendments 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 1 year. No costs are attributable to the final amendments. Thus, the final amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final amendments are not subject to the requirements of 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" 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."

The final amendments 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final amendments 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. No tribal governments own facilities subject to the rule. Thus, Executive Order 13175 does not apply to the final amendments.

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, the 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 regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final amendments are not subject to Executive Order 13045 because they are based on control technology and not on health or safety risks.

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

The final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are 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 (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. The EPA will submit a report containing the 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). The amendments will be effective on November 2, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: October 25, 2005.

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 LL—[Amended]

■ 2. Section 63.842 is amended by adding, in alphabetical order, a definition for the term, "Anode bake cycle" to read as follows:

§ 63.842 Definitions.

* * * * *

Anode bake cycle means the period during which the regularly repeated sequence of loading, preheating, firing, cooling, and removing anodes from all sections within an anode bake furnace occurs one time.

* * * * *

■ 3. Section 63.843 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 63.843 Emission limits for existing sources.

(a) * * *

(2) * * *

(iii) 2.85 kg/Mg (5.7 lb/ton) of aluminum produced for each VSS2 potline.

* * * * *

■ 4. Section 63.847 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 63.847 Compliance provisions.

(a) *Compliance dates.* The owner or operator of a primary aluminum plant must comply with the requirements of this subpart by:

* * * * *

(c) *Performance test dates.* Following approval of the site-specific test plan, the owner or operator must conduct a performance test to demonstrate initial compliance according to the procedures in paragraph (d) of this section. If a performance test has been conducted on the primary control system for potlines or for the anode bake furnace within the 12 months prior to the compliance date, the results of that performance test may be used to demonstrate initial compliance. The owner or operator must conduct the performance test:

(1) During the first month following the compliance date for an existing potline (or potroom group) or anode bake furnace;

(2) By the date determined according to the requirements in paragraph (c)(2)(i), (ii), or (iii) of this section for a new or reconstructed potline, anode bake furnace, or pitch storage tank (for which the owner or operator elects to conduct an initial performance test):

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).

(iii) By the 30th day following startup for a pitch storage tank. The 30-day period starts when the tank is first used to store pitch.

(3) By the date determined according to the requirements in paragraph (c)(3)(i) or (ii) of this section for an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and is subsequently restarted:

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).

* * * * *

■ 5. Section 63.850 is amended by:

■ a. Revising paragraph (a)(7);

■ b. Revising paragraph (a)(8); and

■ c. Adding paragraph (a)(9) to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

(a) * * *

(7) One-time notification for each affected source of the intent to use an HF continuous emission monitor;

(8) Notification of compliance approach. The owner or operator shall develop and submit to the applicable regulatory authority, if requested, an engineering plan that describes the techniques that will be used to address the capture efficiency of the reduction cells for gaseous hazardous air pollutants in compliance with the emission limits in §§ 63.843, 63.844, and 63.846; and

(9) One-time notification of startup of an existing potline or potroom group, anode bake furnace, or paste production plant that was shut down for a long period and subsequently restarted. The owner or operator must provide written notice to the Administrator at least 30 days before the startup.

* * * * *

■ 6. Table 2 to subpart LL is amended by revising the entry for "VSS2 potlines" to read as follows:

TABLE 2 TO SUBPART LL OF PART 63.—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	Quarterly POM limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
*	*	*	*	*	*	*	*
VSS2	5.0	4.7	4.5	4.4	4.3	4.2	4.1

■ 7. Appendix A to subpart LL is amended by revising the title of appendix A and by adding new entries, in numerical order, for § 63.7(a)(2)(ii) and (iii) and § 63.9(b)(1)–(5) to read as follows:

APPENDIX A TO SUBPART LL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

[40 CFR part 63, subpart A]

General provisions citation	Requirement	Applies to subpart LL	Comment
*	*	*	*
63.7(a)(2)(ii) and (iii)	Performance testing requirements.	No	Subpart LL specifies performance test dates.
*	*	*	*
63.9(b)(1)–(5)	Initial notifications	Yes, except as noted in "comment" column.	§ 63.850(a)(9) includes requirement for startup of an existing affected source that has been shut down.
*	*	*	*

[FR Doc. 05–21840 Filed 11–1–05; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2692; MB Docket No. 04–218; RM–10987, RM–11237]

Radio Broadcasting Services; Cimarron, Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 69 FR 35561 (June 25, 2004) this *Report and Order* reallots Channel 264C3, Station KLVF(FM) ("KLVF"), Las Vegas, New Mexico, to Pecos, New Mexico, and modifies Station KLVF's license accordingly. The coordinates for Channel 264C3 at Pecos, New Mexico, are 35–40–48 NL and 105–32–26 WL, with a site restriction of 16.9 kilometers (10.5 miles) northeast of Pecos. The *Report and Order* also allots Channel 296A to Las Vegas, New Mexico, at coordinates of 35–36–33 NL and 105–09–31 WL, with a site restriction of 5.4 kilometers (3.3 miles) east of Las Vegas, New Mexico.

DATES: Effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–218, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–

Federal Register

Wednesday,
October 12, 2005

Part II

Environmental Protection Agency

40 CFR Parts 9, 63, 260 et al.
National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63, 260, 264, 265, 266, 270 and 271

[FRL–7971–8]

RIN 2050–AE01

National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. EPA has identified HWCs as major sources of hazardous air pollutant (HAP) emissions. These standards implement section 112(d) of the Clean Air Act (CAA) by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT).

The HAP emitted by HWCs include arsenic, beryllium, cadmium, chromium, dioxins and furans, hydrogen chloride and chlorine gas, lead, manganese, and mercury. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation to the lung, skin, and mucus membranes, effects on the central nervous system, kidney damage, and cancer. The adverse health effects associated with exposure to these specific HAP are further described in the preamble. For many HAP, these findings have only been shown with concentrations higher than those typically in the ambient air.

This action also presents our decision regarding the February 28, 2002 petition for rulemaking submitted by the Cement Kiln Recycling Coalition, relating to EPA's implementation of the so-called omnibus permitting authority under section 3005(c) of the Resource Conservation and Recovery Act (RCRA). That section requires that each permit issued under RCRA contain such terms and conditions as permit writers determine to be necessary to protect human health and the environment. In that petition, the Cement Kiln Recycling Coalition requested that we repeal the existing site-specific risk assessment policy and technical guidance for hazardous waste combustors and that we promulgate the policy and guidance as rules in accordance with the Administrative Procedure Act if we continue to believe that site-specific risk assessments may be necessary.

DATES: The final rule is effective December 12, 2005. The incorporation by reference of Method 0023A into § 63.14 is approved by the Director of the Federal Register as of December 12, 2005.

ADDRESSES: The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, Room B–102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For more information concerning applicability and rule determinations, contact your State or local representative or appropriate EPA Regional Office representative. For information concerning rule development, contact Michael Galbraith, Waste Treatment Branch, Hazardous Waste Minimization and Management Division, (5302W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone number (703) 605–0567, fax number (703) 308–8433, electronic mail address *galbraith.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

The promulgation of the final rule would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.			
	562211	4953	Incinerator, hazardous waste
	327310	3241	Cement manufacturing, clinker production
	327992	3295	Ground or treated mineral and earth manufacturing
	325	28	Chemical Manufacturers
	324	29	Petroleum Refiners
	331	33	Primary Aluminum
	333	38	Photographic equipment and supplies
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials
	422	51	Chemical and Allied Products, N.E.C
	512, 541, 561, 812	73	Business Services, N.E.C.
	512, 514, 541, 711	89	Services, N.E.C.
	924	95	Air, Water and Solid Waste Management

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in Part II of this preamble. 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.

Abbreviations and Acronyms Used in This Document

acfm actual cubic feet per minute
Btu British thermal units
CAA Clean Air Act
CFR Code of Federal Regulations
DRE destruction and removal efficiency
dscf dry standard cubic foot
dscm dry standard cubic meter

EPA Environmental Protection Agency
FR Federal Register
gr/dscf grains per dry standard cubic foot
HAP hazardous air pollutant(s)
ICR Information Collection Request
kg/hr kilograms per hour
kW-hour kilo Watt hour
MACT Maximum Achievable Control Technology
mg/dscm milligrams per dry standard cubic meter
MMBtu million British thermal unit
ng/dscm nanograms per dry standard cubic meter
NESHAP national emission standards for HAP
ng nanograms
POHC principal organic hazardous constituent
ppmv parts per million by volume
ppmw parts per million by weight
Pub. L. Public Law
RCRA Resource Conservation and Recovery Act
SRE system removal efficiency
TEQ toxicity equivalence
µg/dscm micrograms per dry standard cubic meter
U.S.C. United States Code

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Part One: Background and Summary

I. What Is the Statutory Authority for This Standard?

Section 112 of the Clean Air Act requires that the EPA promulgate regulations requiring the control of HAP emissions from major and certain area sources. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and (in a second round of standard setting) (f).

EPA's initial list of categories of major and area sources of HAP selected for regulation in accordance with section 112(c) of the Act was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Hazardous waste incinerators, Portland cement plants, clay products manufacturing (including lightweight aggregate kilns), industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces are among the listed 174 categories of sources. The listing was based on the Administrator's determination that these sources may reasonably be anticipated to emit one or more of the 186 listed HAP in quantities sufficient to designate them as major sources.

II. What Is the Regulatory Development Background of the Source Categories in the Final Rule?

Today's notice finalizes standards for controlling emissions of HAP from hazardous waste combustors: incinerators, cement kilns, lightweight aggregate kilns, boilers, process heaters [1], and hydrochloric acid production furnaces that burn hazardous waste. We call incinerators, cement kilns, and lightweight aggregate kilns Phase I sources because we have already promulgated standards for those source categories. We call boilers and hydrochloric acid production furnaces Phase II sources because we intended to promulgate MACT standards for those source categories after promulgating MACT standards for Phase I sources. The regulatory background of Phase I and Phase II source categories is discussed below.

A. Phase I Source Categories

Phase I combustor sources are regulated under the Resource Conservation and Recovery Act (RCRA), which establishes a "cradle-to-grave" regulatory structure overseeing the safe treatment, storage, and disposal of hazardous waste. We issued RCRA rules to control air emissions from hazardous waste burning incinerators in 1981, 40 CFR Parts 264 and 265, Subpart O, and from cement kilns and lightweight aggregate kilns that burn hazardous waste in 1991, 40 CFR Part 266, Subpart H. These rules rely generally on risk-based standards to assure control necessary to protect human health and the environment, the applicable RCRA standard. See RCRA section 3004 (a) and (q).

The Phase I source categories also are subject to standards under the Clean Air Act. We promulgated standards for Phase I sources on September 30, 1999 (64 FR 52828). This final rule is referred to in this preamble as the Phase I rule or 1999 final rule. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. The rule regulates emissions of numerous hazardous air pollutants: dioxin/furans, other toxic organics (through surrogates), mercury, other toxic metals (both directly and through a surrogate), and hydrogen chloride and chlorine gas. Where necessary, Section 3005(c)(3) of RCRA provides the authority to impose additional conditions on a source-by-source basis in a RCRA permit if necessary to protect human health and the environment.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the Phase I rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit granted portions of the Sierra Club's petition for review and vacated the challenged portions of the standards. *Cement Kiln Recycling Coalition* v. *EPA*, 255 F. 3d 855 (D.C. Cir. 2001). The court held that EPA had not demonstrated that its calculation of MACT floors met the statutory requirement of being no less stringent than (1) the average emission limitation achieved by the best performing 12 percent of existing sources and, for new sources, (2) the emission control achieved in practice by the best controlled similar source for new sources. 255 F.3d at 861, 865–66. As a remedy, the court, after declining to rule on most of the issues presented in the industry petitions for review, vacated the "challenged regulations," stating that: "[W]e have chosen not to reach the bulk of industry petitioners' claims, and leaving the regulations in place during remand would ignore petitioners' potentially meritorious challenges." Id.

[1] A process heater meets the RCRA definition of a boiler. Therefore, process heaters that burn hazardous wastes are covered under subpart EEE as boilers, and are discussed as such in subsequent parts of the preamble.

at 872. Examples of the specific challenges the Court indicated might have merit were provisions relating to compliance during start up/shut down and malfunction events, including emergency safety vent openings, the dioxin/furan standard for lightweight aggregate kilns, and the semivolatile metal standard for cement kilns. *Id.* However, the Court stated, "[b]ecause this decision leaves EPA without standards regulating [hazardous waste combustor] emissions, EPA (or any of the parties to this proceeding) may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards." Id.

Acting on this invitation, all parties moved the Court jointly to stay the issuance of its mandate for four months to allow EPA time to develop interim standards, which would replace the vacated standards temporarily, until final standards consistent with the Court's mandate are promulgated. The interim standards were published on February 13, 2002 (67 FR 6792). EPA did not justify or characterize these standards as conforming to MACT, but rather as an interim measure to prevent adverse consequences that would result from the regulatory gap resulting from no standards being in place. Id. at 6793, 6795–96; see also 69 FR at 21217 (April 20, 2004). EPA also entered into a settlement agreement, enforceable by the Court of Appeals, to issue final standard conforming to the Court's mandate by June 14, 2005. That date has since been extended to September 14, 2005.

B. Phase II Source Categories

Phase II combustors—boilers and hydrochloric acid production furnaces—are also regulated under the Resource Conservation and Recovery Act (RCRA) pursuant to 40 CFR Part 266, Subpart H, and (for reasons discussed below) are also subject to the MACT standard setting process in section 112(d) of the CAA. We delayed promulgating MACT standards for these source categories pending reevaluation of the MACT standard-setting methodology following the Court's decision to vacate the standards for the Phase I source categories. We also have entered into a judicially enforceable consent decree with Sierra Club that requires EPA to promulgate MACT standards for the Phase II sources by June 14, 2005, since extended to September 14, 2005—the same date that (for independent reasons) is required for the replacement standards for Phase I sources.

III. How Was the Final Rule Developed?

We proposed standards for HWCs on April 20, 2004 (69 FR 21197). The public comment period closed on July 6, 2004. In addition, on February 4, 2005, we requested certain key commenters to comment by email on a limited number of issues arising from public comments on the proposed rule. The comment period for those issues closed on March 7, 2005.

We received approximately 100 public comment letters on the proposed rule and the subsequent direct request for comments. Comments were submitted by owner/operators of HWCs, trade associations, state regulatory agencies and their representatives, and environmental groups. Today's final rule reflects our consideration of all of the comments and additional information we received. Major public comments on the proposed rule along with our responses, are summarized in this preamble.

IV. What Is the Relationship Between the Final Rule and Other MACT Combustion Rules?

The amendments to the Subpart EEE, Part 63, standards for hazardous waste combustors apply to the source categories that are currently subject to that subpart—incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste. Today's final rule, however, also amends Subpart EEE to establish MACT standards for the Phase II source categories—those boilers and hydrochloric acid production furnaces that burn hazardous waste.

Generally speaking, you are an affected source pursuant to Subpart EEE if you combust, or have previously combusted, hazardous waste in an incinerator, cement kiln, lightweight aggregate kiln, boiler, or hydrochloric acid production furnace. You continue to be an affected source until you cease burning hazardous waste and initiate closure requirements pursuant to RCRA. Affected sources do not include: (1) Sources exempt from regulation under 40 CFR part 266, subpart H, because the only hazardous waste they burn is listed under 40 CFR 266.100(c); (2) research, development, and demonstration sources exempt under § 63.1200(b); and (3) boilers exempt from regulation under 40 CFR part 266, subpart H, because they meet the definition of small quantity burner under 40 CFR 266.108. See § 63.1200(b).

If you never previously combusted hazardous waste, or have ceased burning hazardous waste and initiated RCRA closure requirements, you are not subject to Subpart EEE. Rather, EPA has promulgated separate MACT standards for sources that do not burn hazardous waste within the following source categories: commercial and industrial solid waste incinerators (40 CFR Part 60, Subparts CCCC and DDDD); Portland cement manufacturing facilities (40 CFR Part 63, Subpart LLL); industrial/commercial/institutional boilers and process heaters (40 CFR Part 63, Subpart DDDDD); and hydrochloric acid production facilities (40 CFR Part 63, Subpart NNNNN). In addition, EPA considered whether to establish MACT standards for lightweight aggregate manufacturing facilities that do not burn hazardous waste, and determined that they are not major sources of HAP emissions. Thus, EPA has not established MACT standards for lightweight aggregate manufacturing facilities that do not burn hazardous waste.

Note that non-stack emissions points are not regulated under Subpart EEE.[2] Emissions attributable to storage and handling of hazardous waste prior to combustion (i.e., emissions from tanks, containers, equipment, and process vents) would continue to be regulated pursuant to either RCRA Subpart AA, BB, and CC and/or an applicable MACT that applies to the before-mentioned material handling devices. Emissions unrelated to the hazardous waste operations may be regulated pursuant to other MACT rulemakings. For example, Portland cement manufacturing facilities that combust hazardous waste are subject to both Subpart EEE and Subpart LLL, and hydrochloric acid production facilities that combust hazardous waste may be subject to both Subpart EEE and Subpart NNNNN.[3] In these instances Subpart EEE controls HAP emissions from the cement kiln and hydrochloric acid production furnace stack, while Subparts LLL and NNNNN would control HAP emissions from other operations that are not directly related to the combustion of hazardous waste (e.g., clinker cooler emissions for cement production facilities, and hydrochloric acid product transportation and storage for hydrochloric acid production facilities).

Note that if you temporarily cease burning hazardous waste for any reason, you remain an affected source and are still subject to the applicable Subpart

[2] Note, however, that fugitive emissions attributable to the combustion of hazardous waste from the combustion device are regulated pursuant to Subpart EEE.

[3] Hydrochloric acid production furnaces that combust hazardous waste are also affected sources subject to Subpart NNNNN if they produce a liquid acid product that contains greater than 30% hydrochloric acid.

EEE requirements. However, even as an affected source, the emission standards or operating limits do not apply if: (1) Hazardous waste is not in the combustion chamber and you elect to comply with other MACT (or CAA section 129) standards that otherwise would be applicable if you were not burning hazardous waste, e.g., the nonhazardous waste burning Portland Cement Kiln MACT (Subpart LLL); or (2) you are in a startup, shutdown, or malfunction mode of operation.

V. What Are the Health Effects Associated With Pollutants Emitted by Hazardous Waste Combustors?

Today's final rule protects air quality and promotes the public health by reducing the emissions of some of the HAP listed in Section 112(b)(1) of the CAA. Emissions data collected in the development of this final rule show that metals, hydrogen chloride and chlorine gas, dioxins and furans, and other organic compounds are emitted from hazardous waste combustors. The HAP that would be controlled with this rule are associated with a variety of adverse health affects. These adverse health effects include chronic health disorders (e.g., irritation of the lung, skin, and mucus membranes and effects on the blood, digestive tract, kidneys, and central nervous system), and acute health disorders (e.g., lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system). Provided below are brief descriptions of risks associated with HAP that are emitted from hazardous waste combustors.

Antimony

Antimony occurs at very low levels in the environment, both in the soils and foods. Higher concentrations, however, are found at antimony processing sites, and in their hazardous wastes. The most common industrial use of antimony is as a fire retardant in the form of antimony trioxide. Chronic occupational exposure to antimony (generally antimony trioxide) is most commonly associated with "antimony pneumoconiosis," a condition involving fibrosis and scarring of the lung tissues. Studies have shown that antimony accumulates in the lung and is retained for long periods of time. Effects are not limited to the lungs, however, and myocardial effects (effects on the heart muscle) and related effects (e.g., increased blood pressure, altered EKG readings) are among the best-characterized human health effects associated with antimony exposure. Reproductive effects (increased incidence of spontaneous abortions and higher rates of premature deliveries) have been observed in female workers exposed in an antimony processing facilities. Similar effects on the heart, lungs, and reproductive system have been observed in laboratory animals.

EPA assessed the carcinogenicity of antimony and found the evidence for carcinogenicity to be weak, with conflicting evidence from inhalation studies with laboratory animals, equivocal data from the occupational studies, negative results from studies of oral exposures in laboratory animals, and little evidence of mutagenicity or genotoxicity.[4] As a consequence, EPA concluded that insufficient data are available to adequately characterize the carcinogenicity of antimony and, accordingly, the carcinogenicity of antimony cannot be determined based on available information. However, the International Agency for Research on Cancer in an earlier evaluation, concluded that antimony trioxide is "possibly carcinogenic to humans" (Group 2B).

Arsenic

Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects, such as spontaneous abortions. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion or inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic arsenic as a Group A, human carcinogen.

Beryllium

Chronic inhalation exposure of humans to high levels of beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to high levels of beryllium has been demonstrated to cause lung cancer in rats and monkeys. Human studies are limited, but suggest a causal relationship between beryllium exposure and an increased risk of lung cancer. We have classified beryllium as a Group B1, probable human carcinogen, when inhaled; data are inadequate to determine whether beryllium is carcinogenic when ingested.

Cadmium

Chronic inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. EPA has classified cadmium as a Group B1, probable carcinogen.

Chlorine gas

Chlorine is an irritant to the eyes, the upper respiratory tract, and lungs. Chronic exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. A National Toxicology Program (NTP) study showed no evidence of carcinogenic activity in male rats or male and female mice, and equivocal evidence in female rats, from ingestion of chlorinated water. The EPA has not classified chlorine for potential carcinogenicity. In the absence of specific scientific evidence to the contrary, it is the Agency's policy to classify noncarcinogenic effects as threshold effects. RfC development is the default approach for threshold (or nonlinear) effects.

Chromium

Chromium may be emitted in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity for inhalation exposures. Bronchitis, decreases pulmonary function, pneumonia, and other respiratory effects have been noted from chronic high does exposure in occupational settings due to chromium VI. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is

[4] See "Evaluating THe Carcinogenicity of Antimony," Rish Assessment Issue Paper (98–030/07–26–99), Superfund Technical Support Center. National Center for Environmental Assessment, July 26, 1999.

a carcinogen, resulting in an increased risk of lung cancer. EPA has classified chromium VI as a Group A, human carcinogen.

Chromium III is less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily intake of 50 to 200 micrograms per day recommended for an adult. The body can detoxify some amount of chromium VI to chromium III. EPA has not classified chromium III with respect to carcinogenicity.

Cobalt

Cobalt is a relatively rare metal that is produced primarily as a by-product during refining of other metals, especially copper. Cobalt has been widely reported to cause respiratory effects in humans exposed by inhalation, including respiratory irritation, wheezing, asthma, and pneumonia. Cardiomyopathy (damage to the heart muscle) has also been reported, although this effect is better known from oral exposure. Other effects of oral exposure in humans are polycythemia (an abnormally high number of red blood cells) and the blocking of uptake of iodine by the thyroid. In addition, cobalt is a sensitizer in humans by any route of exposure. Sensitized individuals may react to inhalation of cobalt by developing asthma or to ingestion or dermal contact with cobalt by developing dermatitis. Cobalt is as a vital component of vitamin B_{12}, though there is no evidence that intake of cobalt is ever limiting in the human diet.

A number of epidemiological studies have found that exposures to cobalt are associated with an increased incidence of lung cancer in occupational settings. The International Agency for Research on Cancer (part of the World Health Organization) classifies cobalt and cobalt compounds as "possibly carcinogenic to humans" (Group 2B). The American Conference of Governmental Industrial Hygienists has classified cobalt as a confirmed animal carcinogen with unknown relevance to humans (category A3). An EPA assessment concludes that under EPA's cancer guidelines, cobalt would be considered likely to be carcinogenic to humans.[5]

Dioxins and Furans

Exposures to 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8–TCDD) and related compounds at levels 10 times or less above those modeled to approximate average background exposure have resulted in adverse non-cancer health effects in animals. This statement is based on assumptions about the toxic equivalent for these compounds, for which there is acknowledged uncertainty. These effects include changes in hormone systems, alterations in fetal development, reduced reproductive capacity, and immunosuppression. Effects that may be linked to dioxin and furan exposures at low dose in humans include changes in markers of early development and hormone levels. Dioxin and furan exposures are associated with altered liver function and lipid metabolism changes in activity of various liver enzymes, depression of the immune system, and endocrine and nervous system effects. EPA in its 1985 dioxin assessment classified 2,3,7,8–TCDD as a probable human carcinogen. The International Agency for Research on Cancer (IARC) concluded in 1997 that the overall weight of the evidence was sufficient to characterize 2,3,7,8–TCDD as a known human carcinogen.[6] In 2001 the U.S. Department of Health and Human Services National Toxicology Program in their 9th Report on Carcinogens classified 2,3,7,8–TCDD as a known human carcinogen.[7]

The chemical and environmental stability of dioxins and their tendency to accumulate in fat have resulted in their detection within many ecosystems. In the United States and elsewhere, accidental contamination of the environment by 2,3,7,8–TCDD has resulted in deaths in many species of wildlife and domestic animals.[8] High residues of this compound in fish have resulted in closing rivers to fishing. Laboratory studies with birds, mammals, aquatic organisms, and other species have demonstrated that exposure to 2,3,7,8–TCDD can result in acute and delayed mortality as well as carcinogenic, teratogenic, mutagenic, histopathologic, immunotoxic, and reproductive effects, depending on dose received, which varied widely in the experiments.[9]

Hydrogen chloride/hydrochloric acid

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Chronic (long-term) occupational exposure to hydrochloric acid has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid in humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. EPA has not classified hydrochloric acid for carcinogenicity. In the absence of specific scientific evidence to the contrary, it is the Agency's policy to classify noncarcinogenic effects as threshold effects. RfC development is the default approach for threshold (or nonlinear) effects.

Lead

Lead can cause a variety of effects at low dose levels. Chronic exposure to high levels of lead in humans results in effects on the blood, central nervous system, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. EPA has classified lead as a Group B2, probable human carcinogen.

Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day (mg/d). Chronic

[5] See "Derivation of a Provisional Carcinogenicity Assessment for Cobalt and Compounds," Risk Assessment Issue Paper (00–122/1–15–02), Superfund Technical Support Center, National Center for Environmental Assessment, January 15, 2002. This is a provisional EPA assessment that has been externally peer reviewed but has not yet been incorporated in IRIS.

[6] IARC (International Agency for Research on Cancer). (1997) IARC monographs on the evaluation of carcinogenic risks to humans. Vol. 69. Polychlorinated dibenzo-para-dioxins and polychlorinated dibenzofurans. Lyon, France.

[7] The U.S. Department of Health and Human Services, National Toxicology Program 9th Report on Carcinogens, Revised January 2001.

[8] This does not necessarily apply in regard to laboratory testing, which tend to use 2,3,7,8 TCDD as the test compound.

[9] Eisler, R. 1986. Dioxin hazards to fish, wildlife, and invertebrates: a synoptic review. U.S. Fish and Wildlife Service Biological Report. 85(1.8).

exposure to high levels of manganese by inhalation in humans results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. EPA has classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Mercury

Mercury exists in three forms: elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methyl mercury). Each form exhibits different health effects. Various sources may release elemental or inorganic mercury; environmental methyl mercury is typically formed by biological processes after mercury has precipitated from the air.

Chronic exposure to elemental mercury in humans also affects the central nervous system, with effects such as increased excitability, irritability, excessive shyness, and tremors. The EPA has not classified elemental mercury with respect to cancer.

The major effect from chronic exposure to inorganic mercury is kidney damage. Reproductive and developmental animal studies have reported effects such as alterations in testicular tissue, increased embryo resorption rates, and abnormalities of development. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. EPA has classified mercuric chloride as a Group C, possible human carcinogen.

Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hand and forearms, is the most common effect in humans from chronic exposure to nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive of developmental effects of nickel in humans, but animal studies have reported such effects, although a consistent dose-response relationship has not been seen. Nickel forms released from industrial boilers include soluble nickel compounds, nickel subsulfide, and nickel carbonyl. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal studies of soluble nickel compounds i.e., nickel carbonyl) have reported lung tumors. The EPA has classified nickel refinery subsulfide as a Group A, human carcinogen and nickel carbonyl as a Group B2, probable human carcinogen.

Organic HAP

Organic HAPs include halogenated and nonhalogenated organic classes of compounds such as polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs). Both PAHs and PCBs are classified as potential human carcinogens, and are considered toxic, persistent and bioaccumulative. Organic HAP also include compounds such as benzene, methane, propane, chlorinated alkanes and alkenes, phenols and chlorinated aromatics. Adverse health effects of HAPs include damage to the immune system, as well as neurological, reproductive, developmental, respiratory and other health problems.

Particulate Matter

Atmospheric particulate matter (PM) is composed of sulfate, nitrate, ammonium, and other ions, elemental carbon, particle-bound water, a wide variety of organic compounds, and a large number of elements contained in various compounds, some of which originate from crustal materials and others from combustion sources. Combustion sources are the primary origin of trace metals found in fine particles in the atmosphere. Ambient PM can be of primary or secondary origin.

Exposure to particles can lead to a variety of serious health effects. The largest particles do not get very far into the lungs, so they tend to cause fewer harmful health effects. Fine particles pose the greatest problems because they can get deep into the lungs. Scientific studies show links between these small particles and numerous adverse health effects. Epidemiological studies have shown a significant correlation between elevated PM levels and premature mortality. Other important effects associated with PM exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM exposure include older adults and people with heart and lung disease.

This is only a partial summary of adverse health and environmental effects associated with exposure to PM. Further information is found in the 2004 Criteria Document for PM ("Air Quality Criteria for Particulate Matter," EPA/600/P–99/002bF) and the 2005 Staff Paper for PM (EPA, "Review of the National Ambient Air Quality Standards for Particulate Matter, Policy Assessment of Scientific and Technical Information: OAQPS Staff Paper," (June 2005)).

Selenium

Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Studies of humans chronically exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and listlessness. The consumption of high levels of selenium by pigs, sheep, and cattle has been shown to interfere with normal fetal development and to produce birth defects. Results of human and animal studies suggest that supplementation with some forms of selenium may result in a reduced incidence of several tumor types. One selenium compound, selenium sulfide, is carcinogenic in animals exposed orally. We have classified elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

Part Two: Summary of the Final Rule

I. What Source Categories and Subcategories Are Affected by the Final Rule?

Today's rule promulgates standards for controlling emissions of HAP from hazardous waste combustors: incinerators, cement kilns, lightweight aggregate kilns, boilers, and hydrochloric acid production furnaces that burn hazardous waste. A description of each source category can be found in the proposed rule (see 69 FR at 21207–08).

Hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns are currently subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants (NESHAP). Today's rule revises the emissions limits and certain compliance and monitoring provisions of subpart EEE for these

source categories. The definitions of hazardous waste incinerator, hazardous waste cement kiln, and hazardous waste lightweight aggregate kiln appear at 40 CFR 63.1201(a).

Boilers that burn hazardous waste are also affected sources under today's rule. The rule uses the RCRA definition of a boiler under 40 CFR 260.10 and includes industrial, commercial, and institutional boilers as well as thermal units known as process heaters. Hazardous waste burning boilers will continue to comply with the emission standards found under 40 CFR part 266, subpart H (i.e., the existing RCRA rules) until they demonstrate compliance with the requirements of 40 CFR part 63, subpart EEE, and, for permitted sources, subsequently remove these requirements from their RCRA permit.

Finally, hydrochloric acid production furnaces that burn hazardous waste are affected sources under today's rule. These furnaces are a type of halogen acid furnace included in the definition of "industrial furnace" defined at § 260.10. Hydrochloric acid production furnaces that burn hazardous waste will continue to comply with the emission standards found under 40 CFR part 266, subpart H, until they demonstrate compliance with 40 CFR part 63, subpart EEE, and, for permitted sources, subsequently remove these requirements from their RCRA permit.

II. What Are the Affected Sources and Emission Points?

Today's rule apply to each major and area source incinerator, cement kiln, lightweight aggregate kiln, boiler, and hydrochloric acid production furnace that burns hazardous waste.[10] We note that only major source boilers and hydrochloric acid production furnaces are subject to the full suite of subpart EEE emission standards.[11] The emissions limits apply to each emission point (e.g., stack) where gases from the combustion of hazardous waste are discharged or otherwise emitted into the atmosphere. For facilities that have multiple combustion gas discharge points, the emission limits generally apply to each emission point. A cement kiln, for example, could be configured to have dual stacks where the majority of combustion gases are discharged though the main stack and other combustion gases emitted through a separate stack, such as an alkali bypass stack. In that case, the emission standards would apply separately to each of these stacks.[12]

III. What Pollutants Are Emitted and Controlled?

Hazardous waste combustors emit dioxin/furans, sometimes at high levels depending on the design and operation of the emission control equipment, and, for incinerators, depending on whether a waste heat recovery boiler is used. All hazardous waste combustors can also emit high levels of other organic HAP if they are not designed, operated, and maintained to operate under good combustion conditions.

Hazardous waste combustors can also emit high levels of metal HAP, depending on the level of metals in the waste feed and the design and operation of air emissions control equipment. Hazardous waste burning hydrochloric acid production furnaces, however, generally feed and emit low levels of metal HAP.

All of these HAP metals (except for the volatile metal mercury) are emitted as a portion of the particulate matter emitted by these sources. Hazardous waste combustors can also emit high levels of particulate matter, except that hydrochloric acid production furnaces generally feed hazardous wastes with low ash content and consequently emit low levels of particulate matter. A majority of particulate matter emissions from hazardous waste combustors are in the form of fine particulate. Particulate emissions from incinerators and liquid fuel-fired boilers depend on the ash content of the hazardous waste feed and the design and operation of air emission control equipment. Particulate emissions from cement kilns and lightweight aggregate kilns are not significantly affected by the ash content of the hazardous waste fuel because uncontrolled particulate emissions are attributable primarily to fine raw material entrained in the combustion gas. Thus, particulate emissions from kilns depends on operating conditions that effect entrainment of raw material, and the design and operation of the emission control equipment.

IV. Does the Final Rule Apply to Me?

The final rule applies to you if you own or operate a hazardous waste combustor—an incinerator, cement kiln, lightweight aggregate kiln, boiler, or hydrochloric acid production facility that burns hazardous waste. The final rule does not apply to a source that meets the applicability requirements of § 63.1200(b) for reasons explained at 69 FR at 21212–13.

V. What Are the Emission Limitations?

You must meet the emission limits in Tables 1 and 2 of this preamble for your applicable source category and subcategory. Standards are corrected to 7 percent oxygen. As noted at proposal, we previously promulgated requirements for carbon monoxide, total hydrocarbon, and destruction and removal efficiency standards under subpart EEE for incinerators, cement kilns, and lightweight aggregate kilns. We view these standards as unaffected by the Court's vacature of the challenged regulations in its decision of July 24, 2001. We are therefore not re-promulgating and reopening consideration of these standards in today's final rule, but are summarizing these standards in Tables 1 and 2 for reader's convenience.[13] See 69 FR at 21221, 21248, 21261 and 21274.

Liquid fuel boilers equipped with dry air pollution control devices are subject to different dioxin/furan emission standards than liquid fuel boilers that are not equipped with dry air pollution control devices.[14] Liquid fuel boilers processing hazardous waste with a heating value less than 10,000 BTU/lb must comply with the emission concentration-based standards (expressed as mass of total HAP emissions per volume of stack gas emitted) for mercury, semivolatile metals, low volatile metals, and total chlorine. Liquid fuel boilers processing hazardous waste with heating values greater than 10,000 BTU/lb must comply with thermal emissions-based standards (expressed as mass of HAP emissions attributable to the hazardous waste per million BTU input from the hazardous waste) for those same pollutants. Low volatile metal standards for liquid fuel boilers apply only to emissions of chromium, whereas the low volatile metal standard for the other source categories applies to the combined emissions of chromium, arsenic, and beryllium. Semivolatile metal standards apply to the combined emissions of lead and cadmium.

For any of the source categories except hydrochloric acid production

[10] A major source emits or has the potential to emit 10 tons per year of any single hazardous air pollutant or 25 tons per year or greater of hazardous air pollutants in the aggregate. An area source is a source that is not a major source.

[11] See Part Four, Section II.A for a discussion of the standards that are applicable to area source boilers and hydrochloric acid production furnaces.

[12] We note that there is a provision that allows cement kilns with dual stacks to average emissions on a flow-weighted basis to demonstrate compliance with the metal and chlorine emission standards. See §§ 63.1204(e) and 63.1220(3).

[13] We are also republishing these standards, for reader's convenience only, in the new replacement standard section for these source categories. See § 63.1219, § 63.1220 and § 673.1219.

[14] Liquid fuel boilers equipped with a wet air pollution control device followed by a dry air pollution control device do not meet the definition of a dry air pollution device.

furnaces, you may elect to comply with an alternative to the total chlorine standard under which you would establish site-specific, health-based emission limits for hydrogen chloride and chlorine based on national exposure standards. This alternative chlorine standard is discussed in part two, section IX and part four, section VII.

Incinerators and liquid and solid fuel boilers may elect to comply with an alternative to the particulate matter standard that would limit emissions of all the semivolatile metal HAPs and low volatile metal HAPs. Under this alternative, the numerical emission limits for semivolatile metal and low volatile metal emission HAP are identical to the limitations included in Tables 1 and 2. However, for semivolatile metals, the alternative standard applies to the combined emissions of lead, cadmium, and selenium; for low volatile metals, the standard applies to the combined emissions of chromium, arsenic, beryllium, antimony, cobalt, manganese, and nickel. See § 63.1219(e).

TABLE 1.—SUMMARY OF EMISSION LIMITS FOR EXISTING SOURCES

	Incinerators	Cement kilns	Lightweight aggregate kilns	Solid fuel-fired boilers [1]	Liquid fuel-fired boilers [1]	Hydrochloric acid production furnaces [1]
Dioxin/Furans (ng TEQ/dscm).	0.20 or 0.40 and temperature control < 400°F at APCD inlet [6].	0.20 or 0.40 and temperature control < 400°F at APCD inlet.	0.20 or rapid quench below 400°F at kiln exit.	CO or HC and DRE standard as a surrogate.	0.40 for dry APCD sources; CO or HC and DRE standard as surrogate for others.	CO or HC and DRE standard as surrogate.
Mercury	130 µg/dscm	Hazardous waste feed restriction of 3.0 ppmw and 120 µg/dscm MTEC [11]; or 120 µg/dscm total emissions.	120 hazardous waste MTEC [11] feed restriction or 120 µg/dscm total emissions.	11 µg/dscm	4.2E-5lb/MMBtu [2, 5] or 19 µg/dscm [2]; depending on BTU content of hazardous waste [13].	Total chlorine standard as surrogate.
Particulate Matter	0.013 gr/dscf [8]	0.028 gr/dscf and 20% opacity [12].	0.025 gr/dscf	0.030 gr/dscf [8]	0.035 gr/dscf [8]	Total chlorine standard as surrogate.
Semivolatile Metals (lead + cadmium).	230 µg/dscm	7.6 E-4 lbs/MMBtu [5] and 330 µg/dscm [3].	3.0E-4 lb/MMBtu [5] and 250 µg/dscm [3].	180 µg/dscm	8.2 E–5 lb/MMBtu [2, 5] or 150 µg/dscm [2]; depending on BTU content of hazardous waste [13].	Total chlorine standard as surrogate.
Low Volatile Metals (arsenic + beryllium + chromium).	92 µg/dscm	2.1 E-5 lbs/MMBtu [5] and 56 µg/dscm [3].	9.5E-5 lb/MMBtu [5] and 110 µg/dscm [3].	380 µg/dscm	1.26E–4 lbMMBtu [4, 5] or 370 µg/dscm [4]; depending on BTU content of hazardous waste [13].	Total chlorine standard as surrogate.
Total Chlorine (hydrogen chloride + chlorine gas).	32 ppmv [7]	120 ppmv [7]	600 ppmv [7]	440 ppmv [7]	5.08E–2 lb/MMBtu [5, 7] or 31 ppmv [7]; depending on BTU content of hazardous waste [13].	150 ppmv or 99.923% system removal efficiency.
Carbon Monoxide (CO) or Hydrocarbons (HC).	100 ppmv CO [9] or 10 ppmv HC.	See Note # 10 below.	100 ppmv CO [9] or 20 ppmv HC.	(2) 100 ppmv CO [9] or 10 ppmv HC		
Destruction and Removal Efficiency.	99.99% for each principal organic hazardous pollutant. For sources burning hazardous wastes F020, F021, F022, F023, F026, or F027, however, 99.9999% for each principal organic hazardous pollutant.					

Notes:

[1] Particulate matter, semivolatile metal, low volatile metal, and total chlorine standards for solid and liquid fuel boilers apply only to major sources. Particulate matter, semivolatile and low volatile metal standards for hydrochloric acid production furnaces apply only to major sources, although area sources must still comply with the surrogate total chlorine standard to control mercury emissions.

[2] Standard is based on normal emissions data, and is therefore expressed as an annual average emission limitation.

[3] Sources must comply with both the thermal emissions and emission concentration standards.

[4] Low volatile metal standard for liquid fuel-fired boilers is for chromium only.

[5] Standards expressed as mass of pollutant contributed by hazardous waste per million BTU contributed by the hazardous waste.

[6] APCD means "air pollution control device".

[7] Sources may elect to comply with site-specific risk-based emission limits for hydrogen chloride and chlorine gas

[8] Sources may elect to comply with an alternative to the particulate matter standard.

[9] Sources that elect to comply with the CO standard must demonstrate compliance with the HC standard during the comprehensive performance test that demonstrates compliance with the destruction and removal efficiency requirement.

[10] Kilns without a bypass: 20 ppmv HC or 100 ppmv CO [9]. Kilns with a bypass/mid-kiln sampling system: 10 ppmv HC or 100 ppmv CO9 in the bypass duct, mid-kiln sampling system or bypass stack.

[11] MTEC means "maximum theoretical emission concentration", and is equivalent to the feed rate divided by gas flow rate

[12] The opacity standard does not apply to a source equipped with a bag leak detection system under 63.1206(c)(8) or a particulate matter detection system under 63.1206(c)(9).

[13] Emission concentration-based standards apply to sources processing hazardous waste with energy content less than 10,000 BTU/lb; thermal emission standards apply to sources processing hazardous waste with energy content greater than 10,000 btu/lb.

TABLE 2.—SUMMARY OF EMISSION LIMITS FOR NEW OR RECONSTRUCTED SOURCES

	Incinerators	Cement kilns	Lightweight aggregate kilns	Solid fuel boilers [1]	Liquid fuel boilers [1]	Hydrochloric acid production furnaces [1]
Dioxin/Furans (ng TEQ/dscm).	0.11 for dry APCD and/or WHB [5] sources; 0.20 for other sources.	0.20 or 0.40 and temperature control <400 °F at APCD inlet.	0.20 or rapid quench <400 °F at kiln exit.	CO or HC and DRE standard as a surrogate.	0.40 for sources with dry APCD; CO or HC and DRE standard as a surrogate for other sources.	CO or THC and DRE standard as a surrogate.
Mercury	8.1 µg/dscm	Hazardous waste feed restriction of 1.9 ppmw and 120 µg/dscm MTEC [10]; or 120 µg/dscm total emissions.	120 hazardous waste MTEC [10] feed restriction or 120 µg/dscm total emissions.	11 µg/dscm	1.2E–6 lb/MMBtu [2 4] or 6.8 µg/dscm [2]; depending on BTU content of hazardous waste [12].	TCI as surrogate.
Particulate matter (gr/dscf).	0.0015 [7]	0.0023 and 20% opacity [11].	0.0098	0.015 [7]	0.0087 [7]	TCI as surrogate.
Semivolatile Metals (lead + cadmium).	10 µg/dscm	6.2E–5 lb/MMBtu [4] and 180 µg/dscm.	3.7 E–5 lb/MMBtu [4] and 43 µg/dscm.	180 µg/dscm	6.2 E–6 lb/MMBtu [2 4] or 78 µg/dscm [2]; depending on BTU content of hazardous waste [12].	TCI as surrogate.
Low Volatile Metals (arsenic + beryllium + chromium).	23 µg/dscm	1.5E–5 lb/MMBtu [4] and 54 µg/dscm.	3..3E–5 lb/MMBtu [4] and 110 µg/dscm.	190 µg/dscm	1.41E–5lb/MMBtu [3 4] or 12 µg/dscm [3]; depending on BTU content of hazardous waste [12].	TCI as surrogate.
Total Chlorine (Hydrogen chloride + chlorine gas).	21 ppmv [6]	86 ppmv [6]	600 ppmv [6]	73 ppmv [6]	5.08E–2 lb/MMBtu [4 6] or 31 ppmv [6]; depending on BTU content of hazardous waste [12].	25 ppmv or 99.987% SRE.
Carbon monoxide (CO) or Hydrocarbons (HC).	100 ppmv CO [8] or 10 ppmv HC.	See note #9 below.	100 ppmv CO [8] or 20 ppmv HC.	100 ppmv CO [8] or 10 ppmv HC		
Destruction and Removal Efficiency.	99.99% for each principal organic hazardous pollutant. For sources burning hazardous wastes F020, F021, F022, F023, F026, or F027, however, 99.9999% for each principal organic hazardous pollutant.					

Notes:

[1] Particulate matter, semivolatile metal, low volatile metal, and total chlorine standards for solid and liquid fuel boilers apply only to major sources. Particulate matter, semivolatile and low volatile metal standards for hydrochloric acid production furnaces apply only to major sources, although area sources must still comply with the surrogate total chlorine standard to control mercury emissions.

[2] Standard is based on normal emissions data, and is therefore expressed as an annual average emission limitation.

[3] Low volatile metal standard for liquid fuel-fired boilers is for chromium only. Arsenic and beryllium are not included in the low volatile metal total for liquid fuel-fired boilers.

[4] Standards expressed as mass of pollutant contributed by hazardous waste per million BTU contributed by the hazardous waste.

[5] APCD means "air pollution control device", WHB means "waste heat boiler".

[6] Sources may elect to comply with risk-based emission limits for hydrogen chloride and chlorine gas.

[7] Sources may elect to comply with an alternative to the particulate matter standard.

[8] Sources that elect to comply with the CO standard must demonstrate compliance with the THC standard during the comprehensive performance test that demonstrates compliance with the destruction and removal efficiency requirement.

[9] Greenfield kilns without a bypass: 20 ppmv HC or 100 ppmv CO [8] and 50 ppmv HC. Greenfield kilns with a bypass/mid kiln sampling system: Main stack standard of 50 ppmv HC and 10 ppmv HC or 100 ppmv CO [8] in the bypass duct, mid-kiln sampling system or bypass stack. Greenfield kilns with a bypass/mid-kiln sampling system: 10 ppmv HC or 100 ppmv CO [8] in the bypass duct, mid-kiln sampling system or bypass stack; Non-greenfield kilns without a bypass: 20 ppmv HC or 100 ppmv CO [8]. A greenfield kiln is a kiln whose construction commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist.

[10] MTEC means "maximum theoretical emission concentration", and is equivalent to the feed rate divided by gas flow rate.

[11] The opacity standard does not apply to a source equipped with a bag leak detection system under 63.1206(c)(8) or a particulate matter detection system under 63.1206(c)(9).

[12] Emission concentration-based standards apply to sources processing hazardous waste with energy content less than 10,000 BTU/lb; thermal emission standards apply to sources processing hazardous waste with energy content greater than 10,000 btu/lb.

VI. What Are the Testing and Initial Compliance Requirements?

The testing and initial compliance requirements we promulgate today for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces are identical to those that are applicable to incinerators, cement kilns, and lightweight aggregate kilns at §§ 63.1206, 63.1207, and 63.1208. We note, however, that today's final rule revises some of these requirements as they apply to all or specific HWCs (*e.g.*, one-time dioxin/furan test for sources not subject to a numerical dioxin/furan standard; dioxin/furan stack test method; hydrogen chloride and chlorine stack test methods)

We also discuss compliance and testing dates for incinerators, cement kilns, and lightweight aggregate kilns as well. Even though we are not repromulgating the compliance and testing requirements for those source categories, those sources must demonstrate compliance with the replacement emission standards promulgated today.

A. Compliance Dates

The time-line for testing and initial compliance requirements is as follows:

1. The compliance date is October 14, 2008;[15]

2. You must submit a comprehensive performance test plan to the permitting authority for review and approval 12 months prior to commencing the test.

3.You must submit an eligibility demonstration for the health-based compliance alternative to the total chlorine emission standard 12 months before the compliance date if you elect to comply with § 63.1215;

4. You must place in the operating record a Documentation of Compliance by the compliance date identifying the operating parameter limits that, using available information, you have determined will ensure compliance with the emission standards;

5. For boilers and hydrochloric acid production furnaces, you must commence the initial comprehensive performance test within 6 months after the compliance date;

6. For incinerators, cement kilns, and lightweight aggregate kilns, you must commence the initial comprehensive performance test within 12 months after the compliance date;

7. You must complete the initial comprehensive performance test within 60 days of commencing the test; and

8. You must submit a Notification of Compliance within 90 days of completing the test documenting compliance with emission standards and continuous monitoring system requirements.

B. Testing Requirements

All hazardous waste combustors must commence the initial comprehensive performance test under the time lines discussed above. The purpose of the comprehensive performance test is to document compliance with the emission standards of the final rule and establish operating parameter limits to maintain compliance with those standards. You must also conduct periodic comprehensive performance testing every five years.

If your source is subject to a numerical dioxin/furan emission standard (i.e., incinerators, cement kilns, lightweight aggregate kilns that comply with the 0.2 ng TEQ/dscm standard, and liquid fuel boilers equipped with a dry air pollution control device), you must conduct a dioxin/furan confirmatory performance test no later than 2.5 years after each comprehensive performance test (i.e., midway between comprehensive performance tests). If your source is not subject to a numerical dioxin/furan emission standard (e.g., solid fuel boilers, lightweight aggregate kilns that comply with the 400 °F temperature limit at the kiln exit, liquid fuel boilers equipped with wet or no air pollution control system, and hydrochloric acid production furnaces), you must conduct a one-time dioxin/furan test to enable the Agency to evaluate the effectiveness of the carbon monoxide/hydrocarbon standard and the destruction and removal efficiency standard in controlling dioxin/furan emissions for those sources. Previous dioxin/furan emission tests may be used to meet this requirement if the combustor operated under the conditions required by the rule and if design and operation of the combustor has not changed since the test in a manner that could increase dioxin/furan emissions. The Agency will use those emissions data when reevaluating the MACT standards under CAA section 112(d)(6), when determining whether to develop residual risk standards for these sources pursuant to section 112(f)(2), and when determining whether the source's RCRA Permit is protective of human health and the environment.

You must use the following stack test methods to document compliance with the emission standards: (1) Method 29 for mercury, semivolatile metals, and low volatile metals; and (2) Method 26/26A, Methods 320 or 321, or ASTM D 6735–01 for hydrogen chloride and chlorine;[16] (3) either Method 0023A or Method 23 for dioxin/furans; and (4) either Method 5 or 5i for particulate matter.

C. Initial Compliance Requirements

The initial compliance requirements for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces include:[17]

1. You must place in the operating record a Documentation of Compliance by the compliance date identifying the operating parameter limits that, using available information, you have determined will ensure compliance with the emission standards;

2. You must develop and comply with a startup, shutdown, and malfunction plan;

3. You must install an automatic waste feed cutoff system that links the operating parameter limits to the waste feed cutoff system;

4. You must control combustion system leaks;

5. You must establish and comply with an operator training and certification program;

6. You must establish and comply with an operation and maintenance plan;

7. If your source is equipped with a baghouse, you must install either a bag leak detection system or a particulate matter detection system;[18] and

8. If your source is equipped with an electrostatic precipitator or ionizing wet scrubber, you must either establish site-specific control device operating parameter limits which limits are linked to the automatic waste feed cutoff system, or install a particulate matter detection system and take corrective measures when the alarm level is exceeded.

VII. What Are the Continuous Compliance Requirements?

The continuous compliance requirements for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces are identical to those applicable to incinerators, cement kilns, and lightweight aggregate kilns. See § 63.1209. We note, however, that today's final rule revises some of these requirements as they apply to all or specific HWCs (e.g., bag leak detection system requirements; optional particulate matter detection system requirements; compliance assurance for thermal emissions-based standards).

You must use carbon monoxide or hydrocarbon continuous emissions monitors (as well as an oxygen continuous emissions monitor to correct the carbon monoxide or hydrocarbon values to 7% oxygen) to ensure compliance with the carbon monoxide or hydrocarbon emission standards.

You must also establish limits (as applicable) on the feedrate of metals, chlorine, and ash, key combustor operating parameters, and key operating

[15] See 69 FR at 21313 for rationale. We received no adverse comments at proposal.

[16] Note that you may be required to use other test methods to document emissions of hydrogen chloride and chlorine if you elect to comply with the alternative, health-based emission limits for total chlorine under § 63.1215. See § 63.1208(b)(5).

[17] These same requirements currently apply to incinerators, cement kilns, and lightweight aggregate kilns.

[18] A major difference between a bag leak detection system and a particulate matter detection system is the way the alarm level is established. The alarm level for a bag leak detection system is established using concepts in the Agency's bag leak detection system guidance document while the alarm level for a particulate matter detection system is established based on the detector response during the comprehensive performance test. The ash feedrate limit for incinerators and boilers is waived if you use a particulate matter detection system but not if you use a bag leak detection system because the bag leak detection system alarm level may not provide reasonable assurance of continuous compliance with the particulate matter emission standard.

parameters of the air pollution control device based on operations during the comprehensive performance test. You must continuously monitor these parameters with a continuous monitoring system.

VIII. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements that we promulgate today for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces are identical to those that are applicable to incinerators, cement kilns, and lightweight aggregate kilns. See §§ 63.1210 and 63.1211. We note, however, that today's final rule revises some of these requirements as they apply to all or specific HWCs.

You must submit notifications including the following to the permitting authority in addition to those required by the NESHAP General Provisions, subpart A of 40 CFR part 63:

1. Notification of changes in design, operation, or maintenance (§ 63.1206(b)(5)(i));

2. Notification of performance test and continuous monitoring system evaluation, including the performance test plan and continuous monitoring system performance evaluation plan (§ 63.1207(e));

3. Notification of compliance, including results of performance tests and continuous monitoring system evaluations (§§ 63.1210(b), 63.1207(j); 63.1207(k), and 63.1207(l)); and

4. Various notifications if you request or elect to comply with alternative requirements at § 63.1210(a)(2).

You must submit the following reports to the permitting authority in addition to those required by the NESHAP General Provisions, subpart A of 40 CFR part 63:

1. Startup, shutdown, and malfunction plan, if you elect to comply with § 63.1206(c)(2)(ii)(B));

2. Excessive exceedances report (§ 63.1206(c)(3)(vi)); and

3. Emergency safety vent opening reports (§ 63.1206(c)(4)(iv)).

Finally, you must keep records documenting compliance with the requirements of Subpart EEE. Recordkeeping requirements are prescribed in § 63.1211(b), and include requirements under the NESHAP General Provisions, subpart A of 40 CFR

IX. What Is the Health-Based Compliance Alternative for Total Chlorine, and How Do I Demonstrate Eligibility?

A. Overview

The rule allows you 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, and 63.1221. See § 63.1215. To identify and comply with the limits, you must:

(1) Identify a total chlorine emission rate for each on-site hazardous waste combustor. You may select total chlorine emission rates as you choose to demonstrate eligibility for the health-based limits, except the total chlorine emission rate limits for incinerators, cement kilns, and lightweight aggregate kilns cannot result in total chlorine emission concentrations exceeding the Interim Standards provided by §§ 63.1203, 63.1204, and 63.1205;[19]

(2) Calculate the HCl-equivalent emission rate for the total chlorine emission rates you select, considering long-term exposure and using Reference Concentrations (RfCs) as the health threshold metric. This emission rate is called the annual average HCl-equivalent emission rate;

(3) Perform an eligibility demonstration to determine if your annual average HCl-equivalent emission rate meets the national exposure standard (i.e., Hazard Index not exceeding 1.0 considering the maximum annual average ambient concentration of hydrogen chloride and chlorine at an off-site receptor location which concentrations are attributable to all on-site hazardous waste combustors) and thus is below the annual average HCl-equivalent emission rate limit;

(4) Calculate the HCl-equivalent emission rate for the total chlorine emission rates you select, considering short-term exposure and using acute Reference Exposure Levels (aRELs) as the health threshold metric. This emission rate is called the 1-hour average HCl-equivalent emission rate.

(5) Determine whether your 1-hour HCl-equivalent emission rate may exceed the national exposure standard (i.e., Hazard Index not exceeding 1.0 considering the maximum 1-hour average ambient concentration of hydrogen chloride and chlorine at an off-site receptor location which concentrations are attributable to all on-site hazardous waste combustors) and thus may exceed the 1-hour average HCl-equivalent emission rate limit when complying with the annual average HCl-equivalent emission rate limit, absent an hourly rolling average limit on the feedrate of total chlorine and chloride.

(6) Submit your eligibility demonstration, including your determination of whether the 1-hour average HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride, for review and approval;

(7) Document during the comprehensive performance test the total chlorine system removal efficiency for each combustor and use this system removal efficiency to calculate chlorine feedrate limits. Also, document that total chlorine emissions during the test do not exceed the 1-hour average HCl-equivalent emission rate limit during any run of the test. In addition, establish operating limits on the emission control device based on operations during the comprehensive performance test; and

(8) Comply with the requirements for changes in the design, operation, or maintenance of the facility which could affect the HCl-equivalent emission rate limits or system removal efficiency for total chlorine, and changes in the vicinity of your facility over which you do not have control (e.g., new receptors locating proximate to the facility).

B. HCl-Equivalent Emission Rates

You must express total chlorine emission rates (lb/hr) from each on-site hazardous waste combustor, including hydrochloric acid production furnaces [20], as an annual average HCl-equivalent emission rate and a 1-hour average HCl-equivalent emission rate. See § 63.1215(b). The annual average HCl-equivalent emission rate equates chlorine emission rates to hydrogen chloride (HCl) emission rates using Reference Concentrations (RfCs) as the health risk metric for long-term exposure. The 1-hour average HCl-equivalent emission rate equates chlorine emission rates to HCl emission rates using 1-hour Reference Exposure

[19] Note that the final rule sunsets the Interim Standards on the compliance date of today's rule but codifies the Interim Standards for total chlorine under § 63.1215(b)(7).

[20] Although hydrochloric acid production furnaces are not eligible for the health-based total chlorine emission limits (because control of total chlorine is a surrogate for control of metal HAP), you must consider total chlorine emissions from hydrochloric acid production furnaces when demonstrating that total chlorine emissions from all on-site hazardous waste combustors will not exceed the Hazard Index limit of 1.0 at an off-site receptor location.

Levels (aRELs) as the health risk metric for acute exposure.

To calculate HCl-equivalent emission rates, you must apportion total chlorine emissions (ppmv) between chlorine and HCl using the volumetric ratio of chlorine to hydrogen chloride (Cl_2/HCl).

- To calculate the annual average HCl-equivalent emission rate (lb/hr) and the emission rate limit, you must use the historical average Cl_2/HCl volumetric ratio from all regulatory compliance tests and the gas flowrate (and other relevant parameters) from the most recent RCRA compliance test or MACT performance test.
- To calculate the 1-hour average HCl-equivalent emission rate (lb/hr) and emission rate limit, you must use the highest Cl_2/HCl volumetric ratio from all regulatory compliance tests and the gas flowrate from the most recent RCRA compliance test or MACT performance test.
- If you believe that the Cl_2/HCl volumetric ratio for one or more historical compliance tests is not representative of the current ratio, you may request that the permitting authority allow you to screen those ratios from the analysis of historical ratios.
- If the permitting authority believes that too few historical Cl_2/HCl ratios are available to establish a representative average ratio and a representative maximum ratio, the permitting authority may require you to conduct periodic testing to establish representative ratios.
- You must include the Cl_2/HCl volumetric ratio demonstrated during each performance test in your data base of historical Cl_2/HCl ratios to update the ratios for subsequent calculations of the annual average and 1-hour average HCl-equivalent emission rates (and emission rate limits).

C. Eligibility Demonstration

You must perform an eligibility demonstration to determine whether the total chlorine emission rates you select for each on-site hazardous waste combustor meet the national exposure standard (i.e., the Hazard Index of 1.0 cannot be exceeded at an off-site receptor location considering maximum annual average ambient concentrations attributable to all on-site hazardous waste combustors and the RfCs for HCl and chlorine) using either a look-up table analysis or a site-specific compliance demonstration.[21] Eligibility for the health-based total chlorine standard is determined by comparing the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor to the annual average HCl-equivalent emission rate limit.

The annual average HCl-equivalent emission rate limit is the HCl-equivalent emission rate, determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure, which ensures that maximum annual average ambient concentrations of HCl equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1) and considering all on-site hazardous waste combustors. See § 63.1215(b)(2).

Your facility is eligible for the health-based compliance alternatives for total chlorine if either: (1) The annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the HCl-equivalent emission rate limit determined from the appropriate value for the emission rate limit in the applicable look-up table and the proration procedure for multiple combustors discussed below; or (2) the annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the annual average HCl-equivalent emission rate limit you calculate based on a site-specific compliance demonstration.

1. Look-Up Table Analysis

Look-up tables for the eligibility demonstration are provided as Tables 1 and 2 to § 63.1215. Table 1 presents annual average HCl-equivalent emission rate limits for sources located in flat terrain. For purposes of this analysis, flat terrain is terrain that rises to a level not exceeding one half the stack height within a distance of 50 stack heights.

Table 2 presents annual average HCl-equivalent emission rate limits for sources located in simple elevated terrain. For purposes of this analysis, simple elevated terrain is terrain that rises to a level exceeding one half the stack height, but that does not exceed the stack height within a distance of 50 stack heights.

If your facility is not located in either flat or simple elevated terrain, you must conduct a site-specific compliance demonstration.

To determine the annual average HCl-equivalent emission rate limit for a source from the look-up table, you must use the stack height and stack diameter for your hazardous waste combustors and the distance between the stack and the property boundary. If any of these values for stack height, stack diameter, and distance to nearest property boundary do not match the exact values in the look-up table, you must use the next lowest table value. If you have more than one hazardous waste combustor on site, you must adjust the emission rate limits provided by the tables such that the sum of the ratios for all combustors of the adjusted emission rate limit to the emission rate limit provided by the table cannot exceed 1.0. See § 63.1215 (c)(3)(v).

2. Site-Specific Compliance Demonstration

You may use any scientifically-accepted peer-reviewed risk assessment methodology for your site-specific compliance demonstration to calculate an annual average HCl-equivalent emission rate limit for each on-site hazardous waste combustor. An example of one approach for performing the demonstration for air toxics can be found in the EPA's "Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document," which may be obtained through the EPA's Air Toxics Web site at *http://www.epa.gov/ttn/atw.*

To determine the annual average HCl-equivalent emission rate limit for each on-site hazardous waste combustor, your site-specific compliance demonstration must, at a minimum: (1) estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations; (2) estimate the inhalation exposure for the actual individual most exposed to the facility's emissions from hazardous waste combustors, considering locations where people reside and where people congregate for work, school, or recreation; (3) use site-specific, quality-assured data wherever possible; (4) use health-protective default assumptions wherever site-specific data are not available, and: (5) contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

To establish the annual average HCl-equivalent emission rate limit for each combustor, you may apportion as you elect among the combustors the annual average HCl-equivalent emission rate limit for the facility, which limit ensures that the RfC-based Hazard Index of 1.0 is not exceeded.

[21] The total chlorine emission rates (lb/hr) for incinerators, cement kilns, and lightweight aggregate kilns cannot result in total chlorine emission concentrations (ppmv) exceeding the Interim Standards provided by §§ 63.1203, 63.1204, and 63.1205. The final rule sunsets the Interim Standards on the compliance date of today's rule but codifies the Interim Standards for total chlorine under § 63.1215(b)(7).

D. Assurance That the 1-Hour HCl-Equivalent Emission Rate Will Not Be Exceeded

The long-term, RfC-based Hazard Index will always be higher than the short-term, aREL-based Hazard Index for a constant HCl-equivalent emission rate because the health threshold levels for short-term exposure are orders of magnitude higher than the health threshold levels for long-term exposure.[22] Even though maximum 1-hour average ambient concentrations are substantially higher than maximum annual average concentrations, the higher short-term ambient concentrations do not offset the much higher health threshold levels for short-term exposures. Thus, the long-term, RfC-based Hazard Index will always govern regarding whether a source can make an eligibility demonstration. Accordingly, eligibility for the health-based emission limits is based solely on whether a source can comply with the annual average HCl-equivalent emission rate limit.

Nonetheless, some sources may have highly variably chlorine feedrates (and corresponding highly variable HCl-equivalent emission rates) such that they may feed chlorine at very high levels for short periods of time and still remain in compliance with the chlorine feedrate limit established to ensure compliance with the annual average HCl-equivalent emission rate limit.[23] To ensure that the 1-hour HCl-equivalent emission rate limit will not be exceeded during these periods of peak emissions, you must establish a 1-hour average HCl-equivalent emission rate and 1-hour average HCl-equivalent emission rate limit for each combustor and consider site-specific factors including prescribed criteria to determine if the 1-hour average HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average limit on chlorine feedrate. If the 1-hour average HCl-equivalent emission rate limit may be exceeded, you must establish an hourly rolling average feedrate limit on chlorine.

You must calculate the 1-hour average HCl-equivalent emission rate from the total chlorine emission rate you select for each source.

You must establish the 1-hour average HCl-equivalent emission rate limit for each affected source using either a look-up table analysis or site-specific analysis. Look-up tables are provided for 1-hour average HCl-equivalent emission rate limits as Table 3 and Table 4 to this section. Table 3 provides limits for facilities located in flat terrain. Table 4 provides limits for facilities located in simple elevated terrain. You must use the Tables to establish emission rate limits in the same manner as you use Tables 1 and 2 to establish annual average HCl-equivalent emission rate limits.

If you conduct a site-specific analysis to establish a 1-hour average HCl-equivalent emission rate limit, you must follow the risk assessment procedures you used to establish an annual average HCl-equivalent emission rate limit. The 1-hour HCl-equivalent emission rate limit, however, is the emission rate than ensures that the Hazard Index associated with maximum 1-hour average exposures is not greater than 1.0.

You must consider criteria including the following to determine if a source may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average chlorine feedrate limit: (1) The ratio of the 1-hour average HCl-equivalent emission rate based on the total chlorine emission rate you select for each hazardous waste combustor to the 1-hour average HCl-equivalent emission rate limit for the combustor; and (2) the potential for the source to vary total chlorine and chloride feedrates substantially over the averaging period for the feedrate limit you establish to ensure compliance with the annual average HCl-equivalent emission rate limit.

If you determine that a source may exceed the 1-hour average HCl-equivalent emission rate limit, you must establish an hourly rolling average chlorine feedrate limit as discussed below in Section G.

You must include the following information in your eligibility demonstration to document your determination whether an hourly rolling average feedrate limit is needed to maintain compliance with the 1-hour HCl-equivalent emission rate limit: (1) Determination of the Cl2/HCl volumetric ratio established for 1-hour average HCl-equivalent emission rate determinations as provided by § 63.1215(b)(6)(ii); (2) determination of the 1-hour average HCl-equivalent emission rate calculated from the total chlorine emission rate you select for the combustor; (3) determination of the 1-hour average HCl-equivalent emission rate limit; (4) determination of the ratio of the 1-hour average HCl-equivalent emission rate to the 1-hour HCl-equivalent emission rate limit for the combustor; and (5) determination of the potential for the source to vary chlorine feedrates substantially over the averaging period for the long-term feedrate limit (*i.e.*, 12-hours, or up to annually) established to maintain compliance with the annual average HCl-equivalent emission rate limit.

E. Review and Approval of Eligibility Demonstrations

The permitting authority will review and approve your eligibility demonstration. Your eligibility demonstration must contain, at a minimum, the information listed in § 63.1215(d)(1).

1. Review and Approval for Existing Sources

If you operate an existing source, you must submit the eligibility demonstration to your permitting authority for review and approval not later than 12 months prior to the compliance date. You must also submit a separate copy of the eligibility demonstration to: U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), Attn: Group Leader, Research Triangle Park, North Carolina 27711, electronic mail address *REAG@epa.gov*.

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 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 comply with the MACT total chlorine standards. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standard 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 standard for total chlorine.

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 nonetheless begin complying, on the compliance date, with the annual average HCl-equivalent emission rate limits you present in your eligibility demonstration.

If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the

[22] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 24.2.

[23] See discussion below in Section F regarding the requirement to establish chlorine feedrate limits.

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 total chlorine standards. The permitting authority may extend the compliance date of the total chlorine standard 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 standard for total chlorine.

2. Review and Approval for New and Reconstructed Sources

The procedures for review and approval of eligibility demonstrations applicable to existing sources discussed above also apply to new or reconstructed sources, except that the date you must submit the eligibility demonstration is as discussed below.

If you operate a new or reconstructed source that starts up by April 12, 2007, or a solid fuel-fired boiler or liquid fuel-fired boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before April 12, 2007, you must either: (1) Submit an eligibility demonstration for review and approval by April 12, 2006 and comply with the HCl-equivalent emission rate limits and operating requirements you establish in the eligibility demonstration; or (2) comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221, by October 12, 2005, or upon startup, whichever is later, except for a standard that is more stringent than the standard proposed on April 20, 2004 for your source. If a final standard is more stringent than the proposed standard, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard.

If you operate a new or reconstructed source that starts up on or after April 12, 2007, or a solid fuel-fired boiler or liquid fuel-fired boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP on or after April 12, 2007, you must comply with either of the following. You may submit an eligibility demonstration for review and approval 12 months prior to startup. Alternatively, you may comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221 upon startup. If the final standard is more stringent than the standard proposed for your source on April 20, 2004, however, and if you start operations before October 14, 2008, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard.

F. Testing Requirements

You must comply with the requirements for comprehensive performance testing under § 63.1207.

1. Test Methods for Stack Gas Containing Alkaline Particulate

If you operate a cement kiln or a combustor equipped with a dry acid gas scrubber, you must use EPA Method 320/321 or ASTM D 6735–01, or an equivalent method, to measure hydrogen chloride, and the back-half (caustic impingers) of Method 26/26A, or an equivalent method, to measure chlorine.

2. Test Methods for Stack Gas Containing High Levels of Bromine or Sulfur

If you operate an incinerator, boiler, or lightweight aggregate kiln and your feedstreams contain bromine or sulfur during the comprehensive performance test at the levels indicated below, you must use EPA Method 320/321 or ASTM D 6735'01, or an equivalent method, to measure hydrogen chloride, and Method 26/26A, or an equivalent method, to measure chlorine and hydrogen chloride combined. You must determine your chlorine emissions to be the higher of: (1) The value measured by Method 26/26A, or an equivalent method; or (2) the value calculated by the difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26a, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method.

These procedures apply if you feed during the comprehensive performance test bromine at a bromine/chlorine ratio in feedstreams greater than 5 percent by mass, or sulfur at a sulfur/chlorine ratio in feedstreams greater than 50 percent by mass.[24]

Finally, you should precondition the M26/26A filter for one hour prior to beginning the performance test to minimize the potential for a low bias caused by adsorption/absorption of hydrogen chloride on the filter.

G. Monitoring Requirements

You must establish and comply with limits on the same operating parameters that apply to sources complying with the MACT standard for total chlorine under § 63.1209(o), except that feedrate limits on total chlorine and chloride must be established as described below.

1. Feedrate Limit to Ensure Compliance with the Annual Average HCl-Equivalent Emission Rate Limit

For sources subject to the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) to ensure compliance with the semivolatile metals standard, the feedrate limit (and averaging period) for total chlorine and chloride to ensure compliance with the annual average HCl-equivalent emission rate limit is the same as required by that paragraph. Thus, the chlorine feedrate limit is the average of the run averages during the comprehensive performance test, and is established as a 12-hour rolling average.

That chlorine feedrate limit cannot exceed the numerical value (i.e., not considering the averaging period) of the feedrate limit that ensures compliance with the annual average HCl-equivalent emission rate limit, however. Therefore, the numerical value of the total chlorine and chloride feedrate limit must not exceed the value you calculate as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency]. You must calculate a total chlorine system removal efficiency for each test run of the comprehensive performance test as [1 − total chlorine emission rate (g/s)/ chlorine feedrate (g/s)], and calculate the average system removal efficiency of the test run averages. If your source does not control total chlorine, you must assume zero system removal efficiency. If emissions during the comprehensive performance test exceed the annual average HCl-equivalent emission rate limit, eligibility for the health-based emission limits is not affected. This is because the emission rate limit is an annual average limit. Compliance is based on a 12-hour rolling average chlorine feedrate limit (rather than an (up to) an annual averaging period) for sources subject to the 12-hour rolling average feedrate limit for total chlorine and chloride under § 63.1209(n)(4) to ensure compliance with the semivolatile metals standard given that the more stringent feedrate limit (i.e., the feedrate limit with the shorter averaging period) would apply.

For sources exempt from the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) because they comply with § 63.1207(m)(2) (which allows compliance with the semivolatile metals emission standard absent emissions testing by assuming all metals fed are emitted), the feedrate limit for total chlorine and chloride to ensure

[24] USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005, Chapter 15.1.2.

compliance with the annual average HCl-equivalent emission rate must be established as follows:

- You must establish an average period for the feedrate limit that does not exceed an annual rolling average;
- You must calculate a total chlorine system removal efficiency for each test run of the comprehensive performance test as [1 − total chlorine emission rate (g/s)/chlorine feedrate (g/s)], and calculate the average system removal efficiency of the test run averages. If your source is not equipped with a control system that consistently and reproducibly controls total emissions (e.g., wet or dry scrubber), you must assume zero system removal efficiency. If emissions during the comprehensive performance test exceed the annual average HCl-equivalent emission rate limit, eligibility for emission limits under this section is not affected. The emission rate limit is an annual average limit and compliance is based on an annual average feedrate limit on total chlorine and chloride (or a shorter averaging period if you so elect under paragraph (g)(2)(ii)(A) of this section); and
- You must calculate the feedrate limit for total chlorine and chloride as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency] and comply with the feedrate limit on the averaging period you establish.

2. Feedrate Limit To Ensure Compliance With the 1-Hour Average HCl-Equivalent Emission Rate Limit

You must establish an hourly rolling average feedrate limit on total chlorine and chloride to ensure compliance with the 1-hour average HCl-equivalent emission rate limit unless you determine that the hourly rolling average feedrate limit is waived as discussed under Section D above. If required, you must calculate the hourly rolling average feedrate limit for total chlorine and chloride as the 1-hour average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency] using the system removal efficiency demonstrated during the comprehensive performance test.

H. Relationship Among Emission Rates, Emission Rate Limits, and Feedrate Limits

We summarize here the relationship among: (1) the total chlorine emission rate you select in your eligibility demonstration; (2) the annual average and 1-hour average HCl-equivalent emission rates you present in your eligibility demonstration; (3) the annual average and 1-hour average emission rate limits you present in your eligibility demonstration; (4) performance test emission rates for total chlorine and HCl-equivalent emissions; and (5) long-term and hourly rolling average chlorine feedrate limits.

1. Total Chlorine Emission Rate, Annual Average HCl-Equivalent Emission Rate, and Annual Average HCl-Equivalent Emission Rate Limit

For the eligibility demonstration, you must select a total chlorine emission concentration (ppmv) for each combustor, determine the Cl_2/HCl volumetric ratio, calculate the annual average HCl-equivalent emission rate (lb/hr), and document that the emission rate does not exceed the annual average HCl-equivalent emission rate limit.

You select a total chlorine (*i.e.*, HCl and chlorine combined) emission concentration (ppmv) for each hazardous waste combustor expressed as chloride ($Cl^{(-)}$) equivalent. For incinerators, cement kilns, and lightweight aggregate kilns, this emission concentration cannot exceed the Interim Standards for total chlorine. You then determine the average Cl_2/HCl volumetric ratio considering all historical regulatory emissions tests and apportion total chlorine emissions between Cl_2 and HCl accordingly. You use these apportioned volumetric emissions to calculate the Cl_2 and HCl emission rates (lb/hr) using the average gas flowrate (and other relevant parameters) for the most recent RCRA compliance test or MACT performance test for total chlorine. Finally, you use these Cl_2 and HCl emission rates to calculate an annual average HCl-equivalent emission rate, which cannot exceed the annual average HCl-equivalent emission rate limit that you establish as discussed below.

To establish the annual average HCl-equivalent emission rate limit, you may either use Tables 1 or 2 in § 63.1215 to look-up the limit, or conduct a site-specific risk analysis. Under the site-specific risk analysis option, the annual average HCl-equivalent emission rate limit would be the highest emission rate that the risk assessment estimates would result in a Hazard Index not exceeding 1.0 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.

If you have more than one on-site hazardous waste combustor, and if you use the look-up tables to establish the annual average HCl-equivalent emission rate limits, the sum of the ratios for all combustors of the annual average HCl-equivalent emission rate to the annual average HCl-equivalent emission rate limit cannot not exceed 1.0. This will ensure that the RfC-based Hazard Index of 1.0 is not exceeded, a principle criterion of the eligibility demonstration.

If you use site-specific risk analysis to demonstrate that a Hazard Index of 1.0 is not exceeded, you would generally identify for each combustor the maximum annual average HCl-equivalent emission rate that the risk assessment estimates would result in an RfC-based Hazard Index of 1.0 at any off-site receptor location (i.e., considering locations where people reside and where people congregate for work, school, or recreation.[25] This emission rate would be the annual average HCl-equivalent emission rate limit for each combustor.

2. 1-Hour Average HCl-Equivalent Emission Rate and Emission Rate Limit

As discussed in Section D above, you must determine in your eligibility demonstration whether the 1-hour HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average chlorine feedrate limit. To make this determination, you must establish a 1-hour average HCl-equivalent emission rate and a 1-hour average HCl-equivalent emission rate limit.

You calculate the 1-hour average HCl-equivalent emission rate from the total chlorine emission rate, established as discussed above, using the equation in § 63.1215(b)(3).

You establish the 1-hour average HCl-equivalent emission rate limit by either using Tables 3 or 4 in § 63.1215 to look-up the limit, or conducting a site-specific risk analysis. Under the site-specific risk analysis option, the 1-hour average HCl-equivalent emission rate limit would be the highest emission rate that the risk assessment estimates would result in an aREL-based Hazard Index not exceeding 1.0 at any off-site receptor location (i.e., considering locations where people reside and where people congregate for work, school, or recreation).

3. Performance Test Emissions

During the comprehensive performance test, you must demonstrate a system removal efficiency for total chlorine as [1 − TCl emitted (lb/hr)/chlorine fed (lb/hr)]. During the test, however, the total chlorine emission rate you select for each combustor and the annual average HCl-equivalent

[25] Note again, however, that the total chlorine emission concentration (ppmv) is capped by the Interim Standards for incinerators, cement kilns, and lightweight aggregate kilns.

emission rate limit can exceed the levels you present in the eligibility demonstration. This is because those emission rates are annual average rates and need not be complied with over the duration of three runs of the performance test, which may be nominally only 3 hours.

The 1-hour average HCl-equivalent emission rate limit cannot be exceeded during any run of the comprehensive performance test, however. This limit is based on an aREL Hazard Index of 1.0; an exceedance of the limit over a test run with a nominal 1-hour duration would result in a Hazard Index of greater than 1.0.

4. Chlorine Feedrate Limits

To maintain compliance with the annual average HCl-equivalent emission rate limit, you must establish a long-term average chlorine feedrate limit. In addition, if you determine under § 63.1205(d)(3) that the 1-hour average HCl-equivalent emission rate may be exceeded (i.e., because your chlorine feedrate may vary substantially over the averaging period for the long-term chlorine feedrate limit), you must establish an hourly rolling average chlorine feedrate limit.

Long-Term Chlorine Feedrate Limit. The chlorine feedrate limit to maintain compliance with the annual average HCl-equivalent emission rate is either: (1) The chlorine feedrate during the comprehensive performance test if you demonstrate compliance with the semivolatile metals emission standard during the test (see § 63.1209(o)); or (2) if you comply with the semivolatile metals emission standard under § 63.1207(m)(2) by assuming all metals in the feed to the combustor are emitted, the HCl-equivalent emission rate limit divided by [1 − system removal efficiency] where you demonstrate the system removal efficiency during the comprehensive performance test.

If you establish the chlorine feedrate limit based on the feedrate during the performance test to demonstrate compliance with the semivolatile metals emission standard, the averaging period for the feedrate limit is a 12-hour rolling average. If you establish the chlorine feedrate limit based on the system removal efficiency during the performance test, the averaging period is up to an annual rolling average. See discussion in Part Four, Section VII.B of this preamble.

If you comply with the semivolatile metals emission standard under § 63.1207(m)(2), however, the long-term chlorine feedrate limit is based on the system removal efficiency during the comprehensive performance test rather than the feedrate during the performance test. This is because the averaging period for this chlorine feedrate limit (that ensures compliance with the annual average HCl-equivalent emission rate limit) is up to an annual rolling average. See § 63.1215(g)(2). Thus, the chlorine feedrate, and total chlorine emissions, can be higher than the limit during the relatively short duration of the comprehensive performance tests.

Hourly Rolling Average Chlorine Feedrate Limit. If you determine under § 63.1205(d)(3) that the 1-hour average HCl-equivalent emission rate limit may be exceeded, you must establish an hourly rolling average chlorine feedrate limit. That feedrate limit is established as the 1-hour HCl-equivalent emission rate limit divided by [1 − system removal efficiency]. The hourly rolling average chlorine feedrate limit is not established based on feedrates during the performance test because performance test feedrates may be substantially lower than the feedrate needed to ensure compliance with the 1-hour average HCl-equivalent emission rate. Note, however, that the hourly rolling average feedrate limit cannot be exceeded during any run of the comprehensive performance test. This chlorine feedrate limit is based on the 1-hour average HCl-equivalent emission rate limit, which is based on an aREL Hazard Index of 1.0. Thus, an exceedance of the hourly rolling average feedrate limit (and the 1-hour lHCl-equivalent emission rate limit) over a test run with a nominal 1-hour duration would result in a Hazard Index of greater than 1.0.

I. Changes

Your requirements will change in response to changes that affect the HCl-equivalent emission rate or HCl-equivalent emission rate limit for a source.

1. Changes Over Which You Have Control

Changes That Affect HCl-Equivalent Emission Rate Limits. If you plan to change the design, operation, or maintenance of the facility in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit (*e.g.*, reduce the distance to the property line; reduce stack gas temperature; reduce stack height), prior to the change you must submit to the permitting authority a revised eligibility demonstration documenting the lower emission rate limits and calculations of reduced total chlorine and chloride feedrate limits.

If you plan to change the design, operation, or maintenance of the facility in a manner than would increase the annual average or 1-hour average HCl-equivalent emission rate limit, and you elect to increase your total chlorine and chloride feedrate limits, prior to the change you must submit to the permitting authority a revised eligibility demonstration documenting the increased emission rate limits and calculations of the increased feedrate limits prior to the change.

Changes That Affect System Removal Efficiency. If you plan to change the design, operation, or maintenance of the combustor in a manner than could decrease the system removal efficiency, you are subject to the requirements of § 63.1206(b)(5) for conducting a performance test to reestablish the combustor's system removal efficiency. You also must submit a revised eligibility demonstration documenting the lower system removal efficiency and the reduced feedrate limits on total chlorine and chloride.

If you plan to change the design, operation, or maintenance of the combustor in a manner than could increase the system removal efficiency, and you elect to document the increased system removal efficiency to establish higher feedrate limits on total chlorine and chloride, you are subject to the requirements of § 63.1206(b)(5) for conducting a performance test to reestablish the combustor's system removal efficiency. You must also submit a revised eligibility demonstration documenting the higher system removal efficiency and the increased feedrate limits on total chlorine and chloride.

2. Changes Over Which You Do Not Have Control

If you use site-specific risk assessment in lieu of the look-up tables to establish the HCl-equivalent emission rate limit, you must review the documentation you use in your eligibility demonstration every five years from the date of the comprehensive performance test and submit for review and approval with the comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average HCl-equivalent emission rate limit, or a revised eligibility demonstration. Examples of changes beyond your control that may decrease the annual average HCl-equivalent emission rate limit (or 1-hour average HCl-equivalent emission rate limit) are construction of residences at a location exposed to higher ambient

concentrations than evaluated during your previous risk analysis, or a reduction in the RfCs or aRELs.

If, in the interim between the dates of your comprehensive performance tests, you have reason to know of changes that would decrease the annual average HCl-equivalent emission rate limit, you must submit a revised eligibility demonstration as soon as practicable but not more frequently than annually.

If you determine that you cannot demonstrate compliance with a lower annual average HCl-equivalent emission rate limit (dictated by a change over which you do not have control) during the comprehensive performance test because you need additional time to complete changes to the design or operation of the source or related systems, you may request that the permitting authority grant you additional time to make those changes as quickly as practicable.

X. Overview on Floor Methodologies

The most contentious issue in the rulemaking involved methodologies for determining MACT floors, namely, which sources are best performing, and what is their level of performance. Superficially, these questions have a ready answer: the best performers are the lowest emitters as measured by compliance tests, and those tests fix their level of performance. But compliance tests are snapshots which do not fully capture sources' total operating variability. Since the standards must be met at all times, picking lowest compliance test data to set the standard results in standards best performing sources themselves would be unable to meet at all times.

To avoid this impermissible result, EPA selected approaches that reasonably estimate best performing sources' total variability. Certain types of variability can be quantified statistically, and EPA did so here (using standard statistical approaches) in all of the floor methodologies used in the rule. There are other components of variability, however, which cannot be fully quantified, but nonetheless must be accounted for in reasonably estimating best performing sources' performance over time. EPA selected ranking methodologies which best account for this total variability.

Where control of the feed of HAP is feasible and technically assessable (the case for HAP metals and for total chlorine), EPA used a methodology that ranked sources by their ability to best control both HAP feed and HAP emissions. This methodology thus assesses the efficiency of control of both the HAP inputs to a hazardous waste combustion unit, and the efficiency of control of the unit's outputs. This methodology reasonably selects the best performing (and for new sources, best controlled) sources, and reasonably assesses their level of performance. When HAP feed control is not feasible, notably where HAP is contributed by raw material and fossil fuel inputs, EPA determined best performers and their level of performance using a methodology that selects the lowest emitters using the best air pollution control technology. This methodology reasonably estimates the best performing sources' level of performance, and better accounts for total variability in emissions levels of the best performing sources.

EPA carefully examined approaches selecting lowest emitters as best performers. Examination of other test conditions from the same best performing sources shows, however, that this approach results in standards not achievable even by the best performers. Indeed, in order to meet such standards, even "best performing" sources (lowest emitting in individual tests) would have to add additional air pollution control technology. EPA views this result as an end run around the section 112(d)(2) beyond-the-floor process, because floor standards would force industry-wide technological changes without consideration of the factors (cost and energy in particular) which Congress mandated for consideration when establishing beyond-the-floor standards.

Part Three: What Are the Major Changes Since Proposal?

I. Database

A. Hazardous Burning Incinerators

Five incinerators have been removed from the database because they have initiated or completed RCRA closure.[26] Two incinerators have been added to the list of sources used to calculate the floor levels.[27] Emissions data from source 3015 has been excluded for purposes of calculating the particulate matter floor because the source was processing an atypical waste stream from a particulate matter compliance perspective. See part four, section I.F. We have excluded the most recent mercury and dioxin/furan emissions data from source 327, and have instead used data from an older test condition to represent this source's emissions because the source encountered problems with its carbon injection system during the most recent test. See part four, section I.F. Emissions data from source 3006 has been excluded for purposes of calculating the semivolatile metal standard because this source did not measure cadmium emissions during its emissions test. See part four, section I.F. We have added mercury emissions data from source 901 (DSSI) to the incinerator mercury database because this source (which is otherwise subject to standards for liquid fuel boilers) is burning a waste which is unlike that burned by any other liquid fuel boiler with respect to mercury concentration and waste provenance, but typical of waste burned by incinerators with respect to those factors. See part four, section VI.D.1. This change correspondingly affects the liquid fuel boiler standard by removing that data from the liquid fuel boiler database.

B. Hazardous Waste Cement Kilns

1. Use of Emissions Data From Ash Grove Cement Company

The emissions data from Ash Grove Cement Company, which operates a recently constructed preheater/precalciner kiln located in Chanute, Kansas, are considered when calculating MACT floors for new hazardous waste burning cement kilns. In the proposal, we did not consider their emissions data in the floor analyses for existing sources because Ash Grove Cement used the data to demonstrate compliance with the new source interim standards, and did not address the data for purposes of new source standards. See 69 FR at 21217 n. 35. Consistent with our position on use of post-1999 emissions data, we are including Ash Grove Cement's emissions data in the floor analyses for new sources. See also Part Four, Section I.B of the preamble.

2. Removal of Holcim's Emissions Data From EPA's HWC Data Base

Following cessation of hazardous waste operations in 2003, we are removing all emissions data from both wet process cement kilns at Holcim's Holly Hill, South Carolina, plant from our hazardous waste combustor data base. This is consistent with our approach in both this rule and the 1999 rule to base the standards only on performance of sources that actually are operating (i.e., burning hazardous waste). See also Part Four, Section I.A and 64 FR at 52844.

[26] See "Final Technical Support Document for HWC MACT Standards, Volume II: HWC Database" for a list of the sources that have initiated or completed RCRA closure.

[27] We noticed the data from these sources but did not include them in the MACT standard calculations at proposal. Note that inclusion of these sources did not affect any of the calculated MACT standards. See "Final Technical Support Document for HWC MACT Standards, Volume II: HWC Database" for more discussion.

3. Use of Mercury Data

As discussed below, we are using a commenter-submitted dataset as the basis of the mercury standards for existing and new cement kilns. This comprehensive dataset documents the day-to-day levels of mercury in hazardous waste fired to all cement kilns for a three year period covering 1999 to 2001. We have determined that the commenter-submitted data are more representative than data used at proposal. See Part Four, Section I.D of the preamble for our rationale.

C. Hazardous Waste Lightweight Aggregate Kilns

We are incorporating mercury data submitted by a commenter into the MACT floor analysis for existing and new lightweight aggregate kilns. These data document the day-to-day levels of mercury in hazardous waste fired to lightweight aggregate kilns located at Solite Corporation's Arvonia plant between October 2003 and June 2004. We have determined that the commenter-submitted data are more representative than the data used at proposal. See Part Four, Section I.E of the preamble for our rationale.

D. Liquid Fuel Boilers

In the proposed rule, we classified liquid fuel boilers as one category. The final rule classifies them into two for purposes of the mercury, semivolatile metals, chromium, and total chlorine standards: one for liquid fuel boilers burning lower heating value hazardous waste (hazardous waste with a heating value less than 10,000 Btu/lb), and another for liquid fuel boilers burning higher heating value hazardous waste (hazardous waste with a heating value of 10,000 Btu/lb or greater).

We also made other, minor changes to the data base because some sources have initiated closure, were misclassified as other sources in the proposed rule, or were inadvertently not considered in the floor calculations although the sources' test reports were in the docket at proposal.

E. HCl Production Furnaces

Six of the 17 hydrochloric acid production furnaces have ceased burning hazardous waste since proposal. Consequently, we do not use emissions data from these sources to establish the final standards. All six of these sources were equipped with waste heat recovery boilers and had relatively high dioxin/furan emissions. In addition, we reclassified source #2020 as a boiler based on comments received at proposal.

F. Total Chlorine Emissions Data Below 20 ppmv

We corrected all the total chlorine measurements in the data base that were below 20 ppmv to account for potential systemic negative biases in the Method 0050 data in response to comments on the proposed rule. See the discussion in Part Four, Section I.C.1 below.

To account for the bias, we corrected all total chlorine 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 PM emissions for sources that use fabric filters.

II. Emission Limits

A. Incinerators

The changes in the incinerator standards for existing sources since proposal are:

Standard	Proposed limit	Final limit
Dioxin/Furans (ng TEQ/dscm)	Sources with dry air pollution control systems or waste heat boilers: 0.28; For others: 0.2 or 0.4 and temperature control at inlet of air pollution control device < 400 °F.	For all sources, 0.20 or 0.40 and temperature control < 400 °F at the air pollution control device inlet.
Particulate Matter (gr/dscf)	0.015	0.013.
Semivolatile Metals (µg/dscm)	59	230.
Low Volatile Metals (µg/dscm)	84	92.
Total Chlorine (ppmv)	1.5	32.
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (µg/dscm).	59	230.
Alternative to the particulate matter standard: Combined emissions of arsenic, berrylium, chrome, antimony, cobalt, manganese, and nickel (µg/dscm).	84	92.

The changes in the incinerator standards for new sources since proposal are:

Standard	Proposed limit	Final limit
Particulate Matter (gr/dscf)	0.0007	0.0015
Mercury (µg/dscm)	8.0	8.1
Semivolatile Metals (µg/dscm)	6.5	10
Low Volatile Metals (µg/dscm)	8.9	23
Total Chlorine (ppmv)	0.18	21
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (µg/dscm)	6.5	10
Alternative to the particulate matter standard: Combined emissions of arsenic, berrylium, chrome, antimony, cobalt, manganese, and nickel (µg/dscm)	8.9	23

Hazardous Waste Burning Cement Kilns

The changes in the standards for existing cement kiln since proposal are:

Standard	Proposed limit	Final limit
Mercury (µg/dscm)	64[1]	Both 3.0 ppmw[2] and either 120 µg/dscm (stack emissions) or 120 µg/dscm (expressed as a hazardous waste MTEC)[3].
Particulate matter	0.028 gr/dscf	0.028 gr/dscf *and* 20% opacity[4].
Semivolatile metals	4.0E–04 lb/MMBtu[5]	7.6E–04 lb/MMBtu[5] *and* 330 µg/dscm.
Low volatile metals	1.4E–05 lb/MMBtu[5]	2.1E–05 lb/MMBtu[5] *and* 56 µg/dscm.
Total chlorine (ppmv)[6]	110	120.

[1] The proposed mercury standard was an annual limit.
[2] Feed concentration of mercury in hazardous waste as-fired.
[3] HW MTEC means maximum theoretical emissions concentration of the hazardous waste and MTEC is defined at § 63.1201(a).
[4] The opacity standard does not apply to a source equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).
[5] Standard is expressed as mass of pollutant stack emissions attributable to the hazardous waste per million British thermal unit heat input of the hazardous waste.
[6] Combined standard, reported as a chloride ($Cl^{(-)}$) equivalent.

The changes in the standards for new cement kilns since proposal are:

Standard	Proposed limit	Final limit
Mercury (µg/dscm)	35[1]	Both 1.9 ppmw[2] and either 120 µg/dscm (stack emissions) or 120 µg/dscm (expressed as a hazardous waste MTEC)[3].
Particulate matter	0.0058 gr/dscf	0.0023 gr/dscf and 20% opacity[4].
Semivolatile metals	6.2E–05 lb/MMBtu[5]	6.2E–05 lb/MMBtu[5] *and* 180 µg/dscm.
Low volatile metals	1.4E–05 lb/MMBtu[5]	1.5E–05 lb/MMBtu[5] *and* 54 µg/dscm.
Total chlorine (ppmv)[6]	78	86.

[1] The proposed mercury standard was an annual limit.
[2] Feed concentration of mercury in hazardous waste as-fired.
[3] HW MTEC means maximum theoretical emissions concentration of the hazardous waste and MTEC is defined at § 63.1201(a).
[4] The opacity standard does not apply to a source equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).
[5] Standard is expressed as mass of pollutant stack emissions attributable to the hazardous waste per million British thermal unit heat input of the hazardous waste.
[6] Combined standard, reported as a chloride ($Cl^{(-)}$) equivalent.

C. Hazardous Waste Burning Lightweight Aggregate Kilns

The changes in the standards for existing lightweight aggregate kilns since proposal are:

Standard	Proposed limit	Final limit
Dioxins and furans (ng TEQ/dscm)	0.40	0.20 *or* rapid quench of the flue gas at the exit of the kiln to less than 400 °F.
Mercury (µg/dscm)	67[1]	120 µg/dscm (stack emissions) or 120 µg/dscm (expressed as a hazardous waste MTEC)[2].
Semivolatile metals	3.1E–04 lb/MMBtu[3] *and* 250 µg/dscm	3.0E–04 lb/MMBtu[3] *and* 250 µg/dscm.

[1] The proposed mercury standard was an annual limit.
[2] HW MTEC means maximum theoretical emissions concentration of the hazardous waste and MTEC is defined at § 63.1201(a).
[3] Standard is expressed as mass of pollutant stack emissions attributable to the hazardous waste per million British thermal unit heat input of the hazardous waste.

The changes in the standards for new lightweight aggregate kilns since proposal are:

Standard	Proposed limit	Final limit
Dioxins and furans (ng TEQ/dscm)	0.40	0.20 *or* rapid quench of the flue gas at the exit of the kiln to less than 400 °F.

Standard	Proposed limit	Final limit
Particulate matter	0.0099 gr/dscf	0.0098 gr/dscf.
Mercury (μg/dscm)	67[1]	120 μg/dscm (stack emissions) or 120 μg/dscm (expressed as a hazardous waste MTEC)[2].
Semivolatile metals	2.4E–05 lb/MMBtu[3] *and* 43 μg/dscm	3.7E–05 lb/MMBtu[3] *and* 43 μg/dscm.

[1] The proposed mercury standard was an annual limit.
[2] HW MTEC means maximum theoretical emissions concentration of the hazardous waste and MTEC is defined at § 63.1201(a).
[3] Standard is expressed as mass of pollutant stack emissions attributable to the hazardous waste per million British thermal unit heat input of the hazardous waste.

D. Solid Fuel Boilers

The changes in the solid fuel boiler standards for existing sources since proposal are:

Standard	Proposed limit	Final limit
Mercury (μg/dscm)	10	11
Semivolatile Metals (μg/dscm)	170	180
Low Volatile metals (μg/dscm)	210	380
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (μg/dscm)	170	180
Alternative to the particulate matter standard: Combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (μg/dscm)	210	380

The changes in the solid fuel boiler standards for new sources since proposal are:

Standard	Proposed limit	Final limit
Mercury (μg/dscm)	10	11
Semivolatile Metals (μg/dscm)	170	180
Low Volatile metals (μg/dscm)	210	380
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (μg/dscm)	170	180

E. Liquid Fuel Boilers

We redefined the liquid fuel boiler subcategory into two separate boiler subcategories based on the heating value of the hazardous waste they burn: Those that burn waste below 10,000 Btu/lb, those that burn hazardous waste with a heating value of 10,000 Btu/lb or greater. See Part Four, Section VI.D.2 of today's preamble for a complete discussion.

The additional changes to the liquid fuel boiler standards for existing sources since proposal are:

Standard	Proposed limit	Final limit	
		HW Fuel < 10,000 Btu/lb	HW Fuel ≥ 10,000 Btu/lb
Mercury (lb/MM Btu)	3.7E–6	19 μg/dscm	4.2E–5
Particulate matter (gr/dscf)	0.032	0.035	
Semivolatile metals (lb/MM Btu)	1.1E–5	150 μg/dscm	8.2E–5
Chromium (lb/MM Btu)	1.1E–4	370 μg/dscm	1.3E–4
Total chlorine (Lb/MM Btu)	2.5E–2	31 ppmv	5.1E–2
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (lb/MM Btu).	1.1E–5	150 μg/dscm	8.2E–5
Alternative to the particulate matter standard: Combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (lb/MM Btu).	1.1E–4	370 μg/dscm	1.3E–4

The changes in the liquid fuel boiler standards for new sources since proposal are:

Standard	Proposed limit	Final limit	
		HW fuel < 10,000 Btu/lb	HW fuel > 10,000 Btu/lb
Dioxin and Furan, dry APCD (ng TEQ/dscm)	0.015 or temp control <400F for dry APCD.	0.40	
Mercury (lb/MM Btu)	3.8E–7	6.8 µg/dscm	1.2E–6
Particulate matter (gr/dscf)	0.0076	0.0087	
Semivolatile metals (lb/MM Btu)	4.3E–6	78 µg/dscm	6.2E–6
Chromium (lb/MM Btu)	3.6E–5	12 µg/dscm	1.4E–5
Total chlorine (lb/MM Btu)	7.2E–4	31 µg/dscm	5.1E–2
Alternative to the particulate matter standard: Combined emissions of lead, cadmium and selenium (lb/MM Btu).	4.3E–6	78 µg/dscm [1]	6.2E–6 [1]
Alternative to the particulate matter standard: Combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (lb/MM Btu).	3.6E–5	12 µg/dscm [2]	1.4E–5 [2]

[1] New or reconstructed liquid fuel boilers that process residual oil or liquid feedstreams that are neither fossil fuel nor hazardous waste and that operate pursuant to the alternative to the particulate matter standard must comply with the alternative emission concentration standard of 4.7 µg/dscm, which is applicable to lead, cadmium and selenium emissions attributable to all feedstreams (hazardous and nonhazardous).

[2] New or reconstructed liquid fuel boilers that process residual oil or liquid feedstreams that are neither fossil fuel nor hazardous waste that operate pursuant to the alternative to the particulate matter standard must comply with the alternative emission concentration standard of 12 µg/dscm, which is applicable to arsenic, beryllium, chrome, antimony, cobalt, manganese, and nickel emissions attributable to all feedstreams (hazardous and nonhazardous).

F. Hydrochloric Acid Production Furnaces

The changes in the hydrochloric acid production furnace standards for existing sources since proposal are:

Standard	Proposed limit	Final limit
Dioxin and Furans	0.4 ng TEQ/dscm	Carbon Monoxide/Total Hydrocarbons and DRE standards as surrogates.
Total chlorine	14 ppmv or 99.9927% system removal efficiency	150 ppmv or 99.923% system removal efficiency.

The changes in the hydrochloric acid production furnace standards for new sources since proposal are:

Standard	Proposed limit	Final limit
Dioxin and Furans	0.4 ng TEQ/dscm	Carbon Monoxide/Total Hydrocarbons and DRE standards as surrogates
Total chlorine	1.2 ppmv or 99.9994% system removal efficiency	25 ppmv or 99.987% system removal efficiency

G. Dioxin/Furan Testing for Sources Not Subject to a Numerical Standard

Today's final rule requires that all sources not subject to a numerical dioxin and furan standard perform a one time test to determine their dioxin and furan emissions. See the discussion in Part Four, Section VII.L.

In the proposed rule, this requirement was limited to solid fuel boilers and those liquid fuel boilers with a wet or no air pollution control system. The final rule expands this requirement to include hydrochloric acid production furnaces and those lightweight aggregate kilns that elect to comply with the temperature limit at the kiln exit in lieu of the 0.20 ng TEQ/dscm dioxin/furan standard. Those sources are not subject to a numerical dioxin/furan standard under the final rule for reasons explained in Volume III of the Technical Support Document, Sections 12 and 15. We note that sources not subject to a numerical dioxin/furan emission standard are subject to the carbon monoxide or hydrocarbon standards and the DRE standard as surrogates.

We are making no changes to the implementation of this requirement. See the proposed rule at 69 FR at 21307 for more information.

III. Statistics and Variability

A. Using Statistical Imputation To Address Variability of Nondetect Values

In the final rule, we use a statistical approach to impute the value of nondetect emissions and feedrate measurements to avoid dampening of the variability of data sets when nondetect measurements are assumed to be present at the detection limit.

At proposal, we assumed that nondetects (i.e., HAP levels in stack emissions below the level of detection of the applicable analytic method) are invariably present at the detection limit. Commenters on the proposed rule stated, however, that assuming nondetects are present at the detection limit dampens emissions variability—a consideration necessary to reasonably ascertain sources' performance over time. This could have significant practical consequence for those data sets (such as the data base for liquid fuel boilers) dominated by nondetected values. We agree with these commenters, and instead of making the arbitrary assumption that all nondetected values are identical (which

in fact is highly unlikely), we are using a statistical methodology to impute the value of nondetect measurements.

The imputation approach assigns a value for each nondetect measurement in a data set within the possible range of values that results in maximizing the 99th percentile upper prediction limit for the data set. For example, the possible range of values for a measurement that is 100% nondetect is between zero and the detection limit.

On February 4, 2005 we distributed a direct request for comments on the imputation approach to major stakeholders. We respond to the comments we received in Part Four, Section IV.D of today's notice.

B. Degrees of Freedom When Imputing a Standard Deviation Using the Universal Variability Factor for Particulate Matter Controlled by a Fabric Filter

The use of the universal variability factor to impute a standard deviation for particulate emissions from sources controlled with a fabric filter takes advantage of the empirical observation that the standard deviation of particulate emissions from sources is positively correlated to the average particulate emissions of sources. Based on this observation, we use regression analysis to determine the best fitting curve to explain the relationship of average value to standard deviation.

In the final rule, we use the actual sample size, rather than an assumed sample size of nine used at proposal, to determine the degrees of freedom for the t-statistic to calculate the floor using the standard deviation imputed from the universal variability factor for particulate matter controlled by a fabric filter.

At proposal, we used eight degrees of freedom to identify the t-statistic to account for within-test condition variability (i.e., run-to-run variability) for standard deviations imputed from the universal variability factor regression.[28] This is because, on average, about three test conditions with nine individual test runs are associated with each source used to develop the regression curve.

A commenter states, however, that this approach can dramatically understate variability when imputing a standard deviation for a source with only three runs because the t-statistic is substantially higher for 2 degrees of freedom than 8 degrees of freedom.

We agree with the commenter. Moreover, using the actual number of runs to identify the t-statistic rather than assuming nine runs is appropriate given that the true test condition average is less certain for sources with only three runs, and thus there is less certainty in the imputed standard deviation. The higher t-statistic associated with a three-run data set reflects this uncertainty.

In addition, we include emissions data classified as "normal" in the regression analysis for the final rule. At proposal, we used only data classified as CT (i.e., highest compliance test condition in a test campaign) or IB (i.e., a compliance test condition that achieved lower emissions than another compliance test condition in the test campaign). We conclude that normal data (i.e., emissions data that were not used to establish operating limits and thus do not reflect variability in controllable operating parameters) should also be considered in the regression analysis because particulate matter emissions are relatively insensitive to baghouse inlet loading and operating conditions.[29] Including normal emissions in the analysis provides additional data to better quantify these devices' performance variability.

IV. Compliance Assurance for Fabric Filters, Electrostatic Precipitators, and Ionizing Wet Scrubbers

The final rule provides additional requirements to clarify how you determine the duration of periods of operation when the alarm set point has been exceeded for a bag leak detection system or a particulate matter detection system:

1. You must keep records of the date, time, and duration of each alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

2. You must record the percent of the operating time during each 6-month period that the alarm sounds.

3. In calculating the operating time percentage, if inspection of the fabric filter, electrostatic precipitator, or ionizing wet scrubber demonstrates that no corrective action is required, no alarm time is counted.

4. If corrective action is required, each alarm shall be counted as a minimum of 1 hour.

The final rule also establishes revised procedures for establishing the alarm set point if you elect to use a particulate matter detector system in lieu of site-specific operating parameter limits for compliance assurance for sources equipped with electrostatic precipitators and ionizing wet scrubbers. The rule explicitly allows you to maximize controllable operating parameters during the comprehensive performance test to account for variability by, for example, detuning the APCD or spiking ash. To establish the alarm set-point, you may either establish the set-point as the average of the test condition run average detector responses during the comprehensive performance test or extrapolate the detector response after approximating the correlation between the detector response and particulate matter emission concentrations. You may extrapolate the detector response up to a response value that corresponds to 50% of the particulate matter emission standard or 125% of the highest particulate matter concentration used to develop the correlation, whichever is greater. To establish an approximate correlation of the detector response to particulate matter emission concentrations you should use as guidance Performance Specification-11 for PM CEMS (40 CFR Part 60, Appendix B), except that you need conduct only 5 runs to establish the initial correlation rather than a minimum of 15 runs required by PS–11.

The final rule also notes that an exceedance of a detector response that corresponds to the particulate matter emission standard is not evidence that the standard has been exceeded because the correlation is an approximate correlation used for the purpose of compliance assurance to determine when corrective measures must be taken. The correlation, however, does not meet the requirements of PS–11 for compliance monitoring.

In addition, if you elect to use a particulate matter detection system in lieu of site-specific control device operating parameter limits on the electronic control device, the ash feedrate limit for incinerators and boilers under § 63.1209(m)(3) is waived. The ash feedrate limit is waived because the particulate matter detection system continuously monitors relative particulate matter emissions and the alarm set point provides reasonable assurance that emissions will not exceed the standard.[30]

[28] USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," March 2004, p. 5–4.

[29] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3. See also Part Four, Section III.C of this preamble.

[30] Note that if your incinerator or boiler is equipped with a fabric filter and you elect under § 63.1206(c)(8)(i) to use a particulate matter detection system in lieu of a bag leak detection system for compliance assurance, the ash feedrate limit is waived. The ash feedrate limit is not waived if you use a bag leak detection system, however, because the alarm level may not ensure compliance with the emission standard when you follow the

Finally, you must submit an excessive exceedance notification within 30 days of the date that the alarm set-point is exceeded more than 5 percent of the time during any 6-month block period of time, or within 30 days after the end of the 6-month block period, whichever is earlier. The proposed rule would have required you to submit that notification within 5 days of the end of the 6-month block period.

V. Health-Based Compliance Alternative for Total Chlorine

The final rule includes the following major changes to the proposed health-based compliance alternative for total chlorine:

(1) You must use 1-hour Reference Exposure Levels (aRELs) rather than 1-hour acute exposure guideline levels (AEGL–1) as the acute health risk threshold metric when calculating 1-hour HCl-equivalent emission rates;

(2) You must establish a long-term average chlorine feedrate limit (i.e., 12 hour rolling average or an (up to) annual rolling average) as the annual average HCl-equivalent emission rate limit divided by [1 − system removal efficiency]. You establish the total chlorine system removal efficiency during the comprehensive performance test. The proposed rule would have required you to establish the long-term average chlorine feedrate limit as the average of the test run averages of the comprehensive performance test.[31]

(3) At proposal, we requested comment on whether and how to establish a short-term chlorine feedrate limit to ensure that the acute exposure Hazard Index of 1.0 is not exceeded. See 69 FR at 21304. We conclude for the final rule that a 1-hour rolling average feedrate limit may be needed for some situations (i.e., if chlorine feedrates can vary substantially during the averaging period for the long-term feedrate limit and potentially result in an exceedance of the 1-hour average HCl-equivalent emission rate limit). Accordingly, although your eligibility for the health-based compliance alternatives is based on annual average HCl-equivalent emissions, you must determine considering prescribed criteria whether your 1-hour HCl-equivalent emission rate may exceed the national exposure standard (i.e., Hazard Index not exceeding 1.0 considering the maximum 1-hour average ambient concentration of hydrogen chloride and chlorine at an off-site receptor location[32]) and thus may exceed the 1-hour average HCl-equivalent emission rate limit absent an hourly rolling average limit on the feedrate of chlorine. If the acute exposure standard may be exceeded, you must establish an hourly rolling average chlorine feedrate limit as the 1-hour HCl-equivalent emission rate limit divided by [1 − system removal efficiency]. You establish the system removal efficiency during the comprehensive performance test.

(4) When calculating HCl-equivalent emission rates, rather than partitioning total chlorine emissions between chlorine and HCl (i.e., the Cl_2/HCl volumetric ratio) based on the comprehensive performance test as proposed, you must establish the Cl_2/HCl volumetric ratio used to calculate the annual average HCl-equivalent emission rate based on the historical average ratio from all regulatory compliance tests. You must establish the Cl_2/HCl volumetric used to calculate the 1-hour average HCl-equivalent emission rate as the highest of the historical ratios from all regulatory compliance tests. The rule allows you to exclude ratios from historical compliance tests where the emission data may not be representative of the current Cl_2/HCl ratio for reasons such as changes to the design or operation of the combustor or biases in measurement methods. The rule also explicitly allows the permitting authority to require periodic emissions testing to obtain a representative average and maximum ratio;

(5) The look-up table analysis has been refined by presenting annual average and 1-hour HCl-equivalent emission rate limits as a function of stack height, stack diameter, and distance to property line. In addition, separate look-up tables are presented for flat terrain and simple elevated terrain;

(6) The proposed rule required approval of the eligibility demonstration before you could comply with the alternative health-based emission limits for total chlorine. Under the final rule, 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 nonetheless begin complying, on the compliance date, with the annual average HCl-equivalent emission rate limits you present in your eligibility demonstration. In addition, if your permitting authority issues a notice of intent to disapprove your eligibility demonstration, 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 total chlorine standards. The permitting authority may extend the compliance date of the total chlorine standards 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;

(7) We have revised the approach for determining chlorine emissions if you feed bromine or sulfur during the comprehensive performance test at levels higher than those specified in § 63.1215(e)(3)(ii)(B). Under the final rule, you must use EPA Method 320/321 or ASTM D 6735'01, or an equivalent method, to measure hydrogen chloride, and Method 26/26A, or an equivalent method, to measure chlorine and hydrogen chloride. You must determine your chlorine emissions to be the higher of: (1) The value measured by Method 26/26A, or an equivalent method; or (2) the value calculated by difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26a, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method; and

(8) The proposed rule would have required you to conduct a new comprehensive performance test if you planned to make changes to the facility that would lower the annual average HCl-equivalent emission rate limit. Under the final rule, you would be required to conduct a performance test as a result of a planned change only for a change to the design, operation, or maintenance of the combustor that could affect the system removal efficiency for total chlorine if the change could reduce the system removal efficiency, or if the change would increase the system removal efficiency and you elect to increase the feedrate limits on total chlorine and chloride.

concepts in the Agency's guidance document on bag leak detection systems to establish the alarm level.

[31] Note that, as a practical matter, most sources must establish the chlorine feedrate limit as the average of the test run average feedrate limit during the comprehensive performance test to demonstrate compliance with the semivolatile emission standard. This is because chlorine feedrate is a compliance assurance parameter for the semivolatile metal emission standard. That feedrate limit is based on a 12-hour rolling average. To ensure compliance with the annual average HCl-equivalent emission rate limit, however, that feedrate limit cannot exceed the value calculated as the annual average HCl-equivalent emission rate limit divided by [1 − system removal efficiency], where you demonstrate the total chlorine system removal efficiency during the performance test.

[32] Under the site-specific risk assessment approach to demonstrate eligibility, you must consider locations where people reside and where people congregate for work, school, or recreation.

Part Four: What Are the Responses to Major Comments?

I. Database

A. Revisions to the EPA's Hazardous Waste Combustor Data Base

Comment: Several commenters identify sources which have ceased operations as a hazardous waste combustor and should be removed from EPA's data base.

Response: We agree with commenters that data and information from sources no longer burning hazardous waste should not be included in our hazardous waste combustor data base and should not be used to calculate the MACT standards. We consider any source that has initiated RCRA closure procedures and activities as a source that is no longer burning hazardous waste. This data handling decision is consistent with the approach we used in the 1999 final rule. See 64 FR at 52844. As we stated in that rule, ample emissions data remain to support calculating the MACT standards without using data from sources that no longer burn hazardous waste.

As a result, we removed the following former hazardous waste combustors from the data base: the Safety-Kleen incinerator in Clarence, New York, the Dow Chemical Company incinerators in Midland, Michigan, and LaPorte, Texas, the two Holcim wet process cement kilns in Holly Hill, South Carolina, the Dow Chemical Company liquid fuel-fired boiler in Freeport, Texas, the Union Carbide liquid fuel-fired boilers in Hahnville, Louisiana, and Texas City, Texas, and six Dow Chemical Company hydrochloric production furnaces in Freeport, Texas.

We are retaining, however, Solite Corporation's lightweight aggregate facility in Cascade, Virginia, in the data base. Even though the facility recently initiated RCRA closure procedures, this data handling decision differs from those listed in the preceding paragraph because Solite Corporation provided this new information in February 2005 while information on the other closures was reported or available to us in 2004. Because we cannot continually adjust our data base and still finalize this rulemaking by the court-ordered deadline, we stopped making revisions to the data base in late 2004. Additional facility changes after that date, like Solite Corporation's Cascade facility closure, simply could not be incorporated.

Comment: One commenter identifies a source in EPA's data base that should be classified as a boiler instead of a hydrochloric acid production furnace.

Response: We agree with the commenter. In today's rule, Dow Chemical Company's boiler F–2820, located in Freeport, Texas, is reclassified in our data base as a boiler. This source is identified as unit number 2020 in our data base.

B. Use of Data From Recently Upgraded Sources

Comment: Many commenters recommend that EPA remove from the data base (or not consider for standards-setting purposes) emissions data from sources that upgraded their emissions controls to comply with the promulgated emission standards of either the 1999 rule or the 2002 interim standards. Several commenters also state that any emissions data that were obtained or used to demonstrate compliance with the promulgated standards of 1999 or 2002 should not be used for standard-setting purposes by the Agency. That is, EPA must evaluate the source category as it existed at the beginning of the rule development process and not after emissions controls are later added to comply with the 1999 or 2002 standards. Several commenters also state that EPA is only partly correct in claiming that the interim standards are not MACT standards because the interim standards were established and considered to be MACT until the Court issued its opinion in July 2001. Until that time, sources proceeded to upgrade their facilities to achieve the standards promulgated in 1999. The rationale for these recommendations is threefold: (1) Use of the data unfairly ignores the MACT-driven reductions already achieved by some sources; (2) it is contrary to sound public policy to use data from upgraded facilities to "ratchet down" the MACT floors to a level more stringent because these sources would not have increased their level of performance but for the legal obligation to comply with the standards; and (3) EPA's reliance on *National Lime Ass'n* v. *EPA*, 233 F.3d 625, 640 (D.C. Cir. 2000), for the proposition that the motivation for a source's performance is legally irrelevant in developing MACT floor levels is misplaced because that case involved the initial MACT standard setting process, and not a subsequent rule.

One commenter agrees with EPA's proposed position and states that use of data from sources that have upgraded is not only appropriate, but also required by the Clean Air Act. This commenter states that the actual performance of sources that have upgraded their emissions equipment—to meet the 1999 standards or for any reason—is reflected only by the most recently generated emissions data for the source. Thus, the Clean Air Act requires EPA to use the most recently generated data available to it and precludes the Agency from using older, out-of-date performance data.

EPA also received several comments stating that the language of section 112(d)(3)(A) of the Clean Air Act informs how the Agency should consider emissions data from sources that conducted testing after that 1999 rule was promulgated. One commenter states that the only data which should not be used in calculating the MACT floors are from sources that are subject to lowest achievable emission rates (LAER). Thus, the commenter states, Congress considered the possibility of significant and recent upgrades, and concluded that EPA should use up-to-date data to reflect source's performance, but must exclude certain sources from the floor calculation if their upgrades were of a specific degree and were accomplished within a specific period of time. Another commenter states that Congress did not intend to pile technology upon technology as confirmed by section 112(d)(3)(A) that specifically excludes sources that implemented LAER from consideration when establishing section 112(d) standards. Thus, the commenter states, considering data from sources that have upgraded violates both the language and intent of the Clean Air Act. Another commenter states that, while Congress no doubt contemplated that EPA should use all available emissions information in setting initial MACT standards, neither the statute nor the legislative history suggest that follow-up MACT rulemakings require the use of data reflecting compliance efforts with previous MACT standards or interim standards.

Response: As proposed, EPA maintains its position on use of post-1999 emissions data. The statute indicates that EPA is to base MACT floors on performance of sources "for which the Administrator has emissions information." Section 112(d)(3)(A); *CKRC*, 255 F. 3d at 867. There can be no dispute that post-1999 performance data in EPA's possession fits this description. We also reiterate that the motivation for the control reflected in data available to us is irrelevant. See 69 FR at 21217–218. We further agree with those commenters who pointed out that Congress was explicit when it wanted certain emissions information (i.e., sources operating pursuant to a LAER standard) excluded from consideration in establishing floors. There is, of course, no such enumerated exception

for sources that have upgraded their performance for other reasons.

We also do not agree with those commenters arguing (with respect to the standards for the Phase 1 sources (incinerators, cement kilns, and lightweight aggregate kilns)) in effect that the present rulemaking involves revision of an existing MACT standard. If this were indeed a revision of a MACT standard under section 112(d)(6), then EPA would not redetermine floor levels. See 70 FR at 20008 (April 15, 2005). However, EPA has not to date promulgated valid MACT floors or valid MACT standards for these sources. The 1999 standards do not reflect MACT, as held by the *CKRC* court. The interim standards likewise do not reflect MACT, but were designed to prevent a regulatory gap and were described as such from their inception. 67 FR at 7693 (Feb. 13, 2002); see also *Joint Motion of all Parties for Stay of Issuance of Mandate* in case no. 99–1457 (October 19, 2001), pp. 11–12 ("The Parties emphasize that the contemplated interim rule is in the nature of a remedy. It would not respond to the Court's mandate regarding the need to demonstrate that EPA's methodology reasonably predicts the performance of the average of the best performing twelve percent of sources (or best-performing source). EPA intends to address those issues in a subsequent rule, which will necessarily require a longer time to develop, propose, and finalize.") EPA consequently believes that it is adopting in this rule the initial section 112(d) MACT standards for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns, and that the floor levels for existing sources are based, as provided in section 112(d)(3), on performance of those sources for which EPA has "emissions information."

However, we disagree with the comment that we must make exclusive use of the most recent information from hazardous waste combustion sources. There is no such restriction in section 112(d)(3). EPA has exhaustively examined all of the data in its possession for all source categories covered by this rule, and determined (and documented) which data are suitable for evaluating sources' performance.

C. Correction of Total Chlorine Data to Address Potential Bias in Stack Measurement Method

Comment: Several commenters state that EPA's proposed total chlorine standards of 1.5 ppm for existing incinerators and 0.18 ppm for new incinerators are based on biased data of indeterminate quality and are unachievable. Commenters assert that Method 26A and its RCRA equivalent, SW 846 Method 0050, have a negative bias at concentrations below 20 ppmv when used on stacks controlled with wet scrubbers. Commenters cite two recurring situations when this bias is likely to occur: (1) hydrogen chloride dissolving in condensed moisture in the sampling train; and (2) hydrogen chloride reacting with alkaline compounds from the scrubber water that are collected on the filter ahead of the impingers.

Commenters are particularly concerned about the negative bias associated with stack gas containing substantial water vapor. Commenters note that EPA found in a controlled laboratory study by Steger[33] that the bias is between 17 and 29 percent at stack gas moisture content of 7 to 9 percent. This stack gas moisture is much less than the nominal 50% moisture contained in some hazardous waste combustor stacks according to the commenters. Commenters believe this is why EPA's Method 0050, which was used to gather most of the data in the HWC MACT data base, states in Section 1.2 that "this method is not acceptable for demonstrating compliance with HCl emission standards less than 20 ppm."

Moreover, commenters state that the procedures in Method 0050 to address the negative bias caused by condensed moisture were not followed for many RCRA compliance tests. The method uses an optional cyclone to collect moisture droplets, and requires a 45 minute purge of the cyclone and sampling train to recover hydrogen chloride from water collected by the cyclone and any condensed moisture in the train. The cyclone is not necessary if the stack gas does not contain water droplets. According to commenters, the cyclone and subsequent purge were often not used in the presence of water droplets because a potential low bias below 20 ppmv was irrelevant when demonstrating compliance with emission standards on the order of 100 ppmv. There was no need for the extra complexity and expense of using a cyclone and train purge given the purpose of the test. Although the data were acceptable for their intended purpose, commenters conclude that the data are not useful for establishing standards below 20 ppmv.

For these reasons, commenters suggest that EPA not consider total chlorine measurements below 20 ppmv when establishing the standards.

Response: For the reasons discussed below, we corrected all total chlorine measurements in our data base for all source categories that were below 20 ppmv to 20 ppmv to establish the total chlorine floors. Moreover, to address run-to-run variability given that all runs for several data sets are now corrected to 20 ppmv, we impute 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. This is the same approach we used to impute variability from sources using fabric filters when determining the particulate matter MACT floors.

Effect of Moisture Vapor. Commenters imply that stack gas with high levels of gas phase water vapor will inherently be problematic, particularly at emissions less than 20 ppmv. There is no basis for claiming that water vapor, per se, causes a bias in SW–846 Method 0050 or its equivalent, Method 26A. Condensed moisture (i.e., water droplets), however, can cause a bias because it can dissolve hydrogen chloride in the sampling train and prevent it from being captured in the impingers if the sampling train is not properly purged. Water droplets can potentially be present due to entrainment from the wet scrubber, condensation in cooler regions of the stack along the stack walls, and entrainment from condensed moisture dripping down the stack wall across the inlet duct opening.

Although Method 0050 addresses the water droplet issue by use of a cyclone and 45 minute purge, the Steger paper (Ibid.) concludes that a 45 minute purge is not adequate to evaporate all water collected by the cyclone in stacks with a total moisture content (vapor and condensed moisture) of 7 to 9%. At those moisture levels, Steger documented the negative bias that commenters reference. Steger's recommendation was to increase the heat input to the sample train by increasing the train and filter temperature from 120C (248F) to 200C (392F). We agree that increasing the probe and filter temperature will provide a better opportunity to evaporate any condensed moisture, but another solution to the problem is to require that the post-test purge be run long enough to evaporate all condensed moisture. That is the approach used by Method 26A, which EPA promulgated after Method 0050, and which sources must use to demonstrate compliance with the final standards. Method 26A uses an extended purge time rather than

[33] Steger, J.L., et al, "Laboratory Evaluation of Method 0050 for Hydrogen Chloride", Proc of 13th Annual Incineration Conference, Houston, TX, May 1994.

elevating the train temperature to address condensed moisture because that approach can be implemented by the stack tester at the site without using nonstandard equipment.

We attempted to quantify the level of condensed moisture in the Steger study and to compare it to the levels of condensed moisture that may be present in hazardous waste combustor stack gas. This would provide an indication if the bias that Steger quantified with a 45 minute purge might also be applicable to some hazardous waste combustors. We conclude that this comparison would be problematic, however, because: (1) given the limited information available in the Steger paper, it is difficult to quantify the level of condensed moisture in his gas samples; and (2) we cannot estimate the levels of condensed moisture in hazardous waste combustor stack gas because, even though condensed moisture may have been present during a test, method protocol is to report the saturation moisture level only (i.e., the amount of water vapor present), and not the total moisture content (i.e., both condensed and vapor phase moisture).

We can conclude, however, that, if hazardous waste combustor stack gas were to contain the levels of condensed moisture present in the gas that Steger tested, the 45 minute purge required by Method 0050 would not be sufficient to avoid a negative bias. We also conclude that this is potentially a practical issue and not merely a theoretical concern because, as commenters note, hazardous waste combustors that use wet scrubbers are often saturated with water vapor that will condense if the flue gas cools.

Data from Wet Stacks When a Cyclone Was Not Used. Commenters state that Method 0050 procedures for addressing water droplets (adequate or not, as discussed above) were not followed in many cases because a low bias below 20 ppmv was not relevant to demonstrating compliance with standards on the order of 100 ppmv. We do not know which data sets may be problematic because, as previously stated, the moisture concentration reported was often the saturation (vapor phase only) moisture level and not the total (vapor and liquid) moisture in the flue gas. We also have no documentation that a cyclone was used—even in situations where the moisture content was documented to be above the dew point. We therefore conclude that all data below 20 ppmv from sources controlled with a wet scrubber are suspect and should be corrected.

Potential Bias Due to Filter Affinity for Hydrogen Chloride. Studies by the American Society of Testing and Materials indicate that the filter used in the Method 0050 train (and the M26/26A trains) may adsorb/absorb hydrogen chloride and cause a negative bias at low emission levels. (See ASTM D6735–01, section 11.1.3 and "note 2" of section 14.2.3) This inherent affinity for hydrogen chloride can be satisfied by preconditioning the sampling train for one hour. None of the tests in our database were preconditioned in such a manner.

We are normally not concerned about this type of bias because we would expect the bias to apply to all sources equally (e.g., wet or dry gas) and for all subsequent compliance tests. In other words, we are ordinarily less concerned if a standard is based on biased data, as long as the means by which the standard was developed and the means of compliance would experience identical bias.

However, we did correct the wet gas measurements below 20 ppmv to address the potential low bias caused by condensed moisture. This correction would also correct for any potential bias caused by the filter's inherent affinity for hydrogen chloride. This results in a data set that is partially corrected for this issue—sources with wet stacks would be corrected for this potential bias while sources with dry stacks would not be corrected. To address this unacceptable mix of potentially biased and unbiased data (i.e., dry gas data biased due to affinity of filter for hydrogen chloride and wet gas data corrected for condensed moisture and affinity of filter for hydrogen chloride), we also correct total chlorine measurements from dry gas stacks (i.e., sources that do not use wet scrubbers).

Deposition of Alkaline Particulate on the Filter. Commenters are also concerned that hydrogen chloride may react with alkaline compounds from the scrubber water droplets that are collected on the filter ahead of the impingers. Commenters suggest this potential cause for a low bias at total chlorine levels below 20 ppmv is another reason not to use measurements below 20 ppmv to establish the standards.

Although alkaline particulate deposition on the method filter causing a negative bias is a much greater concern for sources that have stack gas containing high levels of alkaline particulate (e.g., cement kilns, sources equipped with dry scrubbers), we agree with commenters that this may be of concern for all sources equipped with wet scrubbers. Our approach to correct all data below 20 ppmv addresses this concern.

Decision Unique to Hazardous Waste Combustors. We note that the rationale for our decision to correct total chlorine data below 20 ppmv to account for the biases discussed above is unique to the hazardous waste combustor MACT rule. Some sources apparently did not follow Method 0050 procedures to minimize the low bias caused by condensed moisture for understandable reasons. Even if sources had followed Method 0050 procedures to minimize the bias (i.e., cyclone and 45 minute purge) there still may have been a substantial bias because of insufficient purge time, as Steger's work may indicate. We note that the total chlorine stack test method used by sources other than hazardous waste combustors—Method 26A—requires that the cyclone and sampling train be purged until all condensed moisture is evaporated. We believe it is necessary to correct our data below 20 ppmv data because of issues associated exclusively with Method 0050 and how it was used to demonstrate compliance with these sources.

Determining Variability for Data at 20 ppmv. Correcting those total chlorine data below 20 ppmv to 20 ppmv brings about a situation identical to the one we confronted with nondetect data. See Part Four, Section V.B. below. The MACT pool of best performing source(s) for some data sets is now comprised of largely the same values. This has the effect of understating the variability associated with these data.

To address this concern, we took an approach similar to the one we used to determine variability of PM emissions for sources equipped with a fabric filter. In that case, we performed a linear regression on the data, charting variability against emissions, and used the variability that resulted from the linear regression analysis as the variability for the sources average emissions. In this case, most or all of the incinerator and liquid fuel boiler sources in the MACT pool have average emissions at or near 20 ppmv. We therefore performed a linear regression on the total chlorine data charting average test condition results above 20 ppmv against the variability associated with that test condition. The variability associated with 20 ppmv was the variability we used for incinerator and liquid fuel boiler data sets affected by the 20 ppmv correction.

We also considered using the statistical imputation approach we used for nondetect values. See discussion in Section IV.B below. 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 were much lower than 20 ppmv; our statistical imputation approach would tend to overestimate the run to run variability. Consequently, we conclude that a regression analysis approach is more appropriate. A regression analysis is particularly pertinent in this situation because: (1) We consider data above 20 ppmv used to develop the regression to be unbiased; and (2) all the corrected data averages for which we are imputing a standard deviation from the regression curve are at or near 20 ppmv. Thus, any potential concern about downward extrapolation from the regression would be minimized.

We note that, although a regression analysis is appropriate to estimate run-to-run variability for the corrected total chlorine data, we could not use a linear regression analysis to address variability of nondetect values. To estimate a standard deviation from a regression analysis, we would need to know the test condition average emissions. This would not be feasible, however, because some or all of the run measurements for a test condition are nondetect. In addition, we are concerned that a regression analysis would not accurately estimate the standard deviation at low emission levels because we would have to extrapolate the regression downward to levels where we have few measured data (i.e., data other than nondetect). Moreover, the statistical imputation approach is more suitable for handling nondetects because the approach calculates the run-to-run variability by taking into account the percent nondetect for the emissions for each run.[34] A regression approach would be difficult to apply particularly in the case of test conditions containing partial nondetects or a mix of detect and nondetect values. Given these concerns with using a regression analysis to estimate the standard deviation of test conditions with runs that have one or more nondetect (or partial nondetect) measurements, we conclude that the statistical imputation approach best assures that the calculated floor levels account for run-to-run emissions variability.

Compliance with the Standards. The final standards are based on data that were corrected to address specific issues concerning these data. See the above discussion regarding stack gas moisture, filter affinity for hydrogen chloride, and alkaline compound reactions with hydrogen chloride in the sampling train.

Sources must demonstrate compliance using a stack test method that also addresses these issues. Sources with wet stacks must use Method 26A and follow those procedures regarding the use of a cyclone and the purging of the system whenever condensed moisture may be present in the sampling system.

Finally, all sources—those with either wet or dry gas—should precondition the sampling train for one hour prior to beginning the test to satisfy the filter's affinity for hydrogen chloride. The permitting authority will ensure that sources precondition the sample train (under authority of § 63.1209(g)(2)) when they review and approve the performance test plan.

D. Mercury Data for Cement Kilns

Comment: Several commenters state that EPA's data base of mercury emissions data (and associated feed concentrations of mercury in the hazardous waste) are unrepresentative and unsuitable for use in determining MACT standards for cement kilns. These comments are supported by an extensive amount of data submitted by the cement manufacturing industry including three years of data documenting day-to-day levels of mercury in hazardous waste fuels fired to all 14 hazardous waste burning cement kilns.[35] The commenters recommend that EPA use the commenter-submitted data as the basis for assessing cement kilns' performance for control of mercury because it is the most complete and representative data available to EPA.

Response: We agree that the commenter-submitted mercury data are more representative than those we used at proposal. First, these data represent a significantly larger and more comprehensive dataset compared to the one used to support the proposed mercury standard. The commenter-submitted data document the day-to-day levels of mercury in hazardous waste fired to all cement kilns for a three year period covering 1999 to 2001. In total, approximately 20,000 measurements of the concentration of mercury in hazardous waste are included in the dataset. When considered in whole, these data describe the performance (and variability thereof) of all cement kilns for the three year period because each measurement represents the mercury concentration in the burn tank used to fire the kiln over the course of a day's operation (or longer period).[36] In comparison, the data used to support the proposed floor level consisted of a much smaller dataset of approximately 50 test conditions representing a snapshot of performance somewhere in the range of normal operations, with each test condition representing a relatively short period of time (e.g., several hours).[37] As discussed at proposal, we were concerned regarding the representativeness of this smaller dataset. See 69 FR at 21251. In addition, the commenter-submitted dataset allows us to better evaluate the only mercury control technique used by existing hazardous waste burning cement kilns—controlling the feed concentration of mercury in the hazardous waste. The commenters have demonstrated convincingly that the mercury dataset used at proposal does not properly show the range of performance and variability in performance these cement kilns actually experience, while the significantly more robust dataset submitted by commenters does illustrate this variability. Thus, we conclude the larger commenter-submitted dataset is superior to EPA's smaller testing dataset.

We note that our MACT floor analysis of the commenter-submitted dataset to determine which sources are the best performers and to identify a mercury standard for cement kilns is discussed in the background document.[38] Additional discussion of issues related to the mercury standard for cement kilns is found in Part Four, Section VI.B of the preamble.

[34] For multi-constituent HAP (e.g. SVM) the emissions for a run could be comprised of fully detected values for some HAP and detection limits for other HAP that were nondetect.

[35] See docket item OAR–2004–0022–0049.

[36] Mercury is a volatile compound at the typical operating temperatures of the air pollution control devices used by cement kilns (i.e., baghouses and electrostatic precipitators). Most of the mercury exits the cement kiln system as volatile stack emissions, with a smaller fraction partitioning to the clinker product or cement kiln dust. Thus, in general, there is a proportional relationship between the mercury concentration in the hazardous waste and stack emissions of mercury (i.e., as the mercury concentration in hazardous waste increases (assuming mercury concentrations in other inputs such as raw materials and fossil fuels (coal) and other factors remain constant), emissions of mercury will correspondingly increase).

[37] EPA's dataset for mercury for cement kilns is not like the RCRA compliance test emission data for other HAPs where each source designs the compliance test such that the operating limits it establishes account for the variability it expects to encounter during its normal operations (e.g., semi- and low volatile metals). This is not necessarily true for mercury for cement kilns as shown in our analysis of our mercury dataset at proposal. See 69 FR at 21251.

[38] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Sections 7.5.3 and 11.0, September 2005.

E. Mercury Data for Lightweight Aggregate Kilns

Comment: One commenter, an owner and operator of seven of the nine operating lightweight aggregate kilns, states that the mercury dataset used by EPA at proposal is a limited and unrepresentative snapshot of performance of their seven kilns. To support their position that the snapshot emissions data are unrepresentative, the commenter submitted eight months of data documenting levels of mercury in hazardous waste fuels fired to their lightweight aggregate kilns.[39]

Response: We agree with the commenter that their mercury data submission is more representative than those used at proposal. As discussed in a notice for public comment sent directly to certain commenters,[40] the commenter-submitted dataset documents the day-to-day levels of mercury in hazardous waste fuels fired to Solite Corporation's Arvonia kilns between October 2003 and June 2004. The dataset consists of over 310 measurements of the concentration in mercury in hazardous waste. Each measurement represents the mercury concentration of the burn tank used to fire the kiln over the course of a day's operation (or longer period). In comparison, the data used to support the proposed floor level consisted of a smaller dataset of 15 test conditions.

The nature of the mercury data submitted by the commenter is the same as we received for the cement kiln category discussed in the preceding section. For similar reasons, we accept the more comprehensive commenter-submitted dataset as one that better shows the range of performance and variability in performance for these lightweight aggregate kilns. One notable difference, however, is that the commenter submitted mercury data only for its company (representing seven of nine lightweight aggregate kilns). Thus, we received no data documenting day-to-day levels of the concentration of mercury in hazardous waste fuels for the other two lightweight aggregate kilns owned by a different company. For these two lightweight aggregate kilns, we continue to use available data available in our database.[41]

Comment: One commenter opposes the use of the commenter-submitted mercury data because EPA would be uncritically accepting a limited and select data set from a commenter with a direct interest in the outcome of its use. Instead, the commenter suggests EPA use its section 114 authority to obtain all data that are available, not just the data selected by that commenter.

Response: We disagree that we uncritically accepted the commenter-submitted mercury data. The reason the commenter submitted data collected between October 2003 and June 2004 is that the facility was, prior to October 2003, in the process of upgrading its on-site analysis equipment. One outcome of this laboratory upgrade was its capability to detect mercury in hazardous waste at lower concentrations. Prior to the upgrade, the facility's on-site laboratory was capable of detecting mercury in the hazardous waste at a concentration of approximately 2 ppmw, which is a level such that the vast majority of measurements would neither be detected nor useful for identifying best performers and their level of performance.[42] The June 4, 2004 cutoff date represents a practicable date that measurements could still be incorporated into the commenter's public comments to the proposed rule, which were submitted on July 6, 2004. Finally, the commenter provided all waste fuel measurements during this period and states reliably that no measurements made during this period were selectively excluded.[43]

We also reject the commenter's suggestion that we use our authority under section 114 of the Clean Air Act to obtain additional hazardous waste mercury concentration data from the facility. There is no obligation for us to gather more performance data, given that the statute indicates that we are to base floor levels on performance of sources "for which the Administrator has emissions information." Section 112(d)(3)(A); *CKRC*, 255 F. 3d at 867. In addition, given our concerns about the usefulness of measurements with high detection limits discussed above, the collection of additional data prior to the laboratory upgrade would not be productive. When balanced against the expenditure of significant resources, both in time and level of effort, to collect several more months of data, we conclude that obtaining additional mercury measurements is unnecessary because the available eight months of data—including over 310 individual measurements—represent a significant amount of data that we judge to be adequately reflective of the source's performance and variability in performance.

F. Incinerator Database

Comment: Commenters state that many of the top performers (e.g., 3011, 3015, 3022, 349) dilute emission concentrations in the stack by burning natural gas to initiate reactive waste (e.g., explosives, inorganic hydrides) or to decontaminate inert material. Commenters do not believe these units should be considered "representative" of the overall incinerator source category and should not be used to establish standards for incinerators combusting primarily organic wastes.

Response: Source 3022 has closed and has been removed from the database. Emission data from source #3015 (ICI explosives) has been excluded for purposes of calculating the particulate matter floor because the test report indicates this source was primarily feeding scrap metal, which we conclude to be an atypical waste stream from a particulate matter compliance perspective.[44]

The sources identified by the commenter are among the best performing sources in two instances. Source 3011 is the second ranked best performer for the particulate matter standard. This source is among the best performers for particulate matter because it uses a state-of-the art baghouse that is equipped with Teflon coated bags. There is no evidence to suggest that this source was diluting its particulate matter emissions. We acknowledge that we do not have ash feed data for the test conditions that were used in the particulate matter standard analysis. However, this source had the third and fourth highest metal feed control levels among all the sources used in the MACT analysis for the semivolatile and low volatile metal

[39] See docket items OAR–2004–0022–0270 and OAR–2004–0022–0333.

[40] See docket item OAR–2004–0022–0370.

[41] Unlike that is available for the commenter's kilns, we note that we have compliance test emissions data, which is designed to maximize operating parameters (e.g., HAP feedrates) that affect emissions, for the other two kilns. For additional discussion on how these data were analyzed in conjunction with the commenter-submitted data, see the document "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Section 7.5.3 and 12.0, September 2005.

[42] A mercury concentration of 2 ppmw in the hazardous waste corresponds to a stack concentration of approximately 200 µg/dscm, which is well above the interim standard of 120 µg/dscm for mercury.

[43] See also docket items OAR–2004–0022–0233 and OAR–2004–0022–0367.

[44] We did not have ash feed data for source 3015. We acknowledge that ash feed control levels do not significantly affect particulate matter emissions from sources equipped with baghouses. However, in this instance, the particulate matter emissions from this source may not be representative because this source may not have been feeding any appreciable levels of ash given that scrap metal feeds generally would not contribute to the ash loading into the baghouse.

standards.[45] We therefore conclude that it is appropriate to include this source in the MACT analysis that determines the relevant best performers for particulate matter.

Source 349 is the eighth ranked (out of 11) best performer for the particulate matter standard. We acknowledge that the ash feed level for this source is lower than most incinerators equipped with baghouses. However, particulate matter emissions from sources equipped with baghouses are not significantly affected by the ash inlet loading to the baghouse.[46] This is further supported by the fact that this source is ranked eighth among the best performers. We conclude source 349 is a best performer not because of its relatively low ash feed level, but rather because it is equipped with a well designed and operated baghouse. It is therefore appropriate to include this source in the MACT analysis.

Comment: Commenters state that source 341 should not be considered in the MACT analysis because it is a small laboratory waste burner that processes only 900 lbs/hr of waste. Commenters claim that more than 80 percent of the waste profile is non-hazardous waste.

Response: We approached this comment by asking if it would be appropriate to create a separate subcategory for source 341. We conclude it is not necessary to subcategorize hazardous waste incinerators based on the size of combustion units. This is because the ranking factors used to identify the relevant best performing sources are normalized in order to remove the influence that combustion unit size would otherwise have when identifying best performing sources. See part 4 section III.D below. Air pollution control system types (a ranking factor for particulate matter) are generally sized to match the corresponding volumetric gas flow rate in order to achieve a given control efficiency. The size of the combustor therefore does not influence a source's ability to achieve a given control efficiency. System removal efficiency and hazardous waste feed control MTECs (ranking factors used by the SRE/Feed methodology as described in part 4 section III.B below) are also not influenced by the size of the combustor.[47]

Emission limitations are similarly normalized to remove the influence of combustion unit size by expressing the standards as emission concentration limits rather than as mass emission rate limits. See section III.D. This is illustrated in the following example. Assume there are two cement kilns side by side with similar designs, the only difference being one is twice the size of the other, producing twice as much clinker. They both have identical types of air pollution control systems (the larger source is equipped with a larger control device that is appropriately sized to accommodate the larger volumetric gas flow rates and achieves the same control efficiency as the smaller control device). If we were to assess performance based on HAP mass emission rates (e.g., pounds per hour), the smaller source would be the better performer because its mass emission rates would be half of the mass emission rate of the larger source, even though they both are achieving the same back-end control efficiency. Emission concentrations, on the other hand, are calculated by dividing the HAP mass emission rate (e.g., pounds per hour) by the volumetric gas flowrate (e.g., cubic feet per hour). In the above example, both sources would have identical HAP emission concentrations (the larger source has twice the mass emission rate, but twice the volumetric gas flow rate), accurately reflecting their identical control efficiency. Emission concentrations normalize the size of each source by accounting for volumetric gas flowate, which is directly tied to the amount of raw material each source processes (and subsequently the amount of product that is produced). This is a reason we point out that normalization eliminates the need to create subcategories based on unit size. See part four section III.D.

Further, it would be difficult to determine an appropriate minimum size cutoff in which to base such a subcategorization determination. Such a subcategorization scheme could also yield nonsensical floor results, as was the case when we assessed subcategorizing commercial incinerators and on-site incinerators.[48]

We have identified source 341 as the best performing source for particulate matter and low volatile metals. It is the single best performing source for these standards because it is equipped with a state-of-the-art baghouse.[49] This source, which simultaneously feeds hazardous and nonhazardous wastes, conducted several emission tests that reflected different modes of operation. The amount of nonhazardous waste that was processed in the combustion unit varied across test conditions. We could not ascertain the exact amount of hazardous waste processed in the test condition that was used in the MACT analysis for low volatile metals because the test report stated the wastes that were processed were a mixture of hazardous and nonhazardous wastes, although we estimate that at least 26% of the waste processed was nonhazardous.[50] We note that we are aware of several other incinerators that processed nonhazardous waste at levels greater than 26 percent during their emission tests. We therefore do not believe this to be atypical operation that warrants subcategoriztion.

Moreover, the fact that this source was feeding nonhazardous wastes does not result in atypically low hazardous waste low volatile metal feed control levels, as evidenced by the relative feed control ranking for this source of thirteenth among the 26 sources assessed in the MACT analysis. It also has the highest normalized hazardous waste feed control level among the best performing sources, and has the fifth best low volatile metal system removal efficiency among those same 26 sources. We repeat that this source is being identified as the best performing source primarily because it is equipped with a highly efficient baghouse, not because it is feeding low levels of HAP metals attributable to its hazardous waste.

Furthermore, this source is not the lowest emitting source in the database. There are two sources with similar, but slightly lower low volatile metal compliance test emissions (one commercial incinerator and one onsite, non-commercial incinerator). This provides further evidence that the

[45] We note that feed control levels are normalized based on each source's gas flowrate. The feed control levels used to assess performance are therefore appropriate indicators that directly address whether emissions of these pollutants are in fact being diluted by the combustion of natural gas.

[46] See USEPA, "Technical Support Document for the HWC MACT Standards, Vol I: Description of Source Categories," September 2005, Section 3.2.2, for further discussion.

[47] System removal efficiency is a measure of the amount of the pollutant that is removed from the flue combustion gas prior to being emitted and likewise is not influenced by the size of the combustor because back-end control systems are sized to achieve a given performance level. Hazardous waste feed control levels are normalized to remove the influence of combustor size by dividing each source's mass feed rate by its volumetric gas flowrate.

[48] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 4.3.2 for further discussion.

[49] See USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume I: Description of Source Categories", September 2005, Section 3.2.1, for further discussion.

[50] See USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume I: Description of Source Categories", September 2005, Section 2.1 for further discussion.

emissions from this source appropriately represent emissions of a relevant best performing source.

Regarding the particulate matter standard, source 341 does not have atypically low ash feed rates as compared to other sources equipped with baghouses. Out of the nine best performing particulate matter sources for which we have ash feed information, this source ranks fourth (a ranking of one is indicative of the lowest ash feed rate). Nonetheless, as previously discussed, particulate matter emissions from sources equipped with baghouses are not significantly affected by the ash inlet loading to the baghouse. We note that particulate matter emissions from the second and third best performing source are not significantly different from this source, providing further evidence that this source is representative of the range of emissions exhibited by other well designed and operating incinerators equipped with baghouses.[51]

Comment: Commenters state that sources 3018 and 3019 are identified as best performers for mercury emissions for incinerators. After evaluating the trial burn plans for these sources, the commenter believes the data should not be used to calculate the MACT floor because the spiking rate for mercury was extremely low for a compliance test. The ranking for feedrate is therefore unrepresentative. The commenter suggests that these test results should be characterized as "normal".

Response: We have verified that the emission tests performed for sources 3018 and 3019 reflect the upper range of mercury emissions that are not to be exceeded by these sources, and that their spiked mercury feed rates were back-calculated from a risk assessment. We therefore conclude that we properly characterized these emissions as compliance test emissions data because they reflect the emissions resulting from the upper bound of hazardous waste mercury feedrates from these sources.[52] Consequently, these data are properly included with the other data used to calculate floor standards for mercury for incinerators.

Comment: Commenters state the trial burn plan for sources 3018 and 3019 describes these units to be of similar design. Thus the difference in results between these two similar sources is indicative of additional variability above and beyond the run-to-run variability and should be assessed if the data are deemed usable at all.

Response: We conclude both of these sources are in fact unique sources that should be assessed as individual sources for purposes of the MACT analysis. Although these sources are of similar design, we do not believe they are identical, in part because: (1) The facility itself conducted separate emission tests for the two units (rather than trying to avail itself of the 'data in lieu' option, which could save it the expense of a second compliance test, the obvious inference being that the source or regulatory official regards the two units as different); and (2) discussions with facility representatives indicated these units are similar, but not identical.[53] As a result, it would be inappropriate to assess emissions variability by combining the emissions of these two sources into one test condition given they are not identical units.

Comment: Commenters state that emissions data from source 327 should not be used to calculate dioxin/furan and mercury floors because they claim the carbon injection system did not appear to function properly during the test.

Response: We agree with the commenters. We have determined that this source encountered problems with its carbon injection system during the emissions test from which the data were obtained and subsequently used in EPA's proposed MACT analysis. We have also verified that this source did not establish operating parameter limits for the carbon injection system as a result of this test.[54] We therefore have excluded this mercury and dioxin data from the MACT analysis, and have instead used emissions data from an older test condition to represent this source's emissions.

Comment: Commenters state that the emissions data from source 3006 were based on a miniburn to determine how close the unit was to achieving the interim MACT standards. The commenter questions whether these data should be used for purposes of calculating MACT standards.

Response: The fact that a source conducts a voluntary emissions test (e.g., a miniburn) to determine how close it is operating to upcoming emission standards does not necessarily lead us to conclude that the emission data are inappropriate for purposes of calculating MACT standards. However, since proposal, we have determined that this source did not measure cadmium emissions during this emissions test. As a result, we conclude the semivolatile metal emissions data from this source should not be used in the MACT standard calculation for semivolatile metals because the data do not represent the source's combined emissions of lead and cadmium.

II. Affected Sources

A. Area Source Boilers and Hydrochloric Acid Production Furnaces

Comment: Five commenters state that the area sources subject to the proposed rule are negligible contributors to 112(c)(6) HAP emissions and should not be subject to major source standards for 112(c)(6) HAP. Commenters note that requiring compliance with MACT for 112(c)(6) HAP and RCRA for other toxic pollutants is more complicated and burdensome for sources than complying only with RCRA. Although an area source can choose to become regulated as a major source in order to reduce some RCRA requirements, they would become subject to more onerous emissions limits under Subpart EEE and the other MACT requirements.

One of these commenters states that subjecting an area source to major source standards under 112(c)(6) sends a negative message to industry that EPA does not value emissions reduction and/or chemical substitution, or other methods used by area sources to achieve that status. EPA is no longer providing any incentive for sources to take such difficult yet environmentally beneficial steps to become an area source. Imposing Title V permitting requirements on an entire facility that operates as an area source of hazardous air pollutants (HAPs) will impose an unfair and undue burden on the facility.

Another of these commenters states that section 112(c)(6) requires in pertinent part that EPA list categories and subcategories of sources assuring that sources accounting for not less than 90% of the aggregate emissions of each pollutant (specified in 112(c)(6)) are subject to standards under Section 112(d)(2) or (d)(4). In 1998, EPA published a notice identifying the list of source categories accounting for the section 112(c)(6) HAP emissions and to be regulated under section 112(d) to meet the 90% requirement. (63 FR 17838) At the time, EPA acknowledged that MACT standards for a number of the source categories had not yet been promulgated, and stated that when the

[51] Source 341 particulate matter emissions, after accounting for variability, equated to 0.0015 gr/dscf. The second and third ranked particulate matter sources emissions, considering variability, equated to 0.0018 and 0.0023 gr/dscf, respectively.

[52] See February 11, 2005 memo to docket titled "October 20 Conference Call with Squibb Manufacturing regarding Source # 3018 and 3019".

[53] Also see February 11, 2005 memo to docket titled "October 20 Conference Call with Squibb Manufacturing regarding Source # 3018 and 3019".

[54] See July 15, 2005 memo to docket titled "Telephone Conversation with Utah DEQ Regarding 2001 Clean Harbor Emission Test."

regulations for each of those categories are developed, EPA will analyze the data specific to those sources and determine, under Section 112(d), in what manner requirements will be established. EPA also stated that:

"Some area categories may be negligible contributors to the 90% goal, and as such pose unwarranted burdens for subjecting to standards. These trivial source categories will be removed from the listing as they are evaluated since they will not contribute significantly to the 90% goal." (63 FR 17841)

The commenter believes the "two or fewer" area source boilers identified by EPA in the present rulemaking are "negligible contributors" to the 90% goal and therefore, should not be required to adopt the same MACT emission limitations and requirements as major sources of the 112(c)(6) pollutants. The commenter believes EPA's decision to subject area source boilers and hydrochloric acid production furnaces is incorrect, unsupported by the administrative record, and therefore arbitrary and capricious.

One commenter states that, if EPA regulates area sources, it should significantly reduce the administrative burden for area sources by: exempting them from Title V provisions for Subpart EEE requirements; exempting them from compliance with the General Provisions of 63 Subpart A; limiting them to a one-time comprehensive performance test; or limiting other applicable requirements.

Response: We continue to believe that boiler and hydrochloric acid furnace area sources warrant regulation under the major source MACT standards for mercury, dioxin/furan, carbon monoxide/hydrocarbons, and destruction and removal efficiency pursuant to section 112(c)(6).

As discussed at proposal (69 FR at 21212), section 112(c)(6) of the CAA requires EPA to list and promulgate section 112(d)(2) or (d)(4) standards (i.e., standards reflecting MACT) for categories and subcategories of sources emitting seven specific pollutants. Five of those listed pollutants are emitted by boilers and hydrochloric acid production furnaces: mercury, 2,3,7,8-tetrachlorodibenzofuran, 2,3,7,8-tetrachlorodibenzo-p-dioxin, polycyclic organic matter, and polychlorinated biphenyls.

As discussed below, EPA must assure that source categories accounting for not less than 90 percent of the aggregated emissions of each enumerated pollutant are subject to MACT standards (and of course is not prohibited from requiring more than 90 percent of aggregated emissions to be controlled by MACT standards). Congress singled out the pollutants in section 112(c)(6) as being of "'specific concern'" not just because of their toxicity but because of their propensity to cause substantial harm to human health and the environment via indirect exposure pathways (i.e., from the air through other media, such as water, soil, food uptake, etc.). Furthermore, these pollutants have exhibited special potential to bioaccumulate, causing pervasive environmental harm in biota and, ultimately, human health risks.

Section 112(c)(6) of the CAA requires EPA to list categories and subcategories of sources of seven specified pollutants to assure that sources accounting for not less than 90 percent of the aggregate emissions of each such pollutant are subject to standards under CAA section 112(d)(2) or 112(d)(4). In 1998, EPA issued the list of source categories pursuant to section 112(c)(6), and that list is published at 63 Fed. Reg. 17838, 17849, Table 2 (April 10, 1998).

In the 1998 listing, EPA identified the following three subcategories of the HWC source category that emit one or more of the seven section 112(c)(6) pollutants: (1) Hazardous waste incinerators—(emit mercury, dioxin, furans, polycyclic organic matter (POM) and polychlorinated biphenyls (PCBs)); (2) Portland cement manufacture: hazardous waste kilns—(emit mercury, dioxin, furans, and POM); and (3) lightweight aggregate kilns: hazardous waste kilns—(emit dioxin, furans, and mercury). These three subcategories are all subject to today's rule, which is issued pursuant to CAA section 112(d)(2). As explained below, the HWC NESHAP effectively controls emissions of the identified section 112(c)(6) pollutants from the identified subcategories. Accordingly, EPA considers the sources in these three subcategories as being "subject to standards" for purposes of section 112(c)(6).

Specifically, with regard to hazardous waste-burning incinerators, cement kilns, and lightweight aggregate kilns, EPA is adopting in this final rule MACT standards for mercury and dioxins/furans. EPA has already adopted MACT standards for control of POM and PCBs emitted by these sources in the 1999 rule, which standards were not reopened or reconsidered in this rulemaking. These standards are the CO/HC standards, which in combination with the Destruction Removal Efficiency (DRE) requirement, assure that these sources operate continuously under good combustion conditions which inhibit formation of POM and PCBs as combustion by-products, or destroy these HAP if they are present in the wastes being combusted.[55] See discussion in Part Four, Sections V.A and V.B of this preamble.

The HWC NESHAP also applies to hazardous waste-burning boilers and hydrochloric acid production furnaces. In particular, for these boilers and furnaces, this rule addresses emissions of dioxin/furan, mercury, POM and PCBs either through specific numeric standards for the identified HAP, or through standards for surrogate pollutants which control emissions of the identified HAP.

We estimate that approximately 620 pounds of mercury are emitted annually in aggregate from hazardous waste burning boilers in the United States.[56] Also, we estimate that hazardous waste burning boilers and hydrochloric acid production furnaces emit in aggregate approximately 2.3 and 0.2 grams TEQ per year of dioxin/furan, respectively. Controlling emissions of these HAP from area sources consequently reduces emissions of these HAP through application of MACT standards. We note that only major source boilers and hydrochloric acid furnaces are subject to the full suite of subpart EEE emission standards.[57] Section 112(c)(3) of the CAA requires us to subject area sources to the full suite of standards applicable to major sources if we find "a threat of adverse effects to human health or the environment" that warrants such action. We cannot make this finding for area source boilers and halogen acid production furnaces. 69 FR at 21212. Consequently, as proposed, area sources in these categories would be subject only to the MACT standards for mercury, dioxin/furan, and polycyclic

[55] Courts have repeatedly upheld EPA's authority under CAA section 112(d) to use a surrogate to regulate hazardous pollutants if it is reasonable to do so. See, e.g., *National Lime*, 233 F. 3d at 637 (holding that EPA properly used particulate matter as a surrogate for HAP metals).

[56] See USEPA "Technical Support Document for HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs," September, 2005, Section 3.

[57] We note that as a practical matter, however, the same MACT standards apply to both major and area source HCl production furnaces. This is because major sources are subject to the following standards: CO/HC, DRE, and total chlorine. Because the CO/HC and DRE standards are surrogates to control dioxin/furan, and the total chlorine standard is a surrogate to control metal HAP, area sources are subject to the same standards that address dioxin/furan, polycyclic organic matter, polychlorinated biphenyls, and mercury. There is an enforcement difference between the requirements, however. For area sources, an exceedance of the total chlorine standard (or failure to ensure that compliance is maintained) relates to control of mercury only while for a major source, the same failure relates to control of mercury, other metal HAP, and HCl and chlorine.

organic matter and polychlorinated biphenyls (through the surrogate standards for carbon monoxide/hydrocarbons and destruction and removal efficiency) to control the HAP enumerated in section 112(c)(6). RCRA standards under Part 266, Subpart H for particulate matter, metals other than mercury, and hydrogen chloride and chlorine gas would continue to apply to these area sources unless an area source elects to comply with the major source standards in lieu of the RCRA standards. See § 266.100(b)(3) and the revisions to §§ 270.22 and 270.66.

Commenters refer to the "two or fewer" potential area source boilers we identified at proposal as "negligible contributors" and, therefore, conclude that these area sources should not be subject to major source standards for emission of these HAPs. Commenters did not quantify the amount of emissions from area sources, and did not even identify how many area sources are at issue. We do not know how many boilers and hydrochloric acid furnaces are area sources. We apparently underestimated the number given that four companies commented on the proposed rule saying that area sources should not be subject to major source standards for mercury, dioxin/furan, PCBs, and polycyclic organic matter, and one of those companies indicates it operates multiple area sources. Consequently, we continue to believe that area sources in these categories may have the potential to emit more than negligible levels of these HAP.

We also note that the major source standards are tailored to minimize the compliance burden for sources that emit low levels of HAP. Commenters raise concerns about applying the major source standards for HAP enumerated in section 112(c)(6) to liquid fuel boiler area sources. The emission standard compliance burden for liquid fuel boilers that have the potential to emit only low levels of mercury, dioxin/furan, and polycyclic organic matter is minimal. For example, sources that emit low levels of mercury because their feedstreams have low levels of mercury can elect to comply with the mercury emission standard by documenting that the mercury in feedstreams will not exceed the standard assuming zero removal by emission control equipment. We note that 75% of the liquid fuel boilers in our data base, and the two boilers cited by commenters, do not have emission control devices.

The compliance burden for the major source standards for dioxin/furan and for the surrogates to control other polycyclic organic matter—carbon monoxide/hydrocarbons and destruction and removal efficiency (DRE)—should also be minimal for area source liquid fuel boilers. The dioxin/furan standard applicable to the 90% of liquid fuel boilers with wet or no air pollution control equipment is compliance with the carbon monoxide/hydrocarbon standard and the DRE standard. Liquid fuel boilers already comply with these same standards under RCRA. The surrogate standards to control other polycyclic organic matter are also the carbon monoxide/hydrocarbon and DRE standards. Finally, we note that the DRE requirement under Subpart EEE is less burdensome than the DRE requirement under RCRA. Under Subpart EEE, a source needs to conduct a one-time only DRE test, provided that design and operation does not change in a manner than could adversely affect DRE. Under RCRA, the DRE test must be conducted each time the RCRA permit is renewed.

The incremental compliance burden associated with the other Subpart EEE major source requirements, such as the operations and maintenance plan, the startup, shutdown, and malfunction plan, operator training, and the automatic waste feed cutoff system should also be minimal for liquid fuel boilers without an emission control device. In addition, most of the requirements are either identical to or very similar to requirements under RCRA with which these area sources are already complying.[58]

B. Boilers Eligible for the RCRA Low Risk Waste Exemption

Comment: Several commenters state that EPA should exempt those boilers that qualify as Low Risk Waste Exemption (LRWE) burners under the RCRA Boiler and Industrial Furnace Rule at § 266.109 from the MACT particulate matter and destruction and removal efficiency (DRE) standards because EPA has not: (1) Made a demonstration that the data used to provide the exemption to low risk burners under RCRA is no longer valid; or (2) established in the affirmative that regulating these units will provide any benefit to human, health and the environment. Commenters believe that regulating LRWE units under Subpart EEE is unnecessary and inconsistent with RCRA subtitle C and more importantly, appears to be controlling LRWE units for control's sake.

Commenters also state that EPA has not properly addressed the requirements of CAA section 112(n)(7) regarding the inconsistency between the requirements for Low Risk Waste Exempt (LRWE) units under RCRA and those of Subpart EEE. The purported purpose of section 112(n)(7) is to allow EPA to avoid imposing additional emission limitations on a source category subcategory when such limitations would be unnecessary and duplicative.

In addition, commenters state that the costs associated with this MACT are much more than improved feed control or better back-end control. This proposed rule also requires substantial dollar investment in improved data acquisition, computer controls and recordkeeping systems, performance testing, training, development of plans, and other regulatory requirements.

Response: Boilers and hydrochloric acid production furnaces that currently qualify for the RCRA § 266.109 low risk waste exemption are not exempt from Subpart EEE under the final rule.

The Administrator does not have the authority under CAA section 112(d) to exempt sources that comply with RCRA § 266.109. Indeed, there is no necessary connection between the two provisions, since one is technology-based and the other is risk-based. CAA section 112(d)(2) requires the Administrator to establish technology-based emission standards, standards that require the maximum degree of reduction in emissions that is deemed achievable. Although section 112(d)(4) gives the Administrator the authority to establish health-based emission standards in lieu of the MACT standards for pollutants for which a health threshold has been established, we cannot use that authority to develop health-based standards for sources that comply with RCRA § 266.109 because those sources emit HAP for which a health threshold has not been established.

The final rule complies fully with CAA section 112(n)(7) by coordinating applicability of the RCRA and CAA requirements and precluding dual requirements. For example, RCRA requirements that are duplicative of MACT requirements will be removed from the RCRA operating permit when the permitting authority issues a certification of compliance after the source submits a Notification of Compliance.

We also note that the MACT standards are tailored to impose

[58] RCRA, 40 CFR Part 264 requirements that are similar to MACT requirements include: the general inspection requirements and personnel training requirements of Subpart B; the preparedness and prevention requirements of Subpart C, including design and operation of facility, testing and maintenance of equipment, and access to communications or alarm system; the contingency plan and emergency procedures requirements of Subpart D; and the operating requirements and monitoring and inspection requirements of Subpart O.

minimal burden on sources that have low emissions of HAP. The particulate matter emission standard and associated testing can be waived (similar to the § 266.109 exemption) for boilers that elect to document that emissions of total metal HAP do not exceed the limits provided by § 63.1206(b)(14). Hydrochloric acid production furnaces are not subject to a particulate matter emission standard.

The compliance burden with the destruction and removal efficiency (DRE) standard is also minimal given that it is a one-time test, provided that the source does not change its design or operation in a manner that would adversely affect DRE. In addition, the compliance burden for sources with low levels of metals in their feedstreams is minimal. Sources can document compliance with the metals emission standards by assuming all metals in the feed are emitted (i.e., by assuming zero system removal efficiency). Under this procedure, boilers burning relatively clean wastes are not required to conduct a performance test to document compliance with the metals emission standards.

Further, we note that the MACT standard to control organic HAP emissions other than dioxin/furan is the same as the RCRA standard—demonstrating good combustion conditions by complying with a carbon monoxide standard of 100 ppmv.

Finally, we note that the ancillary requirements under MACT (e.g., personnel training; operating and maintenance plan; startup, shutdown, and malfunction plan) should not pose substantially higher costs than similar requirements under RCRA. See response to comment in Section A above. To the extent that compliance costs increase, we have accounted for those costs in our estimates of the cost of the final rule.[59]

C. Mobile Incinerators

Comment: A mobile incinerator used as a directly-fired thermal desorption unit at a Superfund remediation site should not be an affected source under this rule.

Response: EPA is not determining or changing the applicability of any hazardous waste burning unit under today's rule. A combustion unit that treats hazardous waste and meets the definition of incinerator at 40 CFR 260.10 is an affected source under this rule. 40 CFR part 63 also defines a source as any building, structure, facility, or installation which emits or may emit any air pollutant. A mobile incinerator at a remediation site meets this definition.

Comment: One commenter states that a subcategory with different standards must be created for mobile incinerators, or the standards for incinerators must be calculated using actual emissions data from mobile units.

Response: EPA did not have any emissions data from mobile incinerators in the database for the proposed rule. That data base was developed over many years with ample opportunity for public comment. We developed a data base for incinerators to support the 1996 proposed rule (61 FR 17358) and noticed that data base for public comment on January 7, 1997 (64 FR 52828). We updated that data base in July 2002, and noticed the revised data base for public comment (67 FR 44452). We used that revised data base to support the proposed rule. We did not receive comments providing data for mobile incinerators as a result of either public notice.

One commenter on the proposed rule provided a summary of emissions data from one test at a mobile incinerator. The commenter suggested that the data support its view that its mobile incinerator is unique and that EPA should consider subcategorizing incinerators according to mobile incinerators versus other incinerators. We analyzed these data and conclude that the final standards are readily achievable by this source. Moreover, as explained elsewhere, EPA's approach to assess the need for subcategorization is to apply a statistical test to determine whether the emissions data are statistically different from the remaining group. Given that owners and operators of mobile incinerators have not provided emissions data prior to proposal, and that the commenter provides summarized data for only one mobile incinerator (which also indicate that the source can achieve the emission standards in the final rule); we are not compelled to gather additional information, particularly given our time constraints to promulgate the final rule under a court-ordered deadline.

Comment: In support of subcategorizing mobile incinerators, commenters state that mobile thermal treatment systems are substantially different from hazardous waste incinerators. They are much smaller in size, firing capacity rate, refractory lining, and operating temperatures. Most of them treat contaminated soil, so have very high particulate feedrate loading with high ash content, rapid kiln rotation rate, and counter-current flow design like cement kilns. This results in high particulate matter emissions. They operate only for a short duration at a site (usually less than 6 months), and have no flexibility with regard to their waste feed.

Response: We recognize that there is variability between various sources' with regard to size, capacity, operating temperatures etc., and so we applied a statistical test to assess the need of subcategorization, as has been discussed above. The emissions data provided by the commenter also indicate the source can achieve the final standards. The soil entrained in desorber off-gases of mobile incinerators has a relatively large particle size, and is very easy to capture with conventional particulate control systems (such as a fabric filter) used by the incinerators.

Comment: Since mobile incinerators are relocated from site to site, the new source standard should not apply based on the erection date of the mobile unit.

Response: We are not changing the applicability of a new or reconstructed source designation in this rulemaking. The relocation issue is addressed in the definition of "construction" in 40 CFR Section 63.2, which states: "Construction does not include the removal of all equipment comprising an *affected source* from an existing location and the reinstallation of such equipment at a new location * * *" (emphasis added). Therefore, the relocation of an existing Subpart EEE affected source, such as a mobile incinerator, would not result in that mobile incinerator becoming a "new" source. Keep in mind also that the relocation exemption only applies to affected sources. If a mobile incinerator is relocated from an R&D facility (where the unit is not an affected source per Table 1 to Section 63.1200) to a location where the mobile incinerator would become an affected source, the relocation exemption within the definition of "construction" would not apply and the mobile incinerator would be a "new" source. Also, with regard to leased sources, the owner/operator of the facility is responsible for all affected sources operating at his/her facility regardless of whether the sources are owned or leased. The owner or operator should obtain from the leasing company all relevant information pertaining to the affected source in order to be able to demonstrate that the affected source is operating in compliance with the appropriate standards.

III. Floor Approaches

In this section we discuss comments addressing methodologies used in this rule for determining MACT floors. We address comments relating both to

[59] USEPA "Technical Support Document for HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs." September, 2005.

general, overarching issues and to the specific methodologies used in the rule. Our most important point is that the methodologies EPA selected reasonably estimate the performance of the best performing sources by best accounting for these sources' total variability.

A. Variability

1. Authority To Consider Emissions Variability

Comment: Many commenters concur with our approach to account for emissions variability while several commenters believe that our approach does not adequately account for emissions variability. See discussions on separate topics below. One commenter, however, states that use of variability factors (however derived) is inherently unlawful and arbitrary and capricious. The commenter notes that, because floors for existing sources must reflect the "average" emission level achieved by the relevant best performing sources, they cannot reflect any worse levels of performance from the best performers. Indeed, the argument is that the Clean Air Act already accounts for variability by requiring EPA to base existing source floors on the average emission level achieved by the best performing sources.

The commenter continues by stating that EPA has added variability factors both to each individual source's performance and to the collective performance of the alleged best performers, in each case purporting to find an emission level that the individual or group would meet ninety-nine times out of 100 future emission tests. Thus, EPA ignores sources' measured performance in favor of the theoretical worst performance that might ever be expected from them. By looking to the best performers' worst performance rather than their average performance, EPA would set weaker floors than the Clean Air Act allows.

In addition, the commenter notes that EPA's approach to account for emissions variability is arbitrary and capricious because EPA never explains why it chose the 99th percentile for its variability adjustments rather than some other percentile.

Finally, the commenter notes that EPA appears to indicate that its variability analysis would either be applied to variation between sources or would affect EPA's statistical analysis of the variation between sources. The commenter states that any attempt by EPA to add a variability factor to adjust for intersource variability is unlawful and arbitrary and capricious.

Response: Our response explains our approach to estimating best performing sources' variability and addresses the following issues: (1) Considering the variability in each source's performance is necessary to identify the best performing sources and their level of performance; (2) EPA reasonably considered variability in ranking sources to identify the best performers and in considering the range of best performing sources' performance over time to identify an emission level that the average of those sources can achieve; (3) considering variability at the 99th percentile level is reasonable; (4) considering intersource variability by pooling run-to-run variability is appropriate; and (5) compliance test conditions do not fully reflect all of best performing sources' performance variability.

a. *Variability Must Be Considered.* Variability in each source's performance must be considered at the outset in identifying the best performing sources. This is simply another way of saying that best performers are those that perform best over time (i.e. day-in, day-out), a reasonable approach. This approach not only reasonably reflects the statutory language, but also furthers the ultimate objective of section 112 which is to reduce risk from exposure to HAP. Since most of the risk from exposure to emissions from this source category is associated with chronic exposure to HAP (see Part 1 section VI above), assessing a source's performance over time by accounting for variability is reasonable and appropriate.

For similar reasons, variability must be considered in ascertaining these sources' level of performance. Floors for existing sources must reflect "the average emission limitation achieved by the best performing 12 percent" of sources, and for new sources, must reflect "the emission control that is achieved in practice by the best controlled source." Section 112 (d) (3). EPA construes these requirements as meaning achievable over time, since sources are required to achieve the standards at all times. This interpretation has strong support in the case law. See *Sierra Club* v. *EPA*, 167 F. 3d 658, 665 (D.C. Cir. 1999), stating that "EPA would be justified in setting the floors at a level that is a reasonable estimate of the performance of the 'best controlled similar unit' under the worst reasonably foreseeable circumstances. It is reasonable to suppose that if an emissions standard is as stringent as 'the emissions control that is achieved in practice' by a particular unit, then that particular unit will not violate the standard. This only results if 'achieved in practice' is interpreted to mean 'achieved under the worst foreseeable circumstances'; see also *National Lime Ass'n* v. *EPA*, 627 F. 2d 416, 431 n. 46 (D.C. Cir. 1980) (where a statute requires that a standard be 'achievable,' it must be achievable under "the most adverse circumstances which can reasonably be expected to recur");

The court has further indicated that EPA is to account for variability in assessing sources' performance for purposes of establishing floors, and stated that this assessment may require EPA to make reasonable estimates of performance of best performing sources. *CKRC*, 255 F. 3d at 865–66; *Mossville Environmental Action Now* v. *EPA*, 370 F. 3d 1232, 1242 (D.C. Cir. 2004)(maximum daily variability must be accounted for when establishing MACT floors).[60] Indeed, EPA's error in *CKRC* was not in estimating best performing sources' variability, but in using an unreasonable means of doing so. *CKRC*, 255 F. 3d at 866; *Mossville*, 370 F. 3d at 1241.

Since the emission standards in today's rule must be met at all times, the standards need to account for performance variability that could occur on any single day of these sources' operation (assuming proper design and operation). See *Mossville*, 370 F. 3d at 1242 (upholding MACT floor because it was established at a level that took into account sources' long term performance, not just performance on individual days). Moreover, since EPA's database consists of single data points (because there are no continuous emission monitors for HAPs in stack emissions), EPA must of necessity estimate long-term performance, including daily maximum performance, from this limited set of short term data.

b. *EPA Reasonably Considered Variability in Ranking Sources to Identify the Best Performers and in Considering the Range of Best Performing Sources' Performance Over Time to Identify an Emission Level that the Average of Those Sources Can Achieve.* (1) *Selecting Best Performing Sources.* Each of the floor methodologies used in the rule considers various factors in ranking which sources are the best performing. For each methodology, we therefore consider the quantifiable variability of

[60] See also *Chemical Manufacturers Ass'n* v. *EPA*, 870 F. 2d 177, 228 (5th Cir. 1989) ("The same plant using the same treatment method to remove the same toxic does not always achieve the same result. Tests conducted one day may show a different concentration of the same toxic than are shown by the same test the next day. This variability may be due to the inherent inaccuracy of analytical testing, (i.e. 'analytical variability,' or to routine fluctuations in a plant's treatment performance.")

the ranking factors in determining which are the best performing sources. 69 FR at 21230–31. Specifically, we assess run-to-run variability (normally the only type of variability which we can quantify) of the factors used under each methodology to rank best performers. Where SRE/Feed is the ranking methodology, we thus assess run-to-run variability of hazardous waste HAP feedrate and of system removal efficiency. Where ranking is based on sources' emissions (the straight emissions methodology), we assess the run-to-run variability of emission levels. Where we use the air pollution control device methodology for ranking, we assess the run-to-run variability of emissions of the lowest-emitting sources (as we do for straight emissions) using the best air pollution control devices. For hydrochloric acid production furnaces, we assess the run-to-run variability of total chlorine system removal efficiency. *Id.*[61]

To account for run-to-run variability in these ranking factors, we rank sources by the 99th percentile upper prediction limit (UPL99). The UPL99 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. *Id.* at 21231.

(2). *Assessing the Best Performers' Level of Performance Over Time.* Once we identify the best performing sources, we need to consider their emissions variability to establish a floor level that the average of the best performing sources can achieve day-in, day-out. There are two components of emissions variability that must be considered: run-to-run variability and test-to-test variability. Run-to-run emissions variability encompasses variability in individual runs comprising the compliance tests, and includes uncertainties in correlation of monitoring parameters and emissions, and imprecision of stack test methods and laboratory analyses. See 69 FR at 21232.[62] Test-to-test emissions variability is the variability that exists between multiple compliance tests conducted at different times and includes the variability in control device collection efficiency caused by testing at different points in the maintenance cycle of the emission control device[63], and the variability caused by other uncontrollable factors such as using a different stack testing crew or different analytical laboratory, and by different weather conditions (e.g., ambient moisture and temperature) that may affect measurements.

We are able to quantify run-to-run variability. We do so by applying a 99th percentile *modified* upper prediction limit to the averaged emissions of the best performing sources. *Id.* at 21233 and Technical Support Document Volume III section 7.2. The modified upper prediction limit accounts for run-to-run variability of the best performers by pooling their run variance (i.e., within-test condition variability).[64] See *Chemical Manufacturer's Ass'n* v *EPA*, 870 F. 2d 177, 228 (5th Cir. 1989) (upholding use of a variability factor derived, as here, by pooling the performance variability of the best performing plants). Using this approach, we ensure that the average of the best performing sources will be able to achieve the floor in 99 of 100 future performance tests, assuming these best performing sources could replicate their performance when attempting to operate under identical conditions to those used for the compliance test establishing the source as best performing. As just noted, we call this value the modified UPL 99.

The only instance in which we are able to quantify test-to-test variability (as noted above, the other significant component of total operating variability) is for fabric filters (baghouses) when used to control emissions of particulate matter. The modified UPL 99 in these instances reflects not only run-to-run variability, but test-to-test variability as well. That total variability is expressed by the Universal Variability Factor which is derived from analyzing long-term variability in particulate matter emissions for best performing sources across all of the source categories sources that are equipped with fabric filters. 69 FR at 21233. See also the discussion below in Section III.A.2.

Test-to-test variability must be accounted for in other instances as well, however. It follows that if the performance of most efficient fabric filters varies over time relative to particulate matter emissions, then so does their performance relative to the non-mercury metal HAP emissions. We also believe that particulate matter emissions variability from sources equipped with back-end controls other than fabric filters also exists, and is furthermore likely to be higher than what was calculated for fabric filters because there are more uncertainties associated with the correlations between operating parameter limits and control efficiency for these devices.[65] Again, it clearly follows that if the performance of these other control devices varies relative to particulate matter emissions (perhaps even more than what has already been quantified for fabric filters), then so does their performance relative to the non-mercury metal HAP emissions.

Although we cannot quantify this test-to-test variability, we can document its existence and its significance. We conducted two parallel analyses examining all situations where we had multiple test conditions for the sources ranked as best performing performing (examining separate pools for best performing sources under both the straight emissions and SRE/feed ranking methodologies). These analyses showed that these sources' emissions do in fact vary over time, sometimes significantly. In many instances sources had poorer system removal efficiencies and higher emission levels than those in the compliance test used to identify the source as best performing. We further projected that in many instances these best performing sources would not achieve their own UPL 99, the statistically determined prediction limit which captures 99 out of 100 future three-run test averages for the source, if they were to operate at the poorer system removal efficiency of its earlier test and used the federate of its later (best-performing) compliance test. This is significant because the UPL 99 reflects all of a source's run-to-run

[61] These ranking methodologies are discussed later in this section of the preamble, and in USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 7.

[62] Analytic variability exists, and normally must be accounted for in establishing technology-based standards based on performance of the best-performing plants. *Chemical Manufacturers Ass'n* v. *EPA*, 870 F. 2d at 230.

[63] There are myriad factors that affect performance of an emissions control device. These factors change over time, including during the maintenance cycle of the device, such that it is virtually impossible to conduct future compliance tests under conditions that replicate the performance of the control device. See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3.

[64] We note that the Agency used a statistical approach when proposing the NESHAP for Electric Utility Steam Generating Units. See memo from William Maxwell, EPA, to Utility MACT Project Files, entitled, "Analysis of variability in determining MACT floor for coal-fired electric utility steam generating units," dated Nov. 26, 2003, Docket A–92–55.

[65] For example, sources equipped with electrostatic precipitators generally establish multiple operating limits to best assure compliance with the emission standard (feed control limits, power input limits, etc.). There is not an exact correlation between emission levels and operating levels because there are several factors that can affect the control efficiency of these air pollution control systems, such as variations in inlet loads, power inputs, spark rates, humidity, as well as particle resistivity. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 16 and 17.

variability. Failure to meet the UPL 99 thus shows both that further variability exists, namely test-to-test variability, and that it is a significant component of total variability. We obtained similar results when we projected best performing sources' performance based on each of these sources' overall system removal efficiency obtained by pooling the removal efficiencies of all of its tests. In many instances, moreover, these projected levels exceeded floor levels calculated by using the straight emissions approach, which ranks best performers as those with the lowest emission levels. This point is discussed further in Section III.B below. EPA's analysis is set out in detail in chapters 16 and 17 of Volume III of the Technical Support Document.[66]

EPA's conclusion is that total variability includes both run-to-run and test-to-test variability, and that both must be accounted for in determining which are the best performing sources and what are their levels of performance over time. As explained in the following Sections B and C, EPA has accordingly adopted floor methodologies which account for this total variability either quantitatively or qualitatively. The approach advocated by the commenter simply ignores that variability exists. Since this approach is contrary to both fact and law, EPA is not adopting it.

c. *Quantifying Run-to-Run Variability at the 99th Percentile Level Is Reasonable.* We selected the 99% prediction limit to ensure a reasonable level " namely the 99th percentile—of achievability for sources designed and operated to achieve emission levels equal to or better than the average of the best performing sources.[67] Because of the randomness of the emission values, there is an associated probability of the average of the best performing sources, and similarly designed and operated sources, not passing the performance test conducted under the same conditions.[68] At a 99% confidence level, the average of the best performing sources could expect to achieve the floor in 99 of 100 future performance tests conducted under the same conditions as its performance test.. The commenter thus sharply mischaracterizes a 99% confidence level as the worst performance of a best performing source.: the level in fact assumes identical operating conditions as those of the performance test.

EPA routinely establishes not-to-exceed standards (daily maximum values which cannot be exceeded in any compliance test) using the 99% confidence level. *National Wildlife Federation* v. *EPA*, 286 F. 3d 554, 572 (D.C. Cir. 2002).[69] At a confidence level of only 97% for example, the average of the best performing sources could expect to achieve the floor in only 97 of 100 future performance tests.

We note that the choice of a confidence level is *not* a choice regarding the stringency of the emission standard. Although the numerical value of the floor increases with the confidence level selected it only appears to become less stringent. If EPA selected a lower confidence interval, we would necessarily adjust the standard downward due to the expectation that a source would not be expected to achieve the standard for uncontrollable reasons a larger per cent of the time. We would then have to account in some manner for this inability to achieve the standard. See *Weyerhaeuser* v. *Costle*, 590 F. 2d 1011, 1056–57 (D.C. Cir. 1978) (also upholding standards established at 99 % confidence level). The governing issue is what level of confidence should the average of the best performing sources, and similarly designed and operated sources, have of passing the performance test demonstrating compliance with the standard. We believe that the 99% confidence level is a confidence level within the range of values we could have reasonably selected.[70]

d. *Considering Intersource Variability by Pooling Run-to-Run Variability is Appropriate.* The commenter believes that any attempt by EPA to add a variability factor to adjust for intersource variability is unlawful and arbitrary and capricious. We see no statutory prohibition in considering intersource run-to-run variability of the best performing sources (which is all our floor calculation does, by considering the pooled run-to-run variability of the best performing sources). Section 112(d)(3) states that MACT floors are to reflect the "*average* emission limitation achieved" but does not specify any single method of ascertaining an average. Considering the average run-to-run variability among the group of best performing sources is well within the language of the provision (and was upheld in *CMA*, as noted above; see 870 F. 2d at 228). The commenter's further argument that 'average' can only mean average of emission levels achieved in performance tests is inconsistent with the holding in *Mossville*, 370 F. 3d at 1242, that EPA must account for variability in developing MACT floors and that individual performance tests do not by themselves account for such variability.

We believe that it is reasonable and necessary to account for intersource variability of the best performing sources by taking the pooled average of the best performing sources' run-to-run variability. This is an aspect of identifying the average performance of those sources. Emissions data for each best performing source are random in nature, and this random nature is characterized by a stochastic distribution. The stochastic distribution is defined by its central tendency (average value) and the amount of dispersion from the point of central tendency (variance or standard deviation). Consequently, to define the performance of the average of the best performing sources, we must consider the average of the average emissions for the best performing sources as well as the pooled variance for those sources. Hence, we must consider intersource variability to identify the floor—the average performance of the best performing sources.

The commenter further states that EPA's attempt to adjust for intersource variability is unlawful, arbitrary, and capricious. EPA set floors at the 99th percentile worst emission level that it believed any source within the group of best performers could achieve, according to the commenter. The 99th percentile worst performance that could be expected from a source within the best performers is, simply put, not the average performance of the sources in that group, according to the commenter.

The commenter misunderstands our approach to calculate the floor—the floor is not the 99th percentile highest emission level that any best performing source could achieve. The floor for

[66] We explain in those sections that these projections assume that system removal efficiencies are constant across differing HAP federates and that the sources' historical (poorer) system removal efficiencies were not the primary result of operating at poorer "controllable" conditions relative to the most recent test condition. These are reasonable assumptions, as explained in section 17. 3 of Volume III of the Technical Support Document, although these assumptions also create a measure of uncertainty regarding the emissions projections.

[67] Note, again, that the variability we quantify by these analyses is within-test condition variability only. We cannot quantify test-to-test variability and thus cannot quantify sources' total variability.

[68] See Volume III of the Technical Support Document, Section 7.2 .

[69] The opinion notes further that percentiles for standards expressed as long-term average typically use a lower confidence level (usually 95 %c) due to the opportunity to lower the overall distribution with multiple measurements. 286 F. 3d at 573. The standards in this rule are necessarily daily maximum standards because continuous emissions monitors for HAP do not exist or have not been demonstrated on all types of Subpart EEE sources.

[70] See also *Chemical Mfrs. Ass'n* v. *EPA*, 870 F. 2d at 229 (99th percentile daily variability factor is reasonable); 227 ("the choice of statistical methods is committed to the sound discretion of the Administrator").

existing sources is calculated as the 99th percentile modified upper prediction limit of the average of the best performing sources. It represents the average of the best performing sources' emissions levels plus the pooled within-test condition variance of the best performing sources. The floor for existing sources is not the highest 99th percentile upper prediction limit for any best performing source as the commenter states.

e. *Why isn't Total Variability Already Accounted for by Compliance Test Conditions?*

Comment: One commenter states that EPA's use of variability factors along with worst-case data is unlawful and arbitrary and capricious. EPA has stated that its use of worst case "compliance" data accounts for variability. EPA admits that compliance data reflect special worst case conditions created artificially for the purpose of obtaining lenient permit limits, according to the commenter. EPA provides no reason whatsoever to believe that a source would continue to operate under such conditions even one percent of the time. Thus, the commenter concludes, by applying a 99 percent variability factor to compliance test data, EPA ensures that the adjusted data do not accurately reflect the performance of any source. Accordingly, EPA's use of a variability factor is unlawful.

The commenter also states that, to increase compliance data with the reality that sources will not be operating under the worst case conditions except during permit setting tests, the Agency's use of a variability factor with compliance data is arbitrary and capricious.

Response: All but two standards in the final rule are based on compliance test data—when sources maximized operating parameters that affect emissions to reflect variability of those parameters and to achieve emissions at the upper end of the range of normal operations. Use of these data is appropriate both because they are data in EPA's possession for purposes of section 112(d)(3) and because these data help account for best performing sources' operating variability. *CKRC*, 255 F. 3d at 867.

The main thrust of the comment is that total variability is accounted for by the conditions of the performance test, so that making further adjustments to allow for additional variability is improper. The commenter believes that the floor should be calculated simply as the average emissions of the best performing sources and that this floor would encompass the range of operations of the average of the best performing sources. We disagree.

The compliance test is designed to mirror the outer end of the *controllable* variability occurring in normal operations. These controllable factors include the amount of HAP fed to a source in hazardous waste, and controllable operating parameters on pollution control equipment (such as power input to ESPs, or pressure drop across wet scrubbers, factors which are reflected in the parametric operating limits written into the source's permit and which are based on the results of the compliance testing). However, this is plainly not all of the variability a source experiences. Other components of run-to-run variability, including variability relating to measuring (both stack measurements and measurements at analytic laboratories) are not reflected, for example. Nor is test-to-test variability reflected, notably the point in the maintenance cycle that testing is conducted and the variability associated with those inherently differing test conditions even though the source attempts to replicate the test conditions (e.g., measurement variability attributable to use of a different test crew and analytical laboratory and different weather conditions such as ambient temperature and moisture). Other changes that occur over time are due to a wide variety of factors related to process operation, fossil fuels, raw materials, air pollution control equipment operation and design, and weather. Sampling and analysis variations can also occur from test to test (above and beyond those accounted for when assessing within-test variability) due to differences in emissions testing equipment, sampling crews, weather, and analytical laboratories or laboratory technicians.

Thus, there is some need for a standard to account for this additional variability, and not simply expect for a single performance test to account for it. The analyses in Sections 16 and 17 of Volume III of the Technical Support Document confirm these points.

Moreover, the best performing sources (and the average of the best performers) must be able to replicate the compliance test if they are to be able to continue operating under their full range of normal operations. It is thus no answer to say that the best performing sources could operate under a more restricted set of conditions in subsequent performance tests and still demonstrate compliance, so that there is no need to assure that results of initial performance tests can be replicated. To do so would no longer allow the best performing sources (and thus the average of the best performing sources) to operate under their full range of normal operations, and thus impermissibly would fail to account for their total variability.

As discussed throughout this preamble, emissions variability—run-to-run and test-to-test variability—is real and must be accounted for if a best performing source is to be able to replicate the emissions achieved during the initial compliance test. We consequently conclude that we must account for variability in establishing floor levels, and that merely considering the average of compliance test data fails to do so. We have therefore quantified run-to-run variability using standard statistical methodologies, and accounted for test-to-test variability either by quantifying it (in the case of fabric filter particulate matter removal performance) or accounting for it qualitatively (in the case of the SRE/feed ranking methodology).

Comment: The commenter notes that if EPA believes that single performance test results do not accurately capture source's variability, the solution is to gather more data, not to avoid using a straight emissions methodology. EPA cannot use this as an excuse for basing floor levels on a chosen technology rather than the performance of the best performing sources.

Response: There is no obligation for EPA to gather more performance data, since the statute indicates that EPA is to base floor levels on performance of sources "for which the Administrator has emissions information." Section 112(d)(3)(A); *CKRC*, 255 F. 3d at 867 (upholding EPA's decision to use the compliance test data in its possession in establishing MACT standards). Indeed, the already-tight statutory deadlines for issuing MACT standards would be even less feasible if EPA took further time in data gathering. EPA notes further that because particulate matter continuous emission monitors are not widely used, even further data gathering would be limited to snapshot, single performance test results, still leaving the problem of estimating variability from a limited data set.[71] See also *Sierra Club* v. *EPA*, 167 F. 3d at 662 ("EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem").

Thus, EPA has no choice but to assess best performers and their level of performance on the basis of limited amounts of data per source. As explained in the previous response to

[71] Performance tests take an average of 5–8 days to conduct, and cost approximately from $200,000—$500,000 per test. The commenter's off-hand suggestion appears to have ignored these realities.

comments, EPA has selected a methodology that reasonably do so.

EPA notes further that it has carefully examined those instances where there are multiple test conditions (usually compliance tests conducted at different times) for sources ranked as best performing. This analysis confirms EPA's engineering judgment that total variability is not fully encompassed in the single test condition results used to identify these sources as best performing, and that without taking this additional variability into account, best performing sources would be unable to achieve the floor standard reflecting their own performance in those single test conditions.[72]

2. Universal Variability Factor for Particulate Emissions Controlled with a Fabric Filter

Comment: One commenter states that, in calculating the universal variability factor (UVF) to account for total variability—test-to-test variability and within-test variability—for sources controlling particulate matter with a fabric filter, it appears that EPA considered the variability of sources that are not best performing sources. If so, EPA has contravened the law.

The commenter also states that EPA's attempt to use a variability factor derived from an analysis of variability of multiple sources is unlawful. If EPA considers variability at all, it must consider the relevant source's variability.

Response: We developed the particulate matter UVF for sources equipped with a fabric filter using data from best performing sources only.[73]

It is reasonable to aggregate particulate matter emissions data across source categories for all best performing sources equipped with a fabric filter because the relationship between standard deviation and emissions of particulate matter is not expected to be impacted by the source category type.[74] Rather, particulate emissions from fabric filters are a function of seepage (i.e., migration of particles through the filter cake) and leakage (i.e., particles leaking through pores, channels, or pinholes formed as the filter cake builds up). The effect of seepage and leakage on emissions variability should not vary across source categories.[75] Put another way, fabric filter particulate matter reduction is relatively independent of inlet loadings to the fabric filter. 69 FR 21233. This is confirmed by the fact that there are no operating parameters that can be readily changed to increase emissions from fabric filters, *id.*, so control efficiencies reflected in test conditions from different source types will still accurately reflect fabric filter control efficiency.

3. Test-to-Test Variability

Comment: Several commenters state that EPA seems to have ignored test-to-test variability resulting from changes that occur over time such as: normal and natural changes in a wide variety of factors related to process operation, fuels, raw materials, air pollution control equipment operation and design, and differences in emissions testing equipment, sampling crews, weather, analytical laboratories or laboratory technicians. All these sources of variation are expected in that they are typical and are not aberrations. In addition, there are unexpected sources of variability that occur in real-world operations, which also must be accommodated according to commenters.

Commenters state that using compliance test data and assessing within-test condition variability (i.e., run variance) do not fully account for test-to-test variability and thus understates total variability. Consequently, the average of the best performing sources may not be able to achieve the same emission level under a MACT performance test when attempting to operate under the same conditions as it did during the compliance test EPA used to establish the floor. Even though sources generally operated at the extreme high end of the range of normal operations during the compliance tests EPA uses to establish the standards, the average of the best performing sources would need to operate under those same compliance test conditions to establish the same operating envelope—the operating envelope needed to ensure the source can operate under the full range of normal emissions.

Response: We agree with commenters that we have not quantified test-to-test variability when establishing the floors for standards other than particulate matter where a best performing source uses a fabric filter. We are able to quantify only within-test variability (i.e., run-to-run variability) for the other floors, which is only one component of total variability. This is one reason we use the SRE/Feed approach wherever possible rather than a straight emissions approach to rank the best performing sources to calculate the floor—the SRE/Feed ranking approach derives floors that better estimate the levels of best performing sources' performance. See also discussion in Part Four, Section III.A, and the discussion below documenting that test-to-test variability can be substantial.

Comment: One commenter states that EPA should use the universal variability factor (UVF) that accounts for total variability for particulate matter controlled with a fabric filter to derive a correction factor to account for the missing test-to-test variability component of variability for semivolatile metals and low volatile metals. The commenter then suggests that the within-test variability for semivolatile and low volatile metals be adjusted upward by the correction factor to correct for the missing test-to-test variability component.

The commenter focused on cement kilns and compared the total variability imputed from the UVF for the three cement kiln facilities used to establish the UVF to the within-test variability (i.e., run variance) for each facility. The commenter determined that, on average for the three facilities, total variability was a factor of 4.2 higher than within-test variability. Because semivolatile and low volatile metals are also controlled with a fabric filter, the commenter suggested that the total variability of particulate matter could be used as an estimate of the total variability for semivolatile and low volatile metals. Thus, the commenter suggested that the within-test condition variability for semivolatile and low volatile metals be increased by a factor of 4.2 to account for total variability when calculating floors.

Response: As stated throughout this preamble, we believe that there is variability in addition to within-test condition (i.e., run-to-run) variability that we cannot quantify—that we refer to as test-to-test variability. We also do not believe this test-to-test variability is captured by compliance test operating conditions as discussed above, and thus establishing the floor using emissions data representing the extreme high end of the range of normal emissions does not account for test-to-test variability. We disagree, however, with the commenter's attempts to quantify the remaining test-to-test variability for floors other than particulate matter

[72] USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards,", September 2005, Sections 16 and 17.

[73] USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,", March 2004, p. 5–4.

[74] In addition, emissions are not generally affected by particulate inlet loading.

[75] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3.

where all best performing sources are equipped with fabric filters.

We generally agree with the commenter's approach for extracting the test-to-test component of variability using the UVF curve for particulate matter controlled with a fabric filter.[76] The commenter has documented that for cement kilns, test-to-test variability of particulate emissions controlled with a fabric filter is on average a factor of 4.2 higher than within-test variability.

We believe the commenter's suggestion to adopt this correction factor to semivolatile and low volatile metals is technically flawed and for several reasons would present statistical difficulties. First, total variability for semivolatile metals and low volatile metals controlled with a fabric filter can be different from the total variability of particulate matter controlled with a fabric filter because: (1) The test methods are different (i.e., Method 5 for particulate matter and Method 29 for metals) and thus sample extraction and analysis methods differ; (2) the factors that affect partitioning of particulate matter to combustion gas (i.e., entrainment) are different from the factors that affect semivolatile metal partitioning to the combustion gas (i.e., metal volatility); and (3) the volatility of semivolatile metals is affected by chlorine feedrates.

Second, adopting a variability factor applicable to fabric filters for use on electrostatic precipitators[77] is problematic because both test-to-test and within-test variability of these emission control devices can be vastly different. Factors that affect emissions variability for sources equipped with a fabric filter include: (1) Bag wear and tear due to thermal degradation and chemical attack; and (2) variability in flue gas flowrate. Factors that affect emissions variability for sources equipped with an electrostatic precipitator are different (see discussion in Section III.B above) and include: variations in particle loading and particle size distribution, erosion of collection plates, and variation in fly ash resistivity due to changes atmospheric moisture and in sulfur feedrate (e.g. different type of coal).

Finally, the approach raises several difficult statistical questions including: (1) What is the appropriate number of runs to use to identify the degrees of freedom and the t-statistic in the floor calculations (e.g., should we use the number of runs available for metals emissions for the source or the number of runs available for particulate matter emissions from which the correction factor is derived); and (2) should we use a generic correction factor for all source categories or calculate source category-specific or source-specific correction factors.

For these reasons, we believe the approach we use for quantifying baghouse particulate matter collection variability is not readily transferable to other types of control devices and other HAP. We therefore are not applying a quantified correction factor in the final rule but rather are using a MACT ranking methodology that qualitatively accounts for total emission variability, notably test-to-test variability.

B. SRE/Feed Methdology

1. Description of the Methodology

As proposed, we are using the System Removal Efficiency (SRE)/Feed approach to determine the pool of best performing sources for those HAP whose emissions can be controlled in part by controlling the hazardous waste feed of the HAP—that is, controlling the amount of HAP in the hazardous waste fed to the source. These are HAP metals and chlorine. Our basic approach is to determine the sources in our database with the lowest hazardous waste feedrate of the HAP in question (semi-volatile metals, low volatile metals, mercury, or chlorine), and the sources with the best system removal efficiency for the same HAP. The 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 (hazardous waste, fossil fuels, raw materials, and any other input). The pool of best performing sources are those with the best combination of hazardous waste feedrate and system removal efficiency as determined by our ranking procedure, separate best performer pools being determined for each HAP in question (SVM, LVM, mercury, and chlorine), reflecting the variability inherent in each of these ranking factors (see A.2.a.(1) above). We then use the emission levels from these sources to calculate the emission level achieved by the average of the best performing sources, as also explained in the previous section. This is the MACT floor for the HAP from the source type. For new sources, we use the same methodology but select the emission level (adjusted statistically to account for quantifiable variability) of the source with the best combined ranking. A more detailed description of the methodology is found in Volume III of the Technical Support Document, section 7.3.

This methodology provides a reasonable estimate of the best performing sources and their level of performance for HAP susceptible to hazardous waste feed control. As required by section 112(d)(2), EPA has considered measures that reduce the volume of emissions through process changes, or that prevent pollutant release through capture at the stack, and assessed how these control measures are used in combination. Section 112(d)(2)(A), (C) and (E). Hazardous waste feed control is clearly a process change that reduces HAP emissions; air pollution control systems collect pollutants at the stack. These are the best systems and measures for controlling HAP emissions from hazardous waste combustors. 69 FR at 21226. In considering these factors, EPA has necessarily considered such factors as design of different air pollution control devices, waste composition, pollution control operator training and behavior, and use of pollution control devices and methodologies in combination. *CKRC*, 255 F. 3d at 864–65 (noting these as factors, in addition to a particular type of air pollution control device, that can influence pollution control performance); 69 FR at 21223 n. 47 (system removal efficiency measures all internal control mechanisms as well as back-end emission control device performance).

EPA also believes that this methodology reasonably estimates the best performing sources' level of performance by accounting for these sources' total variability, including their performance over time. The methodology quantifies run-to-run variability. See 69 FR at 21232–33. It does not quantify test-to-test variability because we are unable to do so for these pollutants. (See sections A. 2.a.(2) and 3 above.) Although all variability must be accounted for when calculating floors, the only definitive way to accurately quantify this test-to-test emissions variability is through evaluation of long-term continuous emissions monitoring data, which do not presently exist. We believe, however, that SRE/Feed methodology provides some margin for estimating this additional, non-quantifiable variability. This is illustrated in the technical support document (volume III section 17), which clearly shows that the straight emissions approach underestimates (indeed, fails to account

[76] We note, however, that an argument could be made for using a source or condition-specific correction factor rather than averaging the correction factors for all sources within a source category.

[77] We infer that the commenter suggests that we use this correction factor for semivolatile and low volatile metals controlled by both electrostatic precipitators and fabric filters since the majority of cement kilns are equipped with electrostatic precipitators.

for) lower emitting sources' long-term emissions variability. These lower emitting sources that would otherwise not meet the floor levels on individual days under the straight emission approach would be able (or otherwise are more capable) to do so under the SRE/feed approach.

EPA further believes that the SRE/Feed methodology appropriately accounts for design variability that exists across sources for categories, like those here, which consist of a diverse and heterogeneous mixture of sources. This is especially true of incinerators and boilers, for which there are smaller on-site units that are located at widely varying industrial sectors that essentially combust single, or multiple wastestreams that are specific to their industrial process, and off-site commercial units dealing with many different wastes of different origins and HAP metal and chlorine composition. EPA believes that these variations are best encompassed in the SRE/Feed approach, rather than with a subcategorization scheme that could result in anomalous floor levels because there are fewer sources in each source subcategory from which to assess relative performance.[78] See *Mossville*, 370 F. 3d at 1240 (upholding floor methodology involving reasonable estimation, rather than use of emissions data, when sources in the category have heterogeneous emission characteristics due to highly variable HAP concentrations in feedstocks).

Use of the SRE/Feed approach also avoids basing the floor standards on a combination of the lowest emitting low feeding sources and the lowest emitting high feeding sources. For example, the five lowest emitting incinerators for semivolatile metals that would comprise the MACT pool using a straight emissions methodology include three sources that are the first, second, and fourth lowest feeding sources among all the incinerators.[79] The other two best performing incinerators have the first and second best system removal efficiencies (and the highest two metal feedrates). It is noteworthy that the highest feed control level among these best performing sources is over three orders of magnitude higher than the feed control level of the lowest feeding best performing source.[80] Establishing limits dominated by both superior feed control sources and back-end controlled sources would result in floor levels that are not reflective of the range of emissions exhibited by either low feeding sources or high feeding sources and would more resemble new source standards for both of these different types of combustors. Such floors could lead to situations, for example, where commercial sources could find it impracticable to achieve the standards without reducing the overall scope of their operations (since the standard could operate as a direct constraint on the amount of hazardous waste that could be fed to the device, in effect depriving a combustion source of its raw material). Similarly, low feeding sources that cannot achieve this floor level may be required to add expensive back-end control equipment that would result in minimal emission reductions, likely forcing the smaller on-site source to cease hazardous waste treatment operations and to instead send the waste to a commercial treatment unit.

The inappropriateness of a straight emissions-based approach for feed controlled pollutants for commercial hazardous waste combustors is further highlighted by the fact that several commercial hazardous waste combustors that are achieving the design level of the particulate matter standard are not achieving the semivolatile and/or low volatile metals straight emissions based design level, and, in some instances, floor level.[81] This provides further evidence that low feeding sources are in fact biasing some of the straight emissions-based floors to the extent that even the sources with the most efficient back-end control devices would be incapable of achieving the emission standards calculated on a straight emission basis.

These results are inconsistent with the intent of the section 112 (d) (see 2 Legislative History at 3352 (House Report) stating that MACT is not intended to drive sources out of business). Standards that could force commercial sources to reduce the overall scope of their operations are also inconsistent with requirements and objectives of the Resource Conservation and Recovery Act to require treatment of hazardous wastes before the wastes can be land disposed, and to encourage hazardous waste treatment. RCRA sections 3004 (d), (e), (g) and 1003 (a) (6); see also section 112 (n) (7) of the CAA, stating that section 112 (d) MACT standards are to be consistent with RCRA subtitle C emission standards for the same sources to the maximum extent practicable (consistent with the requirements of section 112 (d)); moreover, EPA doubts that a standard which precludes effective treatment mandated by a sister environmental statute must be viewed as a type of best performance under section 112 (d). The SRE/Feed methodology avoids this result by always considering hazardous waste feed control in combination with system removal efficiency and according equal weight to both means of control in the ranking process.

It is also important to emphasize what the SRE/Feed methodology does not evaluate: Feed control of HAP in fossil fuel or raw material inputs to these devices. Emission reduction of these HAP are controllable by back-end pollution control devices which remove a given percentage of pollutants irrespective of their origin and is assured by the system removal efficiency portion of the methodology, as well as through the particulate matter standard (see section IV.A below). Feed control of these inputs is not a feasible means of control, however. HAP content in raw materials and fossil fuel can be highly variable, and so cannot even be replicated by a single source. Raw material and fossil fuel sources are also normally proprietary, so other sources would not have access to raw material and fossil fuel available (in its performance test) to a source with low HAP fossil fuel and raw material inputs. Such sources would thus be unable to duplicate these results. Moreover, there are no commercial-scale pretreatment processes available for removing or reducing HAP content in raw materials or fossil fuels to these units. See technical support document volume III section 17.5 and 25; see also 69 FR at 21224 and n. 48.

2. Why Aren't the Lowest Emitters the Best Performers?

Some commenters nonetheless argue that best performing sources can only mean sources with the lowest HAP

[78] At proposal, we conducted a technical analysis to determine potential subcategorization options. We then conducted an analysis to determine if these different types of sources exhibited statistically different emissions. Although EPA in the end determined that these source categories should not be subcategorized further, this decision was based in part because the SRE/Feed methodology better accounts for the range of emissions from the best performing sources for these diverse combustion types. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 4, for an explanation of the subcategorization assessment, which includes examples of anomalous floor results for certain subcategorization approaches.

[79] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix C, Table "E_INC_SVMCT" and, to determine relative feed control and SRE rankings for these sources, Appendix E Table "SF_INC_SVMCT".

[80] Source 340 had a semivolatile metal feed control MTEC of 892 µg/dscm, whereas source 327 had a semivolatile metal feed control MTEC of 3,080,571 µg/dscm.

[81] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 17.4

emissions, and that the SRE/Feed methodology is therefore flawed because it does not invariably select lowest emitters as best performers.[82] The statute does not compel this result. There is no language stating that lowest emitting sources are by definition the best performers. The floor for existing sources is to be based on the average emission limitation achieved by the "best performing" 12 per cent of sources. Section 112(d)(3)(A). This language does not specify how "best performing" is to be determined: by means of emission level, emission control efficiency, measured over what period of time, etc. See *Sierra Club* v. *EPA*, 167 F. 3d at 661 (language of floor requirement for existing sources "on its own says nothing about how the performance of the best units is to be calculated"). Put another way, this language does not answer the question of which source is the better performing: one that emits 100 units of HAP but also feeds 100 units of that HAP, or one that emits 101 units of the HAP but feeds 10,000 units. See 69 FR at 21223. Moreover, new source floors are to be based on the performance of the "best controlled" similar source achieved in practice. Section 112(d)(3). "Best controlled" can naturally be read to refer to some means of control such as system removal efficiency as well as to emission level.

Use of a straight emissions approach to identify floor levels can lead to arbitrary results. Most important, as explained above, it leads to standards which cannot be achieved consistently even by the best performing sources because operating variability is not accounted for. This is shown in section 17 of volume III of the technical support document. These analyses show that (a) emissions from these sources do in fact vary from test-to-test, and that no two snapshot emission test results are identical; (b) our statistical approach that quantifies within test, run-to-run variability underestimates the best performing sources' long term, test-to-test variability;[83] (c) best performing sources under the straight emissions approach advocated by the commenter (i.e. the lowest emitting sources) had other test conditions that did not achieve straight emission floor levels; (d) best performing sources under the straight emissions approach are projected, based on two separate analyses using reasonable assumptions, not to achieve the straight emissions floor standard based on these sources' demonstrated variations in system removal efficiencies over time (i.e., from test-to-test); and (e) SRE/feed methodology yields floor levels (i.e. the floor standards in the rule) that better estimate the emission levels reflecting the performance over time of the best performing sources. See *Mossville*, 370 F. 3d at 1242 (floor standard is reasonable because it accommodated best performing source's highest level of performance (i.e. its total variability), even though the level of the standard was higher than any individual measurement from that source).

As noted earlier, the straight emissions methodology can also limit operation of commercial units because the standard reflects a level of hazardous waste feed control which could force commercial units to burn less hazardous waste because such standards more resemble new source standards. The straight emissions methodology also arbitrarily reflects HAP levels in raw materials and fossil fuels, an infeasible means of control for any source.

Another arbitrary, and indeed impermissible, result of the straight emissions methodology is that in some instances (noted in responses below) the methodology results in standards which would force sources identified as best performing to install upgraded air pollution control equipment. This result undermines section 112 (d) (2) of the statute, by imposing what amounts to a beyond the floor standard without consideration of the beyond the floor factors: the cost of achieving those reductions, as well as energy and nonair environmental impacts.

Comment: The commenter states that because MACT floors must reflect the "actual performance" of the relevant best performing hazardous waste combusters, this means that the lowest emitters must be the best performers. The commenter cites *CKRC* v. *EPA*, 255 F. 3d at 862 and other cases in support.

Response: As explained in the introduction above, the statute does not specify that lowest emitters are invariably best performers. Nor does the caselaw cited by the commenter support this position. The D.C. Circuit has held repeatedly that EPA may determine which sources are best performing and may "reasonably estimate" the performance of the top 12 percent of these sources by means other than use of actual data. *Mossville*, 370 F. 3d at 1240–41 (collecting cases). In *Mossville*, sources had varying levels of vinyl chloride emissions due to varying concentrations of vinyl chloride in their feedstock. Individual measurements consequently did not adequately represent these sources' performance over time. Not-to-exceed permit limits thus reasonably estimated sources' performance, corroboration being that individual sources with the lowest long-term average performance occasionally came close to exceeding those permit limits. *Id.* at 1241–42. The facts are similar here, since our examination of best performing sources with multiple test conditions likewise shows instances where these sources would be unable to meet floors established based solely on lowest emissions (including their own). As here, EPA was not compelled to base the floor levels on the lowest measured emission levels.

Comment: The same commenter maintains that it is clear from the caselaw that MACT floors must reflect the relevant best performing sources' "actual performance", and that this must refer to the emissions level it achieves.

Response: As just stated, the D.C. Circuit has repeatedly stated that EPA may make reasonable estimates of sources' performance in assessing both which sources are best performing and the level of their performance. The court has further indicated that EPA is to account for variability in assessing sources' performance for purposes of establishing floors, and this assessment may require that EPA make reasonable estimates of performance of best performing sources. *CKRC*, 255 F. 3d at 865–66; *Mossville*, 370 F. 3d at 1241–42. See discussion in A.1.a above.

Comment: The commenter generally maintains that EPA's floor approaches consider only the performance of back-end pollution control technology and so fail to capture other means of HAP emission control that otherwise would be captured if EPA were to assess performance based on the emission levels each source achieved.

Response: EPA agrees that factors other than end-of-stack pollution control can affect metal HAP and chlorine emissions. This is why EPA assesses performance for these HAP by considering combinations of system removal efficiency (which measures every element in a control system resulting in HAP reduction, not limited to efficiency of a control device), and hazardous waste HAP feed control. Standards for dioxins and other organic HAP (which have no hazardous waste feed control component) likewise assess every element of control.

[82] In fact, many of the sources identified as best performing under the SRE/Feed methodology are also the lowest emitting, although this is not invariably the case.

[83] Best performing sources pursuant to the straight emissions methodology are projected to be unable to achieve the levl of their of their performance test emissions even after they are adjusted upward to account for run-to-run variability.

EPA also accounts for the variability of HAP levels in the (essential) use of raw materials and fossil fuels by assessing performance of back-end control but not evaluating fuel/raw material substitution, which, as discussed later in the response to comments section, are infeasible means of control. *Mossville*, 370 F. 3d at 1241–42, is instructive on this point. The court held that the constant change in raw materials justified EPA's use of a regulatory limit to estimate a floor level. The reasonableness of this level was confirmed by showing that the highest individual data point of a best performing source was nearly at the level of the regulatory limit. Under the commenter's approach, the court would have had no choice but to hold that the level the source achieved in a single test result using 'clean' raw materials—i.e. the 'level achieved' in the commenter's language—dictated the floor level.

See part four, section III.C for EPA's response to this comment as it relates to the methodologies for the particulate matter standard and total chlorine standard for hydrochloric acid production furnaces.

Comment: The commenter notes that the SRE/Feed methodology does not account for all HAP emissions, failing to account for metal and chlorine feedrates in raw materials and fossil fuels.

Response: The methodology does not assess the effect of feed "control" of HAP levels in raw materials or fossil fuels which may be inputs to the combustion units. This is because such control may not be replicable by an individual source, or duplicable by any other source. See 69 FR at 21224 and n. 48; *Sierra Club* v. *EPA*, 353 F. 3d 976, 988 ("substitution of cleaner ore stocks was not * * * a feasible basis on which to set emission standards. Metallic impurity levels are variable and unpredictable both from mine to mine and within specific ore deposits, thereby precluding ore-switching as a predictable and consistent control strategy").[84] EPA's methodology does account for HAP control of all inputs by assessing system removal efficiency, which measures reductions of HAPs in all inputs (including fossil fuel and raw materials) to a hazardous waste combustion unit. Further, nonmercury metal HAP emissions attributable to raw materials and fossil fuels are effectively controlled with the particulate matter standard, a standard that is based on the sources with best back-end control devices. The only element which is not controlled is what cannot be: HAP levels in feeds for which fuel or raw material switching is simply not an available option.

Comment: The commenter further maintains, however, that the means by which sources may be achieving levels of performance are legally irrelevant (citing *National Lime Ass'n* v. *EPA*, 233 F. 3d 625 , 634 and 640 (D.C. Cir. 2000)). The fact that sources with "cleaner" raw material and fossil fuel inputs may not intend to have resulting lower HAP emissions is therefore without legal bearing.

Response: The issue here is not one of intent. The Court, in *National Lime*, rejected the argument that sources' lack of intent to control a HAP did not preclude EPA from establishing a section 112(d) standard for that HAP. See 233 F. 3d at 640, rejecting the argument that HAP metal control achieved by use of back-end control devices (baghouses) could not be assessed by EPA because the sources used the back-end control devices to control emissions of particulate matter. The case did not consider the facts present here, where the issue is not a source's intent, but rather a means of control which involves happenstance (composition of HAP in raw materials and fossil fuel used the day the test was conducted) and so is neither replicable nor duplicable.

National Lime also held that EPA must establish a section 112(d) emission standard for every HAP emitted by a major source. 233 F. 3d at 634. EPA is establishing emission standards for all HAP emitted by these sources. In establishing these standards, EPA is not evaluating emission reductions attributable to the type of fossil fuel and raw material used in the performance tests, because this is not a "feasible basis on which to set emission standards." *Sierra Club*, 353 F. 3d at 988.

EPA thus does not agree with this comment because the issue is not a source's intent but rather whether or not to assess emission reductions from individual test results which reflect an infeasible means of control.

Comment: The commenter maintains, however, that even if individual sources (including those in the pool of best performing sources) cannot reduce HAP concentrations in raw materials and fossil fuels, they may achieve the same reductions by adding back-end pollution control. Nothing in section 112(d)(3) says that sources have to use the means of achieving a level of performance that other best performing sources used.

Response: The thrust of this comment is essentially to impermissibly bypass the beyond-the-floor factors set out in section 112(d)(2) under the guise of adopting a floor standard. Suppose that EPA were to adopt a floor standard dominated by emission levels reflecting HAP concentrations present in a few sources' raw materials and fossil fuels during their test conditions. Suppose further that some sources have to upgrade their back-end control equipment to operate at efficiencies better than the average level demonstrated by the best performing sources, because test results based on fossil fuel and raw material levels are neither replicable nor duplicable. In this situation, EPA believes that it would have improperly adopted a beyond-the-floor standard because EPA would have failed to consider the beyond-the-floor factors (cost, energy, and nonair environmental impacts) set out in section 112(d)(2).[85]

Comment: EPA has not substantiated its claim that sources cannot switch fossil fuels or raw materials.

Response: At proposal we evaluated fuel switching and raw material substitution as beyond-the-floor technologies for cement kilns and lightweight aggregate kilns and stated these technologies would not be cost effective.[86] We also discussed why fuel switching is not an appropriate floor control technology for solid fuel-fired boilers. 69 FR at 21273. Upon further evaluation, we again conclude that fuel switching and raw material substitution are not floor control technologies and are not cost effective beyond-the-floor technologies for cement kilns, lightweight aggregate kilns, and solid fuel-fired boilers.[87]

Comment: EPA has failed to document the basis for its SRE ranking.

[84] Although this language arose in the context of a potential beyond-the-floor standard, EPA believes that the principle stated is generally applicable. MACT standards, after all, are technology-based, and if there is no technology (i.e. no avaialble means) to achieve a standard—i.e. for a soruce to achieve a standard whenever it is tested (as the rules require)—then the standard is not an achieveable one.

[85] Analysis of the levels of HAP in raw matrial and nonhazardous waste fuels suggests that this is a realistic outcome. Our analysis shows that emissions attributable to raw material and fossil fuel can be significant relative to the level of the straight emissions-based floor design level and floor (the methodology advocated by the commenter), and therefore could inappropriately impact a sournce's ability to comply with such a floor standard. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 17.6.

[86] See, for example, 69 FR at 21252, where we discuss the use of fuel-switching or raw material substitution as a possible beyond-the-floor control for mercury at cement kilns.

[87] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards, September 2005, Sections 11 and 25, for further discussion.

Specifically, EPA has not stated how it measured sources' SREs, or how it knows those rankings are accurate.

Response: System removal efficiency is a parameter that is included in our database that is calculated by the following formula:

$$SRE = 100 \times \frac{[(\text{total HAP mass feedrate}) - (\text{stack gas HAP mass emission rate})]}{\text{total HAP mass feedrate}}$$

The HAP feedrate and emission data are components of the database that were extracted from emission test reports for each source. We use system removal efficiency for each relevant pollutant or pollutant group (e.g., semivolatile metals, low volatile metals, mercury, total chlorine) whenever the data allows us to calculate a reliable system removal efficiency. For example, we generally do not use system removal efficiencies that are based on normal emissions data because of the concern that normal feed data are too sensitive to sampling and measurement error. See 69 FR at 21224.[88]

The system removal efficiencies used in our ranking process are reliable and accurate because the feed and emissions data originate from compliance tests that demonstrate compliance with existing emission standards (primarily RCRA requirements). As such, the data are considered to have excellent accuracy and quality. RCRA trial burn and certification of compliance reports are typically reviewed in detail by the permitting authority. The compliance tests and test reports generally contain the use of various quality assurance procedures, including laboratory, method, and field blanks, spikes, and surrogate samples, all of which are designed to minimize sampling and analytical inaccuracies. EPA also noticed the data base for this rule for multiple rounds of comment and has made numerous changes in response to comment to assure accuracy of the underlying data. Thus, EPA concludes the calculated system removal efficiencies used in the ranking process are both reliable and accurate.

Comment: EPA's approach with regard to use of stack data is internally contradictory. EPA uses stack data in establishing floors, but does not use stack data to determine which performers are best. EPA has failed to explain this contradiction.

Response: Emission levels are used to calculate system removal efficiencies in order to assess each source's relative back-end control efficiency. Also, as explained in the introduction to this comment response section, the SRE/Feed methodology uses the stack emission levels of the sources using the best combinations of hazardous waste feed control and system-wide air pollution control (expressed as HAP percent removal over the entire system) to calculate the floors. The data are adjusted statistically to account for quantifiable forms of variability (run-to-run variability). This methodology reasonably selects best performing sources (for HAP amenable to these means of control), and reasonably estimates these sources' performance over time. As further stated in section B.2 above, using a straight emissions approach to identify best performers and their level of performance can lead to standards for these HAP that do not fully account for variability (including variability resulting from varying and/or uncontrollable amounts of HAP in raw materials and fossil fuels) and could force installation of *de facto* beyond-the-floor controls without consideration of the section 112(d)(2) beyond-the-floor factors.

EPA thus does not see the contradiction expressed by the commenter. Use of the straight emissions approach as advocated by the commenter would lead to standards that do not reasonably estimate sources' performance and which could not be achieved even by the best performers with individual test conditions below the average of the 12 percent of best performing sources. These problems would be compounded many-fold if the data were not normalized and adjusted to at least account for quantifiable variability, steps the commenter also opposes. EPA's use of emissions data (suitably adjusted) after identifying best performers through the ranking methodology avoids these problems and reasonably estimates best performers' level of performance.

Comment: The commenter rejects EPA's finding (69 FR at 21226) that individual test results in the data base do not fully express the best performing sources' performance. The commenter gives a number of reasons for its criticisms, which we answer in the following sequence of comments listed a though f.

a. *Comment:* The commenter states that EPA claims emission levels do not fully reflect variability in part because they are sometimes based on tests where the source was feeding low levels of HAP during the test. The commenter claims this is inconsistent with the fact that EPA preferentially uses worst-case emissions obtained from tests where the sources spiked their feedstreams with metals, and that the mere possibility that these emissions do not reflect test data from conditions where variability was not maximized does not mean those data fail to represent a source's actual performance. The commenter also states that "EPA's apparent suggestion that the best performing sources could not replicate the average performance of the sources with the lowest emissions is unsubstantiated and unexplained. Assuming that EPA accurately assesses a source's actual performance, the source can replicate that performance."

Response: HAPs in raw materials and fossil fuels contribute to a source's emissions. EPA has concerns that a straight emissions approach to setting floors may not be replicable by the best performing sources nor duplicable by other non-best performing sources because of varying concentration levels of HAP in raw material and nonhazardous waste fuels. The best performing sources operated under compliance test conditions as the commenter suggests. However, raw material and nonhazardous fuel HAP concentrations for the best performing sources will change over time, perhaps due to a different source of fuel or raw material quarry location, which could affect their ability to achieve the floor level that was based on emissions obtained while processing different fossil fuel or raw materials. EPA takes sharp issue with the commenter's statement that a single performance test result is automatically replicable so long as it is measured properly in the first instance. This statement is incorrect even disregarding HAP contributions in raw materials and fossil fuels since, as noted previously in section A.2.e, there are many other sources of variability

[88] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume II: Database," September 2005, Section 2, for further discussion on system removal efficiencies, which includes sample calculations and references to the database that contain the calculated system removal efficiencies for each source and each HAP or HAP group.

which will influence sources' performance over time (i.e., in subsequent performance tests).

A straight emissions approach for establishing semivolatile and low volatile metal floors may result in instances where the best performing sources would not be capable of achieving the standards if their raw material and nonhazardous waste fuel HAP levels change over time. For each cement kiln and lightweight aggregate kiln, we estimated the emissions attributable to these raw materials and fossil fuels assuming each source was operating with hazardous waste HAP feed and back-end control levels equivalent to the average of the best performing sources (the difference in emissions across sources only being the result of the differing HAP levels in the nonhazardous waste feeds). The analysis shows that emissions attributable to these nonhazarous waste feedstreams (raw materials and fossil fuels) varies across sources, and can be significant relative to the level of the straight emissions-based floor design level and floor, and therefore could inappropriately impact a source's ability to comply with the floor standard.[89]

b. *Comment:* The commenter states that EPA must consider contributions to emissions from raw materials and fossil fuels, that it is irrelevant if sources from outside the pool of best performing sources can duplicate emission levels reflecting "cleaner" raw materials and fossil fuels used by the best performing sources, and that sources unable to obtain such "cleaner" inputs may always upgrade other parts of their systems to achieve that level of performance.

Response: As previously discussed, EPA's methodology does account for HAP control of all inputs by assessing system removal efficiency, which measures reductions of HAPs from all inputs. Further, nonmercury metal HAP emissions attributable to raw materials and fossil fuels are effectively controlled with the particulate matter standard, a standard that is based on the sources with lowest emissions from best back-end control devices. We are not basing any standards on performance of sources not ranked as among the best performing.

c. *Comment:* The commenter disputes EPA's conclusions that failure of sources to meet all of the standards based on a straight emissions methodology at once shows that the methodology is flawed. The standards are not mutually dependent, so the fact that they are not achieved simultaneously is irrelevant. There is no reason a best performer for one HAP should be a best performer for other HAP.

Response: EPA agrees with this comment. On reflection, EPA believes that because all our standards are not technically interdependent (i.e., implementation of one emission control technology does not prevent the source from implementing another control technology), the fact that sources are not achieving all the standards simultaneously does not indicate a flaw in a straight emissions approach. 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).

d. *Comment:* Several commenters took the opposite position that EPA must assure that all existing source standards must be achievable by at least 6 percent of the sources, and that all new source standards must be achievable by at least one existing source.

Response: As discussed above, we are not obligated to establish a suite of floors that are simultaneously achievable by at least six percent of the sources because the standards are not technically interdependent. Nonetheless, the SRE/Feed methodology does result in existing floor levels (when combined with the other floor levels for sources in the source category) that are simultaneously achievable by at least six percent of the sources (or, for source categories that have fewer than 30 sources, by at least two or three sources).[90] However, for the new source standards, three of the source categories do not include any sources that are simultaneously achieving all the standards (incinerators, cement kilns, and lightweight aggregate kilns). Again, similar to existing sources, EPA is not obligated to establish a suite of new source floors that are simultaneously achievable by at least one existing source because these standards are not technically interdependent. We conclude that a new source can be designed (from a back-end control perspective) to achieve all the new source standards.[91]

e. *Comment:* The commenter criticizes EPA's discussion at 69 FR 21227–228 indicating that both hazardous waste feed control and back-end pollution control are superior means of HAP emission control and treatment standards should be structured to allow either method to be the dominant control mechanism.

Response: EPA is not relying on this part of the proposed preamble discussion as justification for the final rule, with the one exception noted in the response to the following comment.

f. *Comment:* Considerations of proper waste disposal policy are not relevant to MACT floor determinations. In any case, the possibility that some commercial waste combustors may upgrade their back-end pollution control systems to meet standards reflecting low hazardous waste HAP feedrates, or divert wastes to better-controlled units, is positive, not negative.

Response: As discussed in section B.1 above, there are instances where standards derived by using a straight emissions approach are based on a combination of lowest emitting low feeding sources and lowest emitting higher feeding sources. Resulting floor standards would thus reflect these low hazardous waste feedrates and could put some well-controlled commercial incinerators in the untenable situation of having to reduce the amount of hazardous waste that is treated at their source. Our database verifies that such an outcome is in fact realistic.[92]

This type of standard would operate as a direct constraint on the amount of hazardous waste that could be fed to the device, in effect depriving a combustion source of its raw material. In this instance, hazardous wastes could not be readily diverted to other units because the low feeding hazardous waste sources tend not to be commercial units. In these circumstances, there would be a significant adverse nonair environmental impact. Hazardous waste is required to be treated by Best Demonstrated Available Technology (BDAT) before it can be land disposed. RCRA sections 3004 (d), (e), (g), and (m); *Hazardous Waste Treatment Council* v. *EPA*, 866 F. 2d 355, 361 (D.C.Cir. 1990) (upholding Best Demonstrated Available Technology treatment requirement). Most treatment standards for organic pollutants in hazardous waste can only be achieved by combustion. Leaving some hazardous wastes without a

[89] See USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 17.6. .

[90] These achievability analyses did not account for the additional test-to-test variability that we cannot quantify.

[91] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs," September 2005, Section 4.2.3 for a discussion that explains how such a new source could be designed to achieve the new source standards.

[92] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 17.4.

treatment option is in derogation of these statutory requirements and goals, and calls into question whether a treatment standard that has significant adverse nonair environmental impacts must be viewed as best performing. See *Portland Cement Ass'n* v. *Ruckelshaus, 486 F. 2d 375 , 386 (D.C. Cir. 1973); Essex Chemical Co.* v. *EPAEPA*, 486 F. 2d 427, 439 (D.C. Cir. 1973). The commenter's statement that waste disposal policy is not relevant to the MACT standard-setting process is not completely correct, since section 112 (n) (7) of the Clean Air Act directs some accommodation between MACT and RCRA standards for sources combusting hazardous waste. Part of this accommodation is using a methodology to evaluate best performing sources that evaluates as best performers those using the best combination of hazardous waste feed control (among other things, an existing control measure under RCRA rules) and system-wide removal.

We assessed whether we could address this issue by subcategorizing commercial incinerators and on-site incinerators. Applying the straight emission approach to such a subcategorization scheme, however, yields anomalous results due to the scarcity of available and complete compliance test data from commercial incinerators. Calculated floor levels for semivolatile metals and low volatile metals for the commercial incinerator subcategory equate to 2,023 and 111 μg/dscm, respectively (both higher than the current interim standards).[93] We conclude that the SRE/Feed methodology better addresses this issue because it yields floor levels that better represent the performance of the best performing commercial incinerators and onsite incinerators alike by applying equal weights to hazardous waste feed control and back-end control in the ranking process.

EPA notes, however, that its choice of the SRE/Feed methodology is justified independent of considerations of adverse impact on hazardous waste treatment and disposal.

Comment: The commenter reiterates its comments with respect to floor levels for new sources.

Response: EPA's previous responses to comments apply to both new and existing source standards.

Comment: Two commenters recommend that EPA define the single best performing source as that source with the lowest aggregated SRE/Feed aggregated score (as proposed), as opposed to the source with the lowest emissions among the best performing existing sources (an approach on which we requested comment).

Response: We agree with the commenters because this is consistent with our methodology for defining best performers for existing sources and assessing their level of performance. We note, however, that with respect to the new source standards, we encountered two instances where the SRE/Feed methodology identified multiple sources with identical single best aggregated scores, resulting in a tie for the best performing source. This occurred for the mercury and low volatile metal new source standards for incinerators. In these instances, EPA applied a tie breaking procedure that resulted in selecting as the single best performing source as that source (of the tied sources) with the lowest emissions. We believe this is a reasonable interpretation of section112(d)(3), which states the new source standard shall not be less stringent than the emission control that is achieved in practice by the best controlled similar *source* ("source" being singular, not plural). Moreover, we believe use of the emission level as the tie-breaking criteria is reasonable, not only because it is a measure of control, but because we have already fully accounted for hazardous waste feedrate control and system removal efficiency in the ranking methodology. To choose either of these factors to break the tie would give that factor disproportionate weight.

C. Air Pollution Control Technology Methodologies for the Particulate Matter Standard and for the Total Chlorine Standard for Hydrochloric Acid Production Furnaces

At proposal, EPA used what we termed "air pollution control technology" methodologies to estimate floor levels for particulate matter from all source categories as a surrogate for non-mercury HAP metals, and for total chlorine from hydrochloric acid furnace production furnaces. 69 FR at 21225–226. Under this approach, we do not estimate emission reductions attributable to feed control, but instead assess the performance of back-end control technologies.[94] We are adopting the same methodologies for these HAP in the final rule. Because the details of the approaches differ for particulate matter and for total chlorine, we discuss the approaches separately below.

1. Air Pollution Control Device Methodology for Particulate Matter

Our approach to establishing floor standards for particulate matter raises three major issues.

The first issue is whether particulate matter is an appropriate surrogate for non-enumerated HAP metals from all inputs, and for all non-mercury HAP metals in raw material and fossil fuel inputs. This issue is discussed at section IV.A of this part, where we conclude that particulate matter is indeed a reasonable surrogate for these metal HAP.

The second issue is why EPA is not evaluating some type of feed control for the particulate matter floor. There are two potential types of feed control at issue: hazardous waste feed control of nonenumerated metals, and feed control of non-mercury HAP metals in raw material and fossil fuel inputs. With respect to feed control of non-enumerated metals in hazardous waste, as discussed in more detail in section IV.A of this part, we lack sufficient reliable data on non-enumerated metals to assess their feedrates in hazardous waste. In addition, there are significant questions about whether feedrates of the non-enumerated metals can be optimized along with SVM and LVM feedrates. We also have explained elsewhere why control of hazardous waste ash feedrate would be technically inappropriate, since it would not properly assess feed control of nonenumerated metals in hazardous waste. See also 69 FR at 21225.

We have also explained why we are not evaluating control of feedrates of HAP metals in raw materials and fossil fuels to hazardous waste combusters: it is an infeasible means of control. See section B of this part. We consequently are not evaluating raw material and fossil fuel ash feed control in determining the level of the various floors for particulate matter.

a. *The methodology.* The final issue is the means by which EPA is evaluating back-end control. Essentially, after determining (as just explained) that back-end control is the means of controlling non-mercury metal HAP and that particulate matter is a proper surrogate for these metals, EPA is using its engineering judgment to determine what the best type of air pollution control device (i.e., back-end control) is to control particulate matter (and, of course, the contained HAP metals). We then ascertain the level of performance by taking the average of the requisite number of sources (either 12 % or five,

[93] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 4, and Appendix C, Table "E-INC-SVM-CT-COM" and Table "E-INC-LVM-CT-COM"

[94] See generally USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 7.4 and 7.5.

depending on the size of the source category) equipped with the best back-end control with the lowest emissions.[95] These floor standards are therefore essentially established using a straight emissions methodology. We have determined that baghouses (also termed fabric filters) are generally the best air pollution control technology for control of particulate matter, and that electrostatic precipitators are the next best.

b. *Why not select the lowest emitters?* Although sources with baghouses tended to have the lowest emission levels for particulate matter, this was not invariably the case. There are certain instances when sources controlled with electrostatic precipitators (or, in one instance, a venturi scrubber) had lower emissions in individual test conditions than sources we identified as best performing which were equipped with baghouses.[96] Under the commenter's approach, we must always use these lowest emitting sources as the best performers.

We again disagree. We do not know if these sources equipped with control devices other than baghouses with lower emissions in single test conditions would actually have lower emissions over time than sources equipped with baghouses because we cannot assess their uncontrollable emissions variability over time. Our data suggests that they likely are not better performing sources. We further conclude that our statistical procedures that account for these sources' within test, run-to-run emissions variability underestimates these sources long-term emissions variability. This is not the case for sources equipped with baghouses, where we have completely assessed, quantified, and accounted for long-term, test-to-test emissions variability through application of the universal variability factor.[97] The sources equipped with control devices other than baghouses with lower snapshot emissions data could therefore have low emissions in part because they were operating at the low end of the "uncontrollable" emissions variability profile for that particular snapshot in time. The basis for these conclusions, all of which are supported by our data, are found in section 16 of volume III of the technical support document.

We therefore conclude sources equipped with baghouses are the best performers for particulate matter control not only based on engineering judgment, but because we are able to reliably quantify their likely performance over time. The straight emissions methodology ignores the presence of long-term emissions variability from sources not equipped with baghouses, and assumes without basis that these sources are always better performing sources in instances where they achieved lower snapshot emissions relative to the emissions from baghouses, emissions that have notably already been adjusted to account for long-term emissions variability.

A straight emissions approach also results in inappropriate floor levels for particulate matter because it improperly reflects/includes low ash feed when identifying best performing sources for particulate matter. 69 FR at 21228. For example, the MACT pool of best performing liquid fuel boilers for particulate matter under the straight emissions approach includes eight sources, only one of which is equipped with a back-end control device. These sources have low particulate matter emissions solely because they feed low levels of ash. The average ash inlet loadings for these sources are well over two orders of magnitude lower than the average ash inlet loading for the best performing sources that we identify with the Air Pollution Control Technology approach. (Of course, since ash loadings are not a proper surrogate for HAP metals, these sources' emissions are lowest for particulate matter but not necessarily for HAP metals.) The straight emissions approach would yield a particulate matter floor level of 0.0025 gr/dscf (with a corresponding design level of 0.0015 gr/dscf). There is not one liquid fuel boiler that is equipped with a back-end control that achieved this floor level, much less the design level. The best performing source under the air pollution control technology approach, which is equipped with both a fabric filter and HEPA filter, did not even make the pool of best performing sources for the straight emissions approach. Yet this unit has an excellent ash removal efficiency of 99.8% and the lower emitting devices' removal efficiencies are, for the most part, 0% because they do not have any back-end controls. EPA believes that it is arbitrary to say that these essentially uncontrolled devices must be regarded as "best performing" for purposes of section 112(d)(3). We therefore conclude that a straight emissions floor would not be achievable for any source feeding appreciable levels of ash, even if they all were to upgrade with baghouses, or baghouses in combination with HEPA filters, and that a rote selection of lowest emitters as best performers can lead to the nonsensical result of uncontrolled units being classified as best performers.

Comment: Commenter claims end-of-stack control technology is not the only factor affecting emissions of particulate matter, stating that EPA admits that particulate matter emission levels are affected by the feedrate of ash. Accordingly, the performance of a source's end-of-stack control technology is not a reasonable estimate of that source's total performance.

Response: The particulate matter standard serves as a surrogate control for the non-enumerated metals in the hazardous waste streams (for all source categories), and all nonmercury metal HAP in the nonhazardous waste process streams (essentially, raw materials and fossil fuels) for cement kilns, lightweight aggregate kilns, and liquid fuel boilers. The commenter suggests that the APCD approach inappropriately ignores HAP feed control in the assessment of best performing sources. We conclude that it would not be appropriate to use a methodology that directly assesses feed control, such as the SRE/Feed methodology, to determine particulate matter floors. First, direct assessment of total ash feed control would inappropriately assess and seek to control (even though variability of raw material and fossil fuel inputs are uncontrollable) raw material and fossil fuel HAP input, as well as raw material and fossil fuel input. Controlling raw material and fossil fuel HAP input is infeasible, as previously discussed. It also inappropriately limits theses sources' feedstocks that are necessary for their associated production process.

Second, we do not believe that developing a floor standard based on hazardous waste feed control of nonenumerated metals (as opposed to feed control of these metals in raw material and fossil fuels) is appropriate or feasible. In part four, section IV.A, we explain that we lack the data to reliably assess direct feedrate of these metals in hazardous waste. In addition, we also discuss that it is unclear (the lack of certainty resulting from the sparse available data) that hazardous waste feed control of the nonenumerated metals is feasible. The majority of these metals are not directly regulated under existing RCRA requirements, so sources have optimized control of the other HAP

[95] As explained in the responses below, the approach varies slightly if the requisite number of sources do not all use the best back-end pollution control technology. In that case, EPA includes in its pool of best performers the lowest emission levels from sources using the next best pollution control technology.

[96] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 22.

[97] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3.

metals, raising issues of whether simultaneous optimization of feed control of the remaining metals is feasible. Moreover, even if one were to conclude that hazardous waste feed control is feasible for the nonenumerated metal HAPs, hazardous waste ash feedrates are not reliable indicators of nonmercury metal HAP feed control levels and are therefore inappropriate parameters to assess in the MACT evaluation process. For example, a source could reduce its ash feed input by reducing the amount of silica in its feedstreams. This would not result in feed control or emission reductions of metal HAP.[98]

Finally, hazardous waste ash feed control levels do not significantly affect particulate matter emissions from cement kilns, lightweight aggregate kilns; and solid fuel-fired boilers because the majority of particulate matter that is emitted originates from the raw material and nonhazardous fuel. Hazardous waste ash feed control levels also do not significantly affect particulate matter emissions from sources equipped with baghouses because these control devices are not sensitive to particulate matter inlet loadings.[99]

Thus, even if one were to conclude that the nonenumerated metal HAPs are amenable to hazardous waste feed control, explicit use of ash feed control in a MACT methodology would not assure that each source's ability to control either nonmercury metal HAP or surrogate particulate matter emissions is assessed. The Air Pollution Control Device methodology identifies and assesses (with the surrogate particulate matter standard) the known technology that always assures metal HAP emissions are being controlled to MACT levels—that technology being back-end control.

Comment: Commenter claims the Air Pollution Control Device approach to calculate particulate matter floors is flawed because the performance of back-end control technology alone does not reflect the performance of the relevant best sources that otherwise would be reflected if EPA were to assess performance based on the emission levels each source achieved because, as EPA admits, it fails to account for the effect of ash feed rate.

Response: We explain above why the Air Pollution Control Technology approach properly identifies the relevant best performing sources for purposes of controlling non-mercury metal HAP (measured as particulate matter), irrespective of ash feed rates. Typically, this results in selecting the sources with the lowest particulate matter emission rates, the result the commenter advocates. This is because we evaluate sources with the best-performing (*e.g.* lowest emitting) baghouses, and particulate matter emissions from baghouses are not significantly affected by inlet particulate matter loadings. Where the pool of best performing sources includes sources operating some other type of back-end control device (because insufficient numbers of sources are equipped with baghouses to comprise 12% of sources, or five sources (depending on the size of the source category)), we again use the lowest particulate matter emission level from the sources equipped with second best technology. Although these data do not reflect test-to-test variability, they are the best remaining data in EPA's possession to estimate performance and EPA is therefore, as required by section 112 (d) (3) (A) and (B), using the data to fill out the requisite percentage of sources for calculating floors.

Comment: Commenter states that EPA has failed to demonstrate how it reasonably estimated the actual performance of each source's end-of-stack control technology because: (1) It failed to acknowledge that there can be substantial differences between the performance of different models of the same type of technology; and (2) it did not explain or support its rankings of pollution control devices.

Response: As discussed in sections 7.4 and 16.2 of volume III of the technical support document and C.1 of this comment response section, we rank associated back-end air pollution control device classes (e.g., baghouses, electrostatic precipitators, etc.), after assessing particulate matter control efficiencies from hazardous waste combustors that are equipped with the associated back-end control class. The data used to make this assessment are included in our database. We also evaluated particulate matter control efficiencies from other similar source categories that also use these types of control systems, such as municipal waste combustors, medical waste incinerators, sewage sludge combustors, coal-fired boilers, oil fired boilers, non-hazardous industrial waste combustors, and non-hazardous waste Portland cement kilns.[100]

After we assign a ranking score to each back-end control class, we determine the number of sources that are using each of these control technology classes. We then identify the MACT control technology or technologies to be those best ranked back-end controls that are being used by 12 percent of the sources (or used by five sources in instances where there are fewer than 30 sources). We then look only at those sources using MACT back-end control and rank order all these sources first by back-end control type, and second by emissions. For example, in instances where there is more than one MACT back-end control, we array the emissions from the sources equipped with the top ranked back-end controls from best to worst (i.e., lowest to highest), followed by the emissions from sources equipped with the second ranked back-end controls from best to worst, and so on. We then determine the appropriate number of sources to represent 12 percent of the source category (5 in instances where there are fewer than 30 sources). If 10 sources represented 12% of the sources in the source category, we would then select the emissions from best ranked 10 sources in accordance with this ranking procedure to calculate the MACT floor. This methodology results in selection of lowest emitters using best back-end air pollution control as pool of the best performing sources.

The commenter is correct that there can be differences between the performance of different models of the same type of technology. We are not capable of thoroughly assessing differences in designs of each air pollution control device in a manner that could be used in the MACT evaluation process, so that we would only select, for example, baghouses of a certain type. Each baghouse, for example, will be designed differently and thus will have different combinations of design aspects that may or may not make that baghouse better than other baghouses (e.g., bag types, air to cloth ratios, control mechanisms to collect accumulated filter cake and maintain optimum pressure drops). We also do not have detailed design information for each source's air pollution control system; such an assessment would therefore not be

[98] For the same reason, even if feed control of total inputs (i.e. raw material and fossil fuel as well as hazardous waste fuel) were feasible, it would be technically inappropriate to use ash feedrates as a surrogate: ash feed control allows sources to selectively reduce the ash feeds without reducing the metal HAP portion of that feed. Back-end control, in contrast, unselectively removes a percentage of everything that is fed to the combustor.

[99] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of Mact Standards," September 2005, Section 3.1.

[100] See USEPA, "Technical Support Document for th HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 5.3 and 16.2, for further discussion.

possible even if the information could be used to assess relative performance.

We instead account for this difference by selecting sources with the lowest emissions that are using the defined MACT back-end controls to differentiate the performance among those sources that are using that technology (the best performer being the source with the lowest emissions, as just explained). For example, in situations where more than 12% of the sources are using the single best control technology (e.g., more than 12% of incinerators use baghouses to control particulate matter), we use the emissions from the lowest emitting sources equipped with baghouses to calculate the MACT floor. In instances where there are two defined MACT technologies (i.e., 12% of sources do not use the single best control technology), we use all the emissions data from sources equipped with the best ranked control class, and then subsequently use only the lowest emissions from the sources equipped with the second ranked back-end controls.

Comment: EPA did not say how it picked the best performers if more than twelve percent used the chosen technologies. If EPA used emissions data to differentiate performance, the Agency is necessarily acknowledging that emissions data are a valid measure of sources' performance—in which case the Agency's claims to the contrary are arbitrary and capricious.

Response: We did use emissions data to select the pool of best performers where over 12% use the best type of emissions control technology, as explained in the previous response. Emissions data is obviously one means of measuring performance. EPA's position is that it need not be the exclusive means, in part because doing so leads to arbitrary results in certain situations. Our use of emission levels to rank sources that use the best particulate matter control (i.e., baghouses) does not lead to arbitrary results, however. First, we are assessing emission levels here as a means of differentiating sources using a known type of pollution control technology. More importantly, the adjusted emission levels from sources equipped with baghouses are the most accurate measures of performance because these emissions have been statistically adjusted to accurately account for long-term variability through application of the universal variability factor.

Comment: Commenter states that EPA, in its support for its Air Pollution Control Technology Approach used to calculate particulate matter floors, claims that an emissions-based approach would result in floor levels that "could not necessarily be achieved by sources using the chosen end-of-stack technology," citing 69 FR at 21228. Commenter claims that it is settled law that standards do not have to be achievable through the use of any given control technology, and that it is also erroneous to establish floors at levels thought to be achievable rather than levels sources actually achieve.

Response: EPA is not establishing floor levels based on assuring the standards are achievable by a particular type of end-of-stack technology (or, for that matter, any end-of-stack technology). The floor levels in today's final rule reasonably estimate average performance of the requisite percent of best performing sources without regard for whether the levels themselves can be achieved by a particular means. Floor standards for particulate matter are based on the performance of those sources with the lowest emissions using the best back-end control technology (most often baghouses, and sometimes electrostatic precipitators). EPA uses this approach not to assure that the floors are achievable by sources using these control devices, but to best estimate performance of the best performing sources, including these sources' variability.

2. Total Chlorine Standard for Hydrochloric Acid Production Furnaces

We are adopting the methodology we proposed to estimate floor levels for total chlorine from hydrochloric acid production furnaces. 69 FR at 21225–226. As stated there, we are defining best performers as those sources with the best total chlorine system removal efficiency. We are not assessing a level of control attributable to control of chlorine in feedstocks because this would simply prevent these furnaces from producing their ultimate product. Further details are presented in responses below.

Comment: Basing the standard for hydrochloric acid production furnaces on the basis of system removal efficiency rather than chlorine emission reduction is impermissible. Even though these devices' purpose is to produce chlorinated product, the furnaces can use less chlorinated inputs. EPA's proposed approach is surreptitious, an impermissible attempt to assure that the standards are achievable by all sources using EPA's chosen technology, the approach already rejected in *CKRC*.

Response: EPA disagrees. There is nothing in the text of the statute that compels an approach that forces sources to produce less product to achieve a MACT floor standard. Yet this is the consequence of the comment. If standards were based on levels of chlorine in feedstock to these units, less product would be produced since there would be less chlorine to recover. EPA has instead reasonably chosen to evaluate best performing/best controlled sources for this source category by measuring the efficiency of the entire chlorine emission reduction system. Indeed, the situation here is similar to that in *Mossville*, where polyvinyl chloride production units fed raw materials containing varying amounts of vinyl chloride depending on the product being produced. This led to variable levels of vinyl chloride in plant emissions. Rather than holding that EPA must base a floor standard reflecting the lowest amount of vinyl chloride being fed to these units, the court upheld a standard estimating the amount of pollution control achievable with back-end control. 370 F. 3d at 1240, 1243. In the present case, as in *Mossville*, the standard is based on actual performance of back-end pollution control (although here EPA is assessing actual performance of the control technology rather than estimating performance by use of a regulatory limit, making the situation here *a fortiorari* from that in *Mossville*), and does not reflect "emission variations not related to technological performance". 370 F. 3d at 1240.

It also should be evident that EPA is not establishing a standard to assure its achievability by a type of pollution control technology, as the commenter mistakenly asserts. The standard for total chlorine is based on the average of the best five sources " best meaning those sources with greatest (most efficient) system removal efficiencies. EPA did not, as in *CKRC*, establish the standard using the highest emission limit achieved by a source operating a particular type of control.

Comment: The commenter generally maintains that EPA's methodology to determine total chlorine floors for hydrochloric acid production furnaces fails to capture other means of HAP emission control that otherwise would be captured if EPA were assess performance based on the emission levels each source achieved.

Response: As discussed above, the standard for total chlorine is based on the sources with the best system removal efficiencies. System removal efficiency encompasses all means of MACT floor control when assessing relative performance because: (1) Chlorine feed control is not a MACT floor technology for these sources; and (2) the measure of system removal efficiency accounts for every other controllable factor that can affect

emissions (e.g., operating practices, worker training, proper maintenance, pollution control device type, etc).

D. Format of Standards

1. Thermal Emissions

EPA proposed, and is finalizing standards for HAP metals and chlorine (the HAPs amenable to hazardous waste feed control) emitted by energy recovery units (cement kilns, lightweight aggregate kilns, and liquid fuel boilers) expressed in terms of pounds of HAP attributable to the hazardous waste fuel per million british thermal units (BTUs) of hazardous waste fired. 69 FR at 21219–20. EPA received many comments on this issue to which we respond below and in the Response to Comment Document. Some initial discussion of the issue is appropriate, however.

a. *Expressing Standards in Terms of a Normalizing Parameter is Reasonable.* First, using a thermal emissions form of a standard is an example of expressing standards in terms of a normalizing parameter. EPA routinely normalizes emission standards either by expressing them as stack HAP concentrations or by expressing the standards in units of allowable mass emissions per amount of production or raw material processed. Emission concentration-based standards normalize the size of each source by accounting for volumetric gas flowrate, which is directly tied to the amount of raw material each source processes (and subsequently the amount of product that is produced). Metal and particulate matter emission standards for commercial and industrial solid waste incinerators are expressed in emission concentration format. See § 60.2105. The particulate matter standard for Portland cement kilns is expressed as mass of allowable emissions per mass of raw material processed. See § 63.1342. The particulate matter, mercury, and hydrogen chloride standards for nonhazardous waste industrial boilers are expressed as pounds of allowable emissions per million British thermal units (BTUs). See § 63.7500.

Technology-based standards typically normalize emissions because such a format assures equal levels of control across sources per amount of raw material that is processed, and allows EPA to equally assess source categories that comprise units that differ in size. By normalizing the emissions standard we better ensure the same percentage of emission reduction per unit of raw material processed by each source.[101] See *Weyerhaeuser* v. *Costle*, 590 F. 2d 1011, 1059 (D.C. Cir. 1978) (technology-based standards are typically expressed in terms of volume of pollutants emitted per volume of some type of unit of production).

There is no legal bar to this approach since the statute does not directly address the question of whether a source emitting 100 units of HAP per unit of production but 100 units of HAP overall is a better performer (or, for new sources, better controlled) than a source emitting 10 units of HAP per unit of production but emitting 101 units overall.[102] One commenter appeared to suggest that we should assess performance on mass feedrates and mass emission rates, without normalizing. Such an approach would yield nonsensical results because the best performing sources would more likely be the smallest sources in the source category (smaller sources generally have lower mass emission rates because they process less hazardous waste). This would likely yield emission standards that would not be achievable by the larger sources that more likely are better controlled sources based on a HAP removal efficiency basis.[103] Normalization by unit of production is another way of expressing unit size, so that normalizing on this basis is a reasonable alternative to subcategorization on a plant size-by-plant size basis. See section 112(d)(1) (size is an enumerated basis for subcategorizing).

b. Using Hazardous Waste Thermal Input as the Normalizing Parameter is Permissible and Reasonable. Normalization of standards based on thermal input is analogous. For energy recovery units (in this rule, kilns and most liquid fuel boilers), normalizing on the basis of thermal input uses a key feed input as the normalizing parameter, allowing comparison of units with different inputs rather than separately evaluating these units by size and type (see section 112(d)(1)). Again, this approach is legally permissible. The statute does not answer the question of which source is better performing, the source emitting 100 pounds of HAP per million BTUs hazardous waste but 100 pounds of HAP overall or the source emitting 10 pounds of HAP per million BTUs hazardous waste but emitting 101 pounds overall.

The approach also is reasonable. First, as with other standards expressed in normalized terms, by normalizing the emissions standard we ensure the same percentage of emission reduction per unit of raw material processed by each source, thus allowing meaningful comparison among sources. For example, emission concentration-based standards normalize the size of each source by accounting for volumetric gas flowrate, which is directly tied to the amount of raw material each source processes (and subsequently to the amount of product that is produced), and assures equal levels of control per amount of product. Normalization on the basis of HAP amount in hazardous waste per BTU level in the hazardous waste similarly assures equal levels of control across sources per amount of raw material that is processed. Here, the raw material is the hazardous waste fuel, expressed as units of energy. It is reasonable to regard a hazardous waste fuel as a raw material to an energy recovery device. Indeed, fuels are the only input to boilers, so fuels are necessarily such units' sole raw material.[104] [105] Hazardous waste burning cement kilns and lightweight aggregate kilns produce a product in addition to recovered energy and so process other raw materials. However, the reason these units use hazardous waste as inputs is typically to recover usable energy from the wastes. Hence, the hazardous waste fuel is reasonably viewed as a raw material to these devices.

In this regard, we note that our choice of normalizing parameter essentially says that best performers with respect to hazardous waste fuel burned in energy recovery units are those using the lowest HAP feedrate (for metals and chlorine) per amount of energy

[101] A more familiar example of normalization is the Earned Run Average (ERA), which normalizes a baseball pitchers' earned runs on the basis of nine innings pitched in order to make comparisons among pitchers possible.

[102] Or, put another way, the statute does not directly address the question of whether a small source that emits 10 units of HAP is better than a much larger source with better back-end control (but feeding the same raw material at a higher mass feedrates) that emits 100 units of HAP.

[103] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 6.0.

[104] EPA thus has expressed the MACT standards for particulate matter, mercury, and hydrogen chloride standards for nonhazardous waste industrial boilers as pounds of allowable emissions per million BTUs. § See 63.7500. This normalization considers the total heat input into the combustion device. Normalizing by total heat input would not be appropriate for hazardous waste combustors for metals and chlorine because this would implicitly account for, and in turn require the use of, feed control of HAP in non hazardous waste fuels. This is inappropriate for the reasons discussed in Section III.B of this Part.

[105] We distinguish (i.e., subcategorize) liquid fuel boilers that process hazardous waste with heating values less than 10,000 BTU/lb from those processing hazardous wastes with heating content greater than 10,000 BTU/lb. Although boilers that process hazardous waste with heating values less than 10,000 BTU/lb are still considered to be energy recovery units, we conclude a thermal emissions normalization approach for these sources is not appropriate. See Part Four, Section VI.D.

recovered.[106] This approach accords well with the requirement in section 112(d)(2) that EPA take energy considerations into account in developing MACT, and also that the Agency consider front-end means of control such as input substitution (section 112(d)(2)(A)). In addition, our choice furthers the RCRA goal of encouraging properly conducted recycling and reuse (RCRA section 1003(b)(6)), which is of relevance here in that Congress directed EPA to consider the RCRA emission controls for hazardous waste combustion units in developing MACT standards for these units, and to ensure "to the maximum extent possible, and consistent with [section 112]" that section 112 standards are "consistent" with the RCRA scheme. CAA section 112(n)(7).[107] Conversely, emission concentration-based standards, the methodology that otherwise would be used to calculate emission concentration-based standards, may result in standards that are biased against sources that recover more energy from hazardous waste. This may discourage sources from recovering energy from hazardous waste because such standards do not normalize each source's allowable emissions based on the amount of hazardous waste it processes for energy recovery purposes. See 69 FR at 21219 and responses below.

Second, use of this normalizing parameter makes it much more likely that hazardous waste feed controls will be utilized by these devices as an aspect of emissions control. See section 112(d)(2)(A) (use of measures reducing the volume of pollutants emitted through "substitution of materials"); *CKRC*, 255 F. 3d at 865 (EPA to consider means of control in addition to back-end pollution control technology when establishing MACT floors). As explained in our discussion of the SRE/Feed methodology, the MACT floor level for metals and chlorine reflects the best combination of hazardous waste feedrate, and total HAP removal efficiency. See section III.B. However, if standards for energy recovery units are expressed in terms of mass of HAP per volume of stack gas, then it would be relatively easy for these energy recovery devices to achieve a standard, without decreasing concentrations of HAP in their hazardous waste fuels, by diluting the HAP contribution of hazardous waste with emissions from fossil fuel. A thermal emissions format prevents this type of dilution from happening because it ignores additions of stack gases attributable to burning fossil fuels. *Weyerhaeuser*, 590 F. 2d at 1059 (use of production of a unit as a normalizing parameter serves "the commendable purpose" of preventing plants from achieving emission limitations via dilution).

For example, assume there are two identical energy recovery units with identical back-end control devices (that reflect the performance of the average of the best performing sources). Source A fulfills 25% of its energy demand from the combustion of hazardous waste; source B fulfills 50% of its energy demand from the combustion of hazardous waste. Also assume that the hazardous waste for these two sources have equivalent energy contents. If these sources were required to comply with an emission concentration based-standard (e.g., µg/dscm), source A would be allowed to feed hazardous waste containing twice the metal content (on a mass concentration basis, e.g., ppm), and would be allowed to emit metal HAP at the same mass emission rate relative to source B. This is because this source is effectively diluting its emissions with the emissions that are being generated by the fossil fuels.[108] A thermal emissions standard format does not allow sources to dilute their emissions with the emissions from fossil fuel inputs because it directly regulates the emissions and feeds associated with the hazardous waste fuel. Under a thermal emissions format both sources would be required to feed hazardous waste with the same thermal feed concentrations (on a lb HAP per million BTU hazardous waste basis), and source A would be required to process hazardous waste with an equivalent concentration of metal HAP (on a mass basis) and also be required to emit half as much metal HAP (on a mass emission rate basis) relative to source B, because source A is processing half as much hazardous waste fuel, thus vindicating the hazardous waste feed control aspect of the standard (see also note below regarding the likelihood of sources using hazardous waste feed control). Further, the thermal feed concentration with which these sources must comply reflects the feed control of the average performance of the best performing sources (on a mass of HAP per million BTU basis). Such a requirement assures that these sources are processing the cleanest hazardous waste fuels to recover energy and are reducing HAP emissions to MACT levels.

We note that it would not be appropriate to express the emission standards for incinerators, hydrochloric acid production furnaces, and solid fuel boilers in terms of thermal emissions. As just explained, the choice of a normalizing parameter is fitted to the nature of the device to which it is applied in order to allow the most meaningful comparisons between devices of like type. We therefore conclude that a thermal emissions format (i.e., normalizing parameter) for incinerators is not appropriate because the primary function of incinerators is to thermally treat hazardous waste (as opposed to recovering energy from the hazardous waste). See 67 FR at 17362 (April 19, 1996). Our database indicates that most incinerators processed hazardous waste during their emissions tests that had, on average, heating values below 10,000 BTU/lb.[109] We have emission test hazardous waste heating value information for 62 incinerators in our database. Of these 62 sources, 40 sources processed hazardous waste with an average heating value of less than 10,000 BTU/lb. The other 22 sources processed hazardous waste with heating values greater than 10,000 BTU/lb in at least one test condition, although we note that 14 of these 22 sources also processed hazardous waste in different test conditions with heating values lower than 10,000 BTU/lb.[110]

We assessed whether we should subcategorize incinerators, similar to how we subcategorize liquid fuel boilers, based on the BTU content of the hazardous waste. Incinerators do recover energy from processing high BTU wastes. Some incinerators are equipped with waste heat boilers, and high BTU hazardous waste can displace fossil fuels that otherwise would have to be burned to thermally treat low BTU wastestreams. However, such energy recovery is considered to be a secondary product because their primary function is to thermally treat hazardous waste. A

[106] As explained earlier, the ultimate ranking of best performers then further evaluates system removal efficiency, best performers then being defined in terms of the combination of hazardous waste thermal feed and system removal efficiency. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 7.3.

[107] EPA would adopt the thermal format for the standards, however, whether or not the approach furthered RCRA objectives.

[108] This example assumes there are no HAP emissions attributable to the fossil fuels.

[109] As discussed later, the heating values of hazardous wastes processed at cement kiln and lightweight aggregate kilns are primarily 10,000 BTU/lb or greater.

[110] These data are based on a compilation of heating contents for every incinerator test condition in the database where the source reported such heating content, and include both the most recent test conditions as well as older test conditions. Incinerator test condition heating values range from a low of 790 to a high of 19,800 BTU/lb, with a median value of 7800 BTU/lb.

thermal emissions normalization approach for incinerators that combust hazardous wastes with heating values greater than 10,000 BTU/lb would therefore not be appropriate because the normalized parameter would not be tied to the primary production output that results from the processing of hazardous waste (i.e., treated hazardous waste). In confirmation, no commenters suggested that we apply a thermal emissions format to incinerators.

We also conclude that a thermal emission format is inappropriate for hydrochloric acid production furnaces. These devices recover chlorine, an essential raw material in the process, from hazardous waste. The classic normalizing parameter of amount of product (HCl) produced is therefore the obvious normalizing parameter for these sources. It is true that some hydrochloric acid production furnaces recover energy from high BTU hazardous wastes. See 56 FR at 7141/1 and 7141–42 (Feb. 21, 1991). Some sources are equipped with waste heat boilers, and high BTU wastes help sustain the combustion process, which is necessary to liberate the chlorine from the wastestreams prior to recovering the chlorine in the scrubbing systems. Again, energy recovery is not the primary function of these types of sources.[111] Hydrochloric acid production furnace hazardous waste heating values range from 1,100 to 11,000 BTU/lb (the median energy content for these sources is slightly above 6,000 BTU/lb). The range of hazardous waste heating contents from these sources is much lower than the ranges for cement kilns, lightweight aggregate kilns, and liquid fuel boilers, supporting the premise that energy recovery is of secondary importance. In addition, and critically, the hazardous waste that is processed in these units contains high concentrations of chlorine, confirming that the wastes serve as feedstock for hydrochloric acid production, even if the wastes also have energy value.[112] No commenters suggested that we apply a thermal emissions format to hydrochloric acid production furnaces.

We consider the processing of hazardous waste in solid fuel boilers to be more reflective of energy recovery (relative to incinerators and hydrochloric acid production furnaces) because these sources directly recover the heat that is released from the combustion of the waste streams. However, as stated at proposal, not all these sources are processing hazardous wastes for energy recovery. 69 FR at 21220. These boilers are generally not commercial units, and so tend to burn whatever hazardous wastes are generated at the facility where they are located. Heating values for this source category range from 1,300 to 10,500 BTU/lb, with a median value of 8,000 BTU/lb. We therefore conclude that thermal emission standards for these sources are not appropriate because most of these sources are processing hazardous waste with energy content lower than 10,000 BTU/lb. As discussed in section VI.D, we conclude that 10,000 BTU/lb is an appropriate level that distinguishes whether thermal emission standards or mass emission concentration-based standards are appropriate. We also note that no commenters suggested that we apply a thermal emissions format to solid fuel boilers.

Comment: Commenters state that thermal emission standards are inappropriate because sources burning hazardous waste with a higher energy content or higher percent hazardous waste firing rate (i.e., one that fulfills a greater percentage of its total energy demand from the hazardous waste) would be allowed to emit more HAP.

Response: Part of this comment would apply regardless of what normalizing parameter is used. Technology-based standards (including MACT standards) are almost always expressed in terms of some type of normalizing parameter, i.e., "X" amount of HAP may be emitted per unit of normalizing parameter. This allows a meaningful comparison between units of different size and production capacity. A consequence is that the overall mass of HAP emissions varies, but the rate of control remains constant per the normalizing unit. As explained in the introduction to this section, this approach is both routine and permissible.

Cement kilns, lightweight aggregate kilns, and liquid fuel boilers combust hazardous waste to recover valuable energy. Recovering energy is an integral part of their production process. As discussed at proposal, emission concentration-based standards (and the methodology that otherwise would be used to calculate emission concentration-based standards) may result in standards that are biased against sources that recover more energy from hazardous waste. 69 FR at 21219. This may discourage sources from recovering energy from hazardous waste because such standards do not normalize each source's allowable emissions based on the amount of hazardous waste it processes for energy recovery purposes. A source that fulfills 100 percent of its energy demand from hazardous waste would be required to limit its mass HAP emissions to the same levels as an identical source that satisfies, for example, only 10 percent of its energy demand from hazardous waste and 90% from coal. This would inappropriately discourage the safe recovery of energy from hazardous waste, and could in turn result in greater consumption of valuable fossil fuels that otherwise would be consumed.

Sources which fulfill a greater percentage of their energy demand from hazardous waste (either by processing hazardous wastes that are higher in energy content, or by simply processing more hazardous waste) will be allowed to emit more HAP (on a mass emission rate basis) than an identical source that satisfies less of its total energy demand from hazardous waste. This is appropriate because: (1) The source fulfilling a greater percentage of its energy demand from hazardous waste is processing more raw material than the other source (the raw material being the energy content of the waste); and (2) The source fulfilling a lower percentage of its energy demand requirements from hazardous waste would not be allowed to dilute its emissions with nonhazardous waste fuels, and we would thus assure that all sources implement hazardous waste feed contro to levels consistent with MACT.[113] This

[111] EPA notes that when first adopting RCRA air emission standards for hydrochloric acid recovery furnaces (then called 'halogen acid furnaces'), EPA indicated that those furnaces designed as boilers would be subject to the emission standards for boilers. 56 FR at 7040. This determination did not have regulatory consequence, since all hydrochloric acid production furnaces were subject to the same emission standards whether they were classified as boilers or as industrial furnaces. Thus, EPA was not concluding that some hydrochloric acid furnaces existed for the primary purpose of recovering energy in the 1991 rulemaking. 56 FR at 7139 ("[Hydrochloric acid recovery furnaces] are typically modified firetube boilers that process secondary waste streams containing 20 to 70 per cent chlorine or bromine to produce a halogen acid product by scrubbing acid from the combustion gases").

[112] Hazardous waste chlorine feedrates that are included in our database (expressed as MTECs) range from a low of 46,000,000 µg/dscm to a high of 294,000,000 µg/dscm. On a mass chlorine percentage basis, these wastes range from 17% to 82%, noting that these percentages did not include the chlorine that was also spiked during the emissions tests). See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards", September 2005, Section 15.

[113] Although the rule does not require use of feed control (or any particular means of control to achieve a standard), the rule assures that all sources' emissions will reflect the emissions of the sources with the best hazardous waste federates expressed in terms of amount of HAP per BTU of hazardous waste. Because this format eliminates

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was illustrated in the example provided in the introduction to this comment response section.

Similarly, two sources that combust hazardous waste with the same energy content and the same metal concentrations (on both a thermal concentration and mass-based concentration basis), but at different hazardous waste firing rates, would be required to achieve identical back-end control device operating efficiencies to comply with a thermal emissions-based standard. Holding these factors constant, thermal emission standards require sources to achieve identical percent reductions of the HAP that is processed within the combustor via removal with an air pollution control device. A thermal emission standard format is thus equally stringent for these sources on a percent HAP removal basis, irrespective of the amount of hazardous waste it processes for energy recovery, and better assures that sources burning smaller amounts of hazardous waste (from an energy recovery perspective) are also controlling emissions as well as the average of the best performing sources.

Sources processing higher energy content hazardous wastes would be allowed to feed hazardous wastes with higher metal and chlorine mass-based concentrations relative to other sources combusting lower energy content wastes. To illustrate this, assume there are two sources (named C and D) with identical back-end control systems and identical mass feedrates of hazardous waste. Also assume the hazardous waste of source C has twice the energy content as compared to the hazardous waste processed by source D. A thermal emission standard will allow Source C to feed a hazardous waste that has twice the metals concentration (as measured on a mass basis) as compared to source D, even though both sources would be required to comply with equivalent thermal feed rates limitations. Notably, however: (1) Source C is displacing (*i.e.*, not using) twice as much valuable fossil fuel as the source with the lower energy content hazardous waste, and is feeding twice as much raw material—the raw material being energy content contained in the hazardous waste; (2) source C cannot exceed the feed control levels (expressed on a lbs of HAP per million BTU basis) that was achieved by the average of the best performing sources (assuming its back-end control efficiency is equivalent to the average performance demonstrated by the best performing sources); and (3) source D is required to have lower mass concentrations of metals in its hazardous waste because it is firing poorer quality hazardous waste fuel (from an energy recovery perspective) and because it is feeding less of the same raw material (measured by energy content). Thus, the thermal emissions format appropriately encourages and promotes the processing of clean, high energy content hazardous waste fuels (consistent with evaluating hazardous waste feed control as an aspect of MACT, and not just relying on control solely through use of back end technology), and does so equally for all sources because it normalizes the allowable emissions based on the amount of energy each source recovers from the hazardous waste. Put another way, source C in the above example is controlling HAP emissions to the same extent as the average of the best performing sources per every BTU of hazardous waste fuel it processes (as is source D).

We note that this is a hypothetical example. In practice the average energy content of hazardous waste processed at cement kilns does not vary significantly across sources. Cement kilns burn hazardous wastes with relatively consistent energy contents because that is what their production process necessitates. This is supported by our database and by comments received from the Cement Kiln Recycling Coalition.[114] Heating values of hazardous wastes processed at cement kilns during compliance tests (information which is included in our database) range from 10,300 to 17,600 BTU/lb, with a median value of 12,400 BTU/lb. We note that these are snapshot representations of hazardous waste heating content from these sources that originate from compliance tests. We also have long term average hazardous waste heating measurements from cement kilns indicating that the heating content of the hazardous wastes on average range from 9,900 to 12,200 BTU/lb, with a median value of 11, 500 BTU/lb. We thus conclude that the commenter's concern regarding sources being allowed to emit more HAP if they process hazardous waste with higher energy content is overstated for these sources.

Energy content of hazardous wastes processed in liquid fuel boilers and lightweight aggregate kilns varies more than energy content of hazardous wastes processed by cement kilns, and sources with higher energy content wastes would be allowed to emit more metals than identical sources burning identical volumes of lower energy content wastes (although the degree of control is identical per BTU of hazardous waste fuel processed).[115] Again, these are hypothetical examples. Each energy recovery unit will have an upper bound on the amount of energy it can process from the hazardous waste. Sources that process higher energy content hazardous wastes would not necessarily feed the same volume of hazardous waste as compared to sources processing lower energy content hazardous wastes because they cannot exceed the thermal capacity of their combustion unit. Under a thermal emission standard format, the mass emission rates that would be allowed for identical sources that fulfill 100 percent of their energy demand from hazardous waste and that have differing hazardous waste energy contents would be identical. Although the source with the higher energy content hazardous waste would have a higher allowable mass-based hazardous waste feed concentration, this source would have to process less hazardous waste (on a mass basis) to remain within its thermal capacity. This helps to ensure that its mass HAP emission rate is similar to other sources that process lower energy content hazardous waste.

One commenter's apparent concern with thermal emissions seems to center on an assertion that sources will intentionally blend nonhazardous, high heating value wastes or fuels with low energy, high metal bearing hazardous wastes in order to increase the energy content of these metal bearing wastes so that they will be subject to higher allowable emissions via thermal emission standards. We specifically address that comment later as it relates to commercial energy recovery units (lightweight aggregate kilns and cement kilns). We note here, however, that we do not consider that comment to be of practical concern for liquid fuel boilers

consideration of stack gas attributable to fossil fuel emissions, and thus eliminates the dilutive effect of these emissions, the likelihood that sources will in fact use hazardous waste feed control as part of their control strategy is great.

[114] See comment submitted by the Cement Kiln Recycling Coalition, USEPA, "Comment Response Document to the Proposed HWC MACT Standards, Volume 1: MACT Standards," September 2005, Section 3.3. Also see USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 23.

[115] The hazardous waste heating values of liquid fuel boilers range from 2,200 to 21,000 BTU/lb, with a median value of 14,800. Heating values of lightweight aggregate kilns range from 4,900 to 16,900 BTU/lb, with a median value of 14,800. We note that the low end heating value for lightweight aggregate kilns reflects one source and is not typical of heating values used by the other commercial lightweight aggregate kiln facilities, and are similar to the heating values of cement kilns.

because they do not engage in commercial fuel blending practices.

Comment: A commenter states that EPA's assessment of thermal emissions to identify the relevant best sources is inappropriate because thermal emissions are not emission levels, but rather a ratio of emissions to the heat content in a source's hazardous waste.

Response: This comment challenges the basic idea of normalization, since the comment would be the same regardless of the normalizing parameter being used. Thermal emissions are emission levels that are normalized to account for the amount of energy (*i.e.*, raw material) these sources recover by processing hazardous waste. Similarly, a mass emission concentration (*i.e.*, μg/dscm) is a ratio of the emissions to the volume of combustion gas that is generated, which normalize emissions to account for differences in the size of the combustion units (as well as differences in production capacity). This rulemaking assesses performance and expresses emission standards in both of these formats; both formats normalize the emissions so that we may better assess emission control efficiencies equally across sources based on the percent of HAP in the feed (whether thermal feed or feed normalized based on combustor size)[115] that is controlled or removed from the stack gas prior to being emitted into the atmosphere. As discussed above, technology-based standards have historically assessed performance after normalizing emissions based on the amount of raw material processed by the given industry sector. Thermal emissions normalize each source's emissions based on the amount of raw material (hazardous waste fuel) it processes, and are therefore appropriate to assess and identify the relevant best performers. Finally, as previously explained, this approach is consistent with both the language of section 112 (d) (2) and (3), and the purpose of these provisions.

Comment: A commenter states that EPA's assessment of thermal emissions to identify the relevant best sources is inappropriate because it ignores HAP emissions attributable to the nonhazardous fuel and raw material.

Response: Thermal emission standards do not directly control HAP emissions attributable to the fossil fuels and raw material, in the sense that we did not assess feed control of fossil fuels or raw materials. However, this issue is not related to our choice to use thermal content of hazardous waste as a normalizing parameter. Rather, the issue is whether feed control of fossil fuels and raw materials is a feasible means of control at all. We have determined that it is not, and that only back-end control (expressed as system removal efficiency) is feasible. Moreover, today's rule controls emissions from HAP in raw material and fossil fuels. All non-mercury metal HAP emissions attributable to fossil fuels or raw material are effectively and efficiently controlled to the level of the average of the best performing sources with the surrogate particulate matter standard, as well as the system removal efficiency component of the SRE/Feed methodology.

Comment: EPA has failed to document sources' actual feedrates. Feedrates are presented either as MTECs (where hazardous waste HAP feedrates are divided by gas flow rates) or as thermal feedrates, (where feedrate is expressed as the mass of HAP per million BTUs of hazardous waste fired). This is impermissible, since it does not measure actual feed levels.

Response: This comment essentially takes the position that it is legally impermissible to normalize standards, *i.e.*, express standards on a common basis. EPA rejects this comment for the reasons stated in the introduction to this section.

Comment: A commenter states that an increasing number of fuel blenders are producing fuels with a minimum heating content and maximum metals content in order to maximize revenues because high metal bearing wastes command a higher revenue on the commercial waste market. The commenter states that thermal emission standards are not appropriate because they are based on the implicit assumption that energy recovery entails metals feed.

Response: Contrary to what the commenter suggests, the thermal emissions format will more likely discourage the alleged practice of fuel blenders producing fuels with a minimum heat content and maximum metals content because the standard limits the allowable metal emissions based on the amount of energy contained in the hazardous waste. Thus, a source with a lower energy waste would have to ensure that the mass concentration of metals is also lower to comply with the thermal emission formatted standard. The source would consequently emit less metals (on a mass basis) because of the lower metal mass concentration in the waste fuel. Thermal emission standards reflect the reality that the hazardous waste fuels that are currently processed safely and efficiently in energy recovery units to displace valuable fossil fuel do in fact contain metal HAP. From a feed control perspective, the thermal emissions format appropriately requires sources to process high energy content hazardous waste fuels that reflect the thermal feed control levels achieved by the average of the best performing sources, and does so equally for all sources because it normalizes the allowable emissions based on the amount of energy each source recovers from the hazardous waste.

Comment: A commenter states that EPA should be concerned that fuel blenders and kilns will use the thermal emission standard format to increase the allowable metals feedrates for their units. The commenter claims that sources could inappropriately convert non-hazardous waste fuel to hazardous waste fuel by simply putting coal in a bunker in which hazardous waste was once stored, or mixing nonhazardous waste fuel oil with hazardous waste. The commenter states that a facility with a low hazardous waste firing rate, and relatively low allowable emissions can become a facility with a high hazardous waste percent firing rate, with higher allowable emissions, simply by 'creative' use of the hazardous waste mixture rule. The commenter suggests that EPA clearly state that the hazardous waste thermal emission standards apply only to the hazardous waste portion of the fuel blend mixture. The commenter further suggests that EPA require fuel blenders to report the amount of nonhazardous waste fuel that is contained in the fuel blend, and that cement kilns use this to determine allowable metal feed rates based on the original hazardous waste energy content.

Response: We do not believe hazardous waste combustors will engage in the practice of redesignating their fossil fuels, *i.e.*, coal, as hazardous wastes with creative use of the mixture rule in order to increase their allowable metal HAP emission rate. That would require large quantities of coal to be newly classified as hazardous waste. The coal, and the unit where the coal is stored, would subsequently become subject to all applicable subtitle C requirements, which include storage and closure/post closure requirements. We believe this disincentive will discourage this hypothetical practice.

Moreover, as previously discussed, today's rule does not allow cement kiln or lightweight aggregate kiln emissions to exceed the interim standards. The fact that we are issuing emission

[115] For emission concentration-based standards we normalize hazardous waste feed control levels by calculating what we call maximum theoretical emission concentrations, which are equivalent to the HAP mass feed rate divided by gas flow rate.

standards for some pollutants in the thermal emissions standard format will not encourage fuel blenders to send more metals to these commercial energy recovery sources because their allowable emission concentrations are, by definition, either equivalent to or more stringent than the current limitations with which they are complying. Thus, even if the fuel blenders and energy recovery units engaged in this practice, they could not emit more metals than they are currently allowed to emit. We therefore conclude that it is not necessary to promulgate complicated regulatory provisions that would increase the reporting and recordkeeping requirements of fuel blenders and energy recovery units in order to address a hypothetical scenario that likely would never occur.

Finally, we note that combustion of certain high HAP metal content wastes is already prohibited under RCRA rules. See 40 CFR 268.3. Such wastes remain prohibited from combustion even if they are mixed with fossil fuel so that the mixture has a higher energy content. *U.S.* v. *Marine Shale Processors*, 81 F. 3d 1361, 1366 (5th Cir. 1996) (an unrecyclable hazardous waste is not recycled when it is mixed with a usable non-waste and the mixture is processed). Thus, the dilution prohibition in § 268.3 serves as a further guard against the commenter's concern.

Comment: A commenter states that the thermal emissions format may be problematic because it is based on a flawed assumption that metal HAP from the cement kiln raw material and hazardous waste partition in equal proportions to the total stack gas emissions. The commenter believes that metal retention in the raw materials is higher than the hazardous waste, suggesting that thermal emission standards allow an arbitrary increase in allowable hazardous waste metals emissions. The commenter suggests that EPA require that compliance demonstrations be conducted only under conditions where the metals content in the hazardous waste is significantly higher than the metal content in the raw material to minimize this bias.

Response: The commenter has not provided any emissions data to support this claim, nor does the EPA know of data available that reaches this conclusion. We do not believe there is a significant difference in the partitioning rates of these metals in a cement kiln.[117] Even if there is a difference, this would not result in an arbitrary increase of allowable hazardous waste metals emissions. The thermal emission standards were calculated using thermal emissions data that are based on each source's compliance test. These tests were conducted at hazardous waste feed control levels that represented the upper bound of feed control levels these sources see on a day-to-day basis. To accomplish this, sources spiked metals into the hazardous waste prior to combusting the wastes. The amount of metals that were contained in the hazardous waste streams, after accounting for these spiked metals, far exceeded the metal levels that were contained in the raw material. Thus the differences in partitioning, if any, would likely be overshadowed by the fact that the majority of the metals were contained in the hazardous waste.

Notably, any partitioning bias that that may be present would also have been present during these compliance tests. As a result, this potential bias would be built into the emission standard and thus would not result in an arbitrary increase in allowable hazardous waste metals emissions because these sources will again demonstrate compliance under testing conditions similar to those used to generate the data used to calculate the MACT floors. We conclude that it is not necessary to provide additional prescriptive regulatory language that would require sources to demonstrate system removal efficiencies under testing conditions that exhibit a high ratio of hazardous waste metal content to raw material metal content because the regulations implicitly require sources to demonstrate hazardous waste metal feed control levels that represent the upper range of their allowable feed control levels.[118]

Comment: A commenter states that compliance with standards expressed in a thermal emissions format is problematic because the measurement of energy content of hazardous waste fuel blends is subject to significant variability due to the nature of the test. The commenter also claims that heating value measurements of waste streams that are mixtures of solids and liquids tend be biased high, which would inappropriately give these sources higher allowable metal emission limitation.

Response: There are standard ASTM procedures that reliably measure the energy content of the hazardous waste. Any parameter that is measured for compliance purposes is subject to method imprecision and variability. We do not believe that hazardous waste energy content measurements result in imprecision and variability above and beyond the measurement methods that are currently used to assure compliance with emission concentration-based standards.

The commenter did not provide evidence that supports the claim that energy content measurement and/or sampling methods consistently result in a positive bias. If a bias were consistently present for these types of wastes, then one would expect it to be also reflected in the measured data for which we based the emission standards, which would fully address the commenter's concern. Nonetheless, we note that all hazardous waste sampling and analysis procedures must be prescribed in each source's feedstream analysis plan, which can be reviewed by the permitting authority upon request. These feedstream analysis plans must ensure that sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream. See § 63.1208(b)(8). More information on obtaining a representative samples can be found in EPA's SW–846 publication.[119] These procedures involve acquiring several sub-samples that provide integration over the breadth, depth and surface area of the waste container and obtaining replicate samples (see Ch. 13.3.1 of SW–846).

Comment: A commenter states that BTU measurements can be reported as either a higher heating value or a lower heating value, and suggests that EPA require sources to use the lower heating value calculation when determining allowable hazardous waste feed control levels. The commenter seems to imply that use of higher heating values will inappropriately result in higher allowable metal feed rates for fuel blends that contain aqueous waste.

Response: The BTU data in our database that we use to calculate the emission standards reflect higher heating values. It is standard practice in the incineration/combustion industry to report the gross heat of combustion (or

[117] We reference comments submitted by the cement kiln recycling coalition that address this very point. See USEPA, "Comment Response Document to the Proposed HWC MACT Standards, Volume 1: MACT Standards," September 2005, Section 3.3. We have evaluated these comments and find them persuasive on this issue.

[118] Although today's final rule allows sources to extrapolate their allowable hazardous waste feed control levels to levels that are higher than the level demonstrated in the comprehensive performance test, sources must still spike metals into the hazardous waste during the test in order to assure that the system removal efficiency used for the extrapolation procedure is reliable and accurate.

[119] SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods."

higher heating value). We conclude that sources should use the higher heating value rather than the lower heating value for all compliance determinations because these are method-based emission standards. Fuel blends that contain aqueous wastes will not be inappropriately rewarded with higher allowable feed rates because any fuel mixture that contain aqueous mixtures will have lower reported heating values, irrespective of whether they are reported as higher heating values or lower heating values.[120]

E. Standards Can Be No Less Stringent Than the Interim Standards

Comment: Several commenters oppose EPA's position in the proposed rule that the replacement standards can be promulgated at a level no less stringent than the interim standards for incinerators, cement kilns, and lightweight aggregate kilns. In instances where the calculated replacement standard is less stringent than the interim standard, the commenters oppose EPA's position of "capping" the replacement standard at the level of the interim standard to prevent backsliding from those levels. Instead, commenters recommend that EPA calculate and finalize the existing and new source floor levels without regard to the interim standards. One commenter also notes that the interim standards are simply a placeholder without the necessary statutory basis to qualify as emission limitations for purposes of establishing MACT floors. Another commenter, however, supports EPA's position to prevent backsliding to levels less stringent than the interim standards.

Response: We maintain that the replacement standards can be no less stringent than existing standards, including the interim standards under §§ 63.1203–1205, for incinerators, cement kilns, and lightweight aggregate kilns. These standards were promulgated on February 13, 2002, and sources were required to comply with them no later than September 30, 2003, unless granted a one-year extension (see § 63.1206(a)). Thus, all hazardous waste combustors are currently complying with the interim standards. The comment that the standards lack some type of requisite statutory pedigree misses the central point of our interpretation of the statute: motivation for achieving a standard (be it regulatory compulsion, statutory requirement, or some other reason) is irrelevant in determining levels of MACT floors. *National Lime* v. *EPA*, 233 F. 3d at 640. What matters is the level of performance, not what motivated that level.

As a result, the replacement standards promulgated today ensure that sources will emit HAP at levels no higher than levels achieved under current regulations. We do this in this rule, when necessary, by either capping a calculated floor level by the interim standard (when both the calculated floor level and interim standard are expressed in the same format of the standard) or by adopting dual standards in cases where formats of the standard vary (so that comparison of stringency cannot be uniformly determined (as for cement kilns and lightweight aggregate kilns, as explained in the preceding section above and in the following response). In this case, the sources are subject to both the replacement and interim standards.

Comment: One commenter states that some proposed standards expressed in a thermal emissions format would allow some sources to emit semivolatile metals at levels higher than the interim standard. The commenter states that EPA reached incorrect conclusions when making relative stringency comparisons between standards expressed in a thermal emissions and mass concentrations format because, in part, EPA assumed an average F-factor (e.g., semivolatile metals for cement kilns).[121] In addition, the commenter notes that the actual relationship between standards expressed in terms of thermal emissions and mass concentrations is complex and depends on a number of factors. As a result, the commenter urges EPA to adopt dual standards (*i.e.*, promulgate the MACT standard as both the standard expressed in a thermal emissions format and also the interim standard expressed in a mass concentration format) to prevent backsliding.

Response: Even though a source may operate in compliance with a standard expressed in a thermal emission format, a source may or may not also be in compliance with the corresponding mass concentration interim standard (e.g., the semi- and low volatile metal emission standards for cement and lightweight aggregate kilns of §§ 63.1204 and 63.1205, respectively). As reflected in the comment, making a judgment as to whether a replacement standard is more stringent than the interim standard for the HAP is not always a straightforward calculation. As we discussed in the proposed rule[122] and echoed by the commenter, comparing standards in the thermal emissions format to those in a mass concentration format involves assumptions that vary on a site-specific basis and can vary over time, including the hazardous waste fuel replacement rate, contributions to emissions from nonhazardous waste inputs such as raw materials and nonhazardous waste fuels such as coal, how close to the standard a source elects to comply, the system removal efficiency demonstrated during testing, and the type and composition, including heating value, of fuels burned.

To ensure that sources operating under standards expressed in a thermal emissions format will not emit HAP metals at levels higher than currently achieved under the interim standards, we adopt a dual standard to prevent emissions increasing to levels higher than the interim standards. The dual standard structure includes both the standard expressed in a thermal emissions format and the interim standard, which is expressed in a mass concentration format. We apply this concept to several standards including semivolatile metals, low volatile metals, and mercury[123] for cement kilns and semivolatile metals and low volatile metals for lightweight aggregate kilns. This approach ensures that sources are not emitting HAP metals above the levels of the interim standards because we cannot reliably determine that emissions under a standard expressed in a thermal emissions format would not exceed the interim standard for all sources in the category. See §§ 63.1220(a)(2)–(a)(4), and (b)(2)–(b)(4) and 63.1221(a)(3)–(a)(4) and (b)(3)–(b)(4).

We evaluated the relative stringency of the standards expressed in the thermal emissions format compared to the interim standards for the entire source category in order to determine if the dual standard scheme could be avoided. We determined that we could not. For some HAP groups we found that many sources in the category would have the potential to exceed the interim

[120] The difference between the higher heating value and lower heating value of an aqueous waste is insignificant relative to the difference in heating value between an aqueous waste and an organic liquid waste fuel.

[121] An F-factor is an estimate of the amount of combustion gas volume that is generated per fuel heat input for a given type of fuel, expressed in units, for example, cubic feet of combustion gas per million British thermal units (BTU) of fuel burned. In the proposal, EPA used F-factors to convert the emission standards expressed on a thermal basis to mass concentrations in order to make a judgment as to the relative stringency of the proposed MACT standards relative to the interim standards.

[122] For example, see 69 FR at 21255–258, 267–271.

[123] Although the mercury standard promulgated for cement kilns is not expressed using a thermal emission format basis, the same concept applies because the mercury standard is a hazardous waste feed concentration standard, which is a different format than the interim standard.

standards for that HAP.[124] In this case, we considered simply "capping" the standard expressed in the thermal emission format by the interim standard (*i.e.*, the promulgated standard would only be expressed in a mass concentration format). However, we conclude that this approach would not be appropriate because the standard expressed in a thermal emission format would likely be more stringent than the mass concentration for some sources, and the statute requires that MACT floors reflect this superior level of performance.

In other cases we found that the standards expressed in the thermal emissions format would not likely exceed the interim standards by the majority of sources operating under typical conditions.[125] While our analysis (based on information in our data base) shows in these cases that the emission standard expressed in a thermal emission format would not likely result in an exceedance of the interim standard, this conclusion may not be true because the assumptions may not be valid for a particular source or site-specific factors may change in future operations. For example, HAP metal emissions could increase over time due to increases in HAP contributions from raw materials or alternative raw materials. Given this potential, we adopt dual standards for the HAP metal standards in order to ensure that standards expressed in a thermal emissions format will not exceed emission levels achieved under the interim standards.[126]

Comment: Several commenters state that the interim standards do not reflect the average performance of the best sources, and so cannot be the basis for floor levels.

Response: In those few situations where we have established floor levels at the level of the interim standards, we have done so as the best means of estimating performance of the best performing sources. Based on the available data to us, the average of the best performing sources exceeds the level of the interim standards in a few instances. Under these circumstances, the binding regulatory limit becomes the best means available to us to estimate performance. See *Mossville*, 370 F. 3d at 1241–42 (accepting regulatory level as a floor standard where sources' measured performance is not a valid means of determining floor levels, and where such data contains results as high as those regulatory levels).

F. How Can EPA's Approach to Assessing Variability and its Ranking Methodologies Be Reasonable When They Result in Standards Higher Than the Interim Standards?

A commenter argued that EPA's floor methodologies, in particular its consideration of variability beyond that demonstrated in single test conditions, the SRE/feed and Air Pollution Control Device methodologies, must be arbitrary because in a few instances projected standards using these approaches were higher than the current interim standards, a level every source (not just the best performers) are achieving. Commenters also noted that one of the new source standards calculated under these approaches was higher than an existing source standard, another arbitrary result.

EPA believes that these seeming anomalies (which are infrequent) result from the database used to calculate performance and standards, rather than from the approaches to assessing variability or the two questioned floor methodologies. The data base is from test results which preceded EPA's adoption of the interim standards. Thus, the level of performance required by the later rule is not necessarily reflected in pre-rule test data. In confirmation, some of the standards computed using straight emission approaches also are higher than the interim standards. Other anomalies arise simply due to scarcity of data (floor levels for certain HAP emitted by lightweight aggregate kilns especially, where there are only nine sources total). In these situations there is a greater likelihood that one or more of the best performing sources will have relatively high emissions because we are required to use data from five sources to comprise the MACT pool whenever we have data from fewer than 30 sources, and a small amount of data can skew the result. See § 112(d)(3)(B).[127]

For example, many of the calculated new source chlorine floors were slightly higher than the calculated existing source standards because we assumed all sources with measured emissions below 20 ppmv were in fact emitting at 20 ppmv (see part four, section I.C). We generally are unable to differentiate a single best performing source among these best performers because many/all of the best performing sources emissions are adjusted to the same emission level. The calculated new source floor can be slightly higher than the existing source floor because the variability factor that is applied to the single best performing source is based on only one test condition (with three emission test runs). This results in a higher level of uncertainty relative to the existing source standard, which is based on a compilation of emissions data from several sources that have essentially the same projected emissions as a result of the method bias correction factor. The variability factor that is applied to the emissions of the single best performing source is therefore higher than the variability factor for the existing source floor because there are fewer degrees of freedom in the statistical analysis.[128] Likewise, many of the calculated solid fuel boiler new source standards were slightly higher than the calculated existing source standards because, as discussed above, there are fewer degrees of freedom when assessing the variability from a single best performing source. The solid fuel boiler "anomalies" also occur using a straight emissions methodology. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September, 2005, Section 19, for further discussion that summarizes and explains these so-called anomalies.

[124] An example for each category is semivolatile metals thermal emissions standard for existing cement and lightweight aggregate kilns. See USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," Section 23.1, September 2005.

[125] An example is the emission standards for low volatile metals for existing and new cement kilns and new lightweight aggregate kilns. See USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," Section 23.1, September 2005.

[126] In response to a comment regarding the implementation of dual standards, we note the promulgation of a new provision allowing sources to petition the Administrator to waive the HAP metal feedrate operating parameter limits for either the emissions standards expressed in a thermal emissions format (or the mercury feed concentration standard for cement kilns) or the interim standards based on documentation that the feedrate operating parameter limit is not needed to ensure compliance with the relevant standard on a continuous basis. See new § 63.1209(g)(1)(iv) and Comment Response Document, Volume I, Section 3.5.

[127] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 19, for further discussion.

[128] For a single test condition the t factor used in variability factor calculation has n–1 degrees of freedom where n is the number of runs for that condition. For the MACT floor calculation the t factor has X–N degrees of freedom where X is the total number of runs from all sources in the MACT pool and N is the number of sources in the pool. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September, 2005, Section 7.1 for more information on the floor calculation procedure.

IV. Use of Surrogates

A. Particulate Matter as Surrogate for Metal HAP

Comment: A commenter states that EPA's use of particulate matter as a surrogate for nonenumerated metals is unlawful and arbitrary and capricious because although particulate matter emissions may provide some indication of how good a source's end-of stack control of such metals is, it does not indicate what its actual metal emission levels are.[129] The commenter states that emissions of these metals can vary based on metal feed rate without having any appreciable effect on particulate matter emission levels. Thus a particulate matter standard does not necessarily ensure that metal emissions are reduced to the metal emission levels achieved by the relevant best performing sources. To support this assertion, the commenter states that EPA is on record saying "low particulate matter emissions do not necessarily guarantee low metal HAP emissions, especially in instances where the hazardous waste feeds are highly concentrated with metal HAP." 69 FR at 21221.

Response: The final rule uses a particulate matter standard as a surrogate to control: (1) Emissions of nonenumerated metals 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). Incinerators, liquid and solid fuel boilers may elect to comply with an alternative to the particulate matter standard that would limit emissions of all the semivolatile metal HAPs and low volatile metal HAPs. See § 63.1219(e).

The particulate matter standard is a necessary, effective, and appropriate surrogate to control nonmercury metal HAPs. The record demonstrates overwhelmingly that when a hazardous waste combustor emits particulate matter, it also emits nonmercury HAP metals as part of that particulate matter, and that when particulate matter is removed from emissions the nonmercury HAP metals are removed with it.[130] Nonmercury metal HAP emissions are therefore reduced whenever particulate matter emissions are reduced. The particulate matter standard thus is an effective and appropriate surrogate that assures sources are controlling these metal HAP with an appropriate back-end control technology. *National Lime* v. *EPA*, 233 F. 3d at 639. The nonenumerated metal HAP are no different than other semivolatile or low volatile metals in that they also will be effectively controlled with a back-end particulate matter air pollution control device.

We also considered the possibility of developing a standard for nonenumerated HAP metals instead of a PM standard (*i.e.*, regulating these metals directly, rather than through use of a surrogate). We conclude for several reasons, however, that issuing emission standards for these nonenumerated metals in lieu of a particulate matter standard would not adequately control nonmercury metal HAPs to levels achieved by the relevant best performing sources.

We generally lack sufficient compliance test emissions data for the noneneumerated metals to assess the relevant best performing sources, because, as discussed below, most of these metals were not directly regulated pursuant to RCRA air emission standards.[131] Although we have more emissions data for these metals that are based on (so called) normal operations, we still lack sufficient emissions data to establish nonenumerated metal standards for all the source categories. Use of normal data may also be problematic because of the concern raised by the cement kiln and lightweight aggregate kiln stakeholders that our normal metals emissions data obtained from compliance tests are not representative of the range of actual emissions at their sources. Cement kiln and lightweight aggregate kiln stakeholders submitted long-term hazardous waste mercury feed control data that support their assertion. Although these stakeholders did not submit long-term normal hazardous waste feed control data for the nonenumerated metals, we can still see that use of the normal nonenumerated metal snapshot emissions in our database to determine MACT floors could raise similar concerns with respect to whether the normal data in fact represents average emissions at these sources, and their level of performance.

Use of particulate matter emissions data to assess the relevant best performers for nonenumerated metal HAP is therefore more appropriate for two reasons. Compliance test data better account for emissions variability and avoid the normal emissions bias discussed above. We also have much more particulate matter emissions data from more sources, which better allows us to evaluate the true range of emissions from all the sources within the source category and to assess and identify the relevant top performing 12 percent of the sources.

It would be inappropriate to assess total stack gas emissions of nonenumerated metals for cement kiln and lightweight aggregate kilns when determining the relevant best performers because these emissions would, in part, reflect the metal feed levels in these sources' nonhazardous waste process feedstreams. This is not appropriate because nonhazardous process feedstream control is not a feasible means of control. See part four, section III.B.1. A potential solution to this problem would be to identify the relevant best performers by assessing each source's hazardous waste thermal emissions for these nonenumerated metals (given that hazardous waste thermal emissions exclude by definition emissions attributable to inputs other than hazardous waste, *i.e.* raw materials and fossil fuels). This, however, would be problematic because, aside from the data limitation issues, the majority of the nonenumerated metals data reflect normal emissions which often do not contain the highest feed rates used by the source. As a result, we cannot assess performance on a thermal emissions basis because of the uncertainty associated with system removal efficiencies at such low metal feedrates. Furthermore, even if we could issue hazardous waste thermal emissions standards for these metals, a particulate matter emission standard would still be necessary to control nonmercury metal HAP emissions from the nonhazardous waste process feedstreams.

[129] "Enumerated" metals are those HAP metals directly controlled with an emission limit, *i.e.*, lead, cadmium, chromium, arsenic and beryllium. The remaining nonmercury metal HAP (*i.e.*, antimony, cobalt, manganese, nickel, and selenium) are called "nonenumerated" metal HAP (note that arsenic and berrylium are nonenumerated metals for liquid fuel boilers because the low volatile metal emission standard applies only to chrome).

[130] This statement is equally true for any emitting source, not just hazardous waste combustors. It is well established that semivolatile and low volatile metals exist in solid particulate form at typical air pollution control device operating temperatures. This is supported by (1) known operating temperature ranges of air pollution control devices used by hazardous waste combustors; (2) known metal volatility equilibrium relationships; and (3) extensive technical literature. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 3.1.

[131] At best, we may have enough compliance test data for antimony and selenium to adequately assess relevant best performers for only incinerators and lightweight aggregate kilns.

Emission standards for these nonenumerated metals could require sources to implement hazardous waste feed control (for these metals) to comply with the standard.[132] We are less assured that these sources were implementing hazardous waste feed control for these nonenumerated metals at the time they conducted the emissions tests (which serve as the basis for floor calculations) because most of these metals were never directly regulated pursuant to the RCRA emission standards.[133] This means that sources tended to optimize (or at least concentrate their efforts on) control of the metals that are regulated. Although these metals were being controlled with each source's back-end control device, sources may not have been controlling these metal feedrates because they probably were not subject to specific feedrate limitations (feed control of the enumerated metal HAP does not ensure feed control of these nonenumerated metal HAP). Furthermore, simultaneous feed control of all these metals, when combined with enumerated semivolatile and low volatile metals, may not be possible because the best performing sources for all these metals may collectively represent a hazardous waste feedstream that does not exist in practice (from a combined metal concentration perspective) because there likely would be different best performers for each of the metal HAP or metal HAP groups.[134] We thus conclude that back-end control as measured and assessed by each source's particulate matter emissions is the appropriate floor technology to assess when identifying the relevant best performers for nonenumerated HAP metals and estimating these sources' level of performance.

Comment: A commenter states that EPA's rationale for use of particulate matter as a surrogate for nonenumerated metals is flawed because EPA has provided no data in the proposal to justify its hypothesis that particulate matter is an appropriate surrogate for non-enumerated metal HAP. The commenter also states that the proposed emission standards for particulate matter for existing sources discriminate against boilers and process heaters that burn clean (*i.e.*, little or very low concentrations of HAP metals) hazardous waste fuels. The commenter suggests that if there are sufficient data, EPA should consider developing an alternative emission standard for total HAP metals for new and existing liquid fuel boilers, as was done for the Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Industrial/Commercial/Institutional Boilers and Process Heaters.

Response: As previously discussed in this section, particulate matter reflects emissions of nonmercury metal HAPs because these compounds comprise a percentage of the particulate matter (provided these metals are fed into the combustion unit). The technologies that have been developed and implemented to control particulate matter also control nonmercury metal HAP. Since non-mercury metal HAP is a component of particulate matter, we can use particulate matter as a surrogate for these metals. Further justification for the use of particulate matter as a surrogate to control metal HAP is included in the technical support document.[135]

We conclude that we do not have enough nonenumerated metal emissions data to calculate alternative total metal emission floors for liquid fuel boilers. The most problematic of these metals are manganese and cobalt, where we have emission data from only three sources. We have much more compliance test particulate matter emissions data from liquid fuel boilers, and thus conclude that the particulate matter standard best reflects the emission levels achieved by the relevant best performers.

Similar to the above discussion, calculating an alternative total metal emissions floor raises questions regarding the method used to calculate such floors. Hazardous waste combustor metal emissions have traditionally been regulated in volatility groupings because the volatility of the metal affects the efficiency of back-end control (*i.e.*, semivolatile metals are more difficult to control than low volatile metals because they volatilize in the combustor and then condense as small particulates prior to or in the emission control device). When identifying the best performing sources, we previously have, in general, only evaluated sources that have metal emissions information for every metal in the volatility grouping. This approach could prove to be problematic since it is not likely many sources will have emissions data for all the metals.

Although we could not calculate alternative total metal emission floor standards based on the available emissions data we have, we agree with the commenters' view that sources that burn hazardous waste fuels with low levels of nonenumerated metals should be allowed to comply with a metals standard rather than the particulate matter standard. We proposed an alternative to the particulate matter standard (see 69 FR at 21331) for incinerators, liquid, and solid fuel boilers that was a simplified version of the alternative particulate matter standard that is currently in effect for incinerators pursuant to the interim standards (see § 63.1206(b)(14)). We received no adverse comment and are promulgating this alternative as proposed. The alternative metal standards apply to both enumerated and nonenumerated metal HAP, excluding mercury. For purposes of these alternative requirements, each nonenumerated metal is classified as either a semivolatile or a low volatile metal and subsequently grouped with the associated semivolatile and low volatile enumerated metals. The semivolatile and low volatile metals standards under this alternative are the same as those that apply to other liquid fuel boilers, but the standard would apply to all metal HAP, not just those enumerated in the generic low volatile metal and semivolatile metal standards. See §§ § 63.1216(e), 63.1217(e) and 63.1219(e).

B. Carbon Monoxide/Hydrocarbons and DRE as Surrogates for Dioxin/Furan

Comment: One commenter states that the dioxin/furan floors for new and existing solid fuel boilers is unlawful and arbitrary and capricious. EPA established the floor for dioxin/furan for these sources as compliance with the carbon monoxide or hydrocarbon standard and the destruction and removal efficiency (DRE) standard. The

[132] Sources that otherwise would be equipped with what is considered to be a MACT back-end control devices (*i.e.*, a control device achieving the final rule particulate matter standard) may not be able to achieve these metal emissions standards due to varying metal feed levels (both within sources and across sources). Such an outcome may require a source to limit the amount of metal that is fed into the combustion unit to achieve the standard.

[133] Antimony is the only nonenumerated metal that is directly regulated pursuant to the boilers and industrial furnace regulations. See § 266.106.

[134] We generally cannot combine these nonenumerated metals into the associated semivoltile or low volatile metal volatility groupings promulgated in this final rule for purposes of establishing "grouped" emission standards because we cannot mix compliance test data with normal emissions data when calculating floors (the majority of the standards included in this final rule are based on compliance test data, and the majority of the data we have for nonenumerated metals being normal). Furthermore, if we were to separately group the normal nonenumerated metal emission data into their associated semivolatile or low volatile metal group, we may encounter data limitation issues because each source would need to have measured each of the nonenumerated metals in that associated metal volatility group in order for us to conclude that the emission data adequately represents the sources combined emissions of semivolatile or low volatile metals.

[135] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 3.1.

commenter states that EPA has not shown that carbon monoxide or hydrocarbon emissions correlate to dioxin/furan emissions, and, accordingly, has not shown that the carbon monoxide or hydrocarbon standard, together with the DRE standard, are valid surrogates.

This commenter also states that it is inappropriate for EPA to use carbon monoxide or hydrocarbons and DRE as surrogates to establish dioxin/furan floors for liquid fuel boilers with wet or no air pollution control devices and for hydrochloric acid production furnaces. The commenter believes EPA inappropriately justifies these surrogates by claiming that a numerical dioxin/furan floor would not be replicable by the best sources or duplicable by the others. The commenter states that EPA has no discretion to avoid setting floors for a HAP just because it believes that HAP is not controlled with a technology. Rather, EPA must set floors reflecting the relevant best sources' actual performance. Such floors necessarily will be duplicable by the relevant best sources themselves. That they cannot be replicated by other sources is irrelevant according to the commenter.

In addition, the commenter states that EPA does not claim or demonstrate that the carbon monoxide and hydrocarbon floors for solid fuel boilers reflect the average emission levels achieved by the relevant best sources.

Finally, the commenter also notes that EPA appears to argue that its carbon monoxide or hydrocarbon standard and DRE standard could be viewed as work practice standards under section 112(h) which allows EPA to establish work practice standards in lieu of emission standards only if it is not be feasible to set the former. Because EPA has made no such demonstration, setting work practice standards to control dioxin/furan emissions from boilers would be unlawful according to the commenter.

Response: The commenter raises four issues: (1) Are the carbon monoxide/hydrocarbon standard and the DRE standard adequate surrogate floors to control dioxin/furan; (2) floors for existing sources must be established as the average emission limitation achieved by the best performing sources irrespective of whether the limitation is duplicable by the best performing sources or replicable by other sources; (3) EPA has not explained how the carbon monoxide and hydrocarbon floors reflect the average emission limitation achieved by the relevant best sources; and (4) EPA cannot establish work practice standards for dioxin/furan under section 112(h) because it has not demonstrated that setting an emission standard is infeasible under section 112(h)(1).

Carbon Monoxide and Hydrocarbons Are Adequate Surrogates to Control Dioxin/Furan when Other Controls Are Not Effective or Achievable. Carbon monoxide and hydrocarbons (coupled with the DRE standard) are the best available surrogates to control dioxin/furan emissions when a numerical floor would not be achievable and when other indirect controls, such as control of the gas temperature at the inlet of a dry particulate matter control device to 400F, are not applicable or effective.[136]

As we explained at proposal, operating under good combustion conditions to minimize emissions of organic compounds such as polychlorinated biphenyls, benzene, and phenol that can be precursors to dioxin/furan formation is an important requisite to control dioxin/furan emissions.[137] See 69 FR at 21274. Minimizing dioxin/furan precursors by operating under good combustion practices plays a part in controlling dioxin/furan emissions, and that role is substantially enhanced when there are no other dominant factors that relate to dioxin/furan formation and emission (e.g., operating a dry particulate matter control device at temperatures above 400F).

Carbon monoxide and hydrocarbons are widely accepted indicators of combustion conditions. The current RCRA regulations for boilers and hydrochloric acid production furnaces use emissions limits on carbon monoxide and hydrocarbons to control emissions of toxic organic compounds. See 56 FR 7150 (February 21, 1991) documenting the relationship between carbon monoxide, combustion efficiency, and emissions of organic compounds. In addition, carbon monoxide and hydrocarbons are used by many CAA standards for combustion sources to control emissions of organic HAP, including: MACT standards for hazardous waste burning incinerators, hazardous waste burning cement kilns, hazardous waste burning lightweight aggregate kilns, Portland cement plants, and industrial boilers; and section 129 standards for commercial and industrial waste incinerators, municipal waste combustors, and medical waste incinerators. Finally, hydrocarbon emissions are an indicator of organic hazardous air pollutants because hydrocarbons are a direct measure of organic compounds.

Commenters on our proposed MACT standards for hazardous waste incinerators, cement kilns, and lightweight aggregate kilns stated that EPA's own surrogate evaluation[138] did not demonstrate a relationship between carbon monoxide or hydrocarbons and organic HAP at the carbon monoxide and hydrocarbon levels evaluated. See 64 FR at 52847 (September 30, 1999). Several commenters on that proposed rule noted that this should not have been a surprise given that the carbon monoxide and hydrocarbon emissions data evaluated were generally from hazardous waste combustors operating under good combustion conditions (and thus, relatively low carbon monoxide and hydrocarbon levels). Under these conditions, emissions of HAP were generally low, which made the demonstration of a relationship more difficult. These commenters noted that there may be a correlation between carbon monoxide and hydrocarbons and organic HAP, but it would be evident primarily when actual carbon monoxide and hydrocarbon levels are higher than the regulatory levels. We agreed with those commenters, and concluded that carbon monoxide and hydrocarbon levels higher than those we established as emission standards for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns are indicative of poor combustion conditions and the potential for increased emissions organic HAP. We continue to believe that carbon monoxide and hydrocarbons are adequate surrogates for organic HAP which may be precursors for dioxin/furan formation and note that the commenter did not explain why our technical analysis is problematic.

Emissions that Are Not Replicable or Duplicable Are Not Being "Achieved". The commenter believes that floors must be established as the average emission limitation of the best performing sources irrespective of whether they are replicable by the best performing sources or duplicable by other sources. To the contrary, emission

[136] As discussed in Part Two, Section V, we view the carbon monoxide, hydrocarbon, and destruction removal efficiency standards as unaffected by the Court's vacature of the September 1999 challenged regulations for incinerators, cement kilns, and lightweight aggregate kilns. We are therefore not re-promulgating and reopening consideration of these standards in today's final rule for these source categories.

[137] Operating under good combustion conditions also helps minimize soot formation on boiler tubes. Research has shown that operating under conditions that can form soot followed by operating under good combustion conditions can lead to dioxin/furan formation. See Section 2.4 of Volume III of the Technical Support Document.

[138] See Energy and Environmental Research Corporation, "'Surrogate Evaluation of Thermal Treatment Systems,'" Draft Report. October 17, 1994.

levels that are not replicable by the best performing sources are not being "achieved" by those sources and cannot be used to establish the floor.

For solid fuel boilers, we explained at proposal why dioxin/furan emissions are not replicable by the best performing sources (or duplicable by other sources): there is no dominant, controllable means that sources are using that can control dioxin/furan emissions to a particular level. See 69 FR at 21274–75. We explained that data and information lead us to conclude that rapid quench of post-combustion gas temperatures to below 400 °F—the control technique that is the basis for the MACT standards for dioxin/furan for hazardous waste burning incinerators, and cement and lightweight aggregate kilns—is not the dominant dioxin/furan control mechanism for coal-fired boilers. We believe that sulfur contributed by the coal fuel is a dominant control mechanism by inhibiting formation of dioxin/furan. Nonetheless, we do not know what minimum level of sulfur provides significant control. Moreover, sulfur in coal causes emissions of sulfur oxides, a criteria pollutant, and particulate sulfates. For this reason, as well as reasons stated at 69 FR 21275, we are not specifying a level of sulfur in coal for these sources as a means of dioxin/furan control.

The same rationale applies to liquid fuel boilers with no air pollution controls or wet air pollution control systems and to hydrochloric acid production furnaces—there is no dominant, controllable means that sources are using that can control dioxin/furan emissions to a particular emission level.[139] Thus, best performer dioxin/furan emissions are not replicable by the best performing sources (or duplicable by other sources). For these sources, the predominant dioxin/furan formation mechanism for other source categories—operating a fabric filter or electrostatic precipitator above 400F—is not a factor.

Given that these sources are not using controllable means to control dioxin/furan to a particular emission level, there is no assurance that the best performers can achieve in the future the emission level reported in the compliance test in our data base. Put another way, the test data do not reflect these sources' variability, and the variability is largely unquantifiable given the uncertainties regarding control mechanisms plus the environmental counter-productiveness of encouraging use of higher sulfur coal. Hence, that reported emission level is not being "achieved" for the purpose of establishing a floor.

Finally, we note that beyond-the-floor controls such as activated carbon can control dioxin/furan to a particular emission level. If a source were to install activated carbon, it could achieve the level demonstrated in a compliance test, after adjusting the level to account for emissions variability to ensure the measurement was replicable. The commenter argues that such a result is mandatory under the straight emissions approach (the only way the commenter believes best performers can be determined). Doing so, however, would amount to a surreptitious beyond-the-floor standard (forcing adoption of a control technology not used by any existing source), without considering the beyond-the-floor factors set out in section 112(d)(2). In fact, we considered beyond-the-floor standards based on use of activated carbon for these sources—solid fuel boilers, liquid fuel boilers with wet or no emission control device, and hydrochloric acid production furnaces—but rejected them for reasons of cost. The cost-effectiveness ranged from $2.5 million to $4.9 million per gram TEQ of dioxin/furan removed. In contrast, the cost-effectiveness of the beyond-the-floor standard we promulgate for liquid fuel boilers equipped with dry emission control devices is $0.63 million per gram TEQ of dioxin/furan removed.[140]

Consequently, we are not promulgating a beyond-the-floor standard for dioxin/furan for these sources, and do not believe we should adopt such a standard under the guise of determining floor levels.

The Carbon Monoxide and Hydrocarbon Floors Are Appropriate MACT Floors. We explained at proposal why the carbon monoxide standard of 100 ppmv and the hydrocarbon standard of 10 ppmv are appropriate floors. See 69 FR at 21282. The floor level for carbon monoxide of 100 ppmv is a currently enforceable Federal standard. Although some sources are achieving carbon monoxide levels below 100 ppmv, it is not appropriate to establish a lower floor level because carbon monoxide is a conservative surrogate for organic HAP. Organic HAP emissions may or may not be substantial at carbon monoxide levels greater than 100 ppmv, and are extremely low when sources operate under the good combustion conditions required to achieve carbon monoxide levels in the range of zero to 100 ppmv.[141] (See also the discussion below regarding the progression of hydrocarbon oxidation to carbon dioxide and water). As such, lowering the carbon monoxide floor below 100 ppmv may not provide significant reductions in organic HAP emissions. Moreover, it would be inappropriate to establish the floor blindly using a mathematical approach—the average emissions for the best performing sources—because the best performing sources may not be able to replicate their emission levels (and other sources may not be able to duplicate those emission levels) using the exact types of good combustion practices they used during the compliance test documented in our data base. This is because there are myriad factors that affect combustion efficiency and, subsequently, carbon monoxide emissions. Extremely low carbon monoxide emissions cannot be assured by controlling only one or two operating parameters.

We proposed a floor level for hydrocarbons of 10 ppmv even though the currently enforceable standard for boilers and hydrochloric acid production furnaces is 20 ppmv because: (1) Although very few sources elect to comply with the RCRA standard for hydrocarbons rather than the standard for carbon monoxide, those that comply with the hydrocarbon standard have hydrocarbon levels well below 10 ppmv; and (2) reducing hydrocarbon emissions within the range of 20 ppmv to 10 ppmv may reduce emissions of organic HAP.

Although all sources are likely to be achieving hydrocarbon levels below 10 ppmv, it is not appropriate to establish a lower floor level because hydrocarbons are a surrogate for organic HAP. Although total hydrocarbons would be reduced at a floor level below 10 ppmv, we do not know whether

[139] We note that the same rationale also applies to incinerators with wet or no air pollution control equipment and that are not equipped with a waste heat boiler.

[140] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 12, 13, and 15.

[141] We note, however, that this general principle may not always apply. There are data that indicate that even though carbon monoxide levels are below 100 ppmv, hydrocarbon levels may not always be below 10 ppmv. See 64 FR at 52851 and Part Four, Section IV B. and C. of this preamble. An example of how this might occur, although not a likely practical scenario, is if combustion is quenched before substantial carbon monoxide can be generated, leaving unburned hydrocarbons in the stack gas. Because of this potential (although unlikely) concern, the rule requires sources that elect to monitor carbon monoxide rather than hydrocarbons to conduct a one-time test to document that hydrocarbons are below 10 ppmv and to establish operating limits on parameters that affect combustion conditions (i.e., the same operating parameters that we use for compliance assurance with the DRE standard). See § 63.1206(b)(6).

organic HAP would be reduced substantially. As combustion conditions improve and hydrocarbon levels decrease, the larger and easier to combust compounds are oxidized to form smaller compounds that are, in turn, oxidized to form carbon monoxide and water. As combustion continues, carbon monoxide is then oxidized to form carbon dioxide and water. Because carbon monoxide is a difficult-to-destroy refractory compound (*i.e.*, oxidation of carbon monoxide to carbon dioxide is the slowest and last step in the oxidation of hydrocarbons), it is a conservative surrogate for destruction of hydrocarbons, including organic HAP, as discussed above. As oxidation progresses and hydrocarbon levels decrease, the larger, heavier compounds are destroyed to form smaller, lighter compounds until ideally all hydrocarbons are oxidized to carbon monoxide (and then carbon dioxide) and water. Consequently, the relationship between total hydrocarbons and organic HAP becomes weaker as total hydrocarbon levels decrease to form compounds that are not organic HAP, such as methane and acetylene.[142]

Moreover, as discussed above for carbon monoxide, it would be inappropriate to establish the floor blindly using a mathematical approach—the average emissions for the best performing sources—because the best performing sources may not be able to replicate their emission levels (and other sources may not be able to duplicate those emission levels) using the exact types of good combustion practices they used during the compliance test documented in our data base. This is because there are myriad factors that affect combustion efficiency and, subsequently, hydrocarbon (and carbon monoxide) emissions. Extremely low hydrocarbon emissions cannot be assured by controlling only one or two operating parameters.

The Standards for CO and HC Are Not Work Practice Standards. The floor standards for CO or HC for boilers and hydrochloric acid production furnaces are quantified emission limits. The standards consequently are not work practice standards (even though they represent levels showing good combustion control). CAA section 302(k). EPA's reference to section 112(h)(1) at proposal (69 FR at 21275) was consequently erroneous.

[142] USEPA, Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies, July 1999, Section 12.1.2.

C. Use of Carbon Monoxide and Total Hydrocarbons as Surrogate for Non-Dioxin Organic HAP[143]

Comment: A commenter states that neither the total hydrocarbon nor carbon monoxide standard alone provides adequate surrogate control for organic HAP. Accordingly, EPA must include standards for both. Hazardous waste combustors could have total hydrocarbon levels below the standard during the carbon monoxide compliance tests, but higher total hydrocarbon levels at other times during normal operation because there are many variables that can affect total hydrocarbon emissions, and these will not all be represented during the carbon monoxide compliance test. The commenter states that EPA is on record stating that carbon monoxide limits alone may not by itself minimize organic emissions because products of incomplete combustion can result from small pockets within the combustion zone where adequate time, temperature, turbulence and oxygen have not been provided to completely oxidize these organics. The commenter also states that EPA is on record stating that total hydrocarbon levels can exceed good combustion condition levels when carbon monoxide levels are below 100 ppmv.

Response: The final rule requires compliance with destruction and removal efficiency and carbon monoxide or hydrocarbon standards as surrogates to control non-dioxin organic HAP emissions[144] from liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces. These are effective and reliable surrogates to control organic HAP. We conclude that simultaneous measurement of both total hydrocarbons and carbon monoxide with continuous emission monitors is not necessary because each serves as a reliable surrogate to control organic HAP emissions. The commenter has cited EPA preamble language that was included in the April 19, 1996 proposed rule for hazardous waste incinerators, cement kilns, and lightweight aggregate kilns. In that rule we proposed to require compliance with both the total hydrocarbon standard and the carbon monoxide standard. We requested comment on whether these requirements were redundant, and we later requested comment on whether we should allow sources to comply with either the carbon monoxide standard or the total hydrocarbon standard. We clarified, however, that allowing sources to comply with the carbon monoxide standard would be contingent on the source demonstrating compliance with the hydrocarbon standard during the compliance test. We believed this was necessary because we had limited data that showed a source could have total hydrocarbon levels exceeding 10 ppmv even though their carbon monoxide emission levels were below 100 ppmv. EPA subsequently promulgated this approach in the September 1999 Final Rule. 62 FR 52829.

Today's rule adopts the same approach for liquid and solid fuel boilers and hydrochloric acid production furnaces. We again conclude that it is not necessary to require sources to verify compliance with both of these standards on a continuous basis with two separate continuous emission monitors, given the redundancy of these measurement techniques. Total hydrocarbon emission measurements are a more direct indicator of organic HAP emissions than carbon monoxide. Hence, continuous compliance with this standard always assures that organic HAP are well controlled. Carbon monoxide is a conservative indicator of combustion efficiency because it is a product of incomplete combustion and because it is a refractory compound that is more thermally stable than hydrocarbons. The hydrocarbon products of incomplete combustion that are simultaneously formed during incomplete, or inefficient, combustion conditions can be subsequently oxidized later in the combustion process. In such instances carbon monoxide will likely still be prevalent in the exhaust gas even though the products of incomplete combustion were later oxidized. The conservative nature of carbon monoxide as an indicator of good combustion practices is supported by our data. At carbon monoxide levels less than 100 ppmv, our data indicates that there is no apparent relationship between carbon monoxide and hydrocarbons (other than that hydrocarbon levels are generally below 10 ppm when carbon monoxide levels are below 100 ppm). For example, a source with a carbon monoxide level of 1 ppm is no more likely to have lower

[143] As discussed in part two, section V, we view carbon monoxide, hydrocarbon, and destruction removal efficiency standards as unaffected by the Court's vacature of the September 1999 challenged regulations for incinerators, cement kilns, and lightweight aggregate kilns. We are therefore not re-promulgating and did not reconsider these standards in today's final rule for these source categories.

[144] As discussed in the previous section, these standards are also used as surrogates to control dioxin/furans for hydrochloric acid production furnaces, solid fuel-fired boilers, and liquid fuel-fired boilers that are not equipped with dry air pollution control devices.

measured hydrocarbons than a source achieving a carbon monoxide emission level of 100 ppm. [145]

We consider the few instances where the data showed total hydrocarbon levels above 10 ppmv while carbon monoxide levels are below 100 ppmv to be anomalies. Even so, we have accounted for this by requiring compliance with the hydrocarbon standard during the compliance test if a source elects to comply with the carbon monoxide standard. See §§ § 63.1216(a)(5)(i), 1217(a)(5)(i), and 1218(a)(5)(i).

We disagree with the commenter's assertion that the total hydrocarbon compliance demonstration during the compliance test is insufficient. Sources are required to establish numerous operating requirements based on operating levels that were demonstrated during the test, including minimum operating temperature, maximum feed rates, minimum combustion zone residence time, and operating requirements on the hazardous waste firing system that control liquid waste atomization efficiency. Sources must comply with these operating requirements on a continuous basis. Compliance with these requirements, in addition to the requirements to comply with the carbon monoxide and destruction and removal standards, adequately assure sources are controlling organic HAP emissions to MACT levels.

Comment: A commenter states that EPA's proposed use of surrogates for organic HAP do not ensure that each of the organic HAP (e.g., polychlorinated biphenyls and polyaromatic hydrocarbons) are reduced to the level of the HAP emitted by the relevant best performing sources. EPA has not shown the necessary correlation between either the total hydrocarbon or carbon monoxide standards and organic HAP, and neither is a reasonable surrogate according to the commenter.

Response: Carbon monoxide and total hydrocarbon monitoring are widely used and accepted indicators of combustion efficiency, and hence control organic HAP, which are destroyed by combustion.[146] Sources that are achieving carbon monoxide of emission levels of 100 ppm or a hydrocarbon emission levels of 10 ppm are known to be operating pursuant to good combustion practices. This is supported by an extensive data analysis we used to support identical standards for incinerators, cement kilns, and lightweight kilns which were promulgated in the September 1999 Final Rule. We are applying the same rationale to support these standards for boilers and hydrochloric acid production furnaces.

Today's rule requires continuous compliance with either a carbon monoxide and hydrocarbon standard, in combination with a destruction and removal efficiency standard, as surrogates to control organic HAP. We conclude that sources which comply with these standards are operating under efficient combustion conditions, assuring non-dioxin organic HAP are being oxidized, thus limiting emissions to levels reflecting MACT. Efficient combustion of hazardous waste minimizes emissions of organic HAP that are fed to the combustion chamber as well as emissions attributable to products of incomplete combustion that may form within the combustion chamber or post combustion. We are not capable of issuing emission standards for each organic HAP because of data limitations and because such emission standards may not be replicable by individual sources or duplicable by the other best performing sources because of the complex nature of combustion and post combustion formation of products of incomplete combustion.

V. Additional Issues Relating to Variability and Statistics

Many commenters raised issues relating to emissions variability and statistics other than those discussed above in Section III.A: (1) Variability dampening for data sets containing nondetects; (2) imputation of variability to address variability dampening for data sets containing nondetects; and (3) our analysis of variance procedures to identify subcategories. We present comments and responses on the remaining topics below.

A. Data Sets Containing Nondetects

Comment: One commenter states that EPA's approach of assuming measurements that are below detection limits are present at the detection limit dampens the variability of the data set. Thus, the variability of ranking parameters is understated when ranking sources to identify the best performers and emissions variability is understated when calculating the floor.

Response: We agree with the commenter. For the final rule, we use an approach to address nondetects whereby a value is assigned to each nondetect within its possible range such that the 99th percentile upper prediction limit for the data set (i.e., test condition runs for each source) is maximized. Although this approach maximizes the deviation among runs containing nondetect measurements, the test condition average is lower because we no longer assume the nondetect analyte is present at the level of detection. See response to comments discussion below for more information on this statistical approach to address variability of nondetects.

We use this measurement imputation approach to address variability of feedrate data sets containing nondetects for source ranking purposes and to address variability of emissions data sets containing nondetects when calculating floors. We do not apply the measurement implementation approach to system removal efficiency (SRE) data sets where feedrates or emissions contain nondetects, however. Statistical imputation of nondetect SREs is complicated given that SRE is derived from feedrate and emissions data, both of which could contain nondetect measurements.[147] Our inability to apply the imputation approach to SREs is not a major concern, however, because system removal efficiency is used as a source ranking criterion only (i.e., it is not used as the standard, except for hydrochloric acid production furnaces where there are no nondetect feedrate or emissions measurements), and there are few instances where system removal efficiencies are derived from nondetect feedrate or emissions data.

B. Using Statistical Imputation To Address Variability of Nondetect Values

On February 4, 2005, EPA distributed by email to major commenters on the proposed rule a direct request for comments on a limited number of issues that were raised by the public comments on the proposed rule. The nondetect measurement imputation approach discussed above was one of the issues for which we requested comment. We discuss below the major comments on the approach.

Comment: Most commenters state that they agree with either the concept or the approach in principle but cannot

[145] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 3.2 and USEPA, "Final Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies," July 1999, Section 5.1.

[146] This is why almost all of the RCRA Land Disposal Restiction treatment standards for organic waste, which standards are for the most part established at an analytic detection level for the organic HAP in question plus a variability factor, are based on the performance of combustion technology. See 40 CFR Part 268.40–43.

[147] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005 Section 7.3.

provide substantive comments. These commenters indicate they cannot provide substantive comments because they cannot determine the implications of using the approach given that we did not provide the resulting floor calculations. One commenter suggests that, before blindly applying this arbitrary estimate of a nondetect value, a reality check should be done to validate that this is reasonable by consulting what is published on the method variability, as well as by checking variability factors derived for other data in the database that are above the detection limit.

Another commenter voiced significant concerns with the approach. The commenter states that EPA contradicts its assumption at proposal that all data that are reported as nondetect are present at the detection limits by now admitting that the true value is between zero and the level of detection. The commenter concludes that EPA now proposes to retreat from its assumption that undetected pollutants are always present at the detection limits not because that assumption is false but because it does not generate sufficiently lenient floors. The commenter believes that this underscores that EPA's statistical analysis approach cannot possibly give an accurate picture of *any* source's actual emission levels. Accordingly, it cannot possibly satisfy EPA's obligation to ensure that its floors reflect the average emission levels achieved by the relevant best performing sources.

The commenter also states that EPA's imputation approach is independently flawed because it assumes—again inaccurately—that the value for a nondetect is always either the highest value or lowest value in the allowable range. In reality the undetected values will necessarily fall in a range between the highest and lowest, and thus yield less variability than EPA would assume.

Response: We agree in theory with the commenter who suggests that the results of the imputation approach should be checked to see if it overstates variability for nondetect data by comparing the results of the imputation approach with the actual variability for detected measurements in the data set. We considered comparing the relative standard deviation derived from the imputation approach for data sets with nondetects, to the relative standard deviation for the data set using a regression analysis. Under the regression analysis approach, we considered relating the relative standard deviation of detected data sets to the average measurement. We would determine this relationship for each standard for which we have nondetect data, and use the relationship to impute the standard deviation for a data set containing nondetects.[148]

We could not perform this analysis, however, because: (1) We have very few detected measurements for the data sets for several standards and could not establish the relationship between relative standard deviation and emission concentration for those data sets; and (2) moreover, for many data sets where detected measurements would have been adequate to establish the relationship, it would have been problematic statistically to extrapolate the relationship to the very low values assigned to the nondetect measurements (e.g., 100% of the detection limit; the value assigned by our statistical imputation approach).[149]

This commenter also suggests that we check the resultant standard deviation after imputation by consulting what is published on the method variability. The commenter did not explain, however, how method variability relates to the variability of nondetect data.

Moreover, we believe that the imputation approach is one approach we could have reasonably used to estimate variability of nondetect data. We first attempted to apply standard statistical techniques to address the nondetect issue. We investigated standard interval censoring techniques to calculate maximum likelihood estimates (MLE) of the average and standard deviation that provide the best fit for a normal distribution for the data containing nondetect values, taking into account that each nondetect data point can be anywhere within its allowable interval. These techniques are not applicable, however, to data sets where all data are nondetects, as is the case for many of our data sets. In that situation, we approximated the mean as the average of the midpoints of the nondetect intervals, and the standard deviation as one half of the possible range of the data.

After working with this MLE/Approximation approach for some time and iteratively developing complicated algorithms to address problems as they arose, we concluded that we needed a simpler approach that could be applied to all data sets. Accordingly, we developed the statistical imputation approach discussed in Section IV.A above.

For 22 separate floors, we compared the results of the approaches we considered for nondetects: (1) Nondetects present at the detection limit (i.e., full detection limit approach); (2) MLE; (3) MLE combined with an approximation approach (i.e., MLE/Approximation approach; and (4) statistical imputation.[150] The MLE approach was only applicable to 2 of the 22 floor data sets, and the numerical algorithm failed to converge on an answer for one of those. The MLE/Approximation approach sometimes results in floors that are unrealistically high (i.e., it calculated 5 of 22 floors that were higher than the statistical imputation approach, which always produces floors that are equal to or higher than assuming nondetects are present at the full detection limit), and sometimes fails to converge on an answer. Because of these limitations, we do not use either the MLE or MLE/Approximation approach.

We believe the statistical imputation approach is preferable to the full detection limit approach because it: (1) Accounts for variability of data sets containing nondetects; (2) can be applied to all data sets containing nondetects; and (3) results in reasonable floor levels. In most cases, floors calculated using statistical imputation are close to those calculated by the full detection limit approach. The statistical imputation approach can produce substantially higher floors than the full detection limit approach, however, when a relatively high nondetect is reported because of a high detection limit. Nonetheless, the statistical imputation approach calculated floors that were 30% higher than the full detection limit approach for only 2 of the 22 floors.

We reject the comment that our approach to handling nondetect data is a mere manipulation to raise the floor. The commenter observes that EPA appears to determine that its initial approach of assuming the worst-case for nondetect data—that the data are present at the detection limit—did not produce floors that were high enough, and consequently applies another manipulation—statistical imputation of nondetect measurements—that assumes the nondetect data are present at lower levels but nonetheless generates floors that are even higher than before. Although the commenter is correct

[148] Note that, under this approach, we would continue to assume that the nondetect analyte is present at the detection limit.

[149] Note that this was not the case where we use a regression analysis of relative standard deviation versus total chlorine measurements to impute a standard deviation for values below 20 ppmv that we corrected to 20 ppmv to address the low bias of Method 0050. In that situation, we have several total chlorine measurements very close to 20 ppmv.

[150] See USEPA, "Technical Support Document fo the HWC MACT Standards, Volume III: Selection o MACT Standards," September 2005, Section 5.4.

about the outcome of our handling of nondetect data'the floors are generally higher after statistically imputing nondetect measurements than if nondetects are simply assumed to be present at the detection limit—our rationale for handling nondetects is sound. At proposal, we assumed that nondetects are present at the detection limit. We do not know (nor does anyone else) whether a nondetect value is actually present at 1% or 99% of the detection limit. We thought that assuming that all values were at the limit of detection would reasonably estimate the range of performance a source could experience for these nondetect measurements. This approach inherently maximizes the average emissions but minimizes emissions variability.

Commenters on the proposed rule state that assuming nondetects are present at the detection limit dampens emissions variability—a consideration necessary to ensure that a source's performance over time is estimated reasonably. *Mossville*, 370 F. 3d at 1242 (daily maximum variability must be accounted for in MACT standards [including floors] which must be achieved continuously). See also *CMA*, 870 F. 2d at 232 (EPA not even obligated to use data from plants that consistently reported nondetected values in calculating variability factors for best performing plants). We agree with these commenters, and are using the statistical imputation approach to address the concern. Relative to our proposed approach of assuming nondetect measurements are present at the detection limit, the statistical imputation approach reduces the average of the data set for a source while maximizing the deviation of the data set. These are competing and somewhat offsetting factors when calculating the floor for existing sources given that we use a modified 99th percentile upper prediction limit to calculate the floor—the floor is the average of the test condition averages for the best performers plus the pooled variance of their runs. See *CMA*, 870 F. 2d at 232 (upholding approach to variability for datasets with nondetect values where various conservative assumptions in methodology offset less conservative assumptions).

We further disagree with this commenter's view that the statistical imputation approach is independently flawed because it assumes that the value for a nondetect is always either the highest value or lowest value in the allowable range. The commenter states that, in reality, the undetected values will necessarily fall in a range between the highest and lowest, and thus yield less variability than EPA would assume. Although the commenter is correct that the true value of a nondetect measurement is likely to be in the range between the highest or lowest value possible rather than at either extreme, we do not know where the true value is within that range. To ensure that variability is adequately considered in establishing a floor, the statistical imputation approach, by design, maximizes the deviation by assuming the nondetect value is at one end of the range or the other, whichever results in a higher average for the data set.

C. Analysis of Variance Procedures To Assess Subcategorization

We use analysis of variance (ANOVA) to determine whether subcategories of sources have significantly different emissions. For two subsets of emissions, the variance of the data between the two subsets is compared to the variance within the subsets. The ratio of these two variances is called the F-statistic. The larger the F-statistic the more likely the underlying data distributions are different. To make a decision regarding the difference between the two subsets, we compare this calculated F-statistic to an F-value associated with a particular confidence level.

One commenter has raised several concerns with our use of the ANOVA procedure in the selection of incinerator subcategories.

Comment: The ANOVA procedure is based upon the assumption that the underlying distribution of both data sets has a normal shape. For incinerator emissions data this assumption is not valid. A log-probability plot shows that particulate emission data is better described by a lognormal distribution. Prior to conducting the ANOVA procedure, the data should be log-transformed.

Response: We use probability plots, Skewness Coefficients, and Correlation Coefficient/Shapiro-Wilks testing to evaluate whether it is more appropriate to analyze emissions data for ANOVA and floor calculations assuming the data represent a normal or lognormal distribution. We believe it is reasonable to assume the data represent a normal distribution for several reasons.

The purpose of the ANOVA subcategorization analysis is to determine if there is a significant difference in emission levels between potential subcategories to warrant establishing separate floors for the subcategories. Although in some cases it may appear that a data set in its entirety may be better represented by a lognormal distribution, the high emissions data causing the right-hand skew will be truncated when we identify the best performing sources—those with the lowest emissions—to calculate floors. This moves the appearance of a skewed distribution toward one that is more symmetric and thus, more representative of a normal distribution.

In addition, our analyses showed: (1) The probability plots do not suggest that either assumed distribution is significantly or consistently better; (2) the data set arithmetic averages tend to be in the neighborhood of the medians, indicating the data sets are not significantly skewed and more closely normal than lognormal; and (3) in some cases, neither assumed distribution could be statistically rejected.[151]

Comment: Some of the data sets used for comparison have very few members. This means that the within-group variance for a small data set would have to be very low for the two groups to be judged as separate.

Response: We agree, but note that as the sample sizes change, the critical values are also changing depending on the degrees of freedom.

Comment: Only emissions data were considered in the ANOVA tests. Feed rate and removal efficiency should have been considered as well.

Response: Differences between subcategories in feedrates or system removal efficiency are irrelevant if there is no significant difference in emissions between the subcategories. The purpose of considering subcategorization is to determine if there are design, operation, or maintenance differences between subcategories that could affect the type or concentration of HAP emissions and thus sources' ability to achieve the floor absent subcategorization. Consequently, it is appropriate to consider emissions only when evaluating subcategorization.

Comment: The confidence level used by EPA for the F-statistic in all cases was 95 percent. If the calculated F-statistic were equal to this 95 percent confidence value, it would mean that there is only a 5 percent chance that data for the two subsets were drawn from the same parent distribution. A less stringent (lower) confidence level would be more appropriate for this analysis.

The commenter evaluated particulate emissions for specialty incinerators (i.e., munitions, chemical weapons and mixed waste incinerators) and non-specialty incinerators (all others). The commenter log-transformed the data and

[151] USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 8.2.

determined that there was only a 30 percent chance that the two data sets could come from the same parent distribution. This result, together with the vastly different operating characteristics for the two types of incinerators, argues for their being treated as separate categories, according to the commenter.

Response: A confidence level of 95% assigns a probability of 0.95 of accepting the hypothesis when there is no difference between subcategories and hence a probability of 0.05 of rejecting a true hypothesis. This reduces the probability to 5% of rejecting a true hypothesis. A less stringent confidence level would increase the chances of rejecting a true hypothesis. The farther apart the averages of the two potential subcategories are, the more likely they are to be statistically different and the more likely you are to be wrong if you hypothesize that they are not different.

A 95% confidence level is most often used for ANOVA because it is generally believed that being wrong one time out of 20 is an acceptable risk for purposes of ANOVA. In addition, statisticians are comfortable with a 95% confidence level because, in a normal distribution, 95% of the data fall within 2 (actually 1.96) standard deviations of the mean.

Other confidence levels could be used for ANOVA—99% or 90%—if there is a good reason to deviate from the general default of 95%. A 99% confidence level is the second most commonly used confidence level and is generally used when it is very important that you be sure that you are right (i.e., where you can only accept the risk of being wrong 1 time out of 100) before you classify the populations (in this case subcategories) as different. Occasionally, but much less frequently, confidence levels of 90% or less are used. But, we note that these situations are so infrequent that some statistics books provide tables for the ANOVA F-statistic only at the 95% and 99% confidence levels.

For these reasons, we believe that the 95% confidence level is an appropriate level among those we could have reasonably selected.

VI. Emission Standards

A. Incinerators

Comment: A commenter states that EPA's subcategorization (and assignment of differing dioxin/furan standards as a result) between incinerators with wet or no air pollution control device and incinerators equipped with dry air pollution control devices or waste heat boilers is unlawful because incinerators equipped with a given type of pollution control equipment are not different "classes," "types," or "sizes" of source. The commenter implies that EPA justifies this subcategorization by stating that these sources have different emission characteristics, which is no less unlawful and arbitrary than subcategorizing based on the pollution control devices they use.

Response: We agree that it would not be appropriate to subcategorize source categories based on a given air pollution control technique. See 69 FR at 403 (Jan. 4, 2004). As stated at proposal, we do not subcategorize incinerators with respect to dioxin/furans based on the type of air pollution control device used. 69 FR at 21214. For example, with respect to dioxin/furans, it would not be appropriate subcategorize based on whether a source is using: (1) Good combustion practices; (2) a carbon bed; (3) an activated carbon injection system; or (4) temperature control at the inlet to its dry air pollution control device. These devices and practices are what control dioxin/furan emissions. Today's final rule does not subcategorize based on these control devices and practices. Instead, our subcategorization approach recognizes the potential of some emission control equipment to create pollutant emissions that subsequently must be addressed.[152]

Dioxin/furans are unique in that these pollutants are not typically present in the process inputs, but rather are formed in the combustor or in post combustion equipment. The primary cause of dioxin/furan emissions from incinerators not equipped with waste heat boilers is post combustion formation by surface-catalyzed reactions that occur within the dry air pollution system.[153] This is evidenced by the statistically significant higher dioxin furan emissions for incinerators with dry air pollution control systems compared to those without dry systems.

Incinerators with dry air pollution systems are designed to effectively control metal and particulate matter emissions through use of baghouses, electrostatic precipitators, etc. Incinerators that are designed in this manner have the potential for elevated dioxin/furan emissions because dry air pollution control systems provide locations where surface-catalyzed reactions can occur (e.g., on particles on fabric filter bags or electrostatic precipitator plates). Thus, for purposes of dioxin/furan formation and control, incinerators equipped with dry air pollution systems are in fact different "types" of incinerators because of their unique pollutant generation characteristics.

On the other hand, incinerators with wet air pollution control systems are generally designed to effectively reduce total chlorine emissions (with the use of wet scrubbers) and metals and particulate matter emissions. There generally is a tradeoff, however, in that these types of incinerators may not be as efficient in reducing particulate matter and metal emissions compared to incinerators that are equipped with baghouses and dry electrostatic precipitators. These types of incinerators generally do not have the potential to have elevated dioxin/furan emissions because they do not provide locations where surface catalyzed reactions can occur. For purposes of dioxin/furan emission formation and control, sources with wet air pollution control systems are thus likewise different types of incinerators.[154]

Subcategorizing dry air pollution systems and wet air pollution control systems for purposes of establishing a dioxin/furan standard is no different than subcategorizing incinerators equipped with waste heat boilers. The waste heat boiler is the origin of the dioxin/furan that is generated. These incinerators are designed to efficiently recover heat from the flue gas to produce useful energy. A result of this type of incinerator design, however, is that it also provides a location where surface catalyzed reactions can occur (i.e., the boiler tubes), potentially resulting in elevated dioxin/furan formation (and emissions if not properly controlled).

An alternative approach that does not subcategorize these sources, but rather identifies best performing sources as those sources with the lowest emissions irrespective of whether they have a wet

[152] Although we subcategorize between incinerators with wet or no air pollution control device and incinerators equipped with dry air pollution control devices or waste heat boilers for the floor analysis, the calculated dioxin furan floors for both subcategories for existing sources were determined to be less stringent than the current interim standard. Subsequently, the final rule emission limitations for both subcategories are, for the most part, identical, and equivalent to the interim standard. See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 10.1, for further discussion.

[153] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume IV: Selection of MACT Standards," September 2005, Section 3, for further discussion.

[154] A similar analogy applies to incinerators that are not equipped with air pollution systems. These incinerators are not designed to control emissions of metals, chlorine, and particulate matter (perhaps because emission levels are low due to low HAP feed levels). Similar to incinerator types with wet systems, this design does not provide the locations for surface catalyzed reactions to occur, which leads us to conclude that these are different types of incinerator with respect to dioxin/furan control.

or dry air pollution control device, would yield floors that would not be achievable unless all the sources, including the best performers, adopted beyond-the-floor technology. The calculated dioxin/furan floor for existing incinerators and liquid fuel boilers using such an approach would be 0.008 and 0.009 ng TEQ/dscm, respectively.[155] All of the best performing sources for these calculated floors had either wet air pollution systems or no air pollution control systems. The floor technology used by these sources is good combustion practices. As a result, these floor levels would not be replicable by these best performing sources nor duplicable by other sources through use of the same good combustion practices because of the uncertainties associated with dioxin/furan generation mechanisms and rates that can vary both within sources and across sources, potentially leading to significant variability in emission levels.[156] Sources equipped with wet or no air pollution systems would thus likely be required to install carbon systems to comply with these standards, a technology used by only four incinerators (none of which were best performers in the above discussed floor analysis). Such an outcome should be viewed as a beyond-the-floor technology and therefore assessed pursuant to the factors enumerated in section 112(d)(2). Furthermore, it is unclear, and perhaps doubtful, that these floors would be achievable by these sources even if they were to install beyond-the-floor controls such as activated carbon systems because no sources using activated carbon are currently achieving those floor levels. We therefore conclude that it is appropriate, and necessary, to subcategorize these types of incinerators for purposes of calculating dioxin/furan floor standards.

B. Cement Kilns

1. Hg Standard

Comment: Several commenters recommend that EPA use a commenter-submitted dataset, which includes three years of data documenting day-to-day levels of mercury in hazardous waste fuels fired to all hazardous waste burning cement kilns, to identify a MACT floor for existing and new cement kilns. Several commenters state that *existing* cement kilns should have the option to comply with either of the following mercury standards: (1) A hazardous waste feed concentration limit, expressed in ppmw, based on an evaluation of the five best performing sources within the commenter-submitted dataset (documenting day-to-day levels of mercury in the hazardous waste over a three year period); or (2) a hazardous waste maximum theoretical emissions concentration (MTEC), expressed in units of µg/dscm, developed by projecting emissions of the best performing sources assuming mercury concentrations in the hazardous waste were at the source's 99th percentile level in the commenter-submitted dataset. To identify the best performing sources, the commenter suggests selecting the five sources with the lowest median mercury concentrations in the dataset. For existing sources, the commenters' evaluation yields a hazardous waste feed concentration limit of 3.3 ppmw and a stack concentration emission limit of 150 µg/dscm (rounded to two significant figures and considering mercury contributions only from the hazardous waste). For *new* cement kilns, the commenters recommend a mercury standard in the format of a hazardous waste feed concentration limit only, expressed in ppmw, based on the single source with the lowest 99th percentile level of mercury in hazardous waste. The commenters recommend a mercury standard of 1.9 ppmw for new sources.

Response: We agree with commenters that the commenter-submitted dataset documenting the day-to-day levels of mercury in hazardous waste fuels fired to all hazardous waste burning cement kilns is the best available data to identify floor levels for existing and new cement kilns. See discussion in Part Four, Section I.D. However, we disagree with the commenters' suggested format of the mercury standard for existing sources. Establishing the mercury standard as the commenters' suggest (i.e., 3.3 ppmw in the hazardous waste feed *or* 150 µg/dscm as a hazardous waste MTEC) fails to consider the interim mercury standards. As discussed in Part Four, Section III.E, there can be no backsliding from the levels of performance established in the interim standards. While not every source feeding hazardous waste with a maximum mercury concentration of 3.3 ppmw would exceed the interim standard, most sources using more than 50 percent hazardous waste as fuel (i.e., replacing at least half its fossil fuel with hazardous waste) would exceed the interim standard, emitting mercury higher than the levels allowed under §§ 63.1204(a)(2) and 63.1206(b)(15) of the interim standards.[157] The hazardous waste MTEC of 150 µg/dscm calculated by the commenters is also higher than the level currently allowed under § 63.1206(b)(15) of the interim standards. Since sources cannot backslide from the levels of the interim standards, if we were to accept the commenters' floor analysis results as presented (which we are not), then we would "cap" each calculated standard (i.e., 3.3 ppmw hazardous waste feed concentration and 150 µg/dscm in stack emissions) at the interim standard level. This would result in a mercury standard for existing sources of 3.3 ppmw hazardous waste feed *and* a hazardous waste feed MTEC of 120 µg/dscm *or* 120 µg/dscm as a stack gas concentration limit. We note this is similar to the mercury standard adopted today: a hazardous waste feed concentration limit of 3.0 ppmw *and* a hazardous waste feed MTEC of 120 µg/dscm or 120 µg/dscm as a stack gas concentration limit. For an explanation of why we derived a level of 3.0 ppmw from the data, see Section 7.5.3 of Volume III of the Technical Support Document.

The commenters' suggested new source mercury standard of 1.9 ppmw in the hazardous waste has the same deficiency. New sources with a hazardous waste fuel replacement rate of approximately 75% could emit mercury at levels higher than currently allowed under the interim standards. After capping the calculated standard at the interim standard level, we would identify the mercury standard for new sources as a hazardous waste concentration limit of 1.9 ppmw in the hazardous waste and a hazardous waste feed MTEC of 120 µg/dscm *or* 120 µg/dscm as a stack gas concentration limit. For reasons discussed in Section 7.5.3 of Volume III of the Technical Support Document, this is indeed the mercury standard we are promulgating for new cement kilns.

The commenters also suggest that the best performing sources should be identified as those with the lowest three-year median concentration of mercury in hazardous waste. Although this approach would be permissible, we conclude that it is more appropriate to identify the best performers (or single best performer for new sources) by

[155] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 20 and Appendix C, tables labeled "E-INC-all-DF" and "E-LFB-all-DF".

[156] Dioxin/furan formation mechanisms are complex. Sources equipped with wet or no air pollution control systems cannot rely on good combustion practices alone to achieve these floor levels because they cannot "dial in" to a specific emission level, as is the case with typical back-end control systems that control particulate matter and metals, for example. See Part Four, Section IV.B.

[157] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Section 23.4, September 2005.

selecting those with the lowest 99th percentile upper level mercury concentrations. (This is not a statistically determined upper prediction limit; there is sufficient data for an arithmetically calculated 99th percentile to reliably reflect sources' performance.) We believe that this approach best accounts for the variability experienced by best performing sources over time.

A detailed discussion of the MACT floor analysis for existing and new cement kilns is presented in Section 7.5.3 of Volume III of the Technical Support Document. In summary, the mercury standard for existing cement kilns is 3.0 ppmw in the hazardous waste feed *and* 120 µg/dscm as a hazardous waste maximum theoretical emission concentration feed limit or 120 µg/dscm as a stack gas concentration limit. For new sources the mercury standard is 1.9 ppmw in the hazardous waste feed and 120 µg/dscm as a hazardous waste maximum theoretical emission concentration feed limit or 120 µg/dscm as a stack gas concentration limit.[158]

Comment: Two commenters oppose EPA's proposed approach to base compliance with the mercury standard on averaged annual emissions. The commenters state an annual average would allow mercury emissions to exceed the interim standard because a source could burn high concentrations of mercury waste over a short period and still comply with an annual limit by burning low concentration wastes at other times. These commenters support the concept of a 12-hour rolling average feedrate limit (i.e., the current requirement under the interim standards) in conjunction with an emission standard no less stringent than the interim standard.

Response: We agree with these comments. Cement kilns must establish a 12-hour rolling average feedrate limit of mercury to comply with these standards. The mercury standards for cement kilns are "capped" at the interim standard level to prevent backsliding from the current level of performance. This is accomplished by expressing the standard as a limit on the mercury concentration in the hazardous waste (with the rolling average) and either an emission concentration limit or hazardous waste maximum theoretical emission concentration feed limit. See § 63.1209(l)(1)(iii).

2. Total Chlorine

Comment: One commenter states that the proposed MACT floor approach is inconsistent with the statutory definition of MACT because EPA's selection of a routinely achievable system removal efficiency (SRE) was arbitrary and not representative of the best performing sources. Instead, the commenter suggests EPA identify a MACT SRE based on the five sources with the best SREs and apply that SRE to the MACT chlorine feed level. Later, in supplemental comments, the same commenter suggests two alternative approaches to identify a floor level. One approach applies a ranking methodology based on emissions and chlorine feed, and the second suggested approach applies a triple ranking method based on emissions, feed, and chlorine SRE. Other commenters, however, supported EPA's proposed approach.

Response: We are adopting the same approach we proposed at 69 FR at 21259. As we explained, this is a variant of the SRE/Feed approach, the variant involving the degree of system removal efficiency achieved by the best performing sources. In summary, to determine the floor level we first identify the best performing sources according to their hazardous waste chlorine feedrate. The best performing sources are those that have the lowest maximum theoretical emissions concentration (MTEC), considering variability. We then apply an SRE of 90 percent (the specific point in contention) to the best performing sources' total MTEC (i.e., thus evaluating removal of total chlorine across the entire system, including chlorine contributions to emissions from all feedstreams such as raw materials and fossil fuels) to identify the MACT floor, which is expressed as a stack gas emissions concentration in parts per million by volume. This approach defines the MACT floor as an emission level that the best performing sources could achieve if the source limits the feedrate of chlorine in the hazardous waste to the MACT level (i.e., the level achieved by the average of the best performing five sources) while also achieving an SRE that accounts for the inherent variability in raw material alkalinity and (to a lesser degree) cement kiln dust recycle rates, and production requirements. 69 FR at 21259.

Under this approach, we are evaluating hazardous waste feed control as we do for other sources. One commenter objects to our determination that an SRE of 90 percent is representative of the best performing sources because we have not established a MACT SRE—the average SRE achieved by the best performing sources.

There is no doubt that the cement manufacturing process is capable of capturing significant quantities of chlorine when favorable conditions exist within the kiln system. Our usual approach of establishing an SRE by ranking the most efficient SREs taken from individual compliance tests, however, would result in a standard that would not be achievable because it may not be duplicable by the best performers or certainly would not be replicable by others, given that it is a function of various highly variable parameters, especially levels of alkali metals (e.g., sodium and potassium) and volatile compounds (e.g., chlorine and sulfur) in the raw materials. Alkalis and volatiles vary at a given best performer facility (in fact, at all facilities) as different strata are mined in the quarry, and across facilities due to different sources of raw materials. Raw material substitution is infeasible and counter to the objective of producing quality product (i.e., a product with low alkali content).

Cement kilns thus are not able to design or operate to achieve a specific SRE at the high (most efficient) end of the range of test conditions. This is demonstrated by our calculations of system removal efficiency data, which is essentially a collection of performance "snapshots." See SRE data summarized in Table 1 at the end of this response; see also *Mossville*, 370 F. 3d at 1242 (maximum emission variability associated with raw material variability needs to be accounted for in MACT floor determination since the standard must be met at all times under all operating conditions). The performance data of the "apparent" best performers—upwards of 99 percent—identified by the commenter are simply a snapshot in the possible range of performance and are not replicable in the future due to factors which are uncontrollable by the source, as just explained. In confirmation, cement kilns achieving this level of removal in one test proved incapable of replicating their own result in other tests even though individual sources each have their own proprietary source of raw materials. See results in table for Giant (SC), Essroc (IN), Holcim (MO), Giant (PA), and LaFarge (KS) all

[158] Please note that we do not regard this standard as a work practice standard under section 112(h)(1) of the Act, because part of the standard includes an emission limit which is measured at the stack. EPA believes the special requirements of section 112(h)(1) apply when a work practice is the exclusive standard.

of whom would violate a 99 + percent standard based on their own operating results.

TABLE 1.—SUMMARY OF SYSTEM REMOVAL EFFICIENCY DATA FOR WET PROCESS CEMENT KILNS [159]

Facility	Number Runs in Data Base	Low SRE Run (%)	High SRE Run (%)	Average SRE of All Runs (%)
LaFarge (OH)	3	99.1	99.4	99.3
Giant (SC)	24	95.5	99.8	99.0
Essroc (IN)	13	97.3	99.9	98.7
Holcim (MO)	6	96.4	99.9	98.4
LaFarge (KS)	12	95.7	99.3	98.1
Giant (PA)	17	87.7	99.4	97.1
Continental (MO)	3	95.7	97.0	96.5
Ash Grove (AR)	37	85.1	98.8	95.1
Texas Industries (TX)	6	88.8	97.0	93.6
Holcim (MS)	9	76.5	99.2	90.0

[159] See Section 3.6 of Volume II (Specific MACT Standards) of Comment Response Document, September 2005.

However, the data indicate that SRE is reasonably quantifiable to a point. Based on our data base of system removal efficiency information from 130 test conditions where total chlorine was evaluated, we conclude that a system removal efficiency of 90 percent is a reasonable estimate of MACT SRE.[160]

We also reject the commenter's three suggested alternative approaches to identify a MACT SRE to apply to the MACT feed level. The commenter's methods all suffer a common flaw: They fail to recognize and take into account the limitations of the total chlorine SRE data. For example, as just demonstrated, available data show that considering the SRE data associated with the most recent compliance test as a ranking factor will result in unachievable standards due to the varying effectiveness of chlorine capture (which impacts emissions) depending on the raw material mix characteristics. Considering only the most recent compliance test data as suggested yields results that are unachievable because the best performer's SRE data are likely biased high (e.g., sources that happen to test under favorable conditions are likely to be identified as best performers), which would not be replicable by even that source on a day-to-day basis.

3. Semivolatile and Low Volatile Metals

Comment: Commenters oppose EPA's proposed approach to treat each kiln as a separate and unique source in the SRE/Feed MACT floor analysis for cement kilns.[161] Commenters state that the approach is an improper way to perform a statistical analysis and reduces the variability in emissions that otherwise would be observed in a MACT pool of five unique sources. Variability is reduced because co-located kilns at the same plant share many of the factors that comprise front-end and back-end controls. As a result, the calculated MACT floors for SVMs and LVMs for cement kilns are too stringent. The commenters' recommended solution (in instances where co-located kilns are among the top five performers) is to use only the data from the best performing co-located kiln, exclude any lesser performing kilns at the plant site, and then include the next-best performing non-co-located kiln in the MACT pool. Implementing their recommendation, the commenters state that the MACT floor for SVMs increases from 4.0×10^{-4} to 7.4×10^{-4} lbs/MMBtu and the floor for LVMs increases from 1.4×10^{-5} to 1.8×10^{-5} lbs/MMBtu. Another commenter generally supports EPA's approach noting that the variability factor applied to the emissions data already accounts for variability.

Response: We consider sources that are not identical as unique sources and emissions data and information from unique sources are considered separate sources in the floor analyses. An example of an "identical" source in our data base is compliance test data from a similar on-site combustion unit used in place of a compliance test for another unit (*i.e.*, emissions testing of an identical unit was not conducted). These sources and their associated data are called "data in lieu of" sources in our data based on the RCRA provisions under § 266.103(c)(3)(i). We acknowledge that co-located sources may in fact share certain similar operation features (e.g., use of raw material from the same quarry, use of the same coal and hazardous waste burn tank to fire the kilns); however, given that the co-located sources (except those designated as data in lieu of) are not designed identically, and given their hazardous waste feed control levels were not identical during testing, we conclude we must consider each source as a unique source in the floor analyses.[162]

Comment: Commenter states that EPA's proposed standards for new cement kilns are unachievable due to problems with its accounting for variability, in part because EPA did not consider geographic differences when assessing feed control levels. The concentrations of hazardous constituents in the waste in a particular region are likely to be different than in the waste from another geographical region due to types of industrial sectors located within each region. Sources cannot reasonably arrange for transportation of lower HAP wastes generated across the country and cannot treat the hazardous waste to remove or reduce HAP concentrations. The commenter cites several court decisions that support their assertions. Commenter believes that while this represents a problem for developing both the new and existing source floors, it is a greater predicament for the new

[160] As discussed a number of times earlier, we are not basing any standards on feed control of HAP in raw material and fossil fuel input. We instead are controlling HAP attributable to those inputs by means of end-of-stack emission standards which reflect removal of HAP by some type of control device. This approach is consistent with the discussion above, since we are not basing the cement kiln chlorine standard on control of any raw material input, but rather on some type of back-end removal efficiency.

[161] It is common for cement manufacturing plants to operate multiple cement kilns at the same plant.

[162] Nonetheless, we analyzed the SVM and LVM floors for cement kilns as suggested by the commenter. Results of the analysis are presented in "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Section 8.8, September 2005.

source floor because this floor level is based on test data for only one source.

Response: We are not obligated to account for varying hazardous waste feed control levels occurring because of differing HAP generation rates in different locations (for commercial sources), or because different production process types generate higher or lower levels HAP concentration wastes. Hazardous waste feed control is a legitimate control technology. The commenter seems to suggest that we should subcategorize low feeding sources and high feeding sources based on their hazardous waste feed control level. This would inappropriately subcategorize sources based on differing levels of controls, which we do not do. See 69 FR at 403 (January 5, 2004). Nonetheless, as previously discussed, the SRE/Feed methodology lessens the impact of feed control variations across commercial units because it results in fewer situations where best performing back-end controlled sources (from a particulate matter emissions perspective) cannot achieve the semivolatile and low volatile metal design levels and floors.

For new source standards, the single best performing cement kiln sources for semivolatile metals and low volatile metals were not the lowest hazardous waste feed controlled source (both floors were based on sources with the fourth best, (i.e., lowest, hazardous waste feed control level). We therefore do not believe these sources are atypically low hazardous waste feeders relative to the other best performing sources in the existing source MACT pools.

C. Lightweight Aggregate Kilns

1. Mercury Standard

Comment: One commenter, an operator of lightweight aggregate kilns subject to this rule, recommends that EPA establish the mercury standard for lightweight aggregate kilns at a hazardous waste feed concentration limit of 3.3 ppmw for existing sources and 1.9 ppmw for new sources, which is the same standard suggested in public comments by a trade organization representing hazardous waste burning cement kilns. The commenter notes that these mercury limits are appropriate for lightweight aggregate kilns because the commenter's two lightweight aggregate manufacturing facilities participate in the same hazardous waste fuel market as the majority of cement kilns. Moreover, the commenter maintains that its parent company also owns and operates two cement kilns and that its lightweight aggregate kilns receive hazardous waste from many of the same generators that provide hazardous waste fuel to the cement kilns. Consequently, the commenter states that the cement industry's data set of actual mercury feed concentrations in the hazardous waste best represents the full range of hazardous waste fuel concentrations that exist in the waste fuel market (see also Part Four, Sections I.D and E).

Response: We disagree with the commenter. Although the cement industry's set of mercury feed concentration data in the hazardous waste may represent the full range of concentrations for the cement kiln source category, we cannot conclude the same for lightweight aggregate kilns because the commenter states that the mercury dataset are only applicable to its kilns.[163] Further, the commenter provides no specific information or data to support the conclusion that its suggested approach is justified for the other lightweight aggregate kiln facility.

We also disagree with the commenter as to the appropriateness of establishing the mercury standard in the format of a hazardous waste feed concentration (i.e., 3.3 ppmw for existing sources and 1.9 ppmw for new sources) for lightweight aggregate kilns. A hazardous waste feed concentration standard is improper for this source category because one lightweight aggregate kiln facility's sources (although not the commenter's) controls mercury emissions using wet scrubbing. Thus, a hazardous waste feed concentration standard would inappropriately limit the mercury concentration in hazardous waste for sources that use control equipment capable of capturing mercury. A source with control equipment should not be restricted to a hazardous waste feed concentration standard that is based on sources that can only control mercury emissions through limiting the amount of mercury in the hazardous waste.

In any case, as explained earlier in our discussion of cement kiln mercury standard, we believe that it is preferable to establish an emission standard to assure that the actual amount of mercury emitted by these sources is controlled by means of a numerical standard for stack emissions.

Comment: One commenter agrees that a source may not be able to achieve the mercury standard due to raw material contributions that might cause an exceedance of the emission standard in spite of a source using properly designed and operated MACT floor control technologies, including controlling the levels of metals in the hazardous waste. The commenter opposes the proposed alternative standard of 42 μg/dscm, which is expressed as a hazardous waste maximum theoretical emissions concentration. Instead, the commenter suggests that EPA maintain the alternative standard options of §§ 63.1206(b)(15) or 63.1206(b)(9).

Response: We agree with the commenter that the mercury standard should address the concern of raw material contributions causing an exceedance of the emission standard. We also agree that the proposed alternative standard of a hazardous waste maximum theoretical emissions concentration of 42 μg/dscm is an improper standard because the underlying data are unrepresentative. See discussion in Part Four, Section I.E. We note that the mercury standard promulgated today is 120 μg/dscm as a stack gas concentration limit or 120 μg/dscm as a hazardous waste maximum theoretical emission concentration feed limit. The alternative mercury standard sought by the commenter under § 63.1206(b)(15) is a limit of 120 μg/dscm as a hazardous waste maximum theoretical emission concentration, which is included in the mercury standard promulgated today. This should address the commenter's concern.

Comment: One commenter supports a mercury standard with short-term compliance limits (e.g., 12-hour rolling average feedrate limits) as opposed to the annual limit proposed.

Response: For reasons discussed in Part Four, Section I.E, we are using a different mercury dataset than at proposal. We solicited comment on a floor approach using these data in a notice[164] sent directly to certain commenters. We are adopting that approach today. The monitoring requirements of the mercury standard for lightweight aggregate kilns includes short-term averaging periods (*i.e.*, not to exceed a 12-hour rolling average), as recommended by the commenter.

2. Total Chlorine Standard

Comment: One commenter supports excluding from the floor analysis all lightweight aggregate kiln sources that lack air pollution control devices for chlorine, such as scrubbing technology. The floor analysis should simply exclude sources without back-end controls according to the commenter.

[163] We note that the commenter-submitted dataset is not amenable for use in establishing standards expressed in a thermal emission format because sufficient information on the characteristics of the hazardous waste (*e.g.*, heating value of hazardous waste) were not provided.

[164] See docket item OAR–2004–0022–0370.

Response: We disagree. For the final rule, we are using the SRE/Feed MACT floor approach which defines best performers as those sources with the best combined front-end hazardous waste feed control and back-end air pollution control efficiency. The commenter's suggestion would exclude emissions data from two of the three facilities in this source category even though valid emissions data from these sources are available (and therefore ordinarily to be used, see *CKRC*, 255 F. 3d at 867), and these sources achieved the best front-end hazardous waste feed control in the category. We note that the best feedrate controlled sources have hazardous waste thermal feed levels that are approximately one-fifth the level of the source's with back-end controls. These data describe the level of performance of sources in the category and must be evaluated in the MACT floor analysis. We also note that even if we were to implement the commenter's suggestion, the MACT floor results would not change for existing and new lightweight aggregate kilns because the total chlorine emissions data of the source with back-end air pollution controls (after considering variability) are higher than the standards promulgated today. Thus, the commenter's suggestion also would result in a standard that would be capped by the interim standard.

3. Beyond-the-Floor Standards

Comment: One commenter opposes EPA's proposed decision to promulgate a beyond-the-floor standard for dioxin/furans for existing and new lightweight aggregate kilns based on performance of activated carbon injection.

Response: For the final rule, we conclude that a beyond-the-floor standard for lightweight aggregate kilns is not warranted. The Clean Air Act requires us to consider costs and non-air quality impacts and energy requirements when considering more stringent requirements than the MACT floor. In the proposed rule, we estimated that the incremental annualized compliance costs for lightweight aggregate kilns to achieve the beyond-the-floor standard would be approximately $1.8 million and would provide an incremental reduction in dioxin/furan emissions of 1.9 grams TEQ per year (see 69 FR at 21262). At proposal we judged costs of approximately $950,000 per additional gram of dioxin/furan TEQ removed as justified, and, therefore, we proposed a beyond-the-floor standard. Since proposal, we made several changes to the dioxin/furan data base as the result of public comments. One implication of these changes is a lower national emissions estimate for dioxin/furans for lightweight aggregate kilns. We now estimate an incremental reduction in dioxin/furan emissions of 1.06 grams TEQ per year with costs ranging between $1.6 and $2.2 million per additional gram of dioxin/furan TEQ removed. Based on these costs and consideration of the non-air quality impacts and energy requirements (including more waste generated in the form of spent activated carbon, and more energy consumed), we conclude that a beyond-the-floor standard for existing and new lightweight aggregate kilns is no longer justified. For an explanation of the beyond-the-floor analysis, see Section 12.1.2 of Volume III of the Technical Support Document. We note that EPA also retains its authority under RCRA section 3005(c) (the so-called omnibus permitting authority) by which permit writers can adopt more stringent emission standards in RCRA permits if they determine that today's standards are not protective of human health and the environment.

D. Liquid Fuel Boilers

1. Mercury Standard Not Achievable When Burning Legacy Mixed Waste

Comment: One commenter states that the proposed liquid fuel boiler mercury standard is not achievable by a commercial boiler, DSSI (Diversified Scientific Services, Inc.) that burns mercury-bearing low level radioactive waste that is also a hazardous waste (so-called 'mixed waste') that was generated years ago (so-called, legacy waste). The waste is an organic liquid containing high concentrations of mercury. The boiler is equipped with a wet scrubber which provides good mercury control—93%, system removal efficiency according to the commenter.

The commenter states that the proposed liquid fuel boiler mercury standard is not achievable using feedrate control and/or additional back-end control. Waste minimization is not an option because the waste has already been generated. Further, available national treatment capacity for mercury-bearing, low-level radioactive organic hazardous waste is very limited. The only other hazardous waste combustion facility authorized to treat such waste is the Department of Energy incinerator at Oak Ridge, Tennessee. Waste treatment volumes at that facility are restricted by the mercury feed rate limitation for the incinerator. In addition, the feedrate of the waste cannot be practicably reduced because of the large back-log of waste that must be treated.

The commenter suggests that their boiler be subject to the incinerator mercury standard because the mixed waste has far higher concentrations of mercury than wastes burned by other boilers and, as a consequence, the boiler is more incinerator-like with respect to the feedrate of mercury.

Response. We agree with the commenter's suggestion. The final rule subjects this commercial liquid fuel boiler to the mercury standard for incinerators. We are classifying this source as a separate type of source for purposes of the mercury standard, because the type of mercury-containing waste it processes is dramatically different from that processed by other liquid fuel boilers, effectively making this a different type of source for purposes of a mercury standard [185]. The source thus feeds mercury at concentrations exceeding that of any boiler but at concentrations within the range processed by hazardous waste incinerators. The maximum test condition average MTEC [186] for mercury for the remaining liquid fuel boilers is 20 µg/dscm. All the liquid fuel boiler mercury data represent "normal" data, i.e., data that were not spiked. (The lack of spiked data in the liquid fuel boiler data base, in and of itself, indicates that these sources do not process mercury-bearing waste and do not need the operational flexibility gained by spiking to account for occasional higher concentration mercury wastes.) DSSI's 2002 mercury test condition average MTEC was spiked to 3500 µg/dscm. In other words, DSSI needs the operational flexibility to feed 175 times more mercury than any other liquid fuel boiler. Incinerators, on the other hand, had mercury MTECs that ranged to 110,000 µg/dscm in 2002. In fact, DSSI's mercury feed rate is the eighth highest of the 40 incinerators, including DSSI, for which we have 2002 mercury feed rate data. DSSI's process feed is thus within the upper range of mercury feed found at incinerators.

We believe it is well within the broad discretion accorded us in section 112(d)(1) to subcategorize among "types" and "classes" of sources within a category. See also *Weyerhaeuser* v. *Costle*, 590 F. 2d at 254, n. 70 (D.C. Cir. 1978) (similar raw waste characteristics justify common classification) and *Chemical Manufacturers Ass'n* v. *EPA*, 870 F. 2d 177, 253–54 and n. 340 (5th

[185] See CAA section 112 (d) (1)), authorizing EPA to distinguish among different "types * * * of sources within a category or subcategory" in developing MACT standards.

[186] Maximum theoretical emission concentration is the feedrate normalized by gas flowrate assuming zero system removal efficiency.

Cir. 1989) (same). We note that this boiler will be subject to the liquid fuel boiler standards for all HAP other than mercury (the only HAP where the issue of appropriate classification arises).

Not surprisingly, given the disparity in waste concentration levels, the DSSI boiler, even though equipped with back end control comparable to best performing commercial incinerators, achieves mercury emission levels less than an order of magnitude higher than the other hazardous waste-burning liquid fuel boilers, few of which use back end control that is effective for mercury.[167] This emission disparity likewise indicates that DSSI is treating a different type of waste than other liquid fuel boilers.

The nature of the mercury-bearing waste further confirms that it is of a different type than that processed by other hazardous waste burning liquid fuel boilers. The waste is a remediation waste, a type of waste burned routinely by commercial hazardous waste incinerators but almost never by a liquid fuel boiler.

Moreover, the waste is a legacy, mixed waste generated decades ago in support of the United States' strategic nuclear arsenal. It is not amenable to the types of control all other liquid fuel boilers use to reduce mercury emissions—some type of feed control or other minimization technique. We investigated whether any waste minimization options are feasible for this waste, and find that they are not. Normally, waste minimization is accomplished by one of three means: eliminating the use of mercury in the process to prevent it from being in the waste; pretreating the waste before burning to remove the mercury; or sending it to another facility better suited to handle the waste. Changing the production process to eliminate or reduce the mercury content of the waste is not an option because this waste has already been generated. Pretreatment is already practiced to the maximum extent feasible by settling out and separating the heavier mercury from the liquid components after thermal desorbtion. The remaining organic liquid that is burned by the mixed waste boiler contains concentrations of mercury (in organo-mercury and other organic soluble forms) that are orders of magnitude higher than burned by other liquid fuel boilers. Much of the waste cannot be feasibly pretreated to remove mercury because this legacy, mixed waste comes from many highly diverse sources. It is not practical or feasible to investigate how to remove the mercury from wastes of such varied and unique origins.

Only one other facility could potentially treat this mixed waste, DOE's incinerator at Oak Ridge, Tennessee, whose permit allows the incinerator to manage mixed waste. However, waste treatment volumes for mercury-bearing wastes at that facility are restricted by the mercury feed rate limitation in the incinerator's permit. The DOE incinerator alone cannot assure national capacity for mercury-bearing, low-level radioactive organic hazardous waste. In addition, the back-end emission controls of the mixed waste boiler are superior to those used by most incinerators, including the Oak Ridge incinerator. This boiler uses a highly effective wet scrubbing system—the principal MACT floor back-end control for mercury used by incinerators—that achieves over 93% system removal efficiency. This is superior control compared to most incinerators, including the one at Oak Ridge which achieves 75 to 85% removal.[168]

Thus, this mixed waste boiler is reasonably classified a different type of source with respect to mercury waste than other hazardous waste-burning liquid fuel boilers, based on the nature of the waste burned and confirmed by the source's mercury emissions. We note that, although the final rule subjects only the DSSI mixed waste boiler to the incinerator mercury standard, we would conclude that any other liquid fuel boiler with the same fact pattern (i.e., that met the same criteria as the DSSI boiler as discussed above) should also be subject to the incinerator mercury standard rather than the liquid fuel boiler mercury standard.

Comment. One commenter states that EPA's standards for all sources must reflect the actual emission levels achieved by the relevant best sources. If EPA wishes to subject the boiler source and incinerators to the same emission standards, however, it is entirely within the Agency's power to do so.

Response. We agree. There is no functional difference between this boiler and incinerators with respect to mercury feed rate and the type of waste processed (incinerators often treat remediation wastes). Therefore, the most relevant sources for the purposes of clarification in this case are incinerators, not liquid fuel boilers.

Accordingly, we have classified DSSI as an incinerator for purposes of a mercury standard (*i.e.*, made it subject to the mercury standard for incinerators), and have included the DSSI mercury data with the incinerator data when assessing mercury standards for incinerators.

Comment. In something of a contradiction, the same commenter argues that the mixed waste boiler source (DSSI) does not claim that it cannot meet the relevant mercury standard for liquid fuel boilers, but only that it cannot do so "using either feedrate control or MACT floor back end emission control." Floors must reflect the emission levels that the relevant best sources actually achieve, not what is achievable through the use of a chosen emission control technology. It is flatly unlawful—and essentially contemptuous of court—for EPA even to entertain the source's argument that the source should be subject to a less stringent emission standard based on the levels they believe would be achievable through the use of one chosen control technology.

The commenter also states that the source acknowledges that it could achieve a better emission level, and apparently meet the relevant standards, by using activated carbon. Their argument that doing so would generate large quantities of spent radioactive carbon does not support its attempt to avoid Clean Air Act requirements; the alternative to the source accumulating large quantities of radioactive carbon is releasing large quantities of radioactive and toxic pollution into the environment.

Response. DSSI cannot meet the liquid boiler mercury standard because it burns a unique waste that resembles wastes processed by hazardous waste incinerators (in terms of mercury concentration and provenance) and is unlike any mercury-containing waste burned by the remaining liquid fuel boilers. See the earlier discussion showing that DSSI needs the operational flexibility to feed 175 times more mercury than any other liquid fuel boiler, but that DSSI's process feed is within the upper range of mercury feed found at incinerators.

We agree that DSSI is processing different types of mercury-bearing wastes than those combusted by all other liquid fuel boilers. We believe that establishing a different mercury standard for DSSI is warranted, as it would for any source with demonstrably unique, unalterable feedstock which is

[167] USEPA, "Technical Support Document for HWC MACT Standards, Volume I: Description of Source Categories," September 2004, Section 2.4.4.

[168] For more explanation concerning mixed waste sources, limitations on the concentrations of mercury fed to these sources, and the system removal efficiency achieved, see USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of Standards," September 2005, Section 8.7.

more difficult to treat than that processed by other sources otherwise in the same category.

How DSSI chooses to comply with the incinerator mercury standard (for example, whether it must use some other type of emissions control technology) is not germane to this decision. We note that today's mercury standard for incinerators will force this source to lower its mercury emissions, since it is unlikely that it can meet today's 120 μg/dscm standard at all times without some changes in operations.

Comment. The source argues that waste minimization is not feasible for legacy mixed waste that has already been generated. It is not possible to travel back in time and unmake mixed legacy waste that already has been created. That obvious fact, however, lends no support to their argument that it should be allowed to burn mixed legacy waste with less stringent emission standards, according to one commenter.

Response. As discussed above, the mercury standard for liquid fuel boilers is not achievable for this source because it is a different type and class of boiler, based on the type of mercury-containing hazardous waste it processes. Because this boiler has mercury feed rates that resemble those of incinerators—not liquid fuel boilers—and waste minimization is not possible, subjecting the boiler to the mercury incinerator standard is a reasonable means of sub-categorization pursuant to the discretionary authority provided us by section 112(d)(1) of the Clean Air Act.

Comment. The commenter states that it is entirely possible to dispose of mixed legacy waste without burning it. Specifically, currently available technologies such as chemical oxidation and precipitation can be used to treat mixed legacy waste without burning it—and without releasing mercury into the air. Therefore, mixed legacy waste should not be burned at all; it should be disposed of safely through the application of one of these more advanced technologies.

Response. First, these wastes must be treated before they can be land disposed. RCRA sections 3004(d), (g)(5), and (m). They also must meet a standard of 0.025 mg/l measured by the Toxicity Characteristic Leaching Procedure before land disposal is permissible. 40 CFR 268.40 (standard for "all other nonwastewaters that exhibit the characteristic of toxicity for mercury").[169] EPA's technical judgment is that it would be very difficult to meet this standard by any means other than combustion. Moreover, as an organic liquid, the waste is readily amenable to treatment by combustion. In addition, combustion is a legal form of treatment for the waste. EPA did not propose to change or otherwise reconsider these treatment standards in this rulemaking, and is not doing so here. We note, however, that 40 CFR 268.42 and 268.44 provide means by which generators and treatment facilities can petition the Agency to seek different treatment standards from those specified by rule, and set out requirements for evaluating such petitions.

We note further that, because this waste is radioactive, exceptional precautions need to be taken in its handling. The nonthermal treatment alternatives mentioned by the commenter ignore the potential for radiation exposure if nonthermal treatment is used. Concerns (some of which are mentioned in DSSI's comment) include: Nonthermal treatment would (or could) increase worker exposure; desire to reduce handling of radioactive materials in general; need to avoid contaminating equipment that subsequently requires decontamination or handling as radioactive material; minimizing the generation of additional radioactive waste residues; reducing the amount of analysis of radioactive materials, which causes potential exposure, generation of radioactive wastes and equipment; wastes are varied and often of small volumes, which makes it difficult to develop routine procedures. Nonthermal treatment alternatives are also not currently available to DOE to manage the diversity and volume of DOE mixed waste. It is thus our belief that the commenter has not fully explored the implications of its position, especially with regard to radiation exposure.

If the commenter wishes to pursue this issue, EPA believes the appropriate context is through the Land Disposal Restriction mechanisms described above.

Comment. The commenter states that the source argues that feedrate control is not "practical." There appears to be no record evidence indicating what would make feedrate control impractical and why any such obstacle could not be overcome.

Response. Feedrate control to the extent necessary to achieve the liquid fuel boiler standards is not practical for reasons just discussed. This source is one of two available sources that is authorized to treat mixed waste, and the other source is not likely to have the ability to burn mercury-bearing organic waste in the future due to permit limitations and size constraints.

Comment. The commenter states that mixed legacy waste should not be burned at all. If there are truly no other facilities that are currently permitted to dispose of mixed legacy waste, such waste should be stored until a facility that can treat such waste safely—e.g., through chemical oxidation—can be permitted.

Response. The commenter's suggestion is beyond the scope of today's rulemaking. The suggestion is also illegal, since RCRA prohibits the storage of hazardous waste for extended periods. See RCRA section 3004(j); and *Edison Electric Inst.* v. *EPA*, 996 F. 2d 326, 335–37 (DC Cir. 1993) (illegal under RCRA section 3004(j) to store hazardous waste pending development of a treatment technology). EPA also notes that it retains authority under RCRA section 3005(c) (the so-called omnibus permitting authority) by which permit writers can adopt more stringent emission standards in RCRA permits if they determine that today's standards are not protective of human health and the environment.

2. Different Mercury, Semivolatile Metals, Chromium, and Total Chlorine Standards for Liquid Fuel Boilers Depending on the Heating Value of the Hazardous Waste Burned

Comment. Several commenters state that liquid fuel boilers should have an alternative concentration-based standard in addition to the thermal emission-based standard. Liquid fuel boilers are typically "captive" units that burn waste fuels generated from on-site or nearby manufacturing operations, rather than accepting wastes from a wide variety of other sources. Because they have captive fuel sources, operators generally do not have fuel blending capabilities. Liquid fuel boilers "burn what they have," and as such have very limited operational flexibility. EPA should not penalize boilers that have the same mass concentrations of metals or chlorine in their waste compared to other boilers, but which wastes have a lower heating value than wastes burned by other boilers. (The "penalty" is that emissions limits that are normalized by the heating value of the hazardous waste require that less volume of lower heating value waste can be burned compared to higher heating value fuel.) This problem is made worse by the limited data base for liquid fuel boilers,

[169] Although the legacy waste that DSSI is burning is nominally classified as a nonwastewater due to its high organic content, it is in fact a liquid matrix, meaning that the treatment standard of 0.025 μg/l is effectively a total standard.

the lack of historical data to verify that these standards are achievable over time, and having most or all of the measured emissions below detection limits. In addition, most of the mercury and semivolatile metal data EPA has in the data base were obtained during normal operations and while the source demonstrated compliance with RCRA's chromium standard—the other metals data were available only because stack method Method 29 reports data for all RCRA metals, even ones that are not at issue for the compliance test. (Sources generally elected to comply with the BIF Tier I metals emissions levels, but Tier III for chromium. Thus, the Method 29 test for chromium will give emissions results for all the metals—even those not subjected to stack testing—not just chromium.)

Response. As explained earlier in Part Four, Section V.A., EPA has selected normalizing parameters that best fit the input to the combustion device. A thermal normalizing parameter (i.e., expressing the standards in terms of amount of HAP contributed by hazardous waste per thermal content of hazardous waste) is appropriate where hazardous waste is being used in energy-recovery devices as a fuel, since the waste serves as a type of fuel. Using a thermal normalizing parameter in such instances avoids the necessity of subcategorizing based on unit size.

The commenters raise the other side of the same issue. As the commenters point out, some liquid fuel boilers burn lower Btu hazardous waste because that is the waste available to them, and those with waste that has a low heating value are, in their words, "penalized," compared to those with a high(-er) heating value. Also, since these are not commercial combustion units, they normally lack the opportunity to blend wastes of different heating values to result in as-fired high heating value fuels. If boiler standards are normalized by hazardous waste heating value, sources with lower heating value waste must either reduce the mass concentration of HAP or increase the waste fuel heating value (or increase the system removal efficiency) compared to sources with wastes having the same mass concentration of HAP but higher heating value.

Moreover, the thermal normalizing parameter is not well suited for a hazardous waste that is not burned entirely for its fuel value. In cases where the lower heating value waste is burned, the boiler is serving—at least in part—as a treatment device for the lower heating value hazardous waste. When this occurs, the better normalizing parameter is the unit's gas flow (a different means of accounting for sources of different size), where the standard is expressed as amount of HAP per volume of gas flow (the same normalizing parameter used for most of the other standards promulgated in today's final rule.)

The commenters requested that liquid fuel boilers be able to select the applicable standard (i.e., to choose between normalizing parameters) and further requested that we assess the performance of these units (for the purpose of establishing concentration-based MACT floor levels) by using the same MACT pool of best performing sources expressed on a thermal emissions basis.

Neither of these suggestions is appropriate. Choice of normalizing parameter is not a matter of election, but rather reflects an objective determination of what parameter is reasonably related to the activity conducted by the source. Moreover, the commenter's suggestion to use thermal emissions to measure best performance for a concentration-based standard does not make sense. It arbitrarily assumes that the best performers with respect to low and high heating value wastes are identical.

Instead, we have established two subcategories among the liquid fuel boilers: those burning high and those burning low heating value hazardous waste. The normalizing parameter for sources burning lower energy hazardous waste is that used for the other hazardous waste treatment devices, gas flow rate, so that the standard is expressed as concentration of HAP per volume of gas flow (a concentration-based form of the standard.) The normalizing parameter for sources burning higher energy content hazardous waste is the thermal parameter used for energy recovery devices, such as cement kilns and lightweight aggregate kilns. For the purposes of calculating MACT floors, the best performers are then drawn from those liquid fuel boilers burning lower energy hazardous waste for the lower heating value subcategory, and from those liquid fuel boilers burning higher energy hazardous waste for the higher heating value subcategory [170]. (See Section 23.2 of Volume III of the Technical Support Document for more information.)

Moreover, liquid fuel boilers are not irrevocably placed in one or the other of these subcategories. Rather, the source is subject to the standard for one or the other of these subcategories based on the as-fired heating value of the hazardous waste it burns at a given time. Thus, when the source is burning for energy recovery, then the thermal emissions-based standard would apply. When the source is burning at least in part for thermal destruction, then the concentration based standard would apply. This approach is similar to how we have addressed the issue of normalization in other rules where single sources switch back and forth among inputs which are sufficiently different to warrant separate classification. [171]

We next considered what an appropriate as-fired heating value would be for each liquid fuel boiler subcategory. Although we have used 5000 Btu/lb (the heating value of lowest grade fuels such as scrap wood) in past RCRA actions as a presumptive measure of when hazardous waste is burned for destruction (see, e.g. 48 FR 11159 (March 16, 1983)), we do not think that measure is appropriate here. We used the 5,000 Btu/lb level to delineate burning for destruction from burning for energy recovery at a time when that determination meant the difference between regulation and nonregulation. See 50 FR 49166–167 (Nov. 29, 1985). This is a different issue from choosing the most reasonable normalizing parameter for regulated units (*i.e.*, units which will be subject to a standard in either case).

Instead, we are adopting a value of 10,000 Btu/lb as the threshold for subcategorization. This is approximately the heating value of commercial liquid fossil fuels. 63 FR 33782, 33788 (June 19, 1998) It is also typical of current hazardous waste burned for energy recovery. *Id.* Moreover, EPA has used this value in its comparable fuel specification as a means of differentiating fuels from waste. See *id.* and Table 1 to 40 CFR section 261.38, showing that EPA normalizes all

[170] We also agree that liquid fuel boilers present several unique circumstances, namely: they are often unable to blend fuel and have limited operational flexibility as a result; our data base on these sources' performance is relatively small; much of our mercury and semivolatile metals data is at or near detection limits; and much of the mercury and semivolatile metals data was obtained for other purposes, namely from risk burns or as a result of Method 29 testing to demonstrate compliance with a RCRA chromium standard. While not immediately important to the topic at hand—namely that not all liquid fuel boilers burn for energy recovery—they are secondary issues that we need to closely consider to make sure we do not estimate what the best performing 12% of sources are achieving in an unreasonable manner.

[171] See NESHAP for Stationary Combustion Turbines, 40 CFR section 63.6175 (definitions of "diffusion flame gas-fired stationary combustion turbine", "diffusion flame oil-fired stationary combustion turbine", "lean pre-mix gas-fired stationary combustion turbine" and "lean premix oil-fired stationary combustion turbine").

constituent concentrations to a 10,000 Btu/lb level in its specification for differentiating fuels from wastes.

We next examined the waste fuel being burned at cement kilns and lightweight aggregate kilns, which burn hazardous waste fuels to drive the process chemistry to produce products[172], to cross-check whether 10,000 Btu/lb is a reasonable demarcation value for subcategorizing. 10,000 Btu/lb is the minimum heating value found in burn tank and test report data we have for cement kilns and lightweight aggregate kilns[173]. We believe the cement kiln and light weight aggregate kiln data confirm that this is an appropriate cutpoint, since these sources are energy recovery devices that blend hazardous wastes into a consistent, high heating value fuel for energy recovery in their manufacturing process.

We then separated the liquid fuel boiler emissions data we had into two groups, sources burning hazardous waste fuel with less than 10,000 Btu/lb and all other liquid fuel boilers, and performed separate MACT floor analyses. (See Sections 13.4, 13.6, 13.7, 13.8, and 22 of Volume III of the Technical Support Document.) We calculated concentration-based MACT standards for these sources from their respective mercury, semivolatile metals, chromium, and total chlorine data.

Liquid fuel boilers will need to determine which of the two subcategories the source belongs in at any point in time. Thus, you must determine the as-fired heating value of each batch of hazardous waste fired so that you know the heating value of the hazardous waste fired at all times.[174] If the as-fired heating value of hazardous wastes varies above and below the cutpoint (i.e., 10,000 Btu/lb) at times, you are subject to the thermal emissions standards when the heating value is not less than 10,000 Btu/lb and the mass concentration standards when the heating value is less than 10,000 Btu/lb. To avoid the administrative burden of frequently switching applicable operating requirements between the subcategories, you may elect to comply with the more stringent operating requirements that ensure compliance with the standards for both subcategories.

Comment: EPA's attempt to give actual performance two different meanings within a single floor approach is unlawful, unexplained, internally inconsistent, and arbitrary. If EPA believes that mass-based emissions constitute sources' actual performance, the best performing sources must be those with the best mass based emissions—not thermal emissions.

Response: As just explained, we agree with this comment, and have developed MACT floors independently for the two subcategories of liquid fuel boilers. Thus, we have defined two separate MACT pools based on the thermal input of the waste fuel and derived two separate and consistent MACT standards for sources when they burn solely for energy recovery, and when they do not.

We also note that a source cannot "pick and choose" the less stringent of the two standards and comply with those. The source must be in compliance with the set of standards that apply.

3. Alternative Particulate Matter Standard for Liquid Fuel Boilers

Comment: A commenter requested that EPA establish standards that allow boilers the option to comply with either a concentration-based particulate matter standard or thermal emissions-based particulate matter standard.

Response: We determined that it is appropriate to express the particulate matter emission standard as a concentration-based standard consistently across source categories and not to give boilers the option to comply with a thermal emissions-based particulate matter standard. As discussed in Part Four, Section III.D as well as the preceding section, metal and chlorine concentration-based emission standards can be biased against sources that process more hazardous waste (from an energy demand perspective), in part because the SRE/Feed methodology assesses feed control of each source when identifying the best performing sources; the ranking procedure thus favors sources with lower percentage hazardous waste firing rates (keeping all other assessment factors equal). The thermal emission standard format eliminates this firing rate bias, which amounts to a limitation on the amount of raw material (hazardous waste fuel to an energy recovery device) that may be processed, when identifying best performing sources.

The methodology we use to identify best performing sources for particulate matter emissions is not affected by the firing rate bias in the manner that metal and chlorine emissions are. This is primarily because we define best performing sources as those with the best back-end air pollution control technology; feed control is not assessed (specifically ash feed control) for raw materials, fossil fuel, or unenumerated HAP metal in the hazardous waste. The hazardous waste firing rate bias is therefore not present when we identify the best performing particulate matter sources because a source's hazardous waste firing rate is not a direct factor in the ranking procedure.

We also note that four of the nine best performing liquid fuel boilers for particulate matter are equipped with fabric filters. Particulate matter emissions from sources equipped with fabric filters are not significantly affected by ash inlet loading. This is not true for metals and chlorine, given metal and chlorine emissions from fabric filters tend to increase at increased feed rates. See Volume III of the Technical Support Document, Sections 5.3 and 7.4. We conclude that the hazardous waste firing rate issue is not a concern for these sources given their particulate matter emissions would not be significantly affected by increased hazardous waste firing rates.

4. Long-term, Annual Averaging Is Impermissible

Comment: Standards expressed as long-term limits are legally impermissible because those levels, by definition, would sometimes be greater than the average emission levels achieved by the best performing sources. Compliance also must be measured on a continuous basis, under section 302(k) of the Act. Thus, floor levels (and standards) for mercury expressed as long-term limits are illegal.

Response: The commenter maintains that the statutory command in section 112(d)(3)(A) to base floor standards for existing sources on "the average emission limitation achieved by the best performing 12 percent of * * * existing sources" precludes establishing standards expressed as long term averages because certain daily values could be higher. We do not accept this position. The statute does not state what type of "average" performance EPA must assess. Long term, i.e., annual, averaging of performance is quite evidently a type of average, and so is permissible under the statutory text. Moreover, it is reasonable to establish

[172] The Norlite light-weight aggregate kiln was not included in this analysis because they claim they are *not* burning for energy recovery. The waste Norlite burns is 4,860 Btu/lb or lower. This is indicative of a source burning solely for thermal treatment of the waste and not, at least in part, for energy recovery. See 40 CFR 266.100(d)(2)(ii).

[173] The cement kiln burn tank data and test report data shows the minimum heating values of 9,900 and 10,000 Btu/lb, respectively, for the hazardous waste. The minimum lightweight aggregate kiln heating values for hazardous waste was 10,000 Btu/lb, excluding the Norlite source.

[174] If you burn hazardous waste in more than one firing nozzle, you must determine the mass-weighted average heating value of the as-fired hazardous waste across all firing nozzles.

standards on this basis (the standards being the average of the best performing sources, expressed as a long-term average), where sufficient data exist. Indeed, since the principal health concern posed by the emitted HAP is from chronic exposure (i.e. cumulative exposure over time), long-term standards (which reduce the long-term distribution of emitted HAP) arguably would be preferable in addressing the chief risks posed by these sources' emissions.

We establish standards with long-term averaging limits whenever we use normal data to estimate long-term performance. We do this in the few instances where there are insufficient data (whether normal data or compliance test data) to estimate each source's short term emission levels (e.g., mercury and semivolatile metal standards for liquid fuel boilers).[175] One or two snapshot data based on normal operations are not likely to reflect a source's short-term operating levels in part because feed control levels can vary over time.[176] See *Mossville*, 370 F. 3d at 1242 (varying feed rates lead to different emission levels, and this variability must be encompassed within the floor standard because the standard must be met at all times). As a result, snapshot normal emissions, when averaged together, better reflect a source's long term average emissions. An emission standard based on normal data that is averaged together, but expressed as a short-term limit, would not be achievable by the best performing sources because it would not adequately account for their emissions variability. See *National Wildlife Federation* v. *EPA*, 286 F. 3d at 572–73 ("[c]ontinuous operation at or near the daily maximum would in fact result in discharges that exceed the long-term average. Likewise, setting monthly limitations at the 99th percentile would not insure that the long-term average is met"). Long-term limits better account for this variability because such limits allow sources to average their varying feed control levels over time while still assuring average emissions over this period are below the levels demonstrated by the best performing sources.

Indeed, under the commenter's approach where no averaging of intra-source data would be allowed, sources would not be in compliance with the standards during the performance tests themselves. The tests consist of the average of three data runs, so half of the emissions-weighted data points would be impermissibly higher than the average during the test used to derive today's emission standards.

EPA also does not see that section 302(f) of the Act, cited by the commenter, supports its position. That provision indicates that the emission standards EPA establishes must limit the quantity, rate, or concentration of air pollutants on a continuous basis. A standard expressed as a long-term average does so by constraining the overall distribution of emissions to meet a long-term average. Also, long term limits result in emission standards that are lower than those that otherwise would be implemented on a short-term basis. The short-term limit would have to reflect the best performing sources' short term emissions variability (i.e., the maximum amount of variability a source could experience during a single test period). *National Wildlife Federation*, 286 F. 3d at 571–73.

Comment: Other commenters argued the opposite point, that ERA has no data to show that an annual average is achievable, and EPA should establish a longer averaging period.

Response: We believe that all sources can achieve the mercury and semivolatile metals standards for liquid fuel boilers on an annual basis using some combination of MACT controls, i.e., feed control, back end control, or some combination of both. We agree that we have a small data set for these standards, but also believe that it is intuitive that a liquid fuel boiler can meet these standards on an annual basis, because one year is sufficiently more than any seasonal (i.e., several month long) production of certain items that may not be represented by the tests we have.

This informs us that an average of less than a year may not be achievable. It does not inform us that averaging of more than a year is required, since variations that occur with a year are averaged together. An annual average is sufficient for a source to determine whether an individual waste stream impacts negatively on the compliance of the liquid fuel boiler and take measures to address the issue.

5. Gas Fuel Boilers

Comment: How can a boiler burning only gaseous waste also be burning hazardous waste? Uncontained gases are not considered hazardous waste under RCRA. Why are boilers that burn only gasses part of the liquid fuel boiler subcategory?

Response: We agree with the commenter that boilers that burn gasses are unlikely to burn hazardous wastes. However, gas fuel hazardous waste boilers have existed in the past,[177] and we believe we need to define a MACT standard for them. Therefore, we included gas fuel boilers in the liquid fuel boiler subcategory for reasons cited in the proposed rule. See 69 FR at 21216.

E. General

1. Alternative to the Particulate Matter Standards

Comment: Commenters state that some incinerators are currently complying with the alternative to the particulate matter standard provision pursuant to the interim standards. See § 63.1206(b)(14). The eligibility and operating requirements for the alternative to the particulate matter standard in the Interim Standards are different than the proposed alternative to the particulate matter standard in the replacement rule. Specifically, the proposed alternative to the particulate matter standard would no longer require sources to demonstrate a 90% system removal efficiency or a minimum hazardous waste metal feed control level to be eligible for the alternative. Commenters request that EPA clarify in the final rule that the proposed alternative to the particulate matter standard supersedes the requirements in the Interim Standards.

Response: We are finalizing the alternative to the particulate matter standard for incinerators as proposed, with the exception that the alternative metal emission limitations have been revised as a result of database changes since proposal. See § 1219(e) and part three, section II.A. We considered superseding the interim standard alternative to the particulate matter standard requirements (63.1206(b)(14)) immediately (upon promulgation) by replacing it with the revised alternative

[175] Two emission standards in this rulemaking are based on normal data but are expressed as short term limits (the mercury standards for lightweight aggregate and cement kilns). However, in these instances we had enough normal data to reasonably estimate each source's maximum emissions, thus allowing us to express the standard as a short term limit. See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 11.2 and 12.2.

[176] This is not the case for floors that are based on compliance tests because sources spiked their hazardous wastes to account for variability in hazardous waste feedrate. See Part Four, Section III.C above. Normal data, however, are a snapshot of what occurred on that day and are not likely to be representative over the long term, especially for mercury and semivolatile metals for liquid fuel boilers, where these limited data were almost entirely below the analytic detection limit.

[177] For example, sources 2014 and 2015 owned by Environmental Purification Industries in Toledo, Ohio, were considered hazardous waste boilers at the time the Phase II data base was noticed in the June 27, 2000, despite the fact that these boilers burned only gasses. These boilers have since stopped burning hazardous waste.

standard provisions finalized in today's rule. Although the eligibility requirements for the alternative to the particulate matter standard finalized today are less stringent than the interim standard requirements, the metal emission limitations that are also required by the alternative finalized today are by definition equivalent to or more stringent than the metal limitations in the interim standard alternative. We therefore cannot completely supersede the interim standard provisions immediately (upon promulgation) because sources have three years to comply with more stringent standards. We are instead revising the interim standard provisions of § 63.1206(b)(14) to only reflect the revised alternative standard eligibility criteria (specifically, we have removed the requirements to achieve a given system removal efficiency and hazardous waste metal HAP feed control level).[178] These eligibility criteria revisions become effective immediately with respect to the interim standards because they are less stringent than the current requirements. Sources should modify existing Notifications of Compliance and permit requirements as necessary prior to implementing these revised procedures.

Comment: One commenter is opposed to the alternative to the particulate matter standard because it ignores the health effects/benefits that are attributable to particulate matter.

Response: Particulate matter is not defined as a hazardous air pollutant pursuant the NESHAP program. See CAA 112(b)(1). We control particulate matter as a surrogate for metal HAP. See part four, section IV.A. As a result, a particulate matter standard is not necessary in instances where metal HAP emission standards can alternatively and effectively control the nonmercury metal HAP that is intended be controlled with the surrogate particulate matter standard. The alternative to the particulate matter standard in the final rule accomplishes this. We acknowledge that particulate matter emission reductions result in health benefits. That in itself does not give EPA the authority under § 112(d)(2) to directly regulate particulate matter, however.

[178] Sources can only use § 63.1206(b)(14) for purposes of complying with the interim standards. After the compliance date for today's rule, incinerators electing to comply with the alternative to the particulate matter standard must comply with the provisions found in § 63.1219(e).

2. Assessing Risk as Part of Consideration of Nonair Environmental Impacts

Comment: Commenter states that EPA has inappropriately failed to consider emissions of persistent bioaccumulative pollutants in its beyond-the-floor analysis despite EPA's acknowledgment that these HAPs have non-air quality health and environmental impacts.

Response: EPA has taken the consistent position that considerations of risk from air emissions have no place when setting MACT standards, but rather are to be considered as part of the residual risk determination and standard-setting process made under section 112 (f) of the statute. EPA thus interprets the requirement in section 112 (d) (2) that we consider "non-air quality health and environmental impacts" as applying to the by-product outputs from utilization of the pollution control technology, such as additional amount of waste generated, and water discharged.[179] EPA's interpretation was upheld as reasonable in *Sierra Club* v. *EPA*, 353 F. 3d 976, 990 (D.C. Cir. 2004) (Roberts, J.).

VII. Health-Based Compliance Alternative for Total Chlorine

A. Authority for Health-Based Compliance Alternatives

Comment: One commenter states there is no established health threshold for either HCl or chlorine.

Response: Although EPA has not developed a formal evaluation of the potential for HCl or chlorine carcinogenicity (e.g., for IRIS), the evaluation by the International Agency for Research on Cancer stated that there was inadequate evidence for carcinogenicity in humans or experimental animals and thus concluded that HCl and chlorine are not classifiable as to their carcinogenicity to humans (Group 3 in their categorization method). Therefore, for the purposes of this rule, we have evaluated HCl and chlorine only with regard to non-cancer effects. In the absence of specific scientific evidence to the contrary, it has been our policy to classify non-carcinogenic effects as threshold effects. RfC development is the default approach for threshold (or nonlinear) effects.

Comment: One commenter states that the proposal is an inappropriate forum for bringing forward such a significant change in the way that MACT standards are established under Section 112(d) of the Clean Air Act. A precedent-setting change of the magnitude that EPA has raised should be discussed openly and carefully with all affected parties, rather than being buried in several individual proposed standards.

Response: Including health-based compliance alternatives for hazardous waste combustors does not mean that EPA will automatically provide such alternatives for other source categories. Rather, as has been the case throughout the MACT rule development process, EPA will undertake in each individual rule to determine whether it is appropriate to exercise its discretion to use its authority under CAA section 112(d)(4) in developing applicable emission standards. Stakeholders for those affected rules will have ample opportunity to comment on the Agency's proposals.

Comment: One commenter states that the proposed approach is contrary to the intent of the CAA which explicitly calls for a general reduction in HAP emissions from all major sources nationwide through the establishment of MACT standards based on technology, rather than risk, as a first step.

Response: For pollutants for which a health threshold has been established, CAA section 112(d)(4) allows the Administrator to consider such threshold level, with an ample margin of safety, to establish emission standards.

Comment: One commenter states that the proposed approach would take the national air toxics program back to the time-consuming NESHAP process that existed prior to the Clean Air Act Amendments of 1990.

Response: We disagree that allowing a health-based compliance alternative in the final rule will alter the MACT program or affect the schedule for promulgation of the remaining MACT standards. Today's rule is the last MACT rule to be promulgated, and the health-based compliance alternative did not delay promulgation of the rule.

Comment: A commenter is concerned that the proposal would remove the benefit of the "level-playing field" that would result from the proper implementation of technology-based MACT standards.

Response: Providing health-based compliance alternatives in the final rule for sources that can meet them will assure the application of a uniform set of requirements across the nation. The final rule and its criteria for demonstrating eligibility for the health-based compliance alternatives apply uniformly to all hazardous waste combustors except hydrochloric acid

[179] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs," September 2005, Section 6, for a discussion of the non-air impact that were assessed for this final rule.

production furnaces. The final rule establishes two baseline levels of emission reduction for total chlorine, one based on a traditional MACT analysis and the other based on EPA's evaluation of the health threat posed by emissions of HCl and chlorine. All hazardous waste combustor facilities must meet one of these baseline levels, and all facilities have the same opportunity to demonstrate that they can meet the alternative health-based emission standards. We also note that additional uniformity is provided by limiting the health-based compliance alternatives for incinerators, cement kilns, and lightweight aggregate kilns to the emission levels allowed by the Interim Standards.

Comment: Several commenters state that site-specific emission limits are inappropriate under section 112(d)(4) because they are not emission standards. One commenter asserts that the Agency's position that the limits are based on uniform procedures is flawed because the process allows "any scientifically-accepted, peer-reviewed risk assessment methodology for your site-specific compliance demonstration." This is not a "uniform" procedure, according to the commenter. There are a host of variables that influence the results of an accepted methodology. The commenter reasons that, without some standardization of those variables, there is no uniform or standard analysis. Each permitting authority could establish its view of appropriate variables; there would be no national consistency.

Several other commenters assert that EPA has the authority to establish an exposure-based emission limit for total chlorine. One commenter notes that one issue that often arises when considering risk-based standards is whether EPA has authority under section 112 to establish an exposure-based emission limit. The commenter states that the concern seems to be that some stakeholders construe the Act's statutory provisions as requiring uniform emission limitations at all facilities, rather than emissions that are measured at places away from the source and that vary from facility to facility. The commenter does not see any legal impediment to establishing exposure-based limits.

The commenter notes that, first, under section 112, EPA has authority to establish "emission standards." Emission standards are defined to be a requirement established by the State or the Administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis * * * to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter. EPA's alternate risk-based emission standard will limit the quantity, rate or concentration of the emissions. The commenter states that there is no requirement in the definition that specifies where the emission standard is to be measured, nor is there such a requirement anywhere in the statute.

Second, the commenter notes that EPA's proposed exposure-based limit will result in facilities establishing operating parameter limitations, or OPLs. These OPLs qualify as emission limitations because they are "operational standards" being promulgated under section 112, according to the commenter. They will be measured at the facility, not at the point of exposure. Finally, the commenter reasons that the limitations EPA is establishing are uniform. They uniformly protect the individual most exposed to emission levels no higher than a hazard index of 1.0. Consequently, the commenter believes that there is nothing in the statute that prevents the Agency from promulgating exposure-based emission standards.

Response: We agree with the commenters who believe the Agency has the authority to establish health-based compliance alternatives under a national exposure standard. In particular, we agree with the commenter that the health-based compliance alternatives are national standards since they provide a uniform and national measure of risk control, and also that the health-based compliance alternatives are "emission standards" because they limit the quantity, rate or concentration of total chlorine emissions.

Section 112(d)(4) authorizes EPA to bypass the mandate in section 112(d)(3) in appropriate circumstances. Those circumstances are present for hazardous waste combustors other than hydrochloric acid production furnaces. Section 112(d)(4) provides EPA with authority, at its discretion, to develop health-based compliance alternatives for HAP "for which a health threshold has been established," provided that the standard reflects the health threshold "with an ample margin of safety."

Both the plain language of section 112(d)(4) and the legislative history indicate that EPA has the discretion under section 112(d)(4) to develop health-based compliance alternatives for some source categories emitting threshold pollutants, and that those standards may be less stringent than the corresponding MACT standard (including floor standards) would be.[180] EPA's use of such standards is not limited to situations where every source in the category or subcategory can comply with them. As with technology-based standards, a particular source's ability to comply with a health-based standard will depend on its individual circumstances, as will what it must do to achieve compliance.

In developing health-based compliance alternatives under section 112(d)(4), EPA seeks to ensure that the concentration of the particular HAP to which an individual exposed at the upper end of the exposure distribution is exposed does not exceed the health threshold. The upper end of the exposure distribution is calculated using the "high end exposure estimate," defined as "a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure" (EPA Exposure Assessment Guidelines, 57 FR 22888, May 29, 1992). Assuring protection to persons at the upper end of the exposure distribution is consistent with the "ample margin of safety" requirement in section 112(d)(4).

We agree with the view of several commenters that section 112(d)(4) is appropriate for establishing health-based compliance alternatives for total chlorine for hazardous waste combustors other than hydrochloric acid production furnaces. Therefore, we have established such compliance alternatives for affected sources in those categories. Affected sources which believe that they can demonstrate compliance with the health-based compliance alternatives may choose to comply with those compliance alternatives in lieu of the otherwise applicable MACT-based standard.

Comment: One commenter states that the risk assessments would not provide an ample margin of safety because background exposures are not taken into account. There is no accounting for other chlorine compounds from other sources at the facility, or from other neighboring facilities. The commenter believes that there is no evidence in the section 112(f) residual risk assessments produced thus far that emissions from collocated sources will actually be pursued by EPA. The commenter also notes that the Urban Air Toxics program cannot be relied upon to address ambient background. This program,

[180] See also Legislative History at 876 (section 112(d)(4) standard may be less stringent than MACT).

required under section 112(k), was to be completed by 1999. However, the strategy has not been finalized and the small amount of activity in this area is focused on *voluntary* emission reductions rather than federal requirements. Finally, the commenter notes that control of criteria pollutants via State Implementation Plans to achieve compliance with the NAAQS is problematic. For particulate matter (PM) and ozone, new NAAQS were set in 1997 and seven years later the nonattainment designations are still being determined. The designation process will be followed by a 3 year period to prepare State Implementation Plans and several more years to carry out those plans. In the meantime, there will be high levels of PM and ozone in the air near many hazardous waste combustors in New Jersey which will exacerbate exposures to chlorine and hydrogen chloride.

Response: Total chlorine missions from collocated hazardous waste combustors must be considered in establishing health-based compliance alternatives under § 63.1215. Ambient levels of HCl or chlorine attributable to other on-site sources, as well as off-site sources, are not considered, however. As we indicated in the Residual Risk Report to Congress and in the recent residual risk rule for Coke Ovens, the Agency intends to consider facility-wide HAP emissions as part of the ample margin of safety determination for CAA section 112(f) residual risk actions. 70 FR at 19996–998 (April 15, 2005); see also, 54 FR at 38059 (Sept. 14, 1989) (benzene NESHAP).

Comment: Several commenters state that acute exposure guideline levels (AEGLs) are *once-in-a-lifetime* exposure levels. They assert that, because short term exposures at a Hazard Index greater than 1.0 may occur more than once in a lifetime, using AEGLs for the purpose of setting risk-based short-term limits for HCl and chlorine does not provide an "ample margin of safety."

Response: To assess acute exposure, we proposed to use acute exposure guideline levels for 1-hour exposures (AEGL–1) as health thresholds. We have investigated commenters' concerns, however, and conclude that AEGLs are not likely to be protective of human health because individuals may be subject to multiple acute exposures at a Hazard Index greater than 1.0 from hazardous waste combustors. Consequently, we use acute Reference Exposure Levels (aRELs) rather than acute exposure guideline levels (AEGLs) as acute exposure thresholds for the final rule. See also Part Two, Section IX.D above. Acute RELs are health thresholds below which there would be no adverse health effects while AEGL–1 values are health thresholds below which there may be mild adverse effects.

Acute exposures are relevant (in addition to chronic exposures) and the acute exposure hazard index of 1.0 could be exceeded multiple times over an individual's lifetime. Although we concluded at proposal that the chronic exposure Hazard Index would always be higher than the acute exposure Hazard Index, and thus would be the basis for the total chlorine emission rate limit, this conclusion relates to acute versus chronic exposure to a constant, maximum average emission rate of total chlorine from a hazardous waste combustor. See 69 FR at 21300. We explained that acute exposure must nonetheless be considered when establishing operating requirements to ensure that short-term emissions do not result in an acute exposure Hazard Index of greater than 1.0. This is because total chlorine and chloride feedrates to a hazardous waste combustor (e.g., commercial incinerator) can vary substantially over time. Although a source may remain in compliance with a feedrate limit with a long-term averaging period (e.g., 12-hour, monthly, or annual) based on the chronic Hazard Index, the source could feed chlorine during short periods of time that substantially exceed the long-term feedrate limit. This could result potentially in emissions that exceed the one-hour (i.e., acute exposure) Hazard Index. Consequently, we discussed at proposal the need to establish both short-term and long-term total chlorine and chloride feedrate limits to ensure that neither the chronic exposure nor the acute exposure Hazard Index exceeds 1.0.[181]

We conclude that 1-hour Reference Exposure Levels (aRELs) are a more appropriate health threshold metric than AEGL–1 values for hazardous waste combustors given that the acute Hazard Index limit of 1.0 may be exceeded multiple times over an individual's lifetime, albeit resulting from uncontrollable factors. The California Office of Health Hazard Assessment has developed acute health threshold levels that are intended to be protective for greater than once in a lifetime exposures. The acute exposure levels are called acute Reference Exposure Levels and are available at *http://www.oehha.ca.gov/air/acute_rels/acuterel.html.*

The 1-hour REL values for hydrogen chloride and chlorine are 2.1 mg/m^3 and 0.21 mg/m^3, respectively. The AEGL–1 values for hydrogen chloride and chlorine are 2.7 mg/m^3 and 1.4 mg/m^3, respectively. Although there is little difference between the 1-hour REL and AEGL–1 values for hydrogen chloride, the 1-hour REL for chlorine is substantially lower than the AEGL–1 value.

In summary, we believe that aRELs are a more appropriate health threshold metric than AEGL–1 values for establishing health-based compliance alternatives for hazardous waste combustors because aRELs are "no adverse effect" threshold levels that are intended to be protective for multiple exposures.

Comment: One commenter states that the health-based compliance alternative is unlawful because the proposal does not address ecological risks that may result from uncontrolled HAP emissions, including risks posed to those areas where few people currently live, but sensitive habitats exist.

Response: An ecological assessment is normally required under CAA section 112(d)(4) to assess the presence or absence of "adverse environmental effects" as that term is defined in CAA section 112(a)(7). To identify potential multimedia and/or environmental concerns, EPA has identified HAP with significant potential to persist in the environment and to bioaccumulate. This list does not include hydrogen chloride or chlorine.

We also note that health-based total chlorine emission limits for incinerators, cement kilns, and lightweight aggregate kilns cannot be higher than the current Interim Standards. See § 63.1215(b)(7). Thus, the ecological risk from total chlorine emissions from these sources will not be increased under the health-based limits.

In addition, we note that only 2 of 12 solid fuel boilers have total chlorine emissions higher than 180 ppmv, and only 1 liquid fuel boiler has emissions higher than 170 ppmv. Thus, boilers generally have low total chlorine emissions which would minimize ecological risk.

Consequently, we do not believe that emissions of hydrogen chloride or chlorine from hazardous waste boilers will pose a significant risk to the environment, and facilities attempting to comply with the health-based

[181] Note that we conclude for the final rule that most sources are not likely to exceed the acute Hazard Index because they will establish a 12-hour rolling average chlorine feedrate limit and their chlorine feedrates are not likely to vary substantially over that averaging period. Thus, we believe that most sources will not be required to establish an hourly rolling average chlorine feedrate limit. The owner/operator must determine whether the hourly rolling average chloride feedrate limit can be waived under § 63.1215(d).

alternatives for these HAP are not required to perform an ecological assessment.

B. Implementation of the Health-Based Standards

Comment: Several commenters are concerned that the health-based compliance alternative will place an intensive resource demand on state and local agencies to review and approve facilities' eligibility demonstrations, and State and local agencies may not have adequate expertise to review and approve the demonstrations. One commenter states that permitting authorities do not have the expertise to review eligibility demonstrations that are based on procedures other than those included in EPA's Reference Library, as would be allowed. The commenter also states that, if the health-based compliance alternative is promulgated, EPA should establish one standard method for the analyses so there is consistency nationwide. If EPA offers more than one method, EPA should do all of the risk assessment reviews, instead of passing the responsibility, without clear direction, to the permitting authorities, according to the commenter.

Response: The health-based compliance alternatives for total chlorine that EPA has adopted in the final rule should not impose significant resource burdens on states. The required compliance demonstration methodology is structured in such a way as to avoid the need for states to have significant expertise in risk assessment methodology. We have considered the commenters' concerns in developing the criteria defining eligibility for these compliance alternatives, and the approach that is included in the final rule provides clear, flexible requirements and enforceable compliance parameters. The final rule provides two ways that a facility may demonstrate eligibility for complying with the health-based compliance alternatives. First, look-up tables allow facilities to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause the Hazard Index limit to be exceeded. Second, if a facility cannot demonstrate eligibility using a look-up table, a modeling approach can be followed. The final rule presents the criteria for performing this modeling.

Only a portion of hazardous waste combustors will submit eligibility demonstrations for the health-based compliance alternatives. Of these sources, several should be able to demonstrate eligibility based on simple analyses—using the look-up tables. However, some facilities will require more detailed modeling. The criteria for demonstrating eligibility for the compliance alternatives are clearly defined in the final rule. Moreover, under authority of RCRA section 3005(c)(3), multi-pathway risk assessments will typically have already been completed for many hazardous waste combustors to document that emissions of toxic compounds, including total chlorine, do not pose a hazard to human health and the environment. Thus, state permitting officials have already reviewed and approved detailed modeling studies for many hazardous waste combustors. The results of these studies could be applied to the eligibility demonstration required by this final rule.

Because these requirements are clearly defined, 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 programs, and states would not have to overhaul existing permitting programs.

Finally, with respect to the burden associated with ongoing assurance that facilities that opt to do so continue to comply with the health-based compliance alternatives, the burden to states will be minimal. In accordance with the provisions of title V of the CAA and part 70 of 40 CFR (collectively "title V"), the owner or operator of any affected source opting to comply with the health-based compliance alternatives is required to certify compliance with those standards every five years on the anniversary of the comprehensive performance test. In addition, if the facility has reason to know of changes over which the facility does not have control, and these changes could decrease the allowable HCl-equivalent emission rate limit, the facility must submit a revised eligibility demonstration. Further, before changing key parameters that may impact an affected source's ability to continue to meet the health-based emission standards, the source is required to evaluate its ability to continue to comply with the health-based compliance alternatives and submit documentation to the permitting authority supporting continued eligibility for the compliance alternative. Thus, compliance requirements are largely self-implementing and the burden on states will be minimal.

Comment: One commenter suggests that the look-up tables would have more utility if EPA developed tables for each source category to ensure the HCl-equivalent emission rate limits reflected stack parameters representative of each source category. Similarly, another commenter notes that a look-up table designed to be applicable to all hazardous waste combustors is very conservative and will have limited utility. This commenter does not suggest that EPA develop look-up tables for each class of hazardous waste combustors, however. Rather, the commenter suggests that since look-up tables have already been developed for industrial boilers that do not burn hazardous waste[182] hazardous waste combustors should be allowed to use those look-up tables instead of the look-up tables proposed for hazardous waste combustors.

Response: We noted at proposal that the emission rates provided in the look-up table for hazardous waste combustors are more stringent than those promulgated for solid fuel industrial boilers that do not burn hazardous waste. This is because the key parameters used by the SCREEN3 atmospheric dispersion model (i.e., stack diameter, stack exit gas velocity, and stack exit gas temperature) to predict the normalized air concentrations that EPA used to establish HCl-equivalent emission rates for solid fuel industrial boilers that do not burn hazardous waste are substantially different for hazardous waste combustors. Thus, the maximum HCl-equivalent emission rates for hazardous waste combustors would generally be lower than those EPA established for solid fuel industrial boilers that do not burn hazardous waste.

Nonetheless, we agree with the commenter's concerns that the look-up tables would have more utility if they better reflected the range of stack properties representative of hazardous waste combustors. Accordingly, we examined the stack parameters for all hazardous waste-burning sources in our data base (except for hydrochloric acid production furnaces that are not eligible for the health-based emission standards). After analyzing the relationships among the various stack parameters (i.e., stack height, stack diameter, stack gas exhaust volume, and exit temperature), we concluded that the look-up table should be modified to treat both stack diameter and stack height as independent variables rather than relying on stack height alone.

We developed separate tables for short-term (i.e., 1-hour) HCl-equivalent

[182] See Table 2 of Appendix A to Subpart DDDDD, Part 63.

emissions limits to protect against acute health effects and long-term (i.e., annual) emission limits to protect against chronic effects from exposures to chlorine and hydrogen chloride. As discussed above, we used the acute Reference Exposure Level (aREL) developed by Cal-EPA as the benchmark for acute health effects. We used EPA's Reference Concentrations (RfC) as the benchmark for chronic health effects from exposures occurring over a lifetime.

Emission limits in the look-up table are expressed in terms of HCl-toxicity equivalent emission rates (lbs/hr). To convert your total chlorine emission rate (lb/hr) to an HCl-equivalent emission rate, you must adjust your chlorine emission rate by a multiplicative factor representing the ratio of the HCl health risk benchmark to the chlorine health risk benchmark. For 1-hour average HCl-equivalent emission rates, the ratio is the ratio of the aREL for HCl (2100 micrograms per cubic meter) to the aREL for chlorine (210 micrograms per cubic meter), or a factor of 10.[183] For annual average emissions, the ratio is the ratio of the RfC for HCl (20 micrograms per cubic meter) to the RfC of chlorine (0.2 micrograms per cubic meter), or a factor of 100. See § 63.1215(b).

We used the SCREEN3 air dispersion model to develop the emission limits in the look-up tables. SCREEN3 is a screening model that estimates air concentrations under a wide variety of meteorological conditions in order to identify the meteorological conditions under which the highest ambient air concentrations are likely to occur and what the magnitude of the ambient air concentrations are likely to be. The SCREEN3 model implements the procedures in EPA's "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised" (EPA–454/R–92–019, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, October 1992). Included are options for estimating ambient air concentrations in simple elevated terrain and complex terrain. Simple elevated terrain refers to terrain elevations below stack top. We did not use the complex terrain option in the development of the look-up tables because of the site-specific nature of plume impacts in areas of complex terrain. Therefore, the look-up tables cannot be used in areas of complex terrain (which we define generally as terrain that rises above stack top). Sources located in complex terrain (i.e., as a practical matter, sources other than those that are located in flat or simple elevated terrain as discussed below and thus cannot use the look-up tables) must use site-specific modeling procedures to establish HCl-equivalent emission rates.

We looked at two generic terrain scenarios for purposes of the look-up table. In one we assumed the terrain rises at a rate of 5 meters for every 100 meter run (i.e., a slope of 5 percent) and that terrain is "chopped off" above stack top (following the convention for such analyses in simple elevated terrain). In the other we assumed flat terrain. As can be seen from the tables in § 63.1215, the emission limits with flat terrain are significantly higher than those with simple elevated terrain. To reasonably ensure that the emission limits are not substantially over-stated (e.g., by a factor of 2), the simple elevated terrain table must be used whenever terrain rises to an elevation of one half (½) the stack height within a distance of 50 stack heights.

For both the simple elevated terrain and flat terrain scenarios, we performed model runs for urban and rural dispersion conditions, with and without building downwash. We selected the highest (ambient air concentration) values at each distance from among the four runs for each of the terrain scenarios.

As can be seen from the tables in § 63.1215, the HCl-equivalent emission rate limits range from 0.13 pounds per hour on an annual average (for a 0.3 meter diameter stack that is 5 meters tall that lies within 30 meters of the property boundary) to 340 pounds per hour (for a 4.0 meter diameter stack that is 100 meters tall that lies 5000 meters from the property boundary) when located in simple elevated terrain. In flat terrain, the range is from 0.37 to 1100 pounds per hour on an annual average. This contrasts with the look-up table at proposal, where the comparable range was from 0.0612 pounds per hour (for a 5 meter stack height at a distance of 30 meters) to a maximum of 18 pounds per hour (for stack heights of 50 meters or greater, at distances of 500 meters or greater).

If you have more than one hazardous waste combustor on site, the sum of the ratios for all combustors of the HCl-equivalent emission rate to the HCl-equivalent emission rate limit cannot exceed 1.0. See § 63.1215 (c)(3)(v). This will ensure that the Hazard Index of 1.0 is not exceeded considering emissions from all on-site combustors.

Comment: Several commenters state that facilities should be allowed to establish an averaging period for the total chlorine and chloride feedrate limit that is shorter than an annual rolling average. Commenters are referring to the feedrate limit to ensure compliance with the annual average HCl-equivalent emission rate limit. Commenters are concerned with the data handling issues that could arise from calculating, recording, and reporting an annual rolling average feedrate level that is updated hourly, and note that a shorter averaging period would make the limit more stringent.

Response: We agree with commenters, and conclude, moreover, that a 12-hour averaging period rather than an annual averaging period will be imposed on the vast majority of sources as a practical matter. This is because sources must establish a limit on the feedrate of total chlorine and chloride to ensure compliance with the semivolatile metals emission standards. See § 63.1209(n). The feedrate limit for total chlorine and chloride is established under § 63.1209(n) as the average of the hourly rolling averages for each test run, and the averaging period is 12 hours. Thus, the averaging period for the feedrate limit for semivolatile metals—12-hour rolling average updated hourly—trumps the annual rolling average averaging period that would otherwise apply here.[184]

Sources may also demonstrate compliance with the semivolatile metals standard by assuming all semivolatile metals in feedstreams are emitted. See § 63.1207(m)(2). Sources that do not have emission control equipment, such as most liquid fuel boilers, are particularly likely to use this approach. Under this approach, there is no concern regarding increased volatility of metals as chlorine feedrates increase, and such sources are not subject to a feedrate limit for chlorine for compliance assurance with the semivolatile metal standard. These sources may establish an averaging period for the feedrate of total chlorine and chloride for compliance with the health-based compliance alternative for total chlorine of not to exceed one year.[185]

[183] We note that this factor of 10 ratio of the aRELs of HCl to chlorine is based on current aREL values and is subject to change. You must use current aREL (and RfC) values when you conduct your eligibility demonstration. See § 63.1215(b)(4 and 5).

[184] To also ensure compliance with the annual average HCl-equivalent emission rate limit, however, the numerical value of the feedrate limit established during the semivolatile metals performance test cannot exceed the value calculated as the annual average HCl-equivalent emission rate limit divided by [1 − system removal efficiency], where you demonstrate the total chlorine system removal efficiency during the comprehensive performance test.

[185] We note that we have also applied this "not-to-exceed" approach to establishing the duration of

Comment: Several commenters offered suggestions on whether a short-term feedrate limit was needed for total chlorine and chloride (*i.e.*, chlorine) as EPA suggested, and if EPA continues to consider it necessary, how the limit should be established.

One commenter states that it is not necessary to set short-term limits for chlorine feedrates. If EPA concludes that short-term limits are necessary, however, the commenter recommended these options: (1) Cap the feedrate at a level that is extrapolated up to the feedrate associated with Interim Standard for incinerators; (2) if the facility uses the site-specific option to set emission limits, the dispersion models can easily be used to set a 1-hour (or longer) limit; and (3) if the facility uses the look up table (which at proposal provided only annual average HCl-equivalent emission rate limits), a short-term limit can be set based on a multiplier of the annual limit'10 times the annual limit as recommended by documents in EPA's Air Toxics Risk Assessment Reference Library.

Another commenter states that, if EPA were to promulgate a short-term feedrate limit, the EPA-endorsed factor of 0.08 employed to translate maximum hourly concentrations to annual concentrations could be used to identify the maximum hourly feedrate limit.

Finally, another commenter states that extrapolation of the chlorine feedrate (from the level during the comprehensive performance test when the source documents compliance with the annual average HCl-equivalent emission rate limit) should be allowed to 100% of the 1-hour average HCl-equivalent emission rate limit because numerous safety factors have already been included in the health risk threshold values, look-up tables, and modeling demonstration.

Response: At proposal, we explained that sources would establish an annual average feedrate limit on chlorine as the feedrate level during the comprehensive performance test demonstrating compliance with the annual average HCl-equivalent emission rate limit. [186] Only long-term exposures—maximum annual average exposures—need be considered when confirming that the chlorine feedrate during the comprehensive performance test (i.e., average of the hourly rolling averages for each run) is acceptable because the annual exposure Hazard Index limit (i.e., not to exceed 1.0) would always be exceeded before the 1-hour Hazard Index limit (i.e., not to exceed 1.0). Thus, the feedrate limit associated with annual exposures would always be more stringent than the feedrate limit associated with 1-hour exposures. See 69 FR at 21299.

We further explained at proposal, however, the need to establish a short-term feedrate limit for chlorine to ensure that the 1-hour HCl-equivalent emission rate did not exceed the 1-hour average HCl-equivalent emission rate limit due to variability in the chlorine feedrate during the annual averaging period for the feedrate limit. We requested comment on approaches to establish this 1-hour chlorine feedrate limit, including extrapolating feedrates to 100% of the 1-hour average HCl-equivalent emission rate limit. See 69 FR at 21304.

In the final rule we have corrected and refined these procedures. The final rule requires you to establish a long-term chlorine feedrate limit to maintain compliance with the annual average HCl-equivalent emission rate limit as either: (1) The chlorine feedrate during the comprehensive performance test if you demonstrate compliance with the semivolatile metals emission standard during the test (see § 63.1209(o)); or (2) if you comply with the semivolatile metals emission standard under § 63.1207(m)(2) by assuming all metals in the feed to the combustor are emitted, the annual average HCl-equivalent emission rate limit divided by [1 − system removal efficiency] where you demonstrate the system removal efficiency during the comprehensive performance test. See discussion in Part Two, Section IX.H, of this preamble. If you establish the chlorine feedrate limit based on the feedrate during the performance test to demonstrate compliance with the semivolatile metals emission standard, the averaging period for the feedrate limit is a 12-hour rolling average. If you establish the chlorine feedrate limit based on the system removal efficiency during the performance test, the averaging period is up to an annual rolling average.

The final rule also requires you to establish an hourly rolling average chlorine feedrate limit if you determine under § 63.1215(d)(3) that the 1-hour average HCl-equivalent emission rate limit may be exceeded. That feedrate limit is established as the 1-hour HCl-equivalent emission rate limit divided by [1 − system removal efficiency].

Under § 63.1215(d)(3), you must establish an hourly rolling average chlorine feedrate limit unless you determine considering specified criteria that your chlorine feedrates will not increase over the averaging period for the long-term chlorine feedrate limit (*i.e.*, 12-hour rolling average or (up to) annual rolling average) to a level that may result in an exceedance of the 1-hour average HCl-equivalent emission rate limit. The criteria that you must consider are: (1) The ratio of the 1-hour average HCl-equivalent emission rate based on the total chlorine emission rate you select for each combustor to the 1-hour average HCl-equivalent emission rate limit for the combustor; and (2) the potential for the source to vary chlorine feedrates substantially over the averaging period for the long-term chlorine feedrate limit.

For example, if a source's primary chlorine-bearing feedstreams have a relatively constant chlorine concentration over the averaging period for the chlorine feedrate limit to ensure compliance with the annual average HCl-equivalent emission rate limit (*e.g.*, generally 12-hours), as may be the case for commercial sources feeding from large burn tanks or on-site sources where chlorine levels in wastes are fairly constant, you may conclude that there is little probability that 1-hour feedrates would vary substantially over the averaging period. Thus, a 1-hour rolling average chlorine feedrate limit may not be warranted. Even if chlorine feedrates could vary substantially over the long-term feedrate averaging period, however, an hourly rolling average feedrate limit still may not be warranted if the source's 1-hour average HCl-equivalent emission rate is well below the 1-hour HCl-equivalent emission rate limit. See Part Two, Section IX.H, of this preamble for a discussion of the relationship between emission rates, emission rate limits, and feedrate limits.

We disagree with the commenter who states that short-term chlorine feedrate limits are not necessary. The 1-hour average HCl-equivalent emission rate limit could potentially be exceeded for sources with highly variable chlorine feedrates and where the 1-hour HCl-equivalent emission rate is relatively high compared to the 1-hour HCl-equivalent emission rate limit. The 1-hour average HCl-equivalent emission rate limit could be exceeded even though the source remains in compliance with the annual average HCl-equivalent emission rate limit (and,

averaging periods for the limits on all operating parameters established under § 63.1209. See new § 63.1209(r) and USEPA, "Final Technical Support Document for HWC MACT Standards, Volume IV: Compliance with HWC MACT Standards, September 2005, Section 2.4.6.

[186] We discussed at proposal that the feedrate limit to ensure compliance with the long-term Hazard Index limit of not to exceed 1.0 would be the average of the hourly rolling averages for each test run, with compliance based on an annual average. Note that, under the final rule however, the long-term chlorine feedrate limit is established as the annual average HCl-equivalent emission rate limit divided by [1 − system removal efficiency]. See § 63.1215(g)(2).

moreover, the 12-hour rolling average or (up to) annual rolling average chlorine feedrate limit).

We agree with commenters that suggest that the hourly rolling average chlorine feedrate limit should be extrapolated from performance test feedrates up to 100% of the 1-hour average HCl-equivalent emission rate limit. The final rule requires you to establish the hourly rolling average feedrate limit (if a limit is required under § 63.1215(d)(3)) as the 1-hour HCl-equivalent emission rate limit divided by [1 − system removal efficiency]. Establishing the hourly rolling average feedrate in this manner ensures that the 1-hour HCl-equivalent emission rate limit is not exceeded, and thus that the aREL-based Hazard Index of 1.0 is not exceeded.

We also agree in principle with commenters that suggest that the hourly rolling average feedrate limit be based on the 1-hour average HCl-equivalent emission rate limit which is based on emissions modeling. These commenters suggested that we use a multiplier of 10 or 12.5 (*i.e.*, 1/0.08) to project 1-hour average HCl-equivalent emission rate limits from the annual average HCl-equivalent emission rate limits. Rather than use these approaches to project 1-hour average emissions from annual average emissions, however, we use emissions modeling to develop look-up tables for both 1-hour average HCl-equivalent emission rate limits and annual average HCl-equivalent emission rate limits. For sources that use site-specific risk assessment to demonstrate eligibility, they will use the same models to estimate 1-hour average maximum ambient concentrations. Thus, the final rule uses modeling to establish directly 1-hour average HCl-equivalent emission rate limits rather than approximating those limits from annual average HCl-equivalent emission rate limits as commenters suggest. In summary, the final rule requires you to establish the 1-hour average HCl-equivalent emission rate limit by either using Tables 3 or 4 in § 63.1215 to look-up the limit, or conducting a site-specific risk analysis. Under the site-specific risk analysis option, the 1-hour average HCl-equivalent emission rate limit would be the highest emission rate that the risk assessment estimates would result in an aREL-based Hazard Index not exceeding 1.0 at any off-site receptor location.

We do not agree that the short-term feedrate limit should be capped at the level corresponding to the Interim Standards for incinerators, cement kilns, and lightweight aggregate kilns. The final rule caps the total chlorine emission rate and the annual average HCl-equivalent emission rate limit at the level equivalent to the Interim Standard for total chlorine. Thus, the long-term chlorine feedrate limit (12-hour rolling average or (up to) an annual rolling average) is capped at the level corresponding to the Interim Standards for incinerators, cement kilns, and lightweight aggregate kilns. The hourly rolling average feedrate limit to maintain compliance with the 1-hour average HCl-equivalent emission rate limit, however, can exceed the numerical value of the long-term chlorine feedrate limit because the 1-hour average HCl-equivalent emission rate limit is substantially higher than the annual average HCl-equivalent emission rate limit. Thus, capping at the interim standard level is inappropriate unless the interim standard were somehow re-expressed as a 1-hour limit.

Comment: Many commenters state that requiring prior approval of the eligibility demonstration would be unworkable. Commenters are concerned that the permitting authority may not approve the demonstration prior to the compliance date even though the source has submitted complete and accurate information and has responded to any requests for additional information in good faith. Commenters are also concerned that the permitting authority may disapprove the demonstration too late for the source to take other measures to comply with the total chlorine MACT standard. Once commenter recommends the following alternative approach: (1) If the regulatory agency does not act on a risk demonstration within the 6-month period, it is conditionally deemed approved; and (2) if a risk demonstration is disapproved, the source would have to comply with the MACT emission standards no later than three years after notice of disapproval and, in the interim, sources would comply with current emission limits for total chlorine.

Another commenter suggests that, if the permitting authority has neither approved nor disapproved the eligibility demonstration by the compliance date, the source may begin complying on the compliance date with the alternative health-based limits specified in the eligibility demonstration.

Finally, another commenter states that facilities should be granted a three-year extension of the compliance date if the Agency denies a good-faith eligibility demonstration. The commenter is concerned that sources will not have time to install additional controls or take other measures after a denial is issued but prior to the compliance date.

Response: We agree with commenters that requiring prior approval of the eligibility demonstration may be unworkable for the reasons commenters suggest. We also agree with commenters that sources who make a good-faith eligibility demonstration but whose demonstration is denied by the permitting authority may need additional time to install controls or take other measures to comply with the MACT emission standards.

Accordingly, the final rule does not require prior approval of the eligibility demonstration for existing sources. 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 nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits and associated chlorine feedrate limits you present in your eligibility demonstration.

In addition, the final rule states that the 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 comply with the total chlorine MACT standards. The permitting authority may extend the compliance date of the total chlorine MACT standards 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 total chlorine MACT standards.

Comment: One commenter states that proposed § 63.1215(f)(1)(A) should have required sources to conduct a new comprehensive performance test only if there are changes that would decrease the HCl-equivalent emission rate limit below the HCl-equivalent emission rate demonstrated during the comprehensive performance test. Similarly, the commenter suggests that a retest should not be required if a change increases the HCl-equivalent emission rate limit but the source elects to maintain the current feedrate limit.

Another commenter states that the Agency should clarify that if there are any changes that are not controlled by the facility owner/operator, and the

facility is required to change its design or operation to lower chlorine emissions to address the changes, the facility may request up to three years to make such changes.

Response: We generally agree with the commenters and have revised the rule as follows: (1) A new comprehensive performance test is required to reestablish the system removal efficiency for total chlorine only if you change the design, operation, or maintenance of the source in a manner that may decrease the system removal efficiency (e.g., the emission control system is modified in a manner than may decrease total chlorine removal efficiency); and (2) if you use the site-specific risk analysis option for your eligibility demonstration and changes beyond your control (e.g., off-site receptors newly residing or congregating at locations exposed to higher ambient levels than originally estimated) dictate a lower HCl-equivalent emission rate limit and you must make changes to the design, operation, or maintenance of the combustor or related systems to comply with the lower limit, you may request that the permitting authority grant you additional time to make those changes as quickly as practicable.

Comment: Several commenters state that the proposed approach for calculating chlorine emissions to address the potential bias using Method 26/26A attributable to high bromine or sulfur levels in feedstreams is not statistically valid. They indicate that the approach could lead to collection of total chlorine, hydrogen chloride and chlorine data that are contradictory and difficult to apply in a compliance situation. One commenter suggests that using Method 26/26A results for sources with bromine and sulfur dioxide, while recognizing that there is bias in the sampling method, will result in a valid compliance approach.

Response: We agree with commenters that the proposed approach to avoid the bias when feedstreams contain high levels of bromine or sulfur (bromine/chlorine ratio in feedstreams of greater than 5 percent, or sulfur/chlorine ratio in feedstreams of greater than 50 percent) during the comprehensive performance test may be problematic. The proposed approach would have required you to use Method 320/321 or ASTM D 6735–01 for hydrogen chloride measurements, to use Method 26/26A for total chlorine (i.e., hydrogen chloride and chlorine combined) measurements, and to calculate chlorine levels by difference. The potential problem is that chlorine emission levels are generally a very small portion of total chlorine measurements, and variability in the hydrogen chloride or total chlorine measurements due to method imprecision or other factors could result in inaccurate estimations of chlorine emission levels.

We do not agree, however, that using Method 26/26A for chlorine measurements for combustors feeding high levels of bromine or sulfur is acceptable–the chlorine measurement may be biased low. Chlorine emission levels must be determined as accurately as possible given that the long-term health threshold for chlorine is 100 times the threshold for HCl, and the short-term health threshold for chlorine is 10 times the threshold for HCl (i.e., using current RfCs and aRELs). To ensure that a conservative estimate of the chlorine emission rate is used to establish the alternative health-based emission limits and to address commenters' concerns, the final rule requires that you determine chlorine emissions to be the higher of: (1) The chlorine value measured by Method 26/26A, or an equivalent method; or (2) the chlorine value calculated by difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26A, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method.

Comment: Several commenters state the procedures for calculating HCl-equivalent emission rates cannot merely reference an outside source, such as a Web site, unless that reference specifies that the contents of the source are as of a date certain. To specify use of health threshold values that can change over time provides inadequate opportunity for notice and comment on the regulation.

Response: We believe that the best available sources of health effects information should be used for risk or hazard determinations. To assist us in identifying the most scientifically appropriate toxicity values for our analyses and decisions, the Web site to be used for RfCs identifies pertinent toxicity values using a default hierarchy of sources, with EPA's Integrated Risk Information System (IRIS) being the preferred source. The IRIS process contains internal and external peer review steps and IRIS toxicity values represent EPA consensus values. When adequate toxicity information is not available in IRIS, however, we consult other sources in a default hierarchy that recognizes the desirability of these qualities in ensuring that we have consistent and scientifically sound assessments. Furthermore, where the IRIS assessment substantially lags the current scientific knowledge, we have committed to consider alternative credible and readily available assessments (e.g., the acute Relative Exposure Levels established by the California Office of Health Hazard Assessment). For our use, these alternatives need to be grounded in publicly available, peer-reviewed information. We agree with the commenter that the issue of changing toxicity values is a general challenge in setting health-based regulations. However, we are committed to establishing such regulations that reflect current scientific understanding, to the extent feasible.

C. National Health-Based Standards for Cement Kilns

Comment: One commenter states that our suggestion at proposal that it would be appropriate to establish a single national emission rate type standard applicable to all cement kilns based on the worst-case scenario cement kiln is unduly burdensome as it discounts the benefits of improved dispersion realized by facilities that have invested in taller stacks that minimize downwash effects. The commenter recommends a dual limit for cement kilns such that the HCl equivalent emission rate is limited to both: (1) A 130 ppmv total chlorine emission standard (the Interim Standard) coupled with a chlorine feedrate limit based on a 12-hour rolling average; and (2) a Hazard Index of 1.0.

Response: We have decided not to include a separate national standard for cement kilns in the final rule for several reasons: (1) We have no assurance that the Cl_2/HCl volumetric ratio exhibited during the most recent compliance test, and that was the basis for the commenter documenting in a study[187] that the Hazard Index of 1.0[188] was not exceeded, is representative of ratios in the past or future; (2) the commenter's recommended emission standard for cement kilns—130 ppmv total chlorine emission limit and a Hazard Index of 1.0—is equivalent to the requirements under § 63.1215 applicable to other hazardous waste combustors to establish site-specific emission limits; (3) the MACT standard for total chlorine for cement kilns is 120 ppmv such that the health-based standard that the commenter recommends—130 ppmv,

[187] See Trinity Consultants, "Analysis of HCl/Cl2 Emissions from Cement Kilns for 112(d)(4) Consideration in the HWC MACT Replacement Standards," September 17, 2003.

[188] The HCl/Cl_2 ratio for the total chlorine measurement is important because the current RfC for chlorine is 0.2 $\mu g/m^3$ while the current RfC for HCl is 20 $\mu g/m^3$. Thus, when calculating HCl-equivalent emission rate limits, chlorine emissions are currently multiplied by a factor of 100.

the Interim Standard—would provide little compliance relief; and (4) even though the final rule does not provide a separate national health-based standard for cement kilns, cement kilns may apply for the health-based compliance alternatives applicable to other hazardous waste combustors.

Prior to publication of the proposed rule, the commenter submitted results of site-specific risk assessments for all cement kiln facilities showing that both the long-term and short term Hazard Index of 1.0 would not be exceeded at any facility assuming: (1) Sources emit total chlorine at the Interim Standard level of 130 ppmv; and (2) total chlorine emissions are apportioned between HCl and chlorine according to the apportionment exhibited during the most recent compliance test.

At proposal, we requested comment on how to ensure that the 130 ppmv concentration-based standard would ensure that total chlorine emission rates (lb/hr) would not increase to levels that may exceed the Hazard Index limit of 1.0 given that: (1) The partitioning ratio between HCl and chlorine could change over time such that a larger fraction of total chlorine could be emitted as chlorine, which has a much lower health risk threshold; and (2) the mass emission rate of total chlorine could increase. See 69 FR at 21306.

The commenter has addressed the concern about the mass emission rate of total chlorine potentially increasing by suggesting that the health-based standard include a limit on the feedrate of total chlorine and chloride at the level used in their risk assessment supporting a separate national standard for cement kilns. The commenter has also addressed the concern about the HCl and chlorine apportionment ratio changing over time by suggesting that the standard also include a requirement that the Hazard Index of 1.0 not be exceeded. We agree that sources need to account for variability in the chlorine to HCl ratio (see § 63.1215(b)(6)) and that periodic checks to ensure that the Hazard Index of 1.0 is not exceeded are needed. We believe the best way to ensure that the health-based compliance alternatives for total chlorine for cement kilns are protective with an ample margin of safety is through the procedures of § 63.1215 where site-specific emission rate limits are established rather than under a separate national standard for cement kilns.

VIII. Implementation and Compliance

A. Compliance Assurance Issues for both Fabric Filters and Electrostatic Precipitators (and Ionizing Wet Scrubbers)

1. Implementation Issues

Comment: Several commenters state that design and performance specifications and explicit detailed test procedures to determine conformance with the specifications are needed so that manufacturers can certify that their bag leak detection systems and particulate matter detection systems meet applicable criteria. Absent design and performance specifications and test procedures, commenters assert that the "manufacturer's certification" cannot ensure the performance capabilities of the devices.

Response: In general, we believe adherence to manufacturer's written specifications and recommendations is an appropriate approach to reasonably ensure performance of a bag leak detection system or particulate matter detection system, and we have retained that provision in the final rule. We agree, however, that there may be cases where other procedures are more appropriate than the manufacturer's recommendations to ensure performance of a bag leak detection system or particulate matter detection system. Consequently, the rule allows you to request approval for alternative monitoring procedures under § 63.1209(g)(1).[189] We note that you may use references other than EPA's Guidance Document, "Fabric Filter Bag Leak Detection Guidance," September 1997 to identify appropriate performance specifications for the bag leak detection system or particulate matter detection system, including: PS–11 for PM CEMS; PS–1 for opacity monitors; and CPS–001 for opacity monitoring below 10% opacity. You may use these references to support your request for additions to, or deviations from, manufacturer's specifications.

Comment: One commenter states that bag leak detection systems and particulate matter detection systems should have a detection limit of 1.0 mg/acm to ensure peak performance is maintained rather than explicitly allowing sources to request approval for a detection limit on a site-specific basis as the rule currently allows. Several other commenters state that the bag leak detection system or particulate matter detection system need not have a detection limit as low as 1.0 mg/acm to detect increases in normal emissions. One commenter believes that bag leak detection systems installed on cement kilns should be allowed to have a detection limit of 10 mg/acm because: (1) A detection limit requirement of 10 mg/acm is more than sufficient to protect the particulate matter emission limit and to detect increases in particulate matter concentration given that the current particulate matter emission limit for existing kilns is 63 mg/dscm; (2) a detection limit requirement of 10 mg/acm is consistent with the requirement for bag leak detection systems in Subpart LLL, Part 63, for cement plants that choose to install bag leak detection systems on finish mills and raw mills, for bag leak detection systems and particulate matter detection systems installed on lime kilns under Subpart AAAAAA, and for industrial boilers under Subpart DDDDD; (3) a 10 mg/acm detection limit is achievable using state-of-the-art transmissometers (the actual instrument used in a continuous opacity monitoring system (COMS) at cement plants having kiln stack diameters of 2–3 meters, or greater; and (4) it is unclear if any bag leak detection system device can actually be demonstrated to achieve a 1.0 mg/acm detection limit except by extrapolation from tests conducted at higher dust loadings and theoretical arguments based on signal-to-noise ratios or other parameters. This commenter also recommends that EPA establish a 10 mg/am^3 detection limit for all cement kilns rather than provide for site-specific determinations because allowing site-specific determinations is likely to create confusion in the selection of monitoring devices and further complicate the manufacturer's certification of performance requirements.

Response: The current requirement for the bag leak detection system sensitivity/detection limit applicable to incinerators and lightweight aggregate kilns is 1.0 mg/acm unless you demonstrate under § 63.1209(g)(1) that a lower sensitivity (i.e., higher detection limit) would detect bag leaks. We proposed to apply the bag leak detection system requirements to all hazardous waste combustors equipped with fabric filters and promulgate that requirement today. Although we also requested comment whether detection limits higher than 1.0 mg/acm should be allowed, none of the comments has convinced us to alter our view that the rule should allow higher detection limits on a site-specific basis. Similarly,

[189] See discussion in Part Five, Section III.C, for an explanation of how the alternative monitoring provisions of § 63.1209(g)(1) relate to those of § 63.8(f).

we believe that the same detection limit requirement should apply to particulate matter detection systems that you may elect to use for compliance monitoring for your electrostatic precipitator or ionizing wet scrubber in lieu of site-specific operating parameter limits.

Both bag leak detection systems and particulate matter detection systems must be able to detect particulate emission in the range of normal concentrations. For example, to establish the alarm level for the bag leak detection system, you must first adjust detector gain/sensitivity and response time based on normal operations. Although the alarm level for particulate matter detection systems will be established based on operations during the comprehensive performance test or higher (see discussion below), the detector must be responsive within the range of normal operations for you to effectively minimize exceedances of the alarm level.

The range of normal emission concentrations will generally be well below both the particulate matter standard and emissions during the comprehensive performance test. Consequently, we disagree with commenters that believe the detection limit need only be within the range of emissions at the particulate matter emission standard. On the other hand, normal emissions may be well above 1.0 mg/acm such that a higher detection limit (e.g., 10 mg/acm) may be appropriate on a site-specific basis.

We also disagree with the comment that bag leak detection systems (or particulate matter detection systems) may not be able actually to achieve a 1.0 mg/acm detection limit. EPA is aware of bag leak detection system instruments certified to meet levels of 0.2 mg/m^3 and particulate matter detection systems can readily achieve detection limits well below 1.0 mg/acm.[190]

Comment: One commenter states that a continuous opacity monitoring system (COMS) that can achieve a detection level of 10 mg/acm or less can be used to monitor electrostatic precipitator performance. The commenter believes that allowing a COMS for compliance under Subpart EEE is also appropriate because cement kilns will be operating under the requirements of Subpart LLL (for cement kilns that do not burn hazardous waste) at times, which requires compliance with an opacity standard using a COMS.

Response: You may use a COMS (i.e., transmissometer) that meets the detection limit requirement as discussed above (i.e., 1.0 mg/acm or a higher detection limit that you document under an alternative monitoring petition under § 63.1209(g)(1) would routinely detect particulate matter loadings during normal operations) as the detector for your bag leak detection system or particulate matter detection system.

2. Compliance Issues

Comment: One commenter states that, if the bag leak detection system or particulate matter detection system exceeds the alarm level or an operating parameter limit (OPL) is exceeded, the automatic waste feed cutoff (AWFCO) system must be initiated. Allowing a source to exceed the alarm level for 5% of the time in a 6-month period does not ensure continuous compliance.

Response: Although the AWFCO system must be initiated if an OPL is exceeded, we believe that allowing exceedances of the bag leak detection system or particulate matter detection system alarm level up to 5% of the time in a 6-month period is reasonable. Requiring initiation of the AWFCO for an exceedance of an OPL is reasonable because sources generally can control directly the parameter that is limited. Examples are the feedrate of metals or chlorine, or pressure drop across a wet scrubber. Bag leak detection systems and particulate matter detection systems, however, measure mass emissions of particulate matter, a parameter that is affected by many interrelated factors and that is not directly controllable. We believe that the 5 percent alarm rate is a reasonable allowance for sources due to difficult-to-control variations in particulate matter emissions. More important, although the bag leak detection system and particulate matter detection system measure mass emissions of particulate matter, the detector response is not correlated to particulate matter emission concentrations to the extent necessary for compliance monitoring.[191] Thus, triggering the alarm level is not evidence that the particulate matter emission standard has been exceeded.

The purpose of a BLDS or PMDS is to alert the operator that the PM control device is not functioning properly and that corrective measures must be undertaken. We believe that using a BLDS or PMDS for compliance assurance better minimizes emissions of PM (and metal HAP) than use of operating parameter limits (which are linked to the automatic waste feed cutoff system). APCD operating parameters often have an uncertain relationship to PM emissions while the BLDS and PMDS provide real-time information on actual PM mass emission levels.[192]

Comment: One commenter states that requiring a notification if the bag leak detection system or particulate matter detection system set point is exceeded more than 5% of the time in a 6-month period is not cost-effective. Sources using bag leak detection systems have not linked exceedances to the data logging system and would incur an expense to do so.

Response: We continue to believe that limiting the aggregate duration of exceedances in a 6-month period is a reasonable approach to gage the effectiveness of the operation and maintenance procedures for the combustor. We note that recent MACT standards for several other source categories use this approach, including standards for industrial boilers and process heaters and standards for lime kilns.

Comment: One commenter states that EPA did not present a rationale for requiring a notification within 5 working days if the bag leak detection system or particulate matter detection system set point is exceeded more than 5% of the time during a 6-month period. The commenter notes that this notice is not required under the Subpart DDDDD boiler and process heater MACT. The commenter also notes that the source is required to take corrective measures under both the operation and maintenance plan and bag leak detection systems and particulate matter detection systems requirements. The commenter believes that requiring a report to the permitting authority is duplicative, unnecessary, and increases the burden on regulated facilities without providing additional protection to human health or the environment.

Response: If a source exceeds the alarm set point more than 5% of the time in a 6-month period, it is an indication that the operation and maintenance plan may need to be revised. Requiring the source to report the excess exceedances to the permitting

[190] USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005, Appendix C, Section 4.0.

[191] Actually, the BLDS is not correlated at all to PM concentrations, and the alarm level for a PMDS may or may not be approximately correlated to PM concentrations. See § 63.1206(c)(9).

[192] Moreover, for FFs, we are not aware of any APCD operating parameters that correlate well with PM emissions. Thus, sources must use a BLDS or PMDS for compliance assurance. For ESPs and IWSs, we are not aware of generic APCD parameters that correlate well with PM emissions. See discussion below in Section VIII.C of the text. Consequently, although the rule allows sources with ESPs and IWSs to establish site-specific operating parameter limits, sources are encouraged to use a PMDS.

authority serves as a notification that the authority may need to review the operation and maintenance plan with the source to determine if changes are warranted.

We agree with the commenter, however, that it is not necessary to require that the report be submitted within five working days of the end of the 6-month block period. Consequently, the final rule requires you to submit the report within 30 days of the end of the 6-month block period. Allowing 30 days to submit the report rather than 5 days as proposed is reasonable. We are concerned that 5 days may not be enough time to complete the report given that several exceedances toward the end of the 6-month block period may cause you to exceed the 5% time limit and that there may be many individual exceedances that need to be included in the report. We acknowledge that it may take some time to prepare the report given that you must describe the causes of each exceedance and the revisions to the operation and maintenance plan you have made to mitigate the exceedances.

Comment: One commenter notes that there is no guidance on how to calculate when the set-point has been exceeded more than 5 percent of the operating time within a 6 month period. The commenter notes that the MACT for industrial boilers and process heaters provides minimal instruction on how this is to be done, but it is not specific enough to enable facilities to ensure that they are in compliance with this requirement.

Response: For the final rule, we have adopted the procedures specified in the industrial boiler and process heater MACT for calculating the duration of exceedances of the set point. Those procedures are as follows:

1. You must keep records of the date, time, and duration of each alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

2. You must record the percent of the operating time during each 6-month period that the alarm sounds.

3. In calculating the operating time percentage, if inspection of the fabric filter, electrostatic precipitator, or ionizing wet scrubber demonstrates that no corrective action is required, no alarm time is counted.

4. If corrective action is required, each alarm shall be counted as a minimum of 1 hour.

Although the commenter indicates that these procedures are not specific enough to ensure that sources are in compliance with the requirements, the commenter did not indicate the deficiencies or suggest additional requirements. If you need additional guidance on compliance with this provision, you should contact the permitting authority.

Comment: One commenter supports the approach of listing the shutting down of the combustor as a potential—but not mandatory—corrective measure in response to exceeding an alarm set point. Several commenters suggest, however, that EPA should specify that corrective measures could include shutting off the hazardous waste feed rather than shutting down the combustor. Other commenters state that it is inappropriate to imply that shutting down the combustor must be part of a corrective measures program for responding to exceedance of a set point. These commenters believe that the requirement to take corrective action upon the alarm is sufficiently protective. The facility should determine if shutting down the combustor is a necessary response to avoid noncompliance with a standard.

Response: You must operate and maintain the fabric filter, electrostatic precipitator, or ionizing wet scrubber to ensure continuous compliance with the particulate matter, semivolatile metals, and low volatile metals emission standards. Your response to exceeding the alarm set point should depend on whether you may be close to exceeding an operating parameter limit (e.g., ash feedrate limit for an incinerator or liquid fuel boiler equipped with an electrostatic precipitator) or an emission standard. If so, corrective measures should include, as commenters suggest, cutting off the hazardous waste feed. Corrective measures could also include, however, shutting down the combustor as the ultimate immediate corrective measure if an emission standard may otherwise be exceeded. Consequently, the final rule continues to require you to alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include shutting down the combustor. This provision does not imply that shutting down the combustor is the default corrective measure. Rather, it implies that the ultimate immediate response, absent other effective corrective measures, would be to shut down the combustor.

Comment: One commenter states that periods of time when the combustor is operating but the bag leak detection system or particulate matter detection system is malfunctioning should not be considered exceedances of the set-point.

Response: If the bag leak detection system or particulate matter detection system is malfunctioning, the source cannot determine whether it is operating within the alarm set point. Accordingly, it is reasonable to consider periods when the bag leak detection system or particulate matter detection system is malfunctioning as exceedances of the set point.

B. Compliance Assurance Issues for Fabric Filters

Comment: One commenter states that establishing the set point for the bag leak detection system at twice the detector response achieved during bag cleaning as recommended by EPA guidance would not be sensitive enough to detect gradual degradation of the fabric filter, nor would it be low enough to require the operator of the source to take corrective measures that would ensure effective operation of the baghouse over time.

Response: The commenter expresses the same concern that EPA raised at proposal. See 69 FR at 21347. We have concluded, however, that it may be problematic to establish an alarm set point for fabric filters based on operations during the comprehensive performance test. This is because, as noted in earlier responses and at 69 FR at 21233, it is much more difficult to "detune" a fabric filter than an electrostatic precipitator to maximize emissions during the performance test.[193] Consequently, emissions from fabric filters that have not been detuned during the performance test may not be representative of the range of normal emissions caused by factors such as bag aging. Baghouse performance degrades over time as bags age. In addition, establishing the alarm set point based on operations during the performance test for baghouses that have not been detuned would establish more stringent compliance requirements on sources that perform the best—the lower the emissions, the lower the alarm set point. This would unfairly penalize the best performing sources.

For these reasons, the final rule requires you to establish the alarm set-point for bag house detection systems using principles provided in USEPA, "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997).

Comment: One commenter states that the bag leak detection system requirement should not apply to the coal mill baghouse for cement kilns with indirect-fired coal mill systems where a fraction of kiln gas is taken

[193] One approach to detune a fabric filter to simulate the extreme high range of normal operations would be to install a butterfly valve that allows a portion of the combustion gas to by-pass a section of the baghouse.

from the preheater and routed to the coal mill and subsequently to a baghouse before entering the stack. The commenter notes that the PM in this gas is nearly exclusively coal dust, and the baghouse is substantially smaller than the baghouse for the kiln.

Response: We believe that a bag leak detection system is a reasonable approach to monitor emissions for the coal mill baghouse to ensure compliance with the particulate matter (and semivolatile and low volatile metals) emission standards. These systems are inexpensive to install and operate. Annualized costs are approximately $24,000.[194] Although the commenter did not suggest an alternative monitoring approach, and we are not aware of a less expensive and effective approach, we note that sources may petition the permitting authority under § 63.1209(g)(1) to request an alternative monitoring approach.

C. Compliance Issues for Electrostatic Precipitators and Ionizing Wet Scrubbers

Comment: Several commenters believe that a particulate matter detection system may not be necessary for monitoring of electrostatic precipitators and ionizing wet scrubbers. Commenters state that site-specific operating parameter limits linked to the automatic waste feed cutoff system can effectively monitor and ensure the performance of electrostatic precipitators and ionizing wet scrubbers. Particulate matter detection systems on cement kilns would have to operate in a high moisture stack environment (all kilns burning hazardous waste that are equipped with electrostatic precipitators are wet process kilns), with the potential for condensation and/or water droplet interference. Commenters state that when water droplets are present, many of these devices are not applicable.

Response: The final rule provides sources equipped with electrostatic precipitators or ionizing wet scrubbers the alternative of using a particulate matter detection system or establishing site-specific operating parameter limits for compliance assurance. If a particulate matter detection system is used, corrective measures must be taken if the alarm set point is exceeded. If the source elects to establish site-specific operating parameter limits, the limits must be linked to the automatic waste feed cutoff system.

In response to commenters' concern that high moisture stack gas may be problematic for particulate matter detection systems, we note that extractive light-scattering detectors and beta gauge detectors can effectively operate in high moisture environments. We acknowledge, however, that the cost of these extractive detector systems is substantially higher than transmissometers or in situ light-scattering detectors.

Comment: One commenter states that EPA must set minimum total power requirements for both ionizing wet scrubbers and electrostatic precipitators because allowing permit officials to establish compliance operating parameters on a site-specific basis frustrates the intention of the CAA by obviating the requirements for federal standards. The commenter asserts that a minimum total power requirement is monitorable, recordable, and reportable, three requirements that are necessary for these facilities to come into, and remain in compliance with, their Title V operating permits.

Other commenters state that electrostatic devices are not easily characterized by operating parameters in a "one-size-fits-all" fashion. The significant operating parameters for electrostatic devices are secondary voltage, secondary current, and secondary power (the product of the first two items). The relationship between these parameters and performance of the unit differ between applications and unit types. For example, inlet field power can increase as unit performance appears to decrease. In this case, an operating parameter other than secondary power by field would be more appropriate. The commenter notes that, in its various proposals over the years, EPA has discussed a number of approaches to establish operating parameter limits for electrostatic devices, including: Minimum total secondary power; minimum secondary power by field; pattern of increasing power from inlet to outlet field; and minimum secondary power of the last ⅓ of fields (or the last field). Commenters have also proposed: minimum specific power (secondary power divided by flue gas flow rate); minimum secondary voltage and/or secondary current; and total secondary voltage and/or secondary current. The commenter concludes that it is not surprising that there is so little agreement on the right approach, because different units and applications respond differently. EPA's proposal to let facilities and local regulators determine the best approach is far wiser than regulating from a distance.

Response: We agree with the commenters that state that it is not practicable to establish operating parameter limits that would effectively ensure performance of all electrostatic devices. Accordingly, the final rule continues to allow sources to establish site-specific operating parameter limits for these devices.

We disagree with the commenter's assertion that site-specific operating parameter limits obviate the requirements for federal standards. The site-specific operating parameter limits merely reflect the truism that no two sources are identical and so what each needs to do to comply with the uniform standards may differ. The final rule provides consistent, federally-enforceable emission standards. Necessary flexibility in compliance assurance for those emission standards does not undermine the uniformity of those standards. In addition, we disagree with the commenter's concern that without a minimum power limit, there will be no monitorable, recordable, and reportable Title V permit limits for electrostatic devices. To the contrary, site-specific operating parameter limits can and will be monitored, recorded, reported, and linked to the automatic waste feed cut-off system. And, if a source elects to use a particulate matter detection system in lieu of establishing site-specific operating parameter limits, the detector response will be monitored, recorded, reported, and linked to requirements to take corrective measures if the alarm set point is exceeded.

Comment: One commenter asserts that the use of electrostatic precipitator total power input data (sum of the product of kilovolts times milliamps for each electrostatic precipitator field) is one acceptable approach as a site-specific parameter to monitor electrostatic precipitator performance. Limits on power input for each field (or particular fields) are not warranted.

Response: A limit on total power input to a multifield electrostatic device is generally not an acceptable operating parameter for compliance assurance. We have documented that when total power input was held constant for a four-field electrostatic precipitator while the power input to the fourth field was decreased, emissions of particulate matter doubled from 0.06 gr/dscf to 0.12 gr/dscf. See 66 FR at 35143 (July 3, 2001). Thus, if the total power input during the comprehensive performance test were used as the operating parameter limit, particulate matter emissions could exceed the emission

[194] USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005. Appendix C.

standard because of changes in other parameters that were not limited even though total power input did not exceed the parametric limit.

Notwithstanding our concern that a limit on total power input to a multifield electrostatic device is generally not an effective operating parameter for compliance assurance, this does not preclude you from documenting to the permitting authority that total power input is an effective compliance assurance parameter for your source. See § 63.1209(m)(1)(iv).

Comment: Several commenters suggest that the rule should offer various approaches to establish an achievable particulate matter detection system alarm level on a site-specific basis in lieu of the approach we proposed (i.e., average detector response during the comprehensive performance test): (1) Use the 2 times the maximum peak height or 3 times the baseline concepts developed in EPA's bag leak detection guidance documents; (2) allow spiking to set the alarm set point given that PS 11 allows for spiking as a way to calibrate PM CEMs; (3) establish the limit as the 99th percentile upper prediction limit of the average response during each performance test run instead of the average of the test run averages; (4) allow upward extrapolation from the average of the test run averages to some percentage of the particulate matter emissions standard (fraction could be variable depending upon how close to the standard the facility is during the compliance test); or (5) set the alarm point at the maximum test run.

Response: We agree with several of the commenters' suggestions: explicitly allowing spiking (and emission control device detuning) during the comprehensive performance test to maximize controllable operating parameters to simulate the full range of normal operations; and upward extrapolation of the detector response. See discussion below.

The final rule is consistent with commenters' suggestion to establish the alarm level for particulate matter detection systems on fabric filters based on the concepts in the Agency's guidance document on bag leak detection systems. Commenters made this suggestion in response to our request for comments on requiring particulate matter detection systems on fabric filters and establishing the alarm level based on the detector response during the comprehensive performance test. See 69 FR at 21347. The final rule requires bag leak detection systems on all fabric filters and suggests that you establish the alarm level using concepts in the bag leak detection system guidance.[195]

Neither the suggestion to establish the alarm level at the 99th percentile upper prediction limit (UPL99) based on the average response during the comprehensive performance test runs nor the suggestion to establish the alarm level at the maximum test run response would control PM emissions at the level achieved during the performance test or provide some assurance that the PM standard was not being exceeded, unless the detector response is correlated to PM concentrations. For example, if the detector response does not relate linearly to PM concentration (or if the response changes w/changes in particulate characteristics), the UPL99 detector response could relate to a much higher (e.g., 99.9th percentile) PM concentration. In addition, even if the detector response were correlated to PM concentration, there is no assurance that the correlation would be consistent over the range of the average detector response during the performance test to the UPL99 detector response. Note that under PS–11 for PM CEMS, even after complying with rigorous procedures to correlate the detector response to PM concentrations, the detector response may be extrapolated only to 125% of the highest PM concentration used for the correlation. Thus, the final rule does not use these approaches to establish the alarm level.

If you elect to use a particulate matter detection system in lieu of site-specific operating parameters for your electrostatic precipitator or ionizing wet scrubber, you must establish the alarm level using either of two approaches. See Appendix C of USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWV MACT Standards," September 2005. Under either approach, you may maximize controllable operating parameters during the comprehensive performance test to simulate the full range of normal operations (*e.g.*, by spiking the ash feedrate and/or detuning the electrostatic device).[196]

You may establish the alarm set-point as the average detector response of the test condition averages during the comprehensive performance test.

Alternatively, you may establish the alarm set point by extrapolating the detector response. Under the extrapolation approach, you must approximate the correlation between the detector response and particulate matter emission concentrations during an initial correlation test. You may extrapolate the detector response achieved during the comprehensive performance test (*i.e.*, average of the test condition averages) to the higher of: (1) A response that corresponds to 50% of the particulate matter emission standard; or (2) a response that correlates to 125% of the highest particulate matter concentration used to develop the correlation.

To establish an approximate correlation of the detector response to particulate matter emission concentrations, you should use as guidance Performance Specification–11 for PM CEMS (40 CFR Part 60, Appendix B), except that you need only conduct only 5 runs to establish the initial correlation rather than a minimum of 15 runs required by PS–11. In addition, the final rule requires you to conduct an annual Relative Response Audit (RRA) for quality assurance as required by Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, Appendix F, Part 60.[197] The RRA is required on only a 3-year interval, however, after you pass two sequential annual RRAs.

The rule requires only minimal correlation testing because the particulate matter detection system is used for compliance assurance only—as an indicator for reasonable assurance that an emission standard is not exceeded. The particulate matter detection system is not used for compliance monitoring—as an indicator of continuous compliance with an

[195] Note that a bag leak detection system is a type of particulate matter detection system for purposes of this discussion. A triboelectric detector is normally used for a bag leak detector system because it is very inexpensive and has a low detection limit. A triboelectric detector meets the criterion for a particulate matter detector in a particulate matter detection system in that it detects relative mass emissions of particulate matter within the range of normal emission concentrations. (Note further, however, that a triboelectric detector cannot be correlated to particulate matter concentrations and thus cannot be used as a particulate matter CEMS. Note also that a triboelectric detector cannot be used on sources equipped with electronic control devices.) The alarm level for a bag leak detection system would be established using the concepts discussed in the Agency's guidance document on bag leak detection systems. The alarm level for a particulate matter detection system used on a fabric filter, however, (preferable with a detector other than a tribolectric device that could be correlated to PM concentrations) would be established based on the detector response during the comprehensive performance test.

[196] Note, however, that bypassing or detuning an emission control system could cause PM stratification and could make it difficult to pass the PS–11 performance criteria you use as guidelines for a PMDS.)

[197] You perform an RRA by collecting three simultaneous reference method PM concentration measurements and PM CEMS measurements at the as-found source operating conditions and PM concentration.

emission standard. Because particulate matter detection system correlation testing and quality assurance is much less rigorous than the requirements of PS–11 for a PM CEMS, the particulate matter detection system response cannot be used as credible evidence of exceedance of the emission standard.

D. Fugitive Emissions

Comment: A commenter does not support EPA's proposed approach to allow alternative techniques that can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits given that the CAA requires continuous compliance with the standards and given positive pressure events can result in fugitive emissions, irrespective of facility design.

Response: Rotary kilns can be designed to prevent fugitive emissions during positive pressure events. As stated in the February 14, 2002 final rule, and subsequently in the April 20, 2004 proposed rule, there are state-of-the-art rotary kiln seal designs (such as those with shrouded and pressurized seals) which are capable of handling positive pressures without fugitive releases. See 67 FR at 6973 and 69 FR at 21340. We have included documentation of such kiln designs in the docket.[198] Instantaneous combustion zone pressure limits thus may not be necessary to assure continuous compliance with these fugitive emission control requirements. Our approach to allow alternative techniques that have been demonstrated to prevent fugitive emissions is therefore reasonable and appropriate. We note that these alternative techniques must be reviewed and approved by the appropriate delegated regulatory official.[199]

Comment: A commenter disagrees with EPA's clarification that fugitive emission control requirements apply only to fugitives attributable to the hazardous waste, given that the CAA does not distinguish between HAP emissions that come from hazardous waste streams and other HAP emissions.

Response: The fugitive emission control requirements in today's final rule originated from the RCRA hazardous waste combustion fugitive emission control requirements for incinerators and boilers and industrial furnaces.[200] The primary focus of these RCRA requirements is to ensure hazardous waste treatment operations are conducted in a manner protective of human health and the environment.[201] It is therefore appropriate to clarify that the intent of this requirement is to control fugitive emission releases from the combustion of hazardous waste.

Furthermore, MACT requirements for source categories that do not combust hazardous waste (e.g., industrial boilers, Portland cement kilns, and commercial and industrial solid waste incinerators) do not have combustion chamber fugitive emission control requirements for the non-hazardous waste inputs or outputs (e.g., clinker product for cement kilns or coal and natural gas fuels for industrial boilers). We have previously taken the position that emissions not affected by the combustion of hazardous waste (e.g., clinker coolers, raw material handling operations, etc.) are regulated pursuant to the applicable nonazardous waste MACT rules.[202, 203] We conclude the clarification that the fugitive emission control requirements applies only to fugitive emissions that result from the combustion of hazardous waste is appropriate because it regulates emissions attributable to nonhazardous waste streams to the same level of stringency that otherwise would apply if the source did not combust hazardous waste.[204]

Comment: A commenter states that the instantaneous monitoring requirements are inappropriate because (1) EPA has not demonstrated that the average of the top 12% of boilers are capable of operating with no instantaneous deviations from the negative pressure requirements; and (2) these requirements, though not standards themselves, effectively increase the stringency of the standard itself beyond what even the best available technology can achieve.

Response: As previously discussed, the fugitive emission control requirements included in today's rule originated from the RCRA hazardous waste combustion chamber fugitive emission control requirements. These provisions allow sources to control fugitive emissions by "maintaining the combustion zone pressure lower than atmospheric pressure, or an alternative means of control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure." All sources that must comply with the provisions of this rule are, or were, required to control fugitive emissions from the combustion unit pursuant to RCRA.

The monitoring requirements in today's rule do not increase the stringency of the standard beyond what the best available technology can achieve. Although we do not have data that confirm negative pressure is being maintained on an instantaneous basis (as we define it)[205] for at least 12 percent of the boilers, we believe this is current practice and readily achievable by most sources.[206] These requirements have been in force for many years, and there is no basis for stating that they are unachievable (EPA is not aware of industrywide noncompliance with these provisions, the necessary premise of the comment). First, maintaining negative pressure is the option that most boilers elect to implement to demonstrate compliance with the RCRA fugitive emission control requirements. Second, negative pressure is readily achieved on an instantaneous basis in boilers through use of induced draft fans. Third, the requirements we are finalizing today for boilers are identical to the fugitive emission control requirements that hazardous waste incinerators, cement kilns, and lightweight aggregate kilns are currently complying with pursuant to the EEE interim standard regulations. See § 63.1206(c)(5). Most of these sources maintain negative combustion chamber pressure through use of induced draft fans, providing further evidence that continuously maintaining combustion

[198] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume IV: Compliance With the HWC MACT Standards," September 2005, Section 10.

[199] See § 63.1206(c)(5)(i)(C) and (D).

[200] See § 266.102(e)(7) and § 264.345(d).

[201] Section 3004(a) of RCRA requires the Agency to promulgate standards for hazardous waste treatment, storage, and disposal facilities as necessary to protect human health and the environment. The standards for hazardous waste incinerators generally rest on this authority. § 3004(q) of RCRA requires the Agency to promulgate standards for emissions from facilities that burn hazardous waste fuels (*e.g.*, cement and lightweight aggregate kilns, boilers, and hydrochloric acid production furnaces) as necessary to protect human health and the environment.

[202] See 69 FR at 21203 and 64 FR at 52871, and § 63.1206(b)(1)(ii).

[203] Portland cement manufacturing facilities that combust hazardous waste are subject to both Subpart EEE and Subpart LLL, and hydrochloric acid production facilities that combust hazardous waste may be subject to both Subpart EEE and Subpart NNNNN. In these instances Subpart EEE controls HAP emissions from the cement kiln and hydrochloric acid production furnace stack (and also fugitive emissions from the combustion chamber), while Subparts LLL and NNNNN would control HAP emissions from other operations that are not directly related to the combustion of hazardous waste (e.g., clinker cooler emissions for cement production facilities, and hydrochloric acid product transportation and storage for hydrochloric acid production facilities).

[204] This issue has little relevance given that the measures taken to control the fugitive emissions from the combustion of hazardous waste will also control the fugitive emission associated with other feedstreams.

[205] The February 14, 2002 Final Amendments Rule clarifies that that a reasonable pressure monitoring frequency that could meet the intent of "instantaneous" would be once every second. See 67 FR at 6974.

[206] Commenters did not provide data to the contrary.

zone pressure lower than ambient pressure is readily achievable by well designed and operated boilers.[207]

We note that use of instantaneous pressure monitoring is not a requirement. A source can elect to implement any of the four compliance options to control combustion system leaks as well as request to use alternative monitoring approaches. See §§ 63.1206(c)(5) and 63.1209(g). The instantaneous pressure monitoring option offers sources a method that satisfies the intent of the rule that can be applied at numerous sources. The inclusion of this requirement in today's rule is thus an attempt to simplify the review process for both regulators and affected sources; the absence of prescriptive compliance options in this case may likely result in time-consuming site-specific negotiations that would prolong the review and approval of comprehensive performance test workplans.

Comment: A commenter believes that requiring an instantaneous waste-feed cutoff when these pressure excursions occur is short-sighted and will result in greater HAP emissions. The commenter recommends EPA instead allow the use of reasonable pressure averaging periods in lieu of instantaneous pressure requirements.

Response: As discussed in the February 14, 2002 Final Amendments Rule, automatic waste feed cutoffs are appropriate non-compliance deterrents, and are necessary whenever an operating limit is exceeded. See 67 FR at 6973. Pressure excursions that result in combustion system leaks (and subsequently lead to automatic waste feed cutoffs) should be prevented by maintaining negative pressure in the combustion zone. We agree that needless triggering of automatic waste feed cutoffs due to short term pressure fluctuations that do not result in combustion system leaks would provide less environmental protection, not more. Today's rule offers three alternative options that do not require the use of instantaneous pressure monitoring to control combustion system leaks. See § 63.1206(c)(5). The use of averaging periods in these alternatives is not prohibited. Sources that elect to use an alternative compliance option must demonstrate that the alternative method is equivalent to maintaining combustion zone pressure lower than ambient pressure or, that the alternative approach prevents fugitive emissions.

[207] The commenter did not provide information that would lead us to conclude that these requirements are harder to implement for boilers than for incinerators, cement kilns, and lightweight aggregate kilns.

E. Notification of Intent To Comply and Compliance Progress Report

1. Notice of Intent To Comply

In the NPRM, we proposed to re-institute the Notification of Intent to Comply (NIC) because we felt that it offered many benefits in the early stages of MACT compliance. As discussed in the 1998 "fast track" rule (63 FR 33782) and in the proposal, the NIC serves several purposes: as a planning and communication tool in the early implementation stages, to compensate for lost public participation opportunities when using the RCRA streamlined permit modification procedure to make upgrades for MACT compliance, and as a means to share information and provide public participation opportunities that would be lost when new units are not required to comply with certain RCRA permit requirements and performance standards. Please refer to the proposal at 69 FR 21313–21316 for additional discussion of the regulatory history, purpose, and implementation of the NIC provisions.

Overall, most commenters supported our decision to finalize NIC provisions. However, they also feel that the NIC should only be required for sources that have not completed a NIC previously (i.e., Phase 2 sources or Phase 1 sources that did not meet the previous NIC deadline) and for sources that need to make upgrades to comply with the final standards (i.e., either Phase 1 or Phase 2). They suggest that if sources do not need to make upgrades, then they should not be required to complete the NIC process, if they had done so previously. To require a second NIC would only add to the administrative burden and is not in line with Agency efforts to reduce reporting burdens. We agree that if Phase 1 sources do not need to make upgrades to comply with the Replacement Standards and if they completed the NIC process before, then it is not necessary to do so again.

In addition to the comment discussed above, a few commenters proposed that for sources who must still comply with the NIC because they wish to make upgrades, that the NIC public notice be combined with the Title V re-opening or renewal public notice. They point out that sources with existing Title V permits will have their permits re-opened or renewed to incorporate the new applicable requirements (i.e., Phase 1 Replacement or even Phase 2 Standards) shortly after the NIC public notice and meeting are to occur. Title V permit re-openings and renewals require: public notice, a minimum of 30 days for comment, and an opportunity to request a hearing.

While we do agree that the Title V re-opening and renewal requirements provide adequate information to the public and an opportunity for the public to comment and request a hearing, we are concerned that the timing requirements for the NIC may not correspond with the timing requirements for title V permit reopenings, revisions, and renewals. The public review of the draft NIC and subsequent public meeting are scheduled to occur 9 and 10 months, respectively, after the rule's effective date. On the other hand, Title V permits for major sources that have a remaining permit term of greater than 3 years from the rule's promulgation date will need to be re-opened, but this re-opening may not occur until 18 months beyond the promulgation date of the rule. Also, Title V permits that have a remaining permit term of less than 3 years from the rule's promulgation date will need to be renewed, but the timing of the renewal is contingent upon the individual permit term, not the timing requirements for public review of the draft NIC and public meeting. Thus, we do not believe there is ample opportunity to combine the requirements of the NIC and Title V process for the vast majority of sources.[208] Also, those sources that need to make upgrades to comply with the final standards and that need to modify any applicable conditions in their RCRA permit will not be able to request the streamlined modification procedure (see 40 CFR 270.42(j)) until they meet the NIC requirements. So the earlier they comply with the NIC requirements, the earlier they can begin upgrading their combustion units.

Another commenter suggested a change to the regulations at § 63.1210(c)(1) to account for sources that will cease burning hazardous waste prior to or on the compliance date. The regulations, as proposed, require sources to hold an informal public meeting to discuss anticipated activities described in the draft NIC even if they plan to cease burning hazardous waste. The commenter also suggested a similar change to § 63.1210(b)(2) that requires the draft NIC be made available for public review no later than 30 days

[208] We recognize that there may be instances when states can coordinate the Title V permit re-opening, revision, and renewal process with the NIC timeframe requirements. Where this is possible, we encourage states (or other permitting authorities) to coordinate the two processes. By coordinating the two, duplication with respect to material content and public participation would be eliminated for both sources and states.

prior to the public meeting. We agree with the commenter that it does not make sense to require sources that intend to cease burning hazardous waste to submit a NIC that discusses anticipated activities that will allow them to achieve compliance with the standards. We also agree that it is not necessary for those sources to hold an informal public meeting, since there are no MACT compliance activities to discuss. However, we believe that the public should be provided notice of the draft NIC so that they are aware of the source's intentions to cease burning and the steps (and key dates) the source will undertake to stop hazardous waste combustion activities.

With regard to Phase 2 sources, we had proposed that all Phase 2 sources comply with the same NIC requirements as the Phase 1 sources. Commenters did not express opinions in favor or against the NIC for Phase 2 sources. We believe that the NIC is beneficial in several respects. As mentioned previously, it serves as a planning and communication tool in the early implementation stages, it compensates for lost public participation opportunities when using the RCRA streamlined permit modification procedure to make upgrades for MACT compliance, and it is a tool to share information and provide public participation opportunities that would be lost when new units are not required to comply with certain RCRA permit requirements and performance standards. Ultimately, it creates more public confidence in the permitting process and so promotes a more stable regulatory environment.

For today's rule, we are finalizing our decision to re-institute the NIC provisions for Phase 1 and Phase 2 sources. We are including a few minor changes and clarifications to improve the proposed regulatory language based on commenters' suggestions. Section 63.1210(b) is revised so that Phase 1 sources that previously complied with the NIC requirements, and that do not need to make upgrades to comply with the Replacement Standards, are not required to comply with the NIC again. Sections 63.1210(b)(1)(iv) and (b)(2) have been revised and (c)(5) has been added so that sources that intend to cease burning hazardous waste prior to or on the compliance date are only required to prepare a (draft) NIC, make a draft of the NIC available for public review no later than 9 months after the effective date of the rule, and submit a final NIC to the Administrator no later than one year following the effective date of the rule. Last, we have revised language in § 63.1210(b) based upon a commenter's concerns that the term you "will" implies that sources are required meet their "estimated" dates for achieving key activities. We have removed "will" and replaced it with "anticipate" to more accurately represent the objective of the NIC, which is for sources to communicate their plans for complying with the standards in two years.

2. Compliance Progress Report

In the proposal, we explained why we thought a compliance progress report would be beneficial. In short, we believed it would help regulatory agencies determine whether Phase 1 and Phase 2 sources were making sufficient headway in their efforts to meet the compliance date. The progress report would be due to the regulatory agency at the midway point of the 3 year compliance period and would serve to update the information the source provided in its NIC. However, because we do not have any experience to draw upon regarding the value of the progress report, we requested comment on whether or not it should be required.

In response to our request for comment, all commenters were opposed to the progress report. They cited several reasons, with the most consistent one being that the progress report serves no useful purpose and imposes unnecessary additional burdens on sources. As we discussed above, sources and regulatory agencies will be focusing on the NIC as well as initial Title V applications, re-openings, revisions, and renewals during this three year compliance period. We agree with the commenter who noted that there is already significant interaction between sources and regulatory authorities during this period. Furthermore, we learned through implementation of the Interim Standards that some regulatory agencies found it difficult to manage the notices, applications, requests, and test plans that were due prior to the compliance date. Therefore, we have decided not to finalize any compliance progress report requirements for today's rule.

F. Startup, Shutdown, and Malfunction Plan

Comment: One commenter states that an exceedance of a standard or operating requirement during a malfunction should be a violation not only because source owners and operators need an incentive to minimize exceedances caused by malfunctions, but also because an exemption for malfunction periods would violate the plain language of the CAA. The commenter notes that an emission standard is defined by 42 U.S.C. § 7602(k) as a standard that "limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation of maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard * * *." The commenter concludes that a standard that contains a malfunction exemption does not apply "on a continuous basis" as required by the statute. Likewise, the commenter concludes that an exemption for startup and shutdown periods would also violate this unambiguous statutory language.

The commenter also notes that, although some courts have held that a technology-based standard must provide some kind of an exemption for unavoidable technology failures, the rationale for such an exemption is that the underlying standard is based on the performance of a particular control technology that cannot be expected to function properly all of the time. The commenter believes that neither the rationale nor the exemption apply to section 112(d) standards, which are not based on the performance of any particular technology but instead must reflect the "maximum degree of reduction" that can be achieved, irrespective of the measures used by a source to achieve that reduction. CAA § 112(d)(2).

The commenter states that, even assuming for the sake of argument that EPA has authority to depart from the statutory language and carve out a startup, shutdown, and malfunction exemption, any such exemption must be narrowly drafted to apply only where a source demonstrates that a violation was unavoidable. See, e.g., *Marathon Oil*, 564 F.2d at 1272–73. As EPA recognizes, emission exceedances that occur during SSM events are frequently avoidable. See 69 FR at 21339/3 (noting that "proper operation and maintenance of equipment" helps avoid exceedances during startup, shutdown, and malfunction events), 69 FR at 21339/2 (describing the industry view that "some" exceedances that occur due to malfunctions are unavoidable). Thus, the commenter concludes that, even if a Marathon Oil-type exemption applies to a § 112(d) standard, it would be unlawful and arbitrary for EPA to exempt sources from liability for all emission exceedances occurring during startup, shutdown, and malfunction events. Rather, such an exemption could only apply where a source demonstrates that a given exceedance was unavoidable.

Many other commenters state that it would be illegal to require compliance with the emission standards and operating requirements during startup, shutdown, and malfunction events. The commenters note that EPA and the courts have long recognized that technology fails at times, despite a source's best efforts to maintain compliance. For this reason, the courts have recognized that technology-based standards such as EPA's § 112(d)(2) MACT standards must account for such unavoidable technology failures if the standards are to be truly "achievable." Thus, the standards must excuse noncompliance with the actual emission standards during startup, shutdown, and malfunction events.

These commenters also note that EPA took the position in the September 1999 final MACT rule for hazardous waste combustors that exceedance of an operating requirement during startup, shutdown, or malfunction events was a violation if hazardous waste remained in the combustion chamber. The commenters note that industry groups challenged the rule, and while the D.C. Circuit did not reach this issue because it vacated the emission standards, it pointed out that "industry petitioners may be correct that EPA should have exempted HWCs from regulatory limits during periods of startup, shutdown, and malfunction, permitting sources to return to compliance by following the steps of a startup, shutdown, and malfunction plan filed with the Agency." *CKRC* v. *EPA*, 255 F.3d 855, 872 (2001). Commenters conclude that, after reading this language, EPA officials wisely decided that hazardous waste combustors should not be required to meet the MACT emission standards and operating limits during startup, shutdown, and malfunction events.

Response: We agree with commenters who state that sources must be exempt from technology-based emission standards and operating limits during startup, shutdown, and malfunction events. Technology is imperfect and can malfunction for reasons that are not reasonably preventable. The regulations must provide relief for such situations. We believe that existing case law supports this position. See, e.g., *Chemical Mfr's Ass'n* v. *EPA*, 870 F. 2d at 228–230 (daily maximum limitations established at 99th percentile reasonable because rules also provide for upset defense for unavoidable *exceedances*); *Marathon Oil* v. *EPA*, 541 F. 2d at 1272–73 (acknowledged by commenter). As commenters noted, the D.C. Circuit also intimated in *CKRC* that some type of exception from compliance with standards during startup, shutdown and malfunction periods was required.

We do not agree with the commenter who contends that the § 112(d) MACT standards are not technology-based standards because they are not based on the performance of any particular technology but instead must reflect the "maximum degree of reduction" that can be achieved, irrespective of the measures used by a source to achieve that reduction. On the contrary, the standards must reflect the average performance of the best performing sources, which performance is achieved using technical controls—air pollution control devices, and for some pollutants, hazardous waste feedrate control. Those controls can fail for reasons that are not reasonably preventable. We note further that the situation was the same in the Clean Water Act cases which the commenter seeks to distinguish. Like section 112(d) standards, Clean Water Act standards are technology-based (reflecting Best Practicable Technology or Best Available Technology, see CWA sections 304 (b) and 301 (b)) and do not require use of any particular type of technology. See also *Mossville*, 370 F. 3d at 1242 (EPA must account for foreseeable variability in establishing MACT floor standards).

We agree with the commenter who states that any exemption from the emission standards and operating requirements during malfunctions must apply only where a source demonstrates that a violation was unavoidable. We note that the term malfunction is defined in § 63.2 as "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." We believe this definition largely addresses the commenter's concern.

We acknowledge, however, that emissions can increase during malfunctions and potentially exceed the standards and agree that exceedances must be minimized. Accordingly, the final rule (and the current rule for incinerators, cement kilns, and lightweight aggregate kilns) requires that sources maintain compliance with the automatic hazardous waste feed cutoff system during malfunctions and notify the permitting authority if they have 10 or more exceedances of an emission standard or operating limit during a 6-month block period when hazardous waste is in the combustion chamber. See § 63.1206(c)(2)(v). This will alert the permitting authority that the source's operation and maintenance plan may not be adequate to maintain compliance with the emission standards and that the authority may need to direct the source to revise the plan under § 63.6(e)(3)(vi). Finally, we note that sources must report all excess emissions semiannually under § 63.10(e)(3) if an emission standard or operating limit is exceeded, including during malfunctions.

Comment: One commenter states that any exemption for emission exceedances during startup, shutdown, or malfunction events would violate the RCRA mandate for standards necessary "to protect human health and the environment." 42 U.S.C. 6924(a). The commenter reasons that, because EPA's RCRA standards are health-based rather than technology-based, no unavoidability defense is available. Given that EPA concludes that the hazardous waste combustor MACT rule satisfies both its CAA and RCRA mandates, the emission standards and operating requirements cannot be waived during startup, shutdown, and malfunction events.

Response: We agree that the RCRA mandate to ensure protection of human health and the environment applies at all times, including during startup, shutdown, and malfunction events. Accordingly, the existing MACT requirements for incinerators, cement kilns, and lightweight aggregate kilns give sources the option of continuing to comply with RCRA permit requirements to control emission during these events, or to comply with special MACT requirements that are designed to be proactive and reactive and intended to be equivalent to the incentive to minimize emissions during these events provided by the RCRA requirements. See existing § 63.1206(c)(2)(ii). The special MACT requirements require sources to include proactive measures in the startup, shutdown, and malfunction plan to minimize the frequency and severity of malfunctions and to submit the startup, shutdown, and malfunction plan to the permitting authority for review and approval. We proposed to require boilers and hydrochloric acid production furnaces to comply with those same provisions providing for equivalence between the two sets of requirements, and promulgate those provisions today.

Comment: One commenter states that the rule should clarify the definitions of startup, shutdown, and malfunctions to preclude sources from improperly

classifying as unavoidable exceedances those exceedances that could have been avoided had the source implemented an appropriate operation and maintenance plan. Many other commenters state that the current definitions in § 63.2 clearly define these terms.

Response: We believe the definitions of startup, shutdown, and malfunction are clearly defined in § 63.2, and combined with the startup, shutdown, and malfunction plan requirements, will preclude sources from improperly classifying as malfunctions events that could have been reasonably prevented by following appropriate procedures in the operation and maintenance plan. As discussed above, the definition of malfunction clearly states that failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Comment: One commenter states that all stack bypasses, automatic waste feed cutoffs, and excursions from the operating parameter limits should be considered malfunctions.

Response: All failures resulting in stack bypasses, automatic waste feed cutoff, and excursions from the operating parameter limits are not malfunctions. As discussed above, failures caused in part by poor maintenance or careless operation are not malfunctions.

Comment: One commenter states that the rule should require sources to expand the startup, shutdown, and malfunction plan to address specific proactive measures that the source has considered and is taking to minimize the frequency and severity of malfunctions. Many other commenters believe that it is not necessary to expand the scope of the startup, shutdown, and malfunction plan beyond that required under § 63.6(e)(3) for other MACT source categories.

Response: We do not believe that it is necessary to expand the scope of the startup, shutdown, and malfunction plan generically for all hazardous waste combustors to address specific proactive measures that the source has considered and is taking to minimize the frequency and severity of malfunctions. Imposing additional requirements in particular situations is appropriate, however. For example, as discussed above, this expanded plan is required for sources that elect to meet the RCRA mandate using provisions of the startup, shutdown, and malfunction plan. See § 63.1206(c)(2)(ii). In addition, the plan with expanded scope may be appropriate for sources that have demonstrated an inability to minimize malfunctions. Consequently, the permitting authority should consider expanding the scope of the startup, shutdown, and malfunction plan on a site-specific basis under authority of § 63.6(e)(3)(vii) if the source has excessive exceedances during malfunctions. See § 63.1206(c)(2)(v)(A)(3) defining excessive exceedances during malfunctions and requiring reporting of the exceedances in the excess emissions report required under § 63.10(e)(3).

Comment: Two commenters state that all startup, shutdown, and malfunction plans should be submitted for review and approval by the delegated authority and made available for a 60-day public review period. Review and approval of the plans is needed in light of EPA's acknowledgment that most excess emissions would occur during startup, shutdown, and malfunctions. One of these commenters also believes that the regulations should provide for the public review period to be extended as necessary to accommodate a thorough public review. The reviewing authority should be required to provide a written response to public comments explaining any decision to reject a public comment suggesting ways for a facility to limit emissions during startup, shutdown, and malfunction events.

Many other commenters have concerns with requiring review and approval of startup, shutdown, and malfunction plans, except as required under § 63.1206(c)(2)(ii) for sources that elect to meet the RCRA mandate using provisions of the startup, shutdown, and malfunction plan as discussed above.

Response: Commenters express the same views here that they expressed under the rulemaking the Agency recently completed to revise the startup, shutdown, and malfunction plan requirements of the General Provisions applicable to all MACT source categories. See 68 FR at 32589–93 (May 30, 2003).

EPA concluded in that final rule that the Administrator may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or a portion thereof). Upon receipt of such a request, the owner or operator must promptly submit a copy of the requested plan (or a portion thereof) to the Administrator. In addition, the Administrator must request that the owner or operator submit a particular startup, shutdown, or malfunction plan (or a portion thereof) whenever a member of the public submits a specific and reasonable request to examine or to receive a copy of that plan or portion of a plan.

These provisions to provide the Administrator and the public with access to startup, shutdown, and malfunction plans, coupled with the provisions of § 63.6(e)(3)(vii) under which the Administrator must require the source to make changes to a deficient plan, should ensure that startup, shutdown, and malfunction plans are complete and accurate. We note that under § 63.6(e)(3)(vii) the Administrator must require the source to revise the plan if the plan: (1) does not address a startup, shutdown, or malfunction event that has occurred; (2) fails to operate the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with the general duty to minimize emissions; (3) does not provide adequate procedures for correcting malfunctioning process and/or air pollution control and monitoring equipment as quickly as practicable; or (4) includes an event that does not meet the definition of startup, shutdown, or malfunction listed in § 63.2.

The commenter advocating that all hazardous waste combustors should be required to submit their startup, shutdown, and malfunction plans for review and approval did not explain why the concerns the Agency expressed in the General Provisions rulemaking (see 68 FR at 32589–93) are not valid for hazardous waste combustors. Accordingly, we do not believe it is appropriate to deviate from the General Provisions to require that all hazardous waste combustors submit their startup, shutdown, and malfunction plans for review.

G. Public Notice of Test Plans

1. What Are the Revised Public Notice Requirements for Test Plans?

Prior to the proposal, it was brought to our attention that the Agency did not provide any direction in the 1999 final rule regarding how and when sources should notify the public, what the notification should include, or where and for how long performance test plans should be made available. Consequently, we proposed to add clarifying language to the § 63.1207(e)(2) public notification requirement for approved performance test and CMS performance evaluation test plans because we believe that providing opportunities for timely and adequate public notice is necessary to fully inform nearby communities of a source's plans to initiate important waste management activities. The proposed clarifications are based upon the *RCRA Expanded Public Participation Rule* (60 FR 63417, December 11, 1995) requirements for

public notification of an impending trial burn test. As a result, we did not feel that the clarifications imposed any new or additional requirements upon sources that will conduct a MACT comprehensive performance test or confirmatory performance test.

Commenters generally supported the clarifications to the public notice.[209] However, they suggested a change to the proposed requirement to provide notice of test plan approval no later than 60 days prior to conducting the test. The basis for suggesting a change is that many sources had not received approval of their test plans 60 days prior to the deadline for initiating their test under the Interim Standards. Moreover, several sources did not receive approval until well after the deadline for initiating the test. The problem created for these sources is that the required 60 day notification of the approved test plan effectively determines when the source will be able to begin its test. In other words, its test would need to be postponed until the approved test plan had been noticed for 60 days. Thus, commenters provided several possible alternatives.

One alternative that would avoid causing delays to testing is to require the public notice when the source submits its test plan. Although this fulfills the notification requirement, this alternative has a shortfall: The notice would occur at least one year (barring any extensions) in advance of the test and given this long period of time, the test plan is likely to be modified prior to approval. A second alternative is to provide notice of the test plan 60 days before the test as before, but regardless of approval status. This alternative is improved over the first, but still faces the same problem of potentially not offering the public an opportunity to view a final approved plan. A third alternative is to issue notice of the test plan as soon as it is approved. With this alternative, the public will have the most up-to-date information; however, it may not be until a few days prior to commencement of the test. Ideally, the second and third alternatives could be combined to provide the best possible chance of providing the public with an approved test plan in a reasonable period of time prior to the test. On the other hand, that would potentially require the facility to issue two notices if the test plan is not approved 60 days prior to the test. We do not believe this would be reasonable given that sources will be focused on activities associated with the impending test.

[209] See 69 FR 21347–21349.

In consideration of practicality, we believe that the second alternative provides an adequate solution. As we mentioned, the drawback is that the public may not have the opportunity to view an approved test plan. However, we believe it is more important that the public be aware of a source's plans (*i.e.*, how and when) for conducting the performance test.[210] This way, if they have questions, there will be 60 days in which they may contact the regulatory authority or the source before the test is scheduled to begin. This alternative will also eliminate the conflict associated with the confirmatory performance test. The regulations at § 63.1207(e)(1)(ii) specify that a source must submit to the regulatory authority its notice of intent to conduct a confirmatory performance test and the applicable test plans at least 60 calendar days prior to the date the test is to begin. Since we are no longer requiring that the test plans be approved before issuing public notice, sources would then provide notice of their confirmatory performance test plan to the public at the same time they submit their notice of intent and test plans to the regulatory authority. Therefore, we are requiring that sources issue the public notice of test plans 60 days in advance of commencing the performance test, whether their test plans have been approved or not. The regulations at § 63.1207(e)(2) have been revised accordingly.

One last concern related to the public notice of approved test plans involves sources that choose to conduct a performance test without an approved test plan (*e.g.*, both time extensions provided by §§ 63.7(h) and 63.1207(e)(3) have expired or due to other circumstances, the source has elected to begin the test without approval). Because we did not believe any sources would choose or need to do so, we did not propose any guidance or regulations specific to issuing notice to the public of their test plans. Nevertheless, a few commenters raised this possibility indirectly in their discussion of the problematic 60 day notice of approved test plan requirement. The revised proposal addresses this concern by no longer requiring that test plans be approved before issuing public notice. Thus, sources that choose to begin their test without an approved plan will have complied with the requirement to issue public notice. Irrespective of the public notice requirements for noticing test plans, we expect that sources will notify their regulatory authority of their decision to proceed with their test in the absence of plan approval.

[210] We expect that some source's test plans may be modified after notice is issued and prior to approval or commencement of their test. However, even under the previous regulations, test plans could be modified after they had been approved and public noticed. It is often a necessary consequence as sources continue to prepare the combustion unit for the test.

2. What Are the Revised Public Notice Requirements for the Petition To Waive a Performance Test?

In the Final Amendments Rule (67 FR 6968, February 14, 2002), the Agency did not provide direction regarding how, when, where, and what should be included in the public notice for a petition for time extension if the Administrator fails to approve or deny test plans.[211] In the proposal, we believed it important to provide clarification regarding when the notice must be issued and what it should contain. Thus, we proposed to revise paragraph § 63.1207(e)(3)(iv).

We received only one comment in response to the proposed requirements. The commenter did not express any concern over the requirements themselves, but rather suggested a change to terminology used. The commenter feels that the terms "to waive a performance test" or "waiver" as used in § 63.1207(e)(3)(iv) could be confusing to readers when we are actually referring to a time extension for commencing the test. Although we agree the terminology could be confusing, 40 CFR 63.1207(e)(3) clearly uses the term "waiver" in the context of an extension of time to conduct the performance test at a later date, implying that the deadline can be waived in this specific situation. The use of the term waiver is derived from the General Provisions requirements for requesting a waiver of performance tests (§ 63.7(h)). Thus, § 63.7(h)(3) provides the basis by which sources may petition, in the form of a waiver, for a time extension under § 63.1207(e)(3). In consideration of the above and that the existing regulations of § 63.1207(e)(3)(i)-(iii) consistently use the term waiver, we do not feel that a change to § 63.1207(e)(3)(iv) is warranted.

H. Using Method 23 Instead of Method 0023A

Comment. Most commenters support our proposal to allow the use of Method 23 instead of Method 0023A if a source includes this request in the comprehensive test plan to the permitting authority. Some commenters believe that Method 23 should be

[211] Sections 63.1207(e)(2) and (e)(3) each require public notice, but neither had provided any direction on how, when, where, and what should be included in their respective notices until today's final rule.

allowed in all cases without prior approval or on a source category basis.

Response. We proposed to allow sources to use Method 23 for dioxin and furan testing instead of SW–846 Method 0023A in situations where the enhanced procedures found in Method 0023A would not increase measurement accuracy. We proposed this change in the July 3, 2001, proposed rule, and again in the April 20, 2004, proposal. See 66 FR at 35137 and 69 FR at 21342.

The final rule promulgates this change as proposed. See § 63.1208(b)(1)(i). You may use Method 23 in lieu of Method 0023A after justifying use of Method 23 as part of your performance test plan that must be reviewed and approved the delegated permitting authority. You may be approved to use Method 23 considering factors including whether previous Method 0023A analyses document that dioxin/furan are not detected, are detected at low levels in the front half of Method 0023A, or are detected at levels well below the emission standard, and the design and operation of the combustor has not changed in a manner that could increase dioxin/furan emissions. We note that coal-fired boilers and combustors equipped with activated carbon injection systems may not be able to support use of Method 23, however, because these sources' stack gas is likely to contain carbonaceous particulate. Thus, these sources are likely to benefit the most from using Method 0023A.

The final rule does not automatically allow use of Method 23 for particular source categories because we cannot assess whether all sources in a category meet the conditions for use of Method 23—generally that quality assurance may not be improved—such as those listed above. These determinations can only be made on a site specific basis by the permitting authority most familiar with the particular source.

Comment: Commenters do not believe that an additional petition process (*i.e.*, under § 63.1209(g)(1)) is necessary before allowing use of Method 23. Instead, EPA should require that the use of Method 23 should be submitted with the test plan to the regulatory agency for approval.

Response: We agree that a separate petition is unnecessary. Sources should include a justification to use Method 23 in the performance test plan that is submitted for review and approval. This will allow the permitting authority to determine whether use of Method 23 is appropriate for the source.

Comment: Two commenters state that "the justification of the use of Method 23 will not be by the existing system of a petition to EPA, but will be included as a part of the performance test plan that is submitted to the delegated regulatory authority for review and approval. This means that the expertise, training, and decision-making will not be consistent across the country. This is especially a problem because of the severe resource, training and staff reductions among the delegated regulatory authorities across the country and from region to region. The decision to allow or disallow use of Method 23 should come specifically, for each case, from EPA consideration of the submitted justification, based on the knowledge and expertise of trained and experienced EPA staff. This is important for uniformly applying the testing requirements all across the country."

Response: We disagree, and we believe the responses to comments in today's rule make clear when Method 23 is an acceptable substitute for Method 0023A. If the source has carbon in the flue gas, as is the case with coal-fired boilers, boilers with carbon injection, and other sources likely to have a substantial amount of carbonaceous particulate matter in the flue gas, Method 0023A will generally be preferable because it includes procedures to account for dioxin and furan bound to carbonaceous particulate matter found in the probe and filter. In other situations, Method 23 will generally give the same results at a lower cost.

I. Extrapolating Feedrate Limits for Compliance With the Liquid Fuel Boiler Mercury and Semivolatile Metal Standards

Comment: One commenter questions whether allowing sources to extrapolate metal feedrates downward from the levels achieved during the comprehensive performance test to establish a metal feedrate limit will ensure compliance with the emission standards.

Response: The mercury and semivolatile metals standards for liquid fuel boilers are annual average emission limits where compliance is established by a rolling average mercury feedrate limit with an averaging period not to exceed an annual rolling average (updated hourly).[212] We use this approach because the emissions data used to establish the standards are more representative of normal emissions than compliance test emissions.[213]

As we explained at proposal, to ensure compliance with the mercury and semivolatile metal emission standards for liquid fuel boilers, you must document during the comprehensive performance test a system removal efficiency for the metals and back-calculate from the emission standard a maximum metal feedrate limit that must not be exceeded on an (not to exceed) annual rolling average. See 69 FR at 21311–12. If your source is not equipped with an emission control system (such as activated carbon to control mercury) for the metals in question, however, you must assume zero system removal efficiency. This is because, although a source that is not equipped with an emission control system may be able to document a positive system removal efficiency in a single test, that removal efficiency is not likely to be reproducible. Rather, it is likely to be an artifact of the calculation of emissions and feeds rather than a removal efficiency that can reliably be repeated.

To ensure that you can calculate a valid, reproducible system removal efficiency for sources equipped with a control system that effectively controls the metal in question, you may need to spike metals in the feed during the comprehensive performance test at levels that may result in emissions that are higher than the standard. This is appropriate because compliance with an emission standard derived from normal emissions data is based on compliance with an (not to exceed) annual average feedrate limit calculated as prescribed here, rather than compliance with the emission standard during the comprehensive performance test.[214]

The commenter is concerned that downward extrapolation from the levels achieved during the comprehensive performance test to establish a metal feedrate limit may not ensure

[212] If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by § 63.1209 (b)(5)(i). This is reasonable because allowing a longer period of time before calculating the initial rolling average would not effectively ensure compliance with the feedrate limit. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. We note that this is an approach allowed for calculating rolling averages under different modes of operation at § 63.1209(q)(2)(ii). At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

[213] See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of HWC MACT Standards," September 2005, Section 13.

[214] The emission standard accounts for long-term variability by incorporating an (not to exceed) annual averaging period that is implemented by an (not to exceed) annual average chlorine feedrate limit. Thus, because the emission level achieved during the performance test relates to daily (or hourly) variability, an exceedance of the emission standard during the test is not a violation.

compliance with the standard because system removal efficiency may be lower at lower feedrates.

This is a valid concern, and we have investigated it since proposal. We conclude that downward extrapolation of feedrates for the purpose of complying with the mercury and semivolatile metals emission standards for liquid fuel boilers will ensure compliance with the emission standards under the conditions discussed below.

We investigated the theoretical relationship between stack gas emissions and feedrate considering vapor phase metal equilibrium, the chlorine, mercury, and semivolatile metal feedrates for liquid fuel boilers in our data base, and the mercury and semivolatile emission standards for liquid fuel boilers.[215] We considered sources equipped with dry particulate matter controls and sources equipped with wet particulate matter controls.

Sources Equipped with Dry Controls. For sources equipped with dry controls other than activated carbon, mercury is not controlled. Thus, you must assume zero system removal efficiency. Consequently, if you are in the low Btu subcategory and comply with the mercury standard expressed as a mass concentration (µg/dscm), the mercury feedrate limit expressed as an MTEC (maximum theoretical emission concentration, µg/dscm) is equivalent to the emission standard.[216] If you are in the high Btu subcategory and comply with the mercury standard expressed as a hazardous waste thermal emission concentration (lb/MM Btu), the mercury feedrate limit expressed as a hazardous waste thermal feed concentration (lb/MM Btu) is also equivalent to the emission standard.

For semivolatile metals, the theoretical relationship between emissions and feedrate indicates that downward extrapolation introduces only a trivial error'0.17% at an emission rate 100 times the standard irrespective of the level of chlorine present. Id. Nonetheless, to ensure the error is minimal and to be practicable, you should limit semivolatile emissions during the comprehensive performance test to five times the emission standard.

Sources Equipped with Wet Scrubbers. For sources equipped with wet scrubbers, we conclude that the approach we use for semivolatile metals for dry scrubbers will also be appropriate to extrapolate a semivolatile metal feedrate limit for wet scrubbers. To ensure that downward extrapolation of the feedrate limit is conservative and to be practicable, you should limit semivolatile metal emissions during the comprehensive performance test to five times the emission standard.

For mercury, ensuring control with wet systems is more complicated because the level of chlorine present affects the formation of mercuric chloride which is soluble in water and easily controlled by wet scrubbers. Elemental mercury has very low solubility in scrubber water and is not controlled. The worst-case situation for conversion of elemental mercury to soluble mercuric chloride would be when the chlorine MTEC is lowest and the mercury MTEC is highest. We conclude that downward extrapolation of mercury feedrates is conservative for feedstreams that contain virtually no chlorine, *e.g.*, below an MTEC of 100 µg/dscm. In addition, we conclude that downward extrapolation is appropriate[217] for boilers feeding chlorinated feedstreams provided that during the performance test: (1) Scrubber blowdown has been minimized and the scrubber water has reached steady-state levels of mercury prior to the test (*e.g.*, by spiking the scrubber water); (2) scrubber water pH is minimized (*i.e.*, you establish a minimum pH operating limit based on the performance test as though you were establishing a compliance parameter for the total chlorine emission standard); and (3) temperature of the scrubber water is maximized (*i.e.*, you establish a maximum scrubber water temperature limit).

J. Temporary Compliance With Alternative, Otherwise Applicable MACT Standards

Comment: One commenter requests clarification on the requirements applicable to a source that switches to an alternative mode of operation when hazardous waste is no longer in the combustion chamber under the provisions of § 63.1206(b)(1)(ii). The commenter suggests that § 63.1206(b)(1)(ii) can imply that the complete compliance strategy needs to be switched over to the alternative section 112 or 129 requirements, even though compliance with the Subpart EEE requirements for monitoring, notification, reporting, and recordkeeping remains environmentally protective under Subpart EEE. For example, the commenter notes that § 63.1206(b)(1)(ii) could be incorrectly interpreted to require a source to comply with illogical requirements when the source temporarily switches to alternative, otherwise applicable standards, including standards testing and opacity monitoring under the alternative section 112 or 129 requirements. The commenter states that this interpretation makes little sense because a source that temporarily changes its mode of operation will continue to do testing under Subpart EEE, Part 63, or, in the case of opacity, the alternative section 112 requirements for cement kilns would necessarily require duplicate systems and compliance with redundant limits because a source may already be using a bag leak detection system or a particulate matter detection system. The commenter suggests only requiring sources to comply with the otherwise applicable emission standards under the alternative section 112 or 129 requirements while still operating under the various associated compliance requirements of Subpart EEE, part 63.

Response: The commenter requests clarification of § 63.1206(b)(1)(ii), which states that if a source is not feeding hazardous waste to the combustor and the hazardous waste residence time has expired (*i.e.*, the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time), then the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act.[218] As we have explained in previous notices,[219] sources that elect to invoke § 63.1206(b)(1)(ii) to become temporarily exempt from the emission standards and operating requirements of Subpart EEE, Part 63, remain an affected source under Subpart EEE (and only Subpart EEE) until the source is no longer an affected source by meeting the requirements specified in Table 1 of § 63.1200. Of course, a source can elect not to use the alternative requirements for compliance during periods when

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[215] USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005, Section 2.5 and Appendix B.

[216] Note, however, that you convert the MTEC (µg/dscm) to a mass feedrate (lb/hr) by considering the average gas flowrate of the test run averages during the comprehensive performance test to simply implementation and compliance.

[217] Mercury SRE is constant as the mercury feedrate decreases.

[218] Examples include 40 CFR part 60, subparts CCCC and DDDD for commercial and industrial solid waste incinerators, 40 CFR part 63, subpart LLL for Portland cement manufacturing facilities, 40 CFR part 63, subpart DDDDD for industrial/commercial/institutional boilers and process heaters, and 40 CFR part 63, subpart NNNNN for hydrochloric acid production facilities.

[219] This provision has been discussed in several Federal Register notices including 64 FR at 52904 (September 30, 1999), 66 FR at 35090, 35145 (July 3, 2001), 67 FR at 6979 (February 14, 2002), and 69 FR at 21203 (April 20, 2004).

they are not feeding hazardous waste, but, if so, the source must comply with all of the operating and monitoring requirements and emission standards of Subpart EEE at all times.[220] To implement § 63.1206(b)(1)(ii) a source defines the period of compliance with the otherwise applicable sections 112 and 129 requirements as an alternative mode of operation under § 63.1209(q). In order to be exempt from the emission standards and operating requirements of Subpart EEE, a source documents in the operating record that they are complying with the otherwise applicable Section 112 and 129 requirements specified under § 63.1209(q).

The commenter recommends that the complete compliance strategy need not be switched over to the alternative section 112 and 129 requirements when temporarily switching to the alternative standards. In general, we disagree. The intent of § 63.1206(b)(1)(ii) is to ensure that a source is complying with all requirements of sections 112 and 129 as an alternative mode of operation in lieu of the requirements under Subpart EEE. In the 1999 final rule we stated that the source must comply with all otherwise applicable standards under the authority of sections 112 and 129. Specifically, the source must comply with all of the applicable notification requirements of the alternative regulation, comply with all of the monitoring, recordkeeping, and testing requirements of the alternative regulation, modify the Notice of Compliance (or Documentation of Compliance) to include the alternative mode(s) of operation, and note in the operating record the beginning and end of each period when complying with the alternative regulation. See 64 FR at 52904. A source that elects to comply with otherwise applicable standards under § 63.1206(b)(1)(ii) must specify all requirements of those standards, not only the emission standards applicable under the sections 112 and 129 standards, but also the associated monitoring and compliance requirements and notification, reporting, and recordkeeping requirements in the operating record under § 63.1209(q).

The commenter suggests that a source should be able to comply with the otherwise applicable emission standards, while continuing to operate under the associated compliance requirements for the HAP under Subpart EEE. An example would be a cement kiln source complying with the dioxin and furan monitoring requirements under § 63.1209(k) of Subpart EEE for the dioxin and furan standards under § 63.1343(d) under Subpart LLL. We did not determine, when promulgating the provisions of §§ 63.1206(b)(1)(ii) and 63.1209(q)(1), that the monitoring provisions under Subpart EEE are equivalent to the associated monitoring requirements under the otherwise applicable 112 and 129 standards, or indeed, whether they are even well-matched. Such a determination would require notice and opportunity for comment, which we have not provided. However, this should not be interpreted to mean that a similar determination could not be made on a site-specific basis given that the MACT general provisions allow a source to request alternative monitoring procedures under § 63.8(f)(4). Certainly, a source can apply under this provision that the compliance requirements under Subpart EEE satisfy the associated monitoring requirements under the otherwise applicable 112 and 129 standards.

We also disagree with the commenter that emissions testing under the alternative standards of sections 112 and 129 is an example of an illogical requirement under § 63.1206(b)(1)(ii). Performance testing generally is required to demonstrate compliance with the emission standards and to establish limits on specified operating parameters to ensure compliance is maintained. In order to take advantage of the alternative under § 63.1206(b)(1)(ii), a source needs to show that compliance with and establish operating parameter limits for the otherwise applicable standards of sections 112 and 129. Thus, testing in order to establish operating parameter limits will be necessary. However, this does not mean that a separate performance test with the alternative sections 112 or 129 standards is necessarily required. We note that a source can make use of the performance test waiver provision under § 63.7(h) of the general provisions to request that the performance test under the alternative sections 112 and 129 standards be waived because the source is meeting the relevant standard(s) on a continuous basis by continuing to comply with Subpart EEE for the relevant HAP. This approach may be practicable for sources that can demonstrate that their level of performance during testing under Subpart EEE, including the associated operating and monitoring limits, will undoubtedly ensure continuous compliance with the emissions standards and the associated operating limits of alternative sections 112 and 129 standards.

Finally, the commenter notes that Subpart LLL (the alternative section 112 standards for cement kilns) includes opacity monitoring while Subpart EEE may not. The commenter states that this unnecessarily would require duplicate systems and compliance with redundant limits because of the bag leak detection and particulate matter detection system requirements under Subpart EEE. We respond that Subpart LLL specifies opacity as a standard (see § 63.1343(b)(2)), and, therefore, cement kilns subject to Subpart EEE must comply with the opacity standard when electing to comply temporarily with the requirements of Subpart LLL. We note that the opacity standard under Subpart EEE does not apply to cement kilns that are equipped with a bag leak detection system under § 63.1206(c)(8) and to sources using a particulate matter detection system under § 63.1206(c)(9). However, a cement kiln may use an opacity monitor that meets the detection limit requirements as the detector for a bag leak detection system or particulate matter detection system. See Part Four, Section VIII.A-C of the preamble.

K. Periodic DRE Testing and Limits on Minimum Combustion Chamber Temperature for Cement Kilns

Comment: Several commenters oppose the need for cement kilns that burn at locations other than the normal flame zone to demonstrate compliance with the destruction and removal efficiency (DRE) standard during each comprehensive performance test. These commenters recommend that EPA remove the requirement of § 63.1206(b)(7)(ii) for cement kilns citing that existing rule provisions (i.e., the requirements under § 63.1206(b)(5) pertaining to changes that may adversely affect compliance) are sufficient to require additional DRE testing after changes are made that may adversely affect combustion efficiency. Commenters question EPA's position that cement kilns that burn hazardous waste at locations other than the normal flame zone demonstrate a variability in DRE sufficient to justify the expense of re-testing for DRE with each performance test. Commenters point to EPA's data base that includes DRE results from over 30 tests with nearly 250 runs showing consistent DRE results, including sources burning hazardous waste at locations other than the normal flame zone, being achieved by cement kilns. The commenters note several burdens associated with DRE

[220] However, the operating requirements do not apply during startup, shutdown, or malfunction provided that hazardous waste is not in the combustion chamber. See § 63.1206(b)(1)(i).

testing that do not result in improved environmental benefit including the purchase of expensive exotic virgin chemicals for performance testing, the risks to workers and contractors associated with the handling of these chemicals, and increasing the length of operation at stressful kiln operating conditions necessary to conduct DRE testing at minimum combustion chamber temperatures. Alternatively, commenters recommend that EPA revise the DRE requirements such that periodic testing is no longer required for cement kilns (that burn at locations other than the normal flame zone) after they have successfully achieved the DRE standard over multiple testing cycles (e.g., two or three) under similar testing regimes. That is, the source should only be required to demonstrate compliance with the DRE standard a maximum of two or three times until the source (that burns at locations other than the normal flame zone) modifies the system in a manner that could affect the ability of it to achieve the DRE standard.

Response: We are revising the requirements of § 63.1206(b)(7)(ii) such that cement kilns that feed hazardous waste at locations other than the normal flame zone need only demonstrate compliance with the DRE standard during three consecutive comprehensive performance tests provided that the source has successfully demonstrated compliance with the DRE standard in each test and that the design, operation, and maintenance features of each of the three tests are similar. These revisions do not affect sources that burn hazardous waste only in the normal flame zone.[221]

Prior to today's change, we required sources that feed hazardous waste in locations other than the flame zone to perform periodic DRE testing every 5 years to ensure that the DRE standard continues to be achieved over the life of the unit. See § 63.1206(b)(7)(ii). We justified this requirement because of concerns that sources that feed hazardous waste at locations other than the flame zone have a greater potential of varying DRE performance due to their hazardous waste firing practices. As we stated in the 1999 rule, we were concerned that the DRE may vary over time due to the design and operation of the hazardous waste firing system, and that those variations may not be identical or limited through operating limits set during a single DRE test (similar to what we concluded for sources that burn hazardous waste only in the normal flame zone). See 64 FR at 52850.

Commenters now question the need for subsequent DRE testing at cement kilns that feed hazardous waste at locations other than the normal flame zone once a cement kiln demonstrates compliance with the MACT DRE standard. The regulatory requirement for the destruction and removal efficiency standard has proved to be an effective method to determine appropriate process controls necessary for the combustion of hazardous waste. We are not convinced that only one DRE test is sufficient to ensure that a cement kiln that burns hazardous waste at locations other than the normal flame zone will continue to meet the DRE standard because temperatures are lower and gas residence times are shorter at the other firing locations. This is especially true given the industry trend to convert to the more thermally efficient preheater/precalciner kiln manufacturing process.[222] Precalciner kilns use a secondary firing system (i.e., flash furnace) at the base of the preheater tower to calcine the raw material feed outside the rotary kiln. This results in two separate combustion processes that must be controlled " one in the kiln and the other in the flash furnace. The gas temperature necessary for calcining the limestone raw material in the flash furnace is lower than the temperature required making the clinker product. We conclude, therefore, that it is necessary, in spite of the concerns raised by commenters, to retain periodic DRE testing to ensure continued compliance with the DRE standard necessary for the control of nondioxin/furan organic HAP.

We also acknowledge, however, the concerns raised by the commenters. Our DRE data base of operating cement kilns includes results from approximately 25 DRE tests and nearly 200 runs.[223] All data show compliance with the DRE standard. Of these, approximately one-quarter of the data are from cement kilns that burned hazardous waste at locations other than the normal flame zone (e.g., injecting waste at midkiln in a wet process kiln), but we do not have DRE results from every operating cement kiln. Considering available DRE data and the concerns of the commenters, we believe that DRE testing during three consecutive comprehensive performance tests is sufficient to provide needed certainty about DRE performance while reducing the overall costs and toxic chemical handling concerns to the regulated source. Thus, we are revising the requirements of § 63.1206(b)(7)(ii) such that cement kilns that feed hazardous waste at locations other than the normal flame zone need only demonstrate compliance with the DRE standard during three consecutive comprehensive performance tests provided that the source has successfully demonstrated compliance with the DRE standard in each test and that the design, operation, and maintenance features of each of the three tests are similar. If a facility wishes to operate under new operating parameter limits that could be expected to affect the ability to meet the DRE standard, then the source would need to conduct another DRE test. Once the facility has conducted another three DRE tests under the new operating limits, then subsequent DRE testing would not be required. Accordingly, we are revising the requirements of § 63.1206(b)(7)(ii).

Comment: Several commenters support EPA's proposal to delete the requirement to establish an operating limit on the minimum combustion chamber temperature for dioxin/furans under § 63.1209(k)(1) for cement kilns. These commenters point to the high temperatures of approximately 2500°F required to make the clinker product. These high temperatures are fixed by the reaction kinetics and thermodynamics occurring in the burning zone and cannot be reduced below minimum values at the whim of the operator and still make a marketable product. In addition to deleting the minimum combustion chamber temperature limit for dioxin/furans, commenters also recommend, for similar reasons, that EPA delete the minimum combustion chamber temperature requirement under § 63.1209(j)(1) associated with the destruction and removal efficiency standand. Commenters note that demonstrating the minimum temperature requires operating under stressful operating conditions that can

[221] The DRE demonstration for these sources need be made only once during the operational life of a source, either before or during the initial comprehensive performance test, provided that the design, operation, or maintenance features do not change in a manner that could reasonably be expected to affect the ability to meet the DRE standard. See §§ 63.1206(b)(7) and 63.1207(c)(2)(ii). The source would ensure continued compliance by operating under the operating parameter limits established during this DRE test.

[222] For example, Ash Grove Cement in Chanute, KS replaced their two wet process cement kilns with one preheater/precalciner kiln in 2001. Holcim Inc in Holly Hill, SC has also recently constructed a new preheater/precalciner kiln to replace two wet process cement kilns. Keystone Cement Company in Bath, PA is considering replacing their two wet process cement kilns with a new preheater/precalciner kiln. See docket item OAR–2004–0022–0384.

[223] U.S. EPA, "Final Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies," Section 23.4, September 2005.

lead to upset conditions and potentially damage the integrity of the manufacturing equipment. Other commenters oppose, however, deletion of the minimum combustion chamber temperature limit for cement kilns. These commenters state that all combustion sources, including cement kilns, must meet a minimum combustion chamber temperature limit to control dioxin/furans and organic HAP emissions given that some cement kilns feed hazardous waste at locations other than the high temperature clinker-forming zone of the kiln.

Response: We are deleting as proposed the requirement to establish a minimum combustion chamber temperature limit for dioxin/furan under § 63.1209(k)(2) for cement kilns. See 69 FR at 21343. However, we retain the requirement for cement kilns to establish and comply with a minimum combustion chamber temperature limit for the destruction and removal efficiency standard under § 63.1209(j)(1).[224]

As discussed in the 1999 rule, nondioxin/furan organic hazardous air pollutants are controlled by the DRE standard and the carbon monoxide and hydrocarbon standards. See 64 FR at 52848–52852. This standard was not reopened in the present rulemaking. We note, however, that the DRE standard determines appropriate process controls necessary for the combustion of hazardous waste. Establishing and monitoring a minimum temperature of the combustion chamber is a principal factor in ensuring combustion efficiency and destruction of toxic organic compounds. As discussed in the previous response, we believe this is especially true given the industry trend to convert to the more thermally efficient preheater/precalciner kiln manufacturing process, which use two separate combustion processes. We conclude that it is necessary, in spite of the concerns raised by commenters, to retain the minimum combustion chamber temperature limit as related to the DRE standard to ensure that combustion efficiency within the entire kiln system is maintained for the control of nondioxin/furan organic HAP.

However, we acknowledge the difficulties that cement kiln operators face in establishing a minimum combustion chamber temperature limit, including the stressful operating conditions necessary to establish the limit. As we stated at proposal, our data indicate that limiting the gas temperature at the inlet to the particulate matter control device is a critical parameter in controlling dioxin/furan emissions in cement kilns. See 69 FR at 21344. Therefore, we believe that an operating limit on the minimum combustion chamber temperature is less important to ensure compliance with the dioxin/furan standard than to ensure compliance with the DRE standard. Thus, we remove the requirement to establish a minimum combustion chamber temperature limit for dioxin/furan under § 63.1209(k)(2) for cement kilns. This change does not affect the other operating parameter limits under § 63.1209(k) that must be established for dioxin/furans, including a limit on the gas temperature at the inlet to the particulate matter control device.

Comment: One commenter supports the use of previous minimum combustion zone temperature data, regardless of the test age, in lieu of conducting new, stressful DRE testing. That is, if a cement kiln is required to conduct future DRE tests, then the source should not have to re-establish a minimum combustion chamber temperature limit during the new test. Rather, the source should have the option to submit minimum combustion chamber temperature results in lieu of re-establishing the limit.

Response: We reject the commenter's suggestion for reasons discussed above. We believe that it is necessary to retain the link between the minimum combustion chamber temperature limit and the DRE test itself, which will ensure that the combustion efficiency of the entire system will be maintained for the control of nondioxin/furan organic HAP.

Comment: One commenter supports deletion of the minimum combustion chamber temperature requirement for dioxin/furan under § 63.1209(k)(2) for lightweight aggregate kilns.

Response: We reject the commenter's suggestion. Our data base of dioxin/furan emissions data shows substantial variability in test results at each source.[225] This may indicate that factors other than limiting kiln exit gas temperatures may be influencing significantly dioxin/furan formation in lightweight aggregate kilns. As such, we conclude that removing the minimum combustion chamber temperature limit would not be appropriate at this time due to the uncertain nature of dioxin/furan formation in lightweight aggregate kilns. Thus, we are retaining the requirement to establish a minimum combustion chamber temperature limit for dioxin/furans under § 63.1209(k)(2) and § 63.1209(j)(1) for lightweight aggregate kilns.

L. One Time Dioxin and Furan Test for Sources Not Subject to a Numerical Limit for Dioxin and Furan

Comment. Commenters support the one-time dioxin/furan test for sources not subject to a numerical dioxin and furan standard. Commenters agree that previous testing should be allowed to document the one time test.

Response. The final rule requires sources that are not subject to a standard with numerical dioxin and furan levels [226] to conduct a one-time dioxin and furan test as part of their initial comprehensive performance testing: lightweight aggregate kilns that elect to control the gas temperature at the kiln exit rather than comply with a dioxin/furan standard of 0.20 ng TEQ/dscm, solid fuel boilers, liquid fuel boilers with wet or no air pollution control systems, and HCl production furnaces. We will use these data as part of the process of addressing residual risk under CAA section 112(f) and evaluating future MACT standards under section 112(d)(6). The results may also be used as part of the RCRA omnibus permitting process.

Comment. EPA proposed that source not subject to a numerical dioxin and furan limit conduct a dioxin and furan test under worst-case conditions. Commenters state that operating under worst-case conditions is inconsistent with the CAA Section 112(f) process, which is to consider actual (i.e., normal) emissions. Commenters suggest that we require the tests be conducted under normal to above normal conditions.

Response. Section 112 (f) standards evaluate allowable emission levels, although actual emissions levels may also be considered. See 70 FR at 19998–

[224] Under the interim standards, cement kilns must establish and continuously monitor limits on minimum gas temperature in the combustion zone for both the dioxin/furan and DRE standards. As discussed in the preceding paragraph, a source may not need to conduct DRE testing during each comprehensive performance test. If DRE testing is required, then the source will need to establish a minimum combustion zone temperature limit as required under the DRE standard. However, if DRE testing is not required, then (according to the changes made today) the cement kiln will not be required to establish the minimum combustion chamber temperature limit under the dioxin/furan standard during a subsequent comprehensive performance test. The minimum combustion chamber temperature operating limit established during previous testing remains in effect, however.

[225] For example, dioxin/furan emissions from source number 307 range from a low of 0.024 to a high of 57.9 ng TEQ/dscm. See "Source Category Summary Sheets" available in the docket or USEPA, "Final Technical Support Document for HWC MACT Standards, Volume II: HWC Data Base," September 2005.

[226] These sources do, however, need to comply with the carbon monoxide or hydrocarbon standards, as well as the DRE standard as surrogates to comply with today's dioxin and furan emissions control requirements.

19999 (April 15, 2005). Although we agree with the commenter that, in general, emissions in the range of normal to maximum are considered for section 112(f) determinations, we believe that dioxin/furan testing to provide information of use in section 112(f) residual risk determinations should be conducted under conditions where controllable operating conditions are maximized to reflect the full range of expected variability of those parameters which can be controlled. This is because dioxin/furan emissions may relate exponentially with the operating conditions that affect formation. We believe that dioxin/furan emissions relate exponentially with gas temperature at the inlet to an ESP or fabric filter,[227] and are concerned that emissions may also relate exponentially with the operating parameters (discussed below) that affect emissions from sources subject to the one-time dioxin/furan emissions test. Emissions testing under operating conditions that are in the range of "normal to above normal" may be exponentially lower than emissions under operating conditions reflecting maximum daily variability of the source. Since testing under normal operating conditions makes no effort to assess operating variability, emissions during such testing would fail to reflect expected daily maximum operating variability and so would not represent time-weighted average emissions and would under-represent health risk from chronic exposure.

Although we acknowledge that sources will not exhibit maximum operating variability each day of operation, we believe that it is important to assess the upper range of emissions that these sources may emit to properly evaluate under section 112(f) whether the MACT standards for dioxin/furan for these sources (i.e., absent a numerical emission standard) protect public health with an ample margin of safety.[228]

In addition, we note that emissions reflecting daily maximum variability would be most useful for section 112(d)(6) determinations in the future because they would represent the full range of emissions variability that results from controllable operating conditions.

For these reasons, the final rule requires sources to test under feed and operating conditions that are most likely to reflect maximized expected daily variability of dioxin/furan emissions, as proposed. Such testing is similar to a comprehensive performance test to demonstrate compliance with a numerical dioxin/furan emission standard where operating limits would be established based on operations during the test. As a practical matter, however, we note that many of the operating parameters discussed below, although controllable to some extent, cannot be quantified and cannot be controlled to replicate the condition in a future test. In addition, some operating parameters we identify may not have as strong a relationship to dioxin/furan emissions as others. Consequently, the operating conditions are generally described subjectively.

Based on currently available research, you should consider the following factors to ensure that you conduct the test under operating conditions that seek to fully reflect maximum daily variability of dioxin/furan emissions: (1) Dioxin/furan testing should be conducted at the point in the maintenance cycle for a boiler when the boiler tubes are more fouled and soot-laden, and not after maintenance involving soot or ash removal from the tubes; (2) dioxin/furan testing should be performed following (or during) a period of feeding normal or greater quantities of metals; (3) dioxin/furan testing should be performed while feeding normal or greater quantities of chlorine; (4) the flue gas temperature in some portion of the heat recovery section of a boiler should be within the dioxin formation temperature window of 750 to 400°F during the testing; (5) the testing should not be conducted under optimal combustion conditions (e.g., combustion chamber temperature should be in the range of normal to the operating limit; hazardous waste feedrate and combustor through put should be in the range of normal to maximum); (6) for units equipped with wet air pollution control systems, the testing should be conducted after a high solids loading has developed in the scrubber system (consistent with normal operating cycles); and (7) for solid fuel boilers, the sulfur content of the coal should be equivalent to or lower than normal coal sulfur levels (within the range of sulfur levels that the source utilizes), and the gas temperature at the inlet to the electrostatic precipitator or fabric filter should be close to the operating limit. In addition, unless sulfur compounds are routinely fed to the boler, dioxin/furan testing should not be performed after a period of firing high sulfur fuel or injection of sulfur additives. See 69 FR at 21308 for more information.

Comment: Commenters state that we should delete the one-time testing requirement for dioxin and furans. The Clean Air Act at Section 114(a)(1)(D) allows EPA to request "any person" to sample emissions. Applying the Section 114 authority to an entire subcategory of sources is overly broad, particularly in the context of having already established appropriate surrogates for dioxin and furan in a MACT rule. Commenters are not aware of EPA taking this approach in previous efforts. (Section 114 requests have focused on collecting existing information from sources facing future MACT standards). Commenters oppose this approach because it established a precedent they do not favor, and will bring about significant costs and difficulties to provide the data. They suggest that we delete the proposed requirements for a one-time dioxin and furan test.

Response: We believe that section 114(a)(1)(D) of the Clean Air Act provides us the authority to require sources to conduct a one time test to generate data which can be used in making later section 112 (f) determinations for the source category. The results of the testing may also inform the section 112(d)(6) review and the RCRA omnibus permitting processes. The fact that section 114 specifically indicates that a purpose of gathering information under section 114 is to assist in developing national rules indicates that the provision can have wide sweep extending to all sources in a category. See 69 FR at 21307–308 for a full explanation.

We believe a dioxin and furan test costs approximately $10,000 when conducted along with other testing. We do not believe this cost is significant, and sources must only perform this test once, not more frequently as would be the case to ensure compliance with a standard. We also allow sources to use prior testing to meet this requirement, and allow sources to use "data in lieu" so they can test one source if they have more than one of the same identical sources.

We do not believe that obtaining these data will be difficult, and note that the permitting authority can assist sources in planning their tests.

M. Miscellaneous Compliance Issues

Comment: Several commenters state that § 63.1206(c)(3)(iv) requiring an automatic waste feed cutoff (AWFCO) if

[227] See USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance," July 1999, Chapter 3.

[228] Dioxin/furan are some of the most toxic compounds known due to their bioaccumulation potential and wide range of health effects, including carcinogenesis, at exceedingly low doses. Exposure via indirect pathways is a chief reason that Congress singled out dioxin/furan for priority MACT control in CAA section 112(c)(6). See S. Rep. No. 128, 101st Cong. 1st Sess. at 154–155.

a parameter linked to the AWFCO is exceeded should be revised to reflect § 63.1206(c)(2)(v)(A)(1). Section 63.1206(c)(2)(v)(A)(1) states that, if the AWFCO is affected by a malfunction such that the malfunction itself prevents immediate and automatic cutoff of the hazardous waste feed, you must cease feeding hazardous waste as quickly as possible.

Response: We agree with commenters in principle, but note that the automatic waste feed cutoff system may fail for reasons other than a malfunction. That is, equipment or other failures are malfunctions only if they meet the definition of malfunction at § 63.2. Failures that result from improper maintenance or operation are not malfunctions. Consequently, the final rule revises § 63.1206(c)(3)(iv) to state that if the AWFCO is affected by a failure such that the failure itself prevents immediate and automatic cutoff of the hazardous waste feed, you must cease feeding hazardous waste as quickly as possible. Revised § 63.1206(c)(3)(iv) does not refer to malfunctions, however, because the AWFCO system may fail for reasons other than a malfunction. The reference in § 63.1206(c)(2)(v)(A)(1) to malfunctions is appropriate because that paragraph addresses requirements during malfunctions.

Comment: Several commenters note that the proposed rule did not include a sunset provision for the Interim Standards applicable to incinerators, cement kilns, and lightweight aggregate kilns after the compliance date of the standards we promulgate today (i.e., the "permanent replacement standards"). Commenters are concerned that, although the Agency intends for the replacement standards to be more stringent than the Interim Standards, that may not be the case in all situations because of the different format used for some of the replacement standards. For example, several of the replacement standards for cement kilns and lightweight aggregate kilns are expressed as hazardous waste thermal emissions.

Response: Although we are promulgating the replacement standards in a format that ensures they are not less stringent than the Interim Standards, we agree with commenters that not sunsetting the Interim Standards may lead to confusion as to which standards apply. Consequently, we include a sunset provision in today's rule for the Interim Standards. The Interim Standards will be superseded by the final rule promulgated today on the compliance date.

We note, however, that the Interim Standards for total chlorine continue to apply to sources that establish health-based limits for total chlorine under § 63.1215. Consequently, we have incorporated the total chlorine Interim Standards in § 63.1215 as they apply as a cap to the health-based emission limits.

Comment: Several commenters state that the rule should allow extrapolation of ash and chlorine feedrates to establish feedrate limits corresponding to the particulate matter and total chlorine standards. Commenters believe the rationale we use to allow extrapolation of metals feedrates is also applicable to ash and chlorine.

Response: The final rule does not allow you to extrapolate ash and chlorine feedrates achieved during the comprehensive performance test to establish feedrate limits comparable to the particulate matter and total chlorine emission standards.

We do not allow extrapolation of ash to the particulate matter emission standard because particulate matter (i.e., soot) may form in the combustor, particularly at times of unstable combustion conditions. Consequently, extrapolating from ash feedrates may underestimate particulate matter emissions and may not ensure compliance with the particulate matter emission standard.

We do not allow extrapolation of chlorine feedrates to the total chlorine emission standard because chlorine feedrate is an operating parameter limit to ensure compliance with the semivolatile metal emission standard. Because an increase in chlorine feedrate can increase the volatility of semivolatile metals and we do not know the precise relationship among chlorine feedrate, metal volatility, and metals emissions, extrapolating the chlorine feedrate achieved during the comprehensive performance test to a feedrate comparable to the total chlorine emission standard may not ensure compliance with the semivolatile metal emission standard. If a source complies with the semivolatile metals emission standard under § 63.1207(m)(2) where the performance test is waived, however, by assuming zero system removal efficiency and limiting the semivolatile feedrate (expressed as a maximum theoretical emission concentration) to the level of the emission standard, the source may request under § 63.1209(g)(1) to extrapolate chlorine feedrates during the comprehensive performance test up to the total chlorine emission standard.

Comment: Several commenters state that the proposed regulatory language under §§ 63.1206(b)(9)(i) and 63.1206(b)(10)(i) is inconsistent with the proposed preamble, which states that sources should be allowed to petition for alternative standards provided they submit information showing that HAP contributions to emissions from the raw materials are preventing the source from achieving the emissions standard though the source is using MACT control.[229] The commenters state that the proposed regulatory language, despite the intent signaled in the proposed preamble, inappropriately excludes the provisions of §§ 63.1206(b)(9)(i) and 63.1206(b)(10)(i) as an alternative option when complying with the replacement emission standards under §§ 63.1220 and 63.1221.

Response: We agree with the commenters. The proposed regulatory text inadvertently excluded the alternative standard provisions from use by cement and lightweight aggregate kilns under the replacement standards. Accordingly, we are revising the introductory text of §§ 63.1206(b)(9)(i) and 63.1206(b)(10)(i) by making the alternative standards available under the replacement standards.

Comment: One commenter states that the availability of the alternative standard for mercury under § 63.1206(b)(10)(i) should not be conditioned upon mercury being present only at levels below the detection limit in raw materials, as specified under § 63.1206(b)(10)(i)(B). The commenter suggests that the approach for mercury should be the same as for other HAP such as semi- and low volatile metals under § 63.1206(b)(10)(i)(A).

Response: The commenter misreads the alternative standard provisions under § 63.1206(b)(10)(i). We note that § 63.1206(b)(10) includes two separate provisions for cement kilns. The first provision allows sources to petition for an alternative standard when a source cannot achieve a standard because of HAP metal or chlorine concentrations in their raw material feedstocks cause an exceedance of a standard despite the source's use of MACT control. See § 63.1206(b)(10)(i)(A). The term "regulated metals" specified in § 63.1206(b)(10)(i)(A) includes mercury, semivolatile metals, and low volatile metals. The second provision allows a source to petition for an alternative mercury standard when mercury is not present at detectable levels in the source's raw materials. § 63.1206(b)(10)(i)(B). These two provisions are indeed separate as

[229] For example, see 69 FR at 21268.

discussed in the 1999 rule. See 64 FR at 52962–967. Also note that the conjunction separating paragraphs (b)(10)(i)(A) and (b)(10)(i)(B) is "or," not "and."

Given the potential confusion of the term "regulated metals," we are clarifying the regulatory text by specifying the three metal HAP volatility groups that comprise the term "regulated metals." See revised § 63.1206(b)(10)(i)(A). Finally, given that the alternative standard provisions are similar for lightweight aggregate kilns, we are also clarifying §§ 63.1206(b)(9)(i)(A) and (b)(9)(iv).

IX. Site-Specific Risk Assessment Under RCRA

A. What Is the Site-Specific Risk Assessment Policy?

The Site-Specific Risk Assessment (SSRA) Policy has undergone several revisions since its inception in the 1993 draft Combustion Strategy. Currently, it is the same policy as we expressed in the 1999 final rule preamble. In the 1999 rule, we recommended that for hazardous waste combustors subject to the Phase 1 MACT standards, permitting authorities should evaluate the need for an SSRA on a case-by-case basis. Further, while SSRAs are not anticipated to be necessary for every facility, they should be conducted where there is some reason to believe that operation in accordance with the MACT standards alone may not be protective of human health and the environment. For hazardous waste combustors not subject to the Phase 1 standards, we continued to recommend that SSRAs be conducted as part of the RCRA permitting process. See 64 FR 52841. Since 1999, we have provided additional clarification of the appropriate use of the SSRA policy and technical guidance in an April 10, 2003 memorandum from OSWER's Assistant Administrator to the EPA Regional Administrators entitled, "Use of the Site-Specific Risk Assessment Policy and Guidance for Hazardous Waste Combustion Facilities" (see Docket # OAR–2004–0022–0083). Most importantly, in this memorandum we reiterated that where a permitting authority concludes that a risk assessment is necessary for a particular combustor, the basis for this decision must be substantiated in each case. The factual and technical basis for any decisions to conduct a risk assessment must be included in the administrative record for the facility per 40 CFR 124.7, 124.8, 124.9, and 124.18. In addition, if the facility, or any other party, files comments on a draft permit decision objecting to the permitting authority's conclusions regarding the need for a risk assessment, the permitting authority must respond fully to the comments. Any permit conditions determined to be necessary based either on the SSRA, or because the facility declined to conduct an SSRA, also must be documented and supported in the administrative record.

Today, we are codifying additional regulatory language providing authority for SSRAs while maintaining the same basic SSRA policy. It is important to note that all of the requirements of Part 124 referred to above will continue to apply to actions taken in accordance with the additional regulatory language we are codifying. The SSRA regulatory provisions, which establish that the need for an SSRA should be determined on a case-by-case basis, apply equally to both Phase 1 and Phase 2 sources.

B. Why Might SSRAs Continue To Be Necessary for Sources Complying With Phase 1 Replacement Standards and Phase 2 Standards?

EPA conducted a national evaluation of human health and ecological risk for the MACT standards as proposed in the 1996 NPRM and then revised the evaluation to include more facilities for the 1999 final rulemaking. Based on the results of the final national risk evaluation for hazardous air pollutants (excluding non-dioxin products of incomplete combustion), we concluded that sources complying with the MACT standards generally would not pose an unacceptable risk to human health or the environment. For today's final rule, we did not conduct another national risk assessment as we did for the 1999 rule. Rather, for both the April 20, 2004 NPRM and today's final rule we conducted a comparative risk analysis, comparing the Phase 1 Replacement and Phase 2 Standards to the 1999-promulgated Phase 1 Standards, to determine if there were any significant differences that might influence or impact the potential risk. Similar to the proposal, the comparative analysis conducted for today's final rule focused on several key characteristics: emission rates, stack height, stack gas buoyancy, meteorological conditions (which include a number of variables), population parameters including density and radial distribution, and correlations among the characteristics themselves. The results of the comparative analysis suggest that the MACT standards for both Phase 1 and Phase 2 sources are generally protective. Therefore, separate national emissions standards under RCRA are unnecessary. See Part Seven: How Does the Final Rule Meet the RCRA Protectiveness Mandate? Although we have concluded that the Phase 1 Replacement and Phase 2 standards are generally protective, as we discussed in the 2004 proposal (69 FR 21325), there may be instances where we cannot assure that emissions from each source will be protective of human health and the environment, and therefore an SSRA may be necessary. Furthermore, it should be noted that, just as for the risk assessment for the 1999 rule, the comparative analysis does not account for cumulative emissions at a source or background exposures from other sources.

Before discussing factors that may lead permit authorities to consider whether or not to conduct an SSRA, it should be noted that the Agency generally does not expect that facilities that have conducted risk assessments will have to repeat them. As we explained in the 1999 final rule preamble, changes to comply with the MACT standards should not cause an increase in risk for the vast majority of facilities given that the changes will likely be the addition of pollution control equipment or a reduction in the hazardous waste being burned (see 64 FR 52842). Instances where a facility may need to repeat a risk assessment would be related to changes in conditions that would likely lead to increased risk. For example, if the only changes at a facility relate to the exposed population (a new housing development is constructed within a few square miles of the source), what was once determined to be protective under a previous risk assessment may now be beyond acceptable levels. Another example would be where a hazardous waste burning cement kiln that previously monitored hydrocarbons in the main stack elects to install a mid-kiln sampling port for carbon monoxide or hydrocarbon monitoring to avoid restrictions on hydrocarbon levels in the main stack. Thus, the stack hydrocarbon emissions may increase (64 FR 52843, footnote 29). In such situations, we would anticipate that the risk assessment would not have to be entirely redone. It may be as limited as collecting relevant new data for comparison purposes, leading to a decision not to repeat any portion of a risk assessment. Or, it may be more inclusive such that modifications would be made to specific inputs to or aspects of the risk assessment using data from a previous risk assessment, risk burn or comprehensive performance test. In recognition of this, we have added an additional factor to the list of factors at § 270.10(l)(1) to indicate that a previously conducted risk assessment

would be relevant in evaluating changes in conditions that may lead to increased risk. The factor reads as follows: "Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk." The following discussion is intended mainly to address facilities that have not yet conducted an SSRA (i.e., where it has been determined that one is needed).

In the proposal we discussed our conclusion that almost all of the proposed standards for Phase 1 sources were equivalent to or more stringent than the 1999 final standards, with the exception of the mercury standard for new and existing LWAKs and the total chlorine standard for new LWAKs. However, there are additional standards for Phase 1 sources finalized in today's rulemaking that are less stringent than the 1999 final standards. In addition to those discussed in the proposal, the following standards are less stringent than the 1999 final standards: mercury for new cement kilns and semi-volatile metals for existing cement kilns; dioxin/furan for existing and new LWAKs, mercury for existing and new LWAKs, and total chlorine for existing and new LWAKs. Because these standards exceed the levels which were evaluated in the 1999 national risk assessment, especially with respect to mercury and dioxin/furan standards for which the national risk assessment showed high end risks at or near levels of concern, permit authorities may decide on a case-by-case basis that an SSRA is appropriate to determine whether the less stringent Replacement standards are protective. In addition, the comparative analysis results suggest concern regarding the dioxin/furan standard for LWAKs and thus, permit authorities may consider site-specific factors in determining whether the standard is sufficiently protective.

Specific to Phase 2 sources, we mentioned earlier that we conducted the same comparative risk analysis for Phase 2 sources as we did for Phase 1 sources (i.e., by comparing the Phase 2 standards to the 1999 final standards for Phase 1 sources). Although several MACT standards for Phase 2 sources are more stringent than the BIF standards under RCRA, there are a few MACT standards that may be cause for concern on a case-by-case basis, as they are either less stringent than some of the 1999 final standards or the comparative risk analysis suggests concern. They are: The particulate matter standard (and certain metals such as antimony and thallium), mercury standard, and total chlorine standard for solid fuel-fired boilers (SFBs); the dioxin/furan standard (carbon monoxide or total hydrocarbon as surrogate controls, versus a numerical standard) for HCl production furnaces; and the dioxin/furan standard for liquid fuel-fired boilers (LFBs) with dry APCDs. In addition, dioxin/furan emissions data for LFBs with wet or no APCDs indicate an observed level (1.4 ng TEQ/dscm) of more than three times the highest dioxin/furan standard evaluated in the 1999 national risk assessment (69 FR 21285).[230] Thus, these standards may warrant site-specific risk consideration, especially with respect to the dioxin/furan standards. That is, due to the complexity of the dioxin/furan formation mechanism and given the toxicity of dioxin/furans,[231] an SSRA may be needed based on the specific emission levels of each source not subject to a numerical standard. For additional discussion on the protectiveness of standards, please refer to Part Seven: How Does the Final Rule Meet the RCRA Protectiveness Mandate?

There are also site-specific factors beyond the standards that can be important to the SSRA decision making process. As discussed in the proposal, examples include a source's proximity to a water body or endangered species habitat, repeated occurrences of contaminant advisories for nearby water bodies, the number of hazardous air pollutant emission sources within a facility and the surrounding community, whether or not the waste feed to the combustor is made up of persistent, bioaccumulative or toxic contaminants, and sensitive receptors with potentially significantly different exposure pathways, such as Native Americans (69 FR 21326). Also, there are several uncertainties inherent in the 1999 national risk assessment.[232] Thus, the same uncertainties related to the fate and transport of mercury in the environment and the biological significance of mercury exposures in fish (i.e., once mercury has been transformed into methylmercury, it can be ingested by the lower trophic level organisms where it can bioaccumulate in fish tissue), as well as the risk posed by non-dioxin products of incomplete combustion, remain today and may influence a permitting authority's decision. Last, we are finalizing the option for Phase 2 area sources to comply with specific MACT standards as provided by CAA § 112(c)(6) specific pollutants authority. These area sources may need to conduct an SSRA for the remaining RCRA standards that they choose to comply with (i.e., since they do not address the potential risk from indirect exposures to long-term deposition of metals onto soils and surface waters).[233]

In addition to the examples provided in the previous paragraph, we also expressed that an SSRA may be necessary with respect to the proposed thermal emission standards. With respect to Phase 1 sources, we had noted in the proposal that the thermal emission standards for semi-volatile and low volatile metals for cement kilns and LWAKs may be of concern because they directly address emissions attributable to hazardous waste versus a source's total HAP metal emissions. See 69 FR 21326. However, we are requiring sources to comply with both the thermal emission standards and the Interim Standards in today's final rulemaking, since compliance with the thermal emission standards may not always assure compliance with the Interim Standards. As a result, the thermal emission standards for cement kilns and LWAKs no longer pose the uncertainties that they had in the proposal.[234] In regard to Phase 2 sources, the concern at the time of proposal was with respect to the thermal emission standards for liquid fuel-fired boilers. However, the comparative analysis for today's final rulemaking for liquid fuel-fired boilers, which is based on total stack emissions from these sources while assuming compliance with the thermal standards, does not suggest that risks for LFBs are cause for concern (except as otherwise noted, e.g., dioxins).

C. What Changes Are EPA Finalizing With Respect to the Site-Specific Risk Assessment Policy?

In the 1999 final rule preamble, we included a revised site-specific risk assessment (SSRA) policy recommendation to account for promulgation of the new technology-based CAA MACT standards for Phase

[230] The comparative analysis did not specifically suggest concern as it has for other source categories, but per the reference to the proposal, we have some concern regarding the protectiveness of the standard.

[231] There is ongoing uncertainty in cancer and other health effects levels for chlorinated dioxins and furans.

[232] Uncertainties stem from a lack of information regarding the behavior of mercury in the environment and a lack of sufficient emissions data and parameter values (e.g., bioaccumulation values) for nondioxin products of incomplete combustion. See 64 FR 52840–52841.

[233] Currently, there are only five area sources that this may apply to; they are interim status units in the process of conducting an SSRA as part of their final permits.

[234] An exception would be the semivolatile metal Interim standard for existing cement kilns, which is less stringent than the 1999 final standard. As we noted, permit authorities may consider the need for an SSRA as a result.

1 sources. We recommended that permitting authorities evaluate the need for an SSRA on a case-by-case basis for hazardous waste combustors subject to the Phase 1 MACT standards. For hazardous waste combustors not subject to the Phase 1 standards, we continued to recommend that SSRAs be conducted as part of the RCRA permitting process if necessary to protect human health and the environment. We indicated that the RCRA omnibus provision authorized permit authorities to require applicants to submit SSRA results where an SSRA was determined to be necessary. For the reasons described in the previous subsection, we believe that additional controls may be necessary on a site-specific basis to ensure that adequate protection is achieved in accordance with RCRA.

Consequently, because SSRAs are likely to continue to be necessary at some facilities (mainly those that have not previously conducted an SSRA), we concluded that it is more appropriate to include a regulatory provision that explicitly provides for the permit authority to require SSRAs on a case-by-case basis and add conditions to RCRA permits based on SSRA results. Therefore, instead of relying on RCRA § 3005(c)(3) and its associated regulations at § 270.10(k) when permitting authorities conduct or require a risk assessment on a site-specific basis (i.e., as applicable to those newly entering the RCRA permit process), we had proposed to codify the authorities provided by sections 3004(a) and (q) and 3005(b). See proposed regulations at 69 FR 21383–21384, §§ 270.10(l) and 270.32(b)(3). In proposing to codify these authorities, we stated that we were not requiring that SSRAs automatically be conducted for hazardous waste combustion units, but that the decision of whether or not a risk assessment is necessary must be made based upon relevant factors associated with an individual combustion unit and that there are combustion units for which an SSRA will not be necessary. Further, we explained that the proposed language would provide notice to the regulated community that an SSRA may be necessary to support a source's permit, while reminding the permit agency of the need to evaluate whether an SSRA would be necessary on a site-specific basis.

Despite our efforts to explain that by codifying these provisions, we are only modifying the statutory authority under which we implement the SSRA policy while maintaining the same SSRA policy from a substantive standpoint, commenters generally opposed EPA's proposed codification. The comment most frequently presented was that the proposed regulatory language is not helpful to anyone (i.e., regulated community, the public or permitting agencies), is redundant with the omnibus authority, and sets an extremely low hurdle for regulators to require SSRAs.

We disagree that the new regulatory language is not helpful and that it sets an extremely low hurdle for regulators to require SSRAs. We believe that the new provisions are beneficial in two ways: (1) They provide notice to the regulated community and public that an SSRA may be necessary to support a source's permit; and (2) they remind the permitting agencies of the importance of evaluating whether an SSRA would be necessary on a site-specific basis. The new regulatory provision in no way expands or supplements the authority on which EPA had previously relied—i.e., omnibus and § 270.10(k), thus it does not provide any more or less authority to permit authorities (i.e., lower or raise the hurdle) to require SSRAs. We agree that, because the proposed language provides permitting authorities with no greater authority than the omnibus authority, it is somewhat duplicative of § 270.10(k). However, as noted, EPA believes this provision offers important benefits to both the agency and the regulated community, and as explained further below, EPA has adopted a slightly modified version of the proposal pursuant to RCRA § 3004(a) and § 3005(b). See also discussion in subsection F.

Another common view expressed by commenters is that, although extensive risk assessments that have been performed for more than a decade, showing lack of risk to human health and the environment, EPA continues to require SSRAs without a technical evaluation of the historical results. To the contrary, EPA Regional permit writers have found that certain chemicals (especially dioxin and mercury)[235] pose excess risk in certain circumstances—even under the Interim Standards—and consequently find it necessary to assess risk to human health and the environment based on site-specific conditions at the facility. In EPA Regions 7 and 10 for example, some facilities have RCRA risk-based permit conditions that establish more frequent sampling or limits on feed rate for specified metals to ensure that ecologically sensitive areas are not adversely impacted.

Many commenters also state that CAA § 112(f) residual risk process is the appropriate method to assess risk for hazardous waste combustors complying with MACT, not RCRA risk assessments. Specifically, one commenter argued that EPA lacked statutory authority to rely on the omnibus provisions to require SSRA and SSRA-based controls on the grounds that § 112(f) of the Clean Air Act establishes a specific provision to control any residual risk from combustor emissions. We disagree with commenters for two reasons. First, as we explained in the 1999 final rule preamble, the omnibus provision is a RCRA statutory requirement and the CAA does not override RCRA. Promulgation of the MACT standards, therefore, does not duplicate, supersede, or otherwise modify the omnibus provision or its applicability to the sources covered by today's rule. Second, the SSRA under RCRA is usually conducted prior to issuance of the final permit. The CAA residual risk determination is generally made eight years after promulgation of the MACT standards for a source category. Accordingly, a permit authority currently facing a permit decision could not rely on these yet unwritten residual risk standards to resolve its identified concern that the MACT standard may not be sufficiently protective at an individual site. In addition, even though we believe that § 3005(c)(3) and its associated regulations provide the authority to require and perform SSRAs and to write permit conditions based on SSRA results, we are not relying on these provisions as the authority for § 270.10(l). Rather, we are relying on §§ 3004(a) and (q) and 3005(b). See 69 FR 21327.

With respect to the costs incurred when conducting an SSRA, several commenters raised the concern that our approximations do not include portions of actual costs (e.g., data gathering, QA/QC, and third party consultants, risk assessors, and plant personnel time to coordinate and review SSRA efforts and collect facility data), thus resulting in artificially low costs. Commenters cited additional reasons why they feel that EPA's cost estimates are too low including our assumptions that: (1) SSRAs are a one-time or infrequent cost; (2) most SSRAs fall under "normal" versus "unusual" situations; and (3) the cost of conducting a risk burn during a

[235] Dioxin is a common risk driver due to ongoing uncertainty in cancer and other health effects levels for chlorinated dioxins and furans. Mercury is also a common risk driver due to uncertainties implicit in the quantitative mercury analysis. See discussion in Part Seven, Section II. and 65 FR 52997. Thus, it is not uncommon for permit authorities to require risk-based RCRA permit limits (based on risk assessment results) to control emissions of these pollutants.

trial burn adds only 20% more to the cost.

Regarding the comment that we did not include actual costs for our estimates of overall costs to conduct an SSRA, we agree that some costs were overlooked. We did include the costs related to conducting an SSRA under "normal" and "unusual" conditions, SSRA data collection in conjunction with a regular performance burn, and a full independent risk burn including protocol, sampling, analysis, and report. However, we did not capture facility time associated with data collection and management related to the SSRA. Consequently, we have revised our cost estimate for performing these activities; see chapter 4 of the background document entitled, Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Replacement Standards—Final Rule, October 12, 2005.

In response to the broader comment that our cost estimates are too low (for several reasons mentioned previously), we agree that our estimate of a 20% additional cost to conduct a risk burn with a trial burn may have been conservative and therefore, we have adjusted our previous estimate to include a range of 20% to 40%. The total SSRA cost range has also been updated from $141K–$370K to $157K–$815K.[236] With respect to our assumption that the majority of SSRAs are conducted under "normal" conditions (lending to overall lower cost estimates), we do believe that the majority of future SSRAs will fall under the "normal" conditions.[237] We believe this is appropriate due to: lack of new facilities coming on-line for which there is no previous test data; availability of commercial modeling software; and finalization of the "Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities" guidance, or "HHRAP" guidance. However, we do recognize that some facilities can be more complex than others in the hazardous waste combustion universe. Therefore, we have identified a portion of facilities that are likely to incur "unusual" costs for a future SSRA and have revised our cost analysis to reflect inclusion of these higher-cost facilities. See background document, Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Replacement Standards—Final Rule, October 12, 2005.

Also, we maintain our assumption that SSRAs generally represent a one-time cost unless a facility significantly changes its operations or if receptors change such that an increase in risk is anticipated as a result. Even so, as explained earlier in subsection B., we would anticipate that the risk assessment would not have to be entirely redone. It may be as limited as collecting relevant new data for comparison purposes, leading to a decision not to repeat any portion of a risk assessment. Or, it may be more inclusive such that modifications would be made to specific inputs to or aspects of the risk assessment using data from a previous risk assessment, risk burn or comprehensive performance test. With respect to chemical weapons demilitarization facilities, we recognize that due to their specialized waste streams and multiple treatment units, SSRAs, in many cases, are not one-time events and as a result, their SSRA costs are relatively high. The high costs can be attributed to the necessity for each chemical weapons demilitarization facility to perform surrogate trial burns and then agent trial burns for each furnace and each agent campaign (e.g., GB (Sarin), VX, and HD (Sulfur Mustard)). For example, a chemical weapons demilitarization facility would conduct GB trial burns on all the furnaces and then complete destruction of the GB stockpile, followed by VX trial burns and VX stockpile and finally, the HD trial burns and the HD stockpile. This effectively extends the input to the risk assessment of the trial burn data over most of the operational life of the facility.

Last, several commenters raised the concern that EPA's proposal to codify the authority to require SSRAs on a case-by-case basis and add conditions to RCRA permits based on SSRA results, violates the due process protections afforded under the current structure, where SSRAs are required and performed pursuant to RCRA § 3005(c)(3) omnibus authority. Commenters were further concerned that the proposed language in § 270.10(l) would remove existing procedural safeguards by allowing the Agency to require a very expensive SSRA before the draft permit is even issued, thus violating EPA's own procedural standards as well as due process. It appears as though commenters believe that the procedures (and procedural protections) currently applicable whenever an SSRA is conducted are unique to circumstances in which the permitting authority proceeds under the authority of RCRA § 3005(c)(3)—the "omnibus" provision. This is incorrect. All of the specific procedural requirements the commenters have raised would be applicable whether the permitting authority proceeded under § 270.10(l), as EPA proposed, or pursuant to RCRA § 3005(c)(3) and § 270.10(k), as is the current practice.

All of the requirements established in Part 124 continue to apply, whether EPA proceeds under § 270.10(l) or under § 270.10(k). As we discussed in the proposal, the basis for the decision to conduct a risk assessment, or to request additional information to evaluate risk or determine whether a risk assessment is necessary, must be included in the administrative record for the facility and made available to the public during the comment period for the draft permit. See 40 CFR 124.7 [statement of basis]; 124.9 [administrative record for draft permit]; 124.18 [administrative record for final permit]. If the facility, or any other party, files comments on a draft permit decision objecting to the permitting authority's conclusions regarding the need for a risk assessment, the permitting authority must respond fully to the comments. Any permit conditions determined to be necessary based either on the SSRA, or because the facility declined to conduct an SSRA, also must be documented and supported in the administrative record.

The commenters' concern that § 270.10(l) allows the permitting authority to require the SSRA prior to the issuance of a draft permit, and therefore the applicant would have no opportunity to comment or challenge that determination, is equally unfounded. There is effectively no practical or substantive distinction between the circumstance when a permit authority communicates the decision that an SSRA is necessary to issue the permit prior to issuing the draft permit, or as part of the draft permit. In either case, if a facility refuses to provide a risk assessment or data to support a risk assessment requested under this provision, the regulations at part 124 make clear that the appropriate recourse is for the permit authority to deny the permit (See 40 CFR 124.3(d); 124.6(b) and 270.10(c). The basis for the denial would essentially be the same in either case—that the information before the agency gives rise to a concern that the MACT may not be sufficiently protective,

[236] The high end of this range applies only to those systems operating under "unusual conditions" (the available data suggest that there are only five such facilities).

[237] Normal conditions assume use of previously collected performance burn data, use of standard commercial modeling software that meet Agency guidance, and limited interactions with State and Federal oversight authorities. Unusual conditions assume the need for site-specific modeling, extensive interactions with stakeholders and regulators, an extended time frame, and targeted ecological analyses.

which the agency is unable to dispel based on the information before it. Consequently, the permit authority cannot determine that the permit meets RCRA's standard for permit issuance. As noted above, all of the requirements of Part 124 would apply to actions taken in accordance with § 270.10(l). For additional discussion on this issue, please refer to the Response to Comments background document for this final rule.[238]

Despite the many reasons offered by commenters opposing our proposal, we continue to believe that our proposed approach is appropriate. As discussed in the proposal (69 FR 21327) and in the previous subsection, although the Phase 1 Replacement and Phase 2 standards provide a high level of protection (i.e., they are generally protective) to human health and the environment, thereby allowing us to nationally defer the RCRA emission requirements to MACT, additional controls may be necessary on an individual source basis to ensure that adequate protection is achieved in accordance with RCRA. Until today, we have relied exclusively upon RCRA § 3005(c)(3) and its associated regulations at § 270.10(k) when conducting or requiring an SSRA. We continue to believe that § 3005(c)(3) and its associated regulations provide the authority to require and perform SSRAs and to write permit conditions based on SSRA results. In fact, as the next subsection will explain, EPA will likely continue to include permit conditions based on the omnibus authority in some circumstances when conducting these activities, and state agencies in states with authorized programs will continue to rely on their own authorized equivalent. However, because SSRAs are likely to continue to be necessary at some facilities, we are finalizing the authority to require them on a case-by-case basis and add conditions to RCRA permits based on SSRA results under the authority of RCRA §§ 3004(a) and (q) and 3005(c). Therefore, we are finalizing §§ 270.10(l) and 270.32(b)(3) with some minor modifications to provide further clarification of the Agency's intent.

D. How Will the New SSRA Regulatory Provisions Work?

The new regulatory provisions are finalized under both base program authority (§ 3004(a) and § 3005(b)) and HSWA authority (§ 3004(q)). That is, changes made to regulations applicable to boilers are promulgated under HSWA authority, whereas changes made to regulations applicable to incinerators are promulgated under non-HSWA authority. Consequently, when it is determined that an SSRA is needed, the applicability of these provisions will vary according to the type of combustion unit (whether it is regulated under 3004(q), or only 3004(a) and 3005(b)), and the authorization status of the state. Depending on the facts, the new authority would be applicable, or the omnibus provision would remain the principal authority for requiring SSRAs and imposing risk-based conditions where appropriate. See 69 FR 21327.

According to the state authorization section of this preamble (see Part Five, Section IV.), EPA does not consider these provisions to be either more or less stringent than the pre-existing federal program, since they simply make explicit an authority that has been and remains available under the omnibus authority and its implementing regulations. Thus, states with authorized equivalents to the federal omnibus authority will not be required to adopt these provisions, so long as they interpret their omnibus authority broadly enough to require risk assessments where necessary.[239]

The provisions of §§ 270.10(l) and 270.32(b)(3) adopted in today's rule are substantially similar to the provisions EPA proposed. Section 270.10(l) continues to explicitly provide that a permit authority has the authority to evaluate, on a case-by-case basis, the need for an SSRA. EPA has also retained its proposed language that explicitly provides that, where an SSRA is determined to be necessary, the permit authority may require a permittee or an applicant to conduct an SSRA, or to provide the regulatory agency with the information necessary to conduct an SSRA on behalf of the permittee/applicant. The final provision also essentially retains the standard laid out in the proposal: that a permit authority may decide that an SSRA is warranted based on a conclusion that additional controls beyond those required pursuant to 40 CFR parts 63, 264, 265, or 266 may be needed to ensure protection of human health and the environment under RCRA. In § 270.32(b)(3), EPA has also explicitly codified the authority for permit authorities to require that the applicant provide information, if needed, to make the decision of whether an SSRA should be required.

However, EPA has adopted some further clarifications to the final provisions in response to comments. In response to comments that the regulatory language EPA had proposed still fails to provide the regulated community with adequate notice that an SSRA might be required, and what that might entail, EPA has included additional language to address those issues. Specifically, EPA has included a sentence stating that the information required under § 270.10(l) can include the information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. EPA has also added language to remind permit authorities that the determination that the MACT standards may not be sufficiently protective is to be based only on factors relevant to the potential risk from the hazardous waste combustion unit at the site, and has provided a list of factors to guide the permit authority in making that determination. See subsections E. and F. for further discussion. The applicability language of §§ 270.19, 270.22, 270.62, and 270.66 also has been amended to allow a permit authority that has determined that an SSRA is necessary to continue to apply the relevant requirements of these sections on a case-by-case basis and as they relate to the performance of the SSRA after the source has demonstrated compliance with the MACT standards.

As previously noted, the requirements at 40 CFR Part 124 continue to apply to actions taken to implement § 270.10(l). Thus, if the permitting authority concludes that a risk assessment or additional information is necessary for a particular combustor, the permitting authority must provide the factual and technical basis for its decision in the permit's administrative record and must make it available to the public during the comment period for the draft permit. If the facility or any other party files comments on a draft permit decision objecting to the permitting authority's conclusions regarding the need for an SSRA, the authority must respond fully to the comments. In addition, the SSRA must be included in the administrative record and made available to the public during the comment period. Any additional conditions and limitations determined to be necessary as a result of the SSRA must be documented and supported in the administrative record as well.[240]

[238] See final Response to Comment to the HWC MACT Standards, Volume 5, Miscellaneous.

[239] Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. This applies to regulations promulgated under both HSWA and non-HSWA authorities.

[240] Additional clarification on the appropriate use of the SSRA policy and technical guidance is provided in the April 10, 2003 memorandum from Marianne Lamont Horinko entitled "Use of the Site-

E. What Were Commenters' Reactions to EPA's Proposed Decision Not To Provide National Criteria for Determining When an SSRA Is or Is Not Necessary?

In the proposal, we stated that we were not proposing national criteria (e.g., guiding factors) for determining when an SSRA is necessary. Although we had developed a list of qualitative guiding factors for permit authorities to consult when considering the need for an SSRA in the September 1999 final rulemaking (revised from the April 1996 NPRM), we never intended for them to comprise an exclusive list for several reasons. Mainly, we felt that the complexity of multi-pathway risk assessments precluded the conversion of the qualitative guiding factors into more definitive criteria. See 69 FR 21328.

Commenters generally agreed that the risk assessment guidance and policy should not be codified. They agreed in principle that it is important to keep the decision to require an SSRA flexible because factors vary from facility to facility. However, several commenters raised the concern that the proposed language of § 270.10 (l) was too vague. For example, one commenter suggested that any additional guidance clarifying how risk assessments should be performed and that providing standards or goals to be achieved by the operating conditions would be helpful. Another commenter felt that EPA should identify specific factors that the regions and authorized states should consider, and specific criteria that should be met, before requiring an SSRA or additional emission controls or other standards. We agree with commenters that additional guidance would be beneficial and have taken a number of actions in this regard. First, EPA is adopting a more detailed regulatory provision that provides a non-exclusive list of guiding factors for permit authorities to use in determining whether the MACT will be sufficiently protective at an individual site, and consequently, whether an SSRA is warranted. Section 270.10(l) now requires that the permit writer's evaluation of whether compliance with the standards of 40 CFR part 63, Subpart EEE alone is protective of human health or the environment be based on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the specifically enumerated factors. These factors reflect the eight guiding factors that EPA has discussed in several rule preambles. See 61 FR 17372, 64 FR 52842, and 69 FR 21328. However, EPA has also incorporated a few minor revisions to reflect the standards promulgated today, and to reflect the fact that the factors will be codified.

EPA has revised the language of the factors so that the language is consistent between the provisions. Consistency of phrasing is generally more important in regulations, which are binding, than in guidance. For example, some of the factors listed in the 1999 preamble used the phrase "presence or absence" while other used the phrase "identities and quantities." EPA has adopted the phrase "identities and quantities," on the grounds that it more precisely expresses the concept intended by both phrases. EPA has also made minor revisions to reduce redundant text, and to shorten the provisions, in the interests of clarity. For example, rather than addressing the proximity of receptors in two factors, EPA addresses this issue in a single factor. However, nothing contained in either of the original factors was deleted as part of this revision. None of the revisions described here substantively change the issues to be considered from those contained in the original eight guiding factors.

In addition to these minor technical revisions, EPA has included language to clarify that one potentially relevant factor for consideration is the "identities and quantities of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants." This reflects changes made between the proposed and final MACT standards (e.g., the proposed rule called for beyond-the-floor dioxin limits for some sources; those were not promulgated in the final rule).

Another change is the EPA has deleted the factor that listed "concerns raised by the public." The regulation will allow the decision to be based on any one of the listed factors, and public concern, unaccompanied by an identifiable risk, would not provide an adequate basis for determining that an SSRA was warranted.

Finally, as discussed previously in subsection B., EPA has added an additional factor to indicate that a previously conducted risk assessment would be relevant in evaluating changes in conditions that may lead to increased risk. The factor reads as follows: "Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk." See § 270.10(l)(1).

One commenter raised the concern that the eight guiding factors the Agency specified in its Federal Register notice at 64 FR 52842 (September 30, 1999) did not adequately focus on the central question of whether there are likely to be emissions that would be uncontrolled under the Subpart EEE final rule. They argued that, as an example, under guiding factor #5, if the waste containing highly toxic constituents are being addressed by the Subpart EEE standards, the fact that there might be such wastes should not justify an SSRA. The commenter apparently misunderstands that the factors were not intended to function as stand-alone criteria for requiring an SSRA—i.e., to use their example, the commenter believes that the mere fact that highly toxic constituents are present in the waste would justify an SSRA without consideration of whether the MACT emission standards were sufficiently protective. This is an incorrect reading of EPA's proposed regulation. Rather, the factors were always intended to function as considerations that might be relevant to the determination of whether the MACT was sufficiently protective. However, the regulatory structure EPA has adopted in the final rule makes perfectly clear that the critical determination is that "compliance with the standards of 40 CFR part 63, Subpart EEE alone may not be protective of human health or the environment." Further, the provision states that this determination is to be based only on factors relevant to the potential risk from the hazardous waste combustion unit, including, as appropriate, the listed factors. EPA believes that these provisions make clear that the determination of whether to require an SSRA is to be based on consideration of the conditions at the facility site, including, for example, an evaluation of all enforceable controls in place to limit emissions. Further discussion of EPA's revised provisions can be found in subsection F.

Second, as discussed in more detail below, EPA is issuing a revised risk assessment guidance document that we believe will provide additional insight to help users. While clearly delineating between risk management and risk assessment, the HHRAP explains in great detail a recommended process for performing and reporting on cost-effective, scientifically defensible risk assessments. It includes numerous recommended defaults, while at the same time is flexible enough to incorporate site-specific values. Although the HHRAP provides numerous recommendations, it remains merely guidance and consequently leaves the final decisions up to the permitting authority. We believe that

Specific Risk Assessment Policy and Guidance for Hazardous Waste Combustion Facilities." (See Docket # OAR–2004–0022–0083).

the revised HHRAP guidance will provide further assistance to permit writers, risk assessors and facilities in determining whether or not to conduct an SSRA and what and how much information is required for the SSRA.

F. What Are EPA's Responses to the Cement Kiln Recycling Coalition's Comments on the Proposal and What is EPA's Final Decision on CKRC's Petition?

In the proposal, we provided a lengthy discussion in response to CKRC's petition for rulemaking (69 FR 21325–21331). In its petition, CKRC presented two requests with respect to SSRAs: (1) That EPA repeal the existing SSRA policy and technical guidance because CKRC believes that the policy and guidance "are regulations issued without appropriate notice and comment rulemaking procedures"; and (2) after EPA repeals the policy and guidance, "should EPA believe it can establish the need to require SSRAs in certain situations, CKRC urges EPA undertake an appropriate notice and comment rulemaking process seeking to promulgate regulations establishing such requirements." Additionally, CKRC stated that it does "not believe that these SSRAs are in any event necessary or appropriate" and that they disagree with EPA's use of the RCRA omnibus provision as the authority to conduct SSRAs. Finally, CKRC raised three general concerns: (1) Whether an SSRA is needed for hazardous waste combustors that will be receiving a RCRA permit when the combustor is in full compliance with the RCRA boiler and industrial furnace regulations and/or with the MACT regulations; (2) how an SSRA should be conducted; and (3) what is the threshold level for a "yes" or "no" decision that additional risk-based permit conditions are necessary. We believe our tentative decision in the proposal addressed each request and concern presented in their petition. However, in its comments, CKRC has restated many of the same issues with new emphasis. Thus, we believe it is appropriate to address their major comments in the following paragraphs.[240a]

1. Whether SSRAs Are Necessary for Facilities in Full Compliance With BIF or MACT Regulations

In its comments, CKRC continues to question the need for any SSRAs at facilities that are in full compliance with the MACT EEE standards. CKRC also states that "[our] Petition challenged EPA to explain why, if there is any need for SSRAs at all under RCRA, there is a rational basis for why it has limited the entire SSRA program to hazardous waste combustors." They argue that, "The point is that if the "omnibus" words in RCRA mean what EPA says they mean for hazardous waste combustors, why do they not mean the same thing for all of the other TSD facilities that also pose the same kind of "what-if" hypotheticals that EPA throws out in its preamble?"

As discussed above in subsection B., and in greater detail below, EPA believes that risk assessments will continue to be necessary at some facilities. For example, based on the inconclusive results from the national risk assessment conducted for the 1999 final rule and the comparative risk analysis conducted for today's rule, EPA is not able to conclude that all MACT standards will be sufficiently protective for every facility (e.g., non-dioxin PICs not previously modeled, no numerical dioxin/furan emission standard for solid fuel-fired boilers, liquid fuel-fired boilers with wet or no APCDs, and hydrochloric acid production furnaces, etc.). EPA also provided examples of site-specific factors that might lead risk assessors to decide that the MACT standards may not be sufficiently protective, and therefore an SSRA may be necessary (e.g., if a source's emissions are comprised of persistent bioaccumulative or toxic contaminants). EPA also discussed this issue at length in both the 2004 proposal, and the 1999 rule preamble. See 69 FR 21326 and 64 FR 52842. Given these uncertainties, the SSRA provides significant support for the Agency's 1006(b) determination supporting the elimination of separate RCRA emission standards for MACT EEE facilities.

We disagree that our discussion of standards (and site-specific factors) that may warrant a risk evaluation at certain types of facilities are mere "what-if" hypotheticals. The examples that we discussed in both the earlier preambles and above were based on the 1999 national risk assessment and a comparative risk analysis, which concluded that either there was not enough information to make a definitive protectiveness determination or that uncertainty in cancer and other health effects levels of dioxin and furans, for instance, make it difficult to draw conclusions about potential risks. Furthermore, the discussions with respect to the protectiveness of certain standards (i.e., some are less stringent today than the 1999 standards) in subsection B., present a reasonable basis for permitting authorities to consider whether or not risk should be evaluated. In support of our position that the examples we have provided in the 1999 final rule preamble, the 2004 proposed rule preamble, and this final rule, are more than "what-if" hypotheticals, we have placed copies of completed risk assessments where risk-based limits were found to be necessary in the docket for today's final rule (see OAR–2004–0022).

The CKRC fails to acknowledge that there are many aspects of hazardous waste combustors and the combustion process itself, which make this category of TSD facilities different from others, and which factor heavily into our SSRA policy. Consider that many combustion facilities feed a wide array of waste streams comprised of many hazardous constituents. The combustion of these constituents results in complex chemical processes (which are difficult to predict) occurring throughout the combustion unit. The end product is stack emissions comprised of a variety of compounds different from those that enter the process, and thus are difficult to predict because they can vary greatly based on the many variables of the individual combustion unit, making them difficult to address (*i.e.*, there are no specific emissions standards to limit certain compounds such as products of incomplete combustion). For example, in attempting to maximize the destruction of organic compounds, products of incomplete combustion are often generated as a consequence. Further, due to stack dispersion, hazardous waste combustors have the potential to affect several square miles. Other types of TSD facilities' operations typically do not encompass such complex processes or have the potential to adversely affect receptors for several square miles.

It should be noted that hazardous waste combustors are not the only type of TSD subjected to site-specific evaluations of risk. We take a site-specific approach to regulating miscellaneous units under Part 264, subpart X. Because it is not possible to develop performance standards and emission limits for each type of treatment unit that may fall under this broad category, we rely on general environmental performance standards to meet our mandate under §§ 3004 (a) and (q) that standards governing the operation of hazardous waste facilities be protective of human health and the environment. For example, § 264.601(c) requires "Prevention of any release that may have adverse effects on human

[240a] CKRC provided numerous comments organized by subtitles. Rather than relying on this format in the preamble, we have organized the comments and responses according to the concerns initially raised in the petition, and consistent with the discussion presented in the proposal.

health or the environment due to migration of waste constituents in the air, considering: * * * (6) the potential for health risks caused by human exposure to waste constituents; and * * *" For all intents and purposes, subparts X units are subject to SSRAs as well.

In addition, the question of whether an SSRA continues to be necessary is partly a function of the fact that EPA is seeking to rely on CAA MACT standards in order to eliminate RCRA emissions standards for these facilities. As noted above, because the MACT is technology-based, and because of uncertainties in our national risk assessments, permit writers' ability to conduct an SSRA in individual cases provides important support for our deferral.

RCRA §§ 3004(a) and (q) mandate that standards governing the operation of hazardous waste combustion facilities be protective of human health and the environment. To meet this mandate, we originally developed national combustion standards under RCRA, taking into account the potential risk posed by direct inhalation of the emissions from these sources. With advancements in risk assessment science since promulgation of the original national standards (*i.e.*, 1981 for incinerators and 1991 for boilers and industrial furnaces), it became apparent that the risk posed by indirect exposure (*e.g.*, ingestion of contaminants in the food chain) to long-term deposition of metals, dioxins/furans and other organic compounds onto soils and surface waters should be assessed in addition to the risk posed by direct inhalation exposure to these contaminants. We also recognized that the national assessments performed in support of the original hazardous waste combustor standards did not take into account unique and site-specific considerations which might influence the risk posed by a particular source. Therefore, until EPA was able to revise its regulations, to ensure the RCRA mandate was met on a facility-specific level for all hazardous waste combustors, we strongly recommended that site-specific risk assessments (SSRAs), including evaluations of risk resulting from both direct and indirect exposure pathways, be conducted as part of the RCRA permitting process. In those situations where the results of an SSRA showed that a facility's operations could pose an unacceptable risk (even after compliance with the RCRA national regulatory standards), additional risk based, site-specific permit conditions could be imposed pursuant to RCRA's omnibus authority, § 3005(c)(3).

Rather than establish separate emission standards under RCRA, EPA decided to coordinate its revisions to the RCRA emissions standards for hazardous waste combustors with the adoption of the MACT standards pursuant to § 112(d) of the CAA. See 64 FR 52832. In the rulemaking establishing the MACT standards for incinerators, cement kilns and lightweight aggregate kilns (Phase 1 sources), relying on RCRA § 1006(b), EPA determined that in most cases, the MACT standards would be sufficiently protective that separate RCRA emission standards and operating conditions would not need to be included in the facility's RCRA permit. However, for a variety of reasons, EPA lacked sufficient factual basis to conclude that a complete deferral of RCRA requirements could be supported for all facilities.

Section 1006(b) conditions EPA's authority to reduce or eliminate RCRA requirements on the Agency's ability to demonstrate that the integration meets RCRA's protectiveness mandate (42 U.S.C. 6005(b)(1)). See *Chemical Waste Management* v. *EPA*, 976 F.2d 2, 23, 25 (D.C. Cir. 1992). To support its RCRA § 1006(b) determination, EPA conducted a national evaluation of both direct and indirect human health and ecological risks to determine if the MACT standards would satisfy the RCRA mandate to protect human health and the environment. That evaluation, however, did not quantitatively assess the proposed standards with respect to mercury and nondioxin products of incomplete combustion. This was due to a lack of adequate information regarding the behavior of mercury in the environment and a lack of sufficient emissions data and parameter values (*e.g.*, bioaccumulation values) for nondioxin products of incomplete combustion. Since it was not possible to suitably evaluate the proposed standards for the potential risk posed by mercury and nondioxin products of incomplete combustion, in order to support our 1006(b) determination, we continued to recommend that SSRAs be conducted for some facilities as part of the permitting process until we could conduct a further assessment once final MACT standards were promulgated and implemented. Specifically, we recommended that for hazardous waste combustors subject to the Phase 1 MACT standards—hazardous waste burning incinerators, cement kilns and light-weight aggregate kilns—permitting authorities should evaluate the need for an SSRA on a case-by-case basis. We further stated that while SSRAs are not anticipated to be necessary for every facility, they should be conducted where there is some reason to believe that operation in accordance with the MACT standards alone may not be protective of human health and the environment. For hazardous waste combustors not subject to the Phase 1 standards, we continued to recommend that SSRAs be conducted as part of the RCRA permitting process. See 64 FR 52841. As discussed in subsection B., EPA believes that SSRAs may continue to be necessary for some Phase 1 facilities. For the Phase 2 sources, our comparative risk analysis generally indicates that, although the MACT standards for Phase 2 sources are appreciably more stringent than the current RCRA BIF standards, an SSRA may be necessary to confirm that a facility will operate in a way that is protective of human health and the environment.

Thus, for both Phase 1 and Phase 2 sources, we continue to believe that SSRAs may be necessary for some facilities.[241] We generally believe the MACT standards will be protective; in most cases they are substantially more protective than the existing RCRA part 264, 265, and 266 requirements. However, because HWCs manage hazardous waste and process it by burning and emitting the by-products into the air, a multitude of potential exposure pathways exist. These exposure pathways can also vary substantially based on site-specific factors associated with an individual combustion unit and the surrounding site. Such factors make it difficult for the Agency to conclude that a single, national risk assessment provides adequate factual support for its determination that the technology-based MACT standards will be sufficiently protective. This is further complicated by the fact that, for certain parameters, the Agency lacked sufficient information to quantitatively assess the risk, but is relying on a combination of quantitative and qualitative assessments of the MACT standards' protectiveness.

Nonetheless, EPA does not believe that the uncertainty is so great that it would preclude a deferral under 1006(b) for the affected categories of facilities; nor does EPA believe that these uncertainties necessarily support requiring a risk assessment for all such facilities. Conditions at the facility

[241] As discussed in section B., we expect that facilities that have previously conducted an SSRA will not need to conduct another in consideration of today's final standards. Only those facilities newly subject to the RCRA permitting requirements, or existing sources where changes in conditions could lead to increased risk, may need to conduct or modify an existing SSRA.

might confirm that the MACT standards are sufficiently protective, without the need for a facility-wide risk assessment. For example, if the results of the MACT testing demonstrated that the facility's dioxin emissions fall below the levels estimated in the database EPA used for its comparative risk assessment, the uncertainties in EPA's comparative risk assessment would not, by itself, support a decision to require an SSRA. Such decisions require an evaluation of the conditions at the site, and EPA believes it important to retain the flexibility for permit authorities to take these conditions into account. Accordingly, EPA believes that the regulatory structure adopted in today's rule strikes the appropriate balance between these competing factors.

In response to EPA's statement in the proposal that non-HAP emissions, which were beyond the direct scope of MACT, may pose risk which could necessitate an SSRA (69 FR 21326), CKRC pointed out that the same could be said for other types of TSDs, such as landfills, land treatment systems, etcetera, and EPA has not addressed this point in its preamble. As previously noted, combustion units are distinct from other types of TSDs due to the wide array of waste streams being fed to the unit, the complex chemical processes throughout the combustion unit, stack emissions comprised of a wide variety of compounds that are difficult to address, and the potential to impact receptors for several square miles due to stack dispersion. A further distinction is that EPA is seeking to rely on the MACT standards to eliminate national RCRA stack emissions standards under § 1006(b). Unless EPA can affirmatively demonstrate that RCRA's protectiveness standards are met, the Agency cannot eliminate RCRA requirements. A number of uncertainties remain concerning the protectiveness of the MACT standards based on the uncertainties remaining in the supporting national risk assessment and comparative analysis, and the variability of site-specific factors from one facility to another. Permitting authorities' ability to resolve these uncertainties through the use of the SSRA, where appropriate, provides important support for the Agency's 1006(b) finding. Furthermore, as we have noted, under omnibus, to the extent permitting authorities believe there are problems with other types of TSDs, they can impose requirements and request additional information, including an SSRA in accordance with § 270.10(k). Also as previously noted, Part 264, subpart X specifically incorporates site-specific consideration of risk into its regulatory framework.

Next, CKRC comments that EPA has a non-discretionary duty under CAA § 112(f) to address and take care of any "residual risk" from MACT facilities in the future in any event. We discussed why we do not believe that the residual risk process should or can take the place of an SSRA under RCRA in subsection C. of this SSRA preamble, as well as in the 1999 rule preamble (64 FR 52843). In short, because the residual risk standards have not yet been established, permit writers cannot rely on this process in reaching current permitting decisions or in acting on currently pending permit applications.

2. Codification of EPA's Technical Guidance

In response to our explanation in the proposal that risk assessment guidelines should be flexible and reflect current science, CKRC gave three comments: (1) Not a word of the current SSRA guidelines has been changed in 3 years; (2) it is easy to write regulations that have provisions that might be applied differently in different situations, and at least many basic, fundamental points can go in regulations, while some details can be in guidance—EPA writes regulations accompanied by "fill in the small details" guidance all the time; and (3) EPA seems to have no real problems with regulatory fixes anyway. In addition, CKRC provides several comments related to the previous three throughout their comment document, which are addressed below.

None of these comments address the specific issue EPA raised, which is that, while it certainly is possible to codify our risk assessment guidance, for a variety of reasons, we disagree that it would be appropriate to issue these technical recommendations as a regulation. As we previously explained, risk assessment—especially multi-pathway, indirect exposure assessment—is a highly technical and evolving field. Any regulatory approach EPA might codify in this area is likely to become outdated, or at least artificially constraining, shortly after promulgation in ways that EPA cannot anticipate now. In support of this, we noted specific examples of problems we experienced in implementing the BIF regulations. See 69 FR 21330. Further, we explained that at the time of codification, BIF risk assessments were not intended to address indirect routes of exposure, thus making the parameters easier to implement. Today, however, risk assessments are more complex due to the necessary inclusion of multi-pathway and indirect exposure routes. Given the complexity of multi-pathway and indirect exposure assessments and the fact that risk science is continuously evolving, it would be difficult and again, overly constraining, to codify risk parameters today. We note as well, in this regard, that several commenters agreed that codification of EPA's risk assessment guidance would be too constraining for both the agency and the regulated community.

We also believe that a guidance approach is consistent with the fact that permit authorities must make site-specific decisions whether to do risk assessments at all. We think that it makes little sense to allow this kind of flexibility regarding whether to do a risk assessment and for what purposes, while prescribing how one must be conducted if one is required. In fact, permitting authorities, in some cases, have developed their own guidance methodologies responsive to the specific needs associated with their facilities. For example, North Carolina, Texas, and New York have each developed their own risk assessment methodologies. Further, facilities that choose to conduct SSRAs themselves can choose alternative approaches in applying methodologies as well. We think this flexibility employed in the field supports our judgment that risk assessment methodologies should not be codified. CKRC's comments failed to address any of these issues.

Turning to the remainder of CKRC's specific points—CKRC's assertion that the technical guidance has not been amended in the past three years is inaccurate. A revised HHRAP guidance, that has been amended to take into account the technical recommendations from both the public comments and peer review, is published in conjunction with this rule. In addition, as noted above, in some cases, permitting authorities have developed their own methodologies responsive to the specific needs associated with their facilities.

With respect to CKRC's third point, the regulatory corrections made to the MACT rules were necessary either to fix an error or omission or to resolve potential legal issues. To codify technical tools and chemical information pertinent to the risk process simply is not prudent, as this information is continually changing and would almost always be out of date. Granted, when this information is presented in guidance, it can just as easily become outdated, however, facilities and risk assessors are free to use the most up-to-date air modeling tools and toxicity values available (i.e., they would not be bound to regulations requiring the use of obsolete tools and

information). We continue to believe that publishing our technical recommendations as regulation would remove much of the flexibility that is important in evaluating risk on a site-specific basis.

CKRC discounts EPA's statement that codification of risk assessment is the exception arguing that "Neither TSCA or CERCLA, however, specifically commands EPA to define the type of information necessary for a permit application through the rulemaking process as RCRA does. Moreover, the TSCA and CERCLA examples EPA cites are not analogous to the situation where a permit applicant can be denied a permit—or at least strung through months or years of tortuous and costly submissions, revision, and resubmission—to obtain a permit."

Even if TSCA and CERCLA were not considered to be analogous, that does not change EPA's fundamental rationale that codification of highly technical risk assessment guidance is not appropriate. EPA does not believe that RCRA § 3005(b) requires EPA to codify an exhaustive list of every possible piece of information that might be required in a permit. To some extent, that is the reason for having a permit process—to allow site specific conditions to be taken into account. Nevertheless, EPA has revised part 270, pursuant to RCRA § 3004(a) and § 3005(b) to specifically provide that a risk assessment may be necessary, where there is reason to believe that the MACT standards may not be sufficiently protective. This was done wholly to address the petitioner's concern that the current regulations do not adequately provide notice that an SSRA might be necessary as part of a permit application. This provision, while it does not provide as much detail as the petitioner wishes, clearly "defines the type of information necessary for a permit application."

CKRC complains that the Agency did not address in its proposed response the petitioner's discussion of the "strong case law compelling the conclusion that 'guidance' documents EPA has issued for conducting SSRAs must be subjected to notice-and-comment rulemaking." EPA has chosen not to respond to CKRC's legal interpretation because we believe that it is clear that the guidance documents do not impose mandatory requirements, and therefore need not be issued by notice and comment rulemaking. Nevertheless, EPA notes that in the proposal, the Agency explained that we were in the process of reviewing the guidance documents, and, to the extent we found language that could be construed as limiting discretion, we committed to revise the documents to make clear that they are non-binding. See 69 FR 21329. We specifically noted that CKRC indicated in its petition that, in its view, the documents contain language that could be construed as mandatory. While EPA does not necessarily agree, and believes that, in context, it is clear that the recommendations in the documents are discretionary, EPA nonetheless reviewed the documents to ensure that they are carefully drafted. Consequently, under the standards articulated in *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015 (D.C. Cir. 2000) and subsequent case law, the final HHRAP guidance is truly guidance and does not require notice-and-comment rulemaking. The HHRAP explains in great detail an acceptable process for performing and reporting on cost-effective, scientifically defensible risk assessments. It includes numerous recommended defaults, while at the same time provides the risk assessor or facility full opportunity to incorporate site-specific values in place of the defaults. The HHRAP offers numerous recommendations, but requires nothing. EPA has placed a copy of the final guidance document in the docket for today's action (see OAR–2004–0022).

CKRC believes that EPA's technical guidance imposes information requirements upon the RCRA permit applicant that are not contained in any regulations and in fact exceed by orders of magnitude any information requirements contained in the part 270 regulations. We disagree that anything contained in HHRAP is "required" in any way. Moreover, to the extent any individual facility believes the information requested is inappropriate or unnecessary, they can challenge that as part of the permitting process.

Lastly, CKRC argues that "The procedures EPA has been using to issue and revise the SSRA guidance do not by any measure comply with the full panoply of procedures and protections offered by the APA process. Most critically, when EPA merely solicits comments on draft guidance documents, it has no duty to respond to comments and provide a rational basis and justification in defense of its choices in the face of comments. EPA is essentially running its entire SSRA program on the basis of "draft" guidance versions for which EPA has never to this day prepared any response to comments." As previously noted, EPA believes the final HHRAP is merely guidance and therefore, EPA is not required to proceed through notice and comment rulemaking pursuant to § 553 of the APA. However, because we want the HHRAP guidance to be useful and clear, we have solicited public review and comment. As a result, it has been improved over the years by including revisions to the guidance based upon feedback from users of the guidance and from experience in the field. A response to comments document has been prepared and released along with the final HHRAP and final MACT rules, even though the Agency was not required to do so. More to the point, because it is only guidance, sources will have the opportunity to raise questions or comments on anything in the guidance as part of the permitting process and the permitting authority will be required to respond to those comments as part of the permitting process. See 40 CFR part 124. Sources will also have the right to challenge the responses or use of the guidance as part of the permitting process.

3. Codification of Criteria for Determining That Additional Risk-Based Permit Conditions or an SSRA Is Necessary

CKRC argues that EPA's proposed regulatory changes should not be considered as a partial grant because EPA has not codified specific criteria in the proposed regulations for permit authorities to use to decide whether to require an SSRA; to set the risk levels that are deemed protective; or to otherwise provide any further definition as to what it means to protect human health and the environment.

In its petition, CKRC requested that after we repeal the policy and guidance (per the first request), "should EPA believe it can establish the need to require SSRAs in certain situations, CKRC urges EPA to undertake an appropriate notice and comment rulemaking process seeking to promulgate regulations establishing such requirements." As discussed at length in both the proposal (69 FR 21325–21327) and the preceding paragraphs, we believe that we have established certain circumstances where the MACT standards may not be protective and that an SSRA may be warranted, based on relevant site-specific factors associated with an individual combustion unit. Consequently, we are finalizing regulations that explicitly authorize permitting authorities to conduct or require an SSRA on a site-specific basis. This, in our view, grants the second of CKRC's requests. Our response directly addresses a number of CKRC's concerns: (1) Through a notice and comment rulemaking process, EPA has established circumstances in which an SSRA may be necessary; and (2) EPA's regulations will now explicitly

acknowledge that an SSRA might be necessary as part of the permitting process, thereby addressing the petitioner's concern that EPA's past approach of relying on RCRA's omnibus authority to implement this policy violates the requirements of RCRA § 3005(b). And as discussed further below, EPA has codified criteria for permit authorities to use to determine whether to require an SSRA.

While it does not provide exactly what CKRC requested, the regulated community has had a full opportunity to comment on the need for an SSRA both as part of the 1999 rulemaking and, again, as part of this rulemaking to adopt the provisions of § 270.10(l), which contain an explicit reference to the potential need for an SSRA as part of the permitting process pursuant to RCRA § 3004(a) and § 3005(b). As previously explained, § 270.10(k) does not explicitly mention the potential for an SSRA to be required. Although the rule does not identify a priori that an SSRA will be required in an individual circumstance, but defers that determination to the permitting process, the final rule reflects EPA's findings that an SSRA is not anticipated to be necessary in every circumstance—only where site-specific conditions give the permit authority reason to believe that additional controls beyond those required pursuant to 40 CFR parts 63, 264, 265, or 266 may be necessary to protect human health and the environment.

CKRC argues that EPA's decision not to codify national criteria renders the regulation impermissibly vague, and therefore, "in their view totally deficient as a legal matter." The petitioner argues that the rule is essentially "a bootstrap attempt to avoid rulemaking requirements by establishing 'rules' that give no more guidance or direction than general terms in the statute and in no way channel the decision maker's discretion or put the public on notice of anything." According to CKRC, this unbridled discretion is manifest in three ways: (1) No criteria explain how a permit writer is to decide whether to require an SSRA; need merely to conclude "reason to believe"; (2) there are absolutely no limits on what type of information or assessments the permit writer may demand and the proposed reg. does not even hint at what type of information or assessments might be demanded; and (3) there is not a word of guidance or specification as to what it means to "ensure protection of human health and the environment." The petitioner argues that as a consequence, the proposed § 270.10(l) would be struck down as a "standardless regulation."

EPA disagrees that the provisions at § 270.10(l) are impermissibly vague, or otherwise inconsistent with the cases the petitioner cites. In the cited cases the courts found that the regulated entity bore the entire burden of determining how to comply with the challenged regulation in the complete absence of a government-generated standard or guidance. See *Maryland* v. *EPA*, 530 F.2d 215, 220 (4th Cir. 1975); *South Terminal Corp* v. *EPA*, 504 F.2d 646, 670 (1st Cir. 1974). This is entirely distinct from the regulations codified at § 270.10(l).

In § 270.10(l) EPA identified the standard for when a risk assessment may be necessary: where the regulatory authority identifies factors or conditions at the facility that indicate that the MACT standards may not be sufficiently protective, and defers the articulation of the more precise requirement to the permitting process, where the onus falls on the permitting authority to identify the basis for its determination. Until the permitting authority provides this further guidance, the regulated entity incurs no obligation. The mere fact that specific factors or facility conditions that form the basis for the determination that an SSRA is warranted will be subsequently identified through the permitting process does not invalidate the regulation. See *Ethyl Corp* v. *EPA*, 306 F.3d 1144, 1149–1150 (D.C. Cir. 2002).

The regulation also identifies the categories of information that might be required for MACT EEE facilities: The information must be necessary to determine whether additional controls are needed to ensure protection of human health and the environment; it can include the information necessary to evaluate the potential risk from both direct and indirect exposure pathways; or it can include the information necessary to determine whether such an assessment is necessary. Here as well, EPA's reliance on the permitting process to provide further specification of the required information is not improper.

Moreover, as discussed above in subsection C., in response to commenters' concerns, EPA has revised § 270.10(l) to provide more detail, both with respect to the basis for the determination that an SSRA is necessary, and with respect to the type of information the permit authority might need. EPA has added language to remind permit authorities that the determination that the MACT standards may not be sufficiently protective is to be based only on factors relevant to the potential risk from the hazardous waste combustion unit at the site. EPA has also added language to § 270.10(l) to identify guiding factors for permitting authorities to consult in determining whether the MACT will be sufficiently protective at an individual site. Although the list of guiding factors is not all-inclusive, they offer a structure for risk managers (as well as the regulated community) to use to frame the evaluation of whether a combustor's potential risk may or may not be acceptable.

Finally, we note that, unlike the circumstances in the cited cases, § 270.10 is promulgated in the context of an existing permitting regime. The regulatory standards at 40 CFR part 124 provide further structure for both the regulated community and the permit authority. For similar reasons, EPA disagrees that the cited cases compel the Agency to establish risk levels that are deemed protective, or to otherwise provide any further definition as to what it means to protect human health and the environment. We discussed at length throughout the proposal the reasons we believe it would not be appropriate to codify either an exclusive set of national criteria for determining that an SSRA (or additional risk-based permit conditions) would be necessary, or a uniform risk level. The decision to require an SSRA is inherently site specific, thus permitting authorities need to have the flexibility to evaluate a range of factors that can vary from facility to facility. See 69 FR 21328–21331. CKRC has neither presented new factual or policy reasons that would cause the Agency to reconsider the tentative decisions presented in the proposal, nor specifically addressed the issues underlying EPA's decision. Instead, the petitioner has merely reiterated the concerns presented in its petition and its general disagreement with EPA's decision.

EPA also disagrees that its new regulatory structure grants permit writers unbridled discretion for many of the same reasons that EPA does not believe that § 270.10(l) is impermissibly vague. As EPA has previously explained, the requirements at Part 124 continue to apply to actions taken to implement § 270.10(l). Moreover, the language of § 270.10(l) makes clear that the onus initially falls on the permitting authority to identify the basis for its conclusion that the MACT standards may not be sufficiently protective. As both part 124 et. seq., and EPA's preamble discussions make clear, facilities will continue to have the opportunity to comment on and challenge the determination. See §§ 124.10, 124.11, and 124.19. The

regulatory structure adopted in § 270.10(l) mirrors the structure Congress established in sections 3004 and 3005; although 3004 directs EPA to establish national standards, section 3005 recognizes that those standards will be applied on a case-by-case basis through the permitting process, to allow site-specific conditions to be taken into account, and to supplement those standards as necessary.

EPA has also provided recommendations through guidance on how an SSRA can be conducted. Although the recommendations are not binding, they provide risk managers (as well as the facility) with a starting point from which to determine whether a combustor's potential risk may or may not be acceptable.

CKRC argues that it appears that rather than following the statutory authorities and requirements to review and amend regulations every 3 years as necessary (RCRA § 2002(b)), EPA decided to take the easy way out and impose, through non-rulemaking "guidance", massive, costly, and confusing requirements leaving unbridled discretion to its permit writers.

We disagree that the Agency has attempted to avoid rulemaking in this context. EPA has conducted several rulemakings to amend our regulations. The first was in 1999, when we adopted revised emission standards under the authority of both § 112(d) of the CAA and RCRA to more rigorously control toxic emissions from burning hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. See 64 FR 52828. At the time, we noted that "today's rule fulfills our 1993 and 1994 public commitments to upgrade emission standards for hazardous waste combustors." We have continued to revise our regulations consistent with and based on the facts before the Agency, taking into account the arguments presented in CKRC's petition. As explained above, we believe that the facts do not support granting all of CKRC's requests. Rather we believe that the MACT standards will generally be protective, and that permit authorities should reach the decision to require an SSRA based on a variety of factors and concerns specific to their sites. In addition, as previously addressed, we believe that our risk assessment guidance should remain as guidance. Several other commenters agree that the guidance should not be codified.

The petitioner argues that the regulation EPA has proposed to adopt is so vague, that it is essentially not a regulation, and that consequently, even if finalized, it would not be sufficient to comply with the requirement in RCRA § 3005(b) to specify in regulations, the information necessary to obtain a permit. They compare the level of detail in § 270.10(l) to the lengthy regulations (codified in 40 CFR part 270) specifying in great detail the information required when one is submitting a RCRA permit application, arguing that "these regulations cover 75 pages of fine print in Code of Federal Regulations," to demonstrate that this regulation would be insufficient under RCRA § 3005(b). In further support of this argument, CKRC cites *Ethyl Corporation* v. *EPA*, 306 F.3d 1144 (D.C. Cir. 2002).

EPA disagrees that its regulations are in any way inconsistent with the decision in *Ethyl Corp.* At issue in that case was a regulation issued pursuant to section 206(d) of the CAA. Section 206(d) provides that EPA "shall, by regulation, establish methods and procedures for making tests under this section." 42 U.S.C. 7525(d). The court found that "with CAP 2000, [the challenged regulation] the EPA does not claim to have itself articulated even a vague durability test. Rather CAP 2000 requires that 'the manufacturer shall propose a durability program' for EPA approval. 40 CFR 86.182301(a). It thus falls on the forbidden side of the line." *Ethyl Corp.*, 306 F.3d at 323–324. The Court distinguished the challenged regulation from the situation in which an agency issues a "vague" regulation, and relies on subsequent proceedings to flesh out the specific details. And as the court explained, where "Congress had not specified the level of specificity expected of the agency, we held that the agency was entitled to broad deference in picking the suitable level." 306 F.3d at 323 (citing *American Trucking Associations* v. *DOT*, 166 F.3d 374 (D.C. Cir. 1999) and *New Mexico* v. *EPA*, 114 F.3d 290 (D.C. Cir. 1997).

In § 270.10(l) EPA has articulated the standard for when a risk assessment may be necessary: where the regulatory authority has identified factors or conditions at the facility that indicate that the MACT standards may not be sufficiently protective. EPA has also adopted a list of factors on which permit writers are to rely in reaching this determination. EPA has also identified the categories of information that might be required for MACT EEE facilities: The information must be necessary to determine whether additional controls are needed to ensure protection of human health and the environment; it can include the information necessary to evaluate the potential risk from both direct and indirect exposure pathways; or it can include the information necessary to determine whether such an assessment is necessary. While it does not provide as much detail as the petitioner wishes, this provision unquestionably "defines the type of information necessary for a permit application."

Thus, the issue turns on the level of specificity that RCRA § 3005(b) requires, and EPA does not believe that RCRA § 3005(b) requires EPA to publish a list of every possible piece of information that might be required in a permit. Section 3005(b) merely establishes a broad directive that "each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator," and that it shall include the information contained in subsections (1) and (2), leaving to EPA's discretion to determine the level of specificity at which to promulgate regulations. To some extent, this reflects the reason for having a permit process—to allow site specific conditions to be taken into account. The regulatory structure adopted in § 270.10 mirrors the structure Congress established in RCRA § 3004 and § 3005. Despite the petitioner's comparison to the length of part 270, the length of these provisions are not indicative of any determination of the precise level of detail that § 3005(b) requires, but reflects the fact that EPA has adopted requirements specific to individual types of units. Moreover, notwithstanding the petitioner's characterization, the language at § 270.10(l) is comparable to many other provisions in 40 CFR part 270. See, for example: §§ 270.14(b)(8); 270.16(h)(1)–(2); 270.22(a)(6)(i)(C); 270.22(c).

Lastly, CKRC argues that the proposed regulation is particularly problematic, because it extends beyond "information" that may already exist. CKRC says that it is one thing to demand that a party go out and gather existing information, but another thing to demand that an applicant conduct "assessments." Moreover, nothing in the regulations prohibits a permit authority from demanding revised assessments, and even more revised assessments. We agree that permit authorities have the authority to require facilities to provide additional information beyond that which already exists. However, based on feedback from EPA Regional permit writers, SSRAs generally represent a one-time cost. We do not expect that facilities that have conducted risk assessments will have to repeat them. As discussed in the 1999 final rule preamble, changes to comply with the MACT standards should not cause an increase in risk for the vast majority of facilities given that the changes, in all

probability, will be the addition of pollution control equipment or a reduction in the hazardous waste being burned (see 64 FR 52842). Instances where a facility may need to repeat a risk assessment would be related to changes in conditions that would likely lead to increased risk.[242] In such situations, we would anticipate that the risk assessment would not have to be entirely redone. It may be as limited as collecting relevant new data for comparison purposes, leading to a decision not to repeat any portion of a risk assessment. Or, it may be more inclusive such that modifications would be made to specific inputs to or aspects of the risk assessment using data from a previous risk assessment, risk burn or comprehensive performance test. As discussed in subsection B., we have added a new regulatory provision to indicate a previously conducted risk assessment would be relevant in evaluating changes in conditions that may lead to increased risk. The factor reads as follows: "Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk."

4. EPA's Cost Estimates for SSRAs

CKRC raised several objections to our cost estimates for conducting an SSRA, and provided higher cost estimates ($200K to $1M, with upper bound of $1.3M). We suggested in the proposal, that the higher cost figures provided by CKRC were likely incurred prior to the 1998 release of the Human Health Risk Assessment Protocol (HHRAP) guidance document. We believe our lower cost estimates can be attributed to the fact that we based them on the conduct of future SSRAs that will benefit from substantially better guidance and commercially available software.

Multiple issues regarding the cost information we provided in the proposal are raised by CKRC. The first of five issues is that CKRC believes that EPA's methods for calculating costs associated with future SSRAs do not include data gathering costs, QA/QC, third party consultants in addition to risk assessors and plant personnel time to coordinate and review SSRA efforts and collect facility data. We disagree with this statement in part; the estimates developed by the Agency do include data gathering costs, QA/QC, and third-party consultants. (Refer to the proposed rule's support document entitled: Preliminary Cost Assessment for Site Specific Risk Assessment, November 2003, Docket # OAR–2004–0022; and the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Replacement Standards—Final Rule, October 12, 2005, for a description of how the estimates were arrived at.) However, we agree with CKRC that the method used to develop SSRA costs does not capture facility time associated with data collection and management related to the SSRA. Consequently, we have adjusted our SSRA cost estimates to account for these activities by incorporating costs associated with time needed for facility data collection and management efforts associated with the SSRA, and will assume that engineering staff are required to perform these tasks.

The second issue concerns the extent to which cement kiln SSRAs are consistent with EPA's "normal" assumptions. We do not question the accuracy of the costs submitted by CKRC. However, it is not clear that the costs submitted by CKRC represent typical future costs for SSRA implementation at all facilities in the universe. Certain of the CKRC cost estimates (e.g., those submitted by Ash Grove and Holcim) reflect implementation of SSRAs over a number of years in the 1990s, while SSRA implementation was in its early stages. In other cases (e.g., estimates provided by Solite) costs appear to be consistent with EPA estimates. While we do not dispute the accuracy of these costs, earlier costs are likely to reflect the deliberative process common with early SSRAs.

For the third issue, CKRC's points out that EPA's estimate of 20 percent additional cost for adding a risk burn during a trial burn may be low; CKRC asserts that additional test costs can add up to 40 percent depending on the circumstances. We agree with this and have adjusted the range of total SSRA costs as necessary to assure that a range of additional test costs for separate risk burns (20 to 40 percent incremental cost) are included. For revised figures, see background document, Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Replacement Standards—Final Rule, October 12, 2005.

CKRC's fourth issue is that EPA does not appear to include more than evaluations of stack emissions in its estimates of SSRA costs. We disagree with this comment. The estimates of SSRA costs developed by the Agency reflect total contractor costs for performing an SSRA at a facility under different sets of conditions, and are not limited to stack emissions.

In the fifth cost-related issue, CKRC asserts that EPA's average estimates might be reasonable if the SSRA process were limited to the submission and acceptance of one SSRA effort. CKRC contends, however, that its members' experiences with SSRAs have involved coordination with state and regional offices and multiple revisions and submissions. Again, we do not question the experiences and costs of specific facilities. However, we anticipate that the 2003 Memorandum, Use of the Site-Specific Risk Assessment Policy and Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities guidance, which is finalized and released in conjunction with today's rule, will provide facilities and regulators with a clearer understanding of SSRA policy and guidance and will support a more efficient SSRA process. EPA's future SSRA cost estimates are based on current or recent cost data from multiple practitioners, and likely reflect a more efficient process than that experienced by some CKRC members in the 1990s.

X. Permitting

As discussed in the proposal, we believe that the permitting approach we adopted in the 1999 final rule is still the most appropriate means to avoid duplication to the extent practicable and to streamline requirements. Thus, both Phase 1 and Phase 2 sources will comply with their RCRA emission limits and operating requirements until they demonstrate compliance with the MACT standards by conducting a comprehensive performance test (CPT), submitting a Notification of Compliance (NOC) documenting compliance to the Administrator or delegated state, and then requesting to have their RCRA permits modified to remove the duplicative RCRA requirements (unless a sunset clause had been added previously that inactivates specified requirements upon compliance with MACT).[243] Ultimately, the MACT air emissions and related operating requirements will reside in the CAA Title V permit, while all other aspects

[242] For example, hazardous waste burning cement kilns that previously monitored hydrocarbons in the main stack may elect to install a mid-kiln sampling port for carbon monoxide or hydrocarbon monitoring to avoid restrictions on hydrocarbon levels in the main stack. Thus, their hydrocarbon emissions may increase. (64 FR 52843, footnote 29.) Another example would be if the only change at a facility relates to the exposed population; what was acceptable in a previous risk assessment may not be any longer.

[243] Although we expect that the vast majority of Phase 1 sources will have had their RCRA permits modified by the time this rule is promulgated, we acknowledge that there may be a few permits yet to be modified.

of the combustion unit and the facility (*e.g.*, corrective action, general facility standards, other combustor specific concerns such as material handling, risk-based emission limits and operating requirements, and other hazardous waste management units) will remain in the RCRA permit. A new pictorial timeline has been provided to highlight milestones of the MACT compliance process. See figure 1 at the end of this section.

A. What is the Statutory Authority for the RCRA Requirements Discussed in this Section?

EPA is finalizing amendments to modify RCRA permits in today's rule pursuant to sections 1006(b), 2002, 3004, 3005 and 7004(b) of RCRA. 42 U.S.C. §§ 6905(b), 6912, 6924, 6905, and 6074. Our approach is likewise consistent with section 112(n)(7) of the Clean Air Act which indicates that EPA should strive to harmonize requirements under section 112 and RCRA requirements for hazardous waste combustion sources. With respect to the regulatory framework that is discussed in this section, we are finalizing the process to eliminate the existing RCRA stack emissions national standards for hazardous air pollutant for Phase 2 sources as we had done for Phase 1 sources in the 1999 final rule. That is, after submittal of the NOC established by today's rule and, where applicable, once RCRA permit modifications are completed at individual facilities, RCRA national stack emission standards will no longer apply to these hazardous waste combustors (unless risk-based permit conditions are determined necessary).

We originally issued emission standards under the authority of section 3004(a) and (q) of RCRA, which calls for EPA to promulgate standards "as may be necessary to protect human health and the environment." We believe that the final MACT standards are generally protective of human health and the environment, and that separate RCRA emission standards are not needed to protect human health and the environment. See Part Seven, How Does the Final Rule Meet the RCRA Protectiveness Mandate? for a discussion of this topic. RCRA section 1006(b) directs EPA to integrate the provisions of RCRA for purposes of administration and enforcement and to avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (and other federal statutes). This integration must be done in a way that is consistent with the goals and policies of these statutes. Therefore, based on its findings regarding the protectiveness of the MACT standards, and pursuant to section 1006(b), EPA is generally eliminating the existing RCRA stack emission standards to avoid duplication with the new MACT standards. The amendments made today to allow new combustion units to comply with the MACT standards upon start-up, versus the RCRA stack emissions national standards, are based on the principle of avoiding duplication between programs.

We are not stating that RCRA permit conditions to control emissions from these sources will never be necessary, only that the national RCRA standards appear to be unnecessary. Under the authority of RCRA's "omnibus" clause section 3005(c)(3); (see §§ 270.32(b)(2) and (b)(3)), RCRA permit authorities may impose additional terms and conditions on a site-specific basis as may be necessary to protect human health and the environment. Thus, if MACT standards are not protective in an individual instance, RCRA permit writers will establish permit limits that are protective.

In RCRA, Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. Section 7004(b) of RCRA requires EPA to provide for, encourage and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

B. Did Commenters Express any Concerns Regarding the Current Permitting Requirements?

Generally speaking, commenters favor maintaining the permitting approach and requirements referred to above. This approach was finalized in the 1999 rule and has been implemented, and in a few cases is currently being implemented, for Phase 1 sources complying with the Interim Standards Rule. However, several commenters raised similar concerns regarding certain aspects of the transition process from RCRA to MACT and Title V permitting.

1. Removal of Duplicative RCRA Permit Conditions

One comment is in regard to Phase 1 sources that have been fully transitioned (i.e., have had duplicative RCRA permit conditions and requirements removed or that have been "sunsetted") to compliance with the Interim Standards that may need to make upgrades to comply with the revised Phase 1 MACT Standards. The concern is that Phase 1 sources needing to make upgrades for MACT should be able to do so without a RCRA permit modification (unless risk-based conditions are present). We agree with the commenters that as long as the technology upgrades (e.g., equipment changes to upgrade air pollution control equipment) do not affect any remaining conditions in the RCRA permit, the regulations do not require a permit modification. For those Phase 1 sources that need to make upgrades to comply with the revised standards, they should address the specific upgrades in their draft Notification of Intent to Comply (NIC) and during the informal NIC public meeting so that the regulatory authority and public are aware of the source's activities and plans for compliance. We encourage early communication between the source and the RCRA permit writer to ensure a common understanding of whether a RCRA permit modification will be needed.

Additionally, Phase 1 sources must comply with the provisions of § 63.1206(b)(5) for changes in facility design. We do not anticipate that upgrades made to comply with the Replacement Standards will adversely affect a source's compliance with the Interim Standards. Therefore, consistent with § 63.1206(b)(5)(ii), sources must document the change in their operating record, revise their NOC and resubmit it to the permitting authority (per § 63.9(h)), and, as necessary, revise their start-up, shutdown, and malfunction plan.[244]

Several commenters felt that we should re-emphasize the importance of removing duplicative RCRA permit conditions and requirements. We agree with the commenters that this is an important action for regulatory agencies. In addition to comments received, we also have learned through the implementation process for the Interim Standards, that some state agencies are not removing duplicative requirements from the RCRA permit. We have clearly stated in several preambles and guidance documents that we believe it is appropriate to retain only the RCRA risk-based conditions that are more stringent than the applicable MACT limits (i.e., if the RCRA condition has been determined to limit risk to an acceptable level and is necessary to protect human health and the environment) in the RCRA permit after

[244] The requirements in § 63.1206(b)(5)(ii) call for sources to revise (as necessary) the performance test plan, DOC, NOC, and start-up, shutdown, and malfunction plan. For sources complying with the Interim Standards, it is not necessary to revise the performance test plan or the DOC, since they were developed in preparation for compliance with the Interim Standards.

compliance with MACT.[245] However, we also acknowledge that in certain cases it may not be clear which compliance requirement is more stringent. For example, standards under MACT are expressed as concentration based limits (micrograms/dry standard cubic meter) while certain RCRA standards are expressed as mass emission rate limits (grams/second). Also, averaging times between the two programs differ: MACT requires hourly rolling averages whereas RCRA requires instantaneous values. This is an unfortunate consequence of moving compliance from a risk-based program to a technology-based program. Because we cannot definitively say when a RCRA requirement is more stringent than a MACT requirement and consistently apply it to all sources, we are relying on sources and permitting agencies to work together to determine which requirement is more stringent. If the MACT requirement is determined to be more stringent, the permitting agency can remove the requirement from the RCRA permit.

In adopting a permitting approach to place the MACT air emissions and related operating requirements in the CAA Title V permit and to keep all other aspects of the combustion unit and the facility in the RCRA permit, our intent was and still is, to minimize duplication to the extent practicable and to eliminate the potential for dual enforcement. We view it as an unnecessary duplication of effort between programs as well as an unnecessary expenditure of resources and costs for both facilities and regulatory authorities to maintain a RCRA permit and a Title V permit that contain duplicative requirements, when there are viable mechanisms (i.e., Class 1 modification procedure at 270.42 Appendix I, section A.8, or Class 2 or 3 if a state has not adopted the Class 1 procedure) in place to avoid doing so.

Nevertheless, we believe that states should have the flexibility to decide how they will allocate their resources, which is why we did not include a single transition approach for implementing agencies to follow in the 1999 rule or in today's rule. So, in such cases where a state agency chooses not to adopt the transition language (i.e. the Class 1 modification procedure at 270.42 Appendix I, section A.8) into their state requirements (e.g., because the state's procedures are broader in scope or more stringent than the federal requirements) or is unable to reach an agreement between its RCRA and air programs regarding which standards are more stringent, the Title V permitting authority should document these issues, including any continuing RCRA permit requirements, in the title V permit's statement of basis (40 CFR §§ 70.7(a)(5) and 71.7(a)(5)). This will help to ensure that the source is clear regarding its compliance obligations, which is a main goal of the Title V program. Further, for purposes of clarification and as a matter of courtesy, we urge regulatory authorities that choose to impose dual compliance requirements, to also provide a written justification to the source explaining the reasons for their decisions.

2. Transition of Interim Status Phase 2 Units From RCRA to CAA Permits

In response to our discussion in the proposal regarding RCRA permitting for interim status Phase 2 units (69 FR 21324), two commenters suggest that EPA establish policy and/or regulation that discourage further RCRA permitting work for interim status Phase 2 sources. Their comments are directed our statement in the proposal that the RCRA combustion permitting procedures in 40 CFR part 270 also continue to apply until you demonstrate compliance. As noted in this statement, we intended for Phase 2 sources to continue to be subject to RCRA permitting requirements for air emissions standards and related operating parameters, including trial burn planning and testing, until they have demonstrated compliance with the MACT standards by conducting a comprehensive performance test and submitting an NOC to the Agency. However, we also provided several factors that should be taken into consideration when determining whether to proceed with the RCRA permit process such as: the facility's permit status at the time the MACT rule becomes final, the facility's anticipated schedule for MACT compliance, the priorities and schedule of the regulatory agency, and the level of environmental concern at a given site (69 FR 21324).

To support their position, the commenters noted that time and resources would be conserved and duplicative and overlapping activities could be minimized if Phase 2 sources were permitted solely via Title V. Also, they argued that it would avoid expending resources to modify the RCRA permit once the source has demonstrated compliance with MACT. We agree with commenters that every effort should be made to conserve resources and avoid duplication to the extent possible. However, we do not believe it is appropriate to establish policy or regulation that permitting authorities must suspend the RCRA permit process (whether it pertains to interim status or renewals), especially in cases where considerable time and effort has been invested and the permit is close to final issuance. As before, we strongly encourage sources and regulatory authorities to work together to establish an approach that will provide for the most practical transition. For example, we strongly recommend that sunset provisions be included in a permit that will be issued well in advance of compliance with MACT to avoid duplication and a later modification to remove the duplicative RCRA conditions. Also, it would make more sense to transition a source to MACT compliance prior to issuing the RCRA permit if it will comply with MACT early.

3. Transition From Compliance With the Interim Standards to the Replacement Standards

A specific question that has been raised relates to the applicable standards and operating parameters that the source must comply with during the period between the rule's effective date for the Phase 1 Replacement Standards and submission of their new NOC. Upon the publication date of the rule, the Replacement Standards (and Phase 2 Standards) will become effective and sources will have 3 years to come into compliance. During this 3-year period, Phase I sources' existing title V permits will either be reopened to include the Replacement Standards, or the permitting authority will have incorporated the Replacement Standards during permit renewal. In this example, a Phase 1 source's Title V permit has been reopened, revised, or renewed and includes the Replacement Standards, the compliance date has not yet passed, no new documentation of compliance (DOC) for the replacement standards has been included in the operating record, and the source has not yet conducted a comprehensive performance test and submitted a new NOC (therefore it still has an NOC containing the operating parameters for compliance with the Interim Standards).

In the above scenario, the question asked is whether the source should comply with the Interim Standards in the current NOC or the Replacement Standards in the Title V permit. The

[245] As an example, a RCRA permit could specify a higher minimum operating temperature than what is necessary for the facility to achieve compliance with MACT. The lower minimum operating temperature under MACT may be sufficient, unless the RCRA permit authority determines that the higher RCRA temperature is necessary to limit risk to an acceptable level for that facility. There should be a connection between the RCRA limit and protection of human health and the environment when retaining a RCRA limit.

source should comply with the Interim Standards until the compliance date of the Replacement Standards. Although the Title V permit now includes the Replacement Standards, the permit will also include the Replacement Standards' future compliance date. With regard to the transition from the Interim Standards NOC to the Replacement Standards DOC, we are revising the regulations at § 63.1211(c) to render the NOC, which documented compliance with the Interim Standards, inapplicable upon inclusion of the DOC for the Replacement Standards in the operating record by the compliance date. Thus, the source will not be placed in a situation where it must continue to ensure compliance with the operating parameters established in the NOC for the Interim Standards, while seeking to comply with the Replacement Standards and operating parameters in its DOC. Although it can be assumed that the source would still be able to comply with its Interim Standard-based NOC because the Replacement Standards are the same as or more stringent than the Interim Standards, we believe that the revision to render the previous NOC inapplicable provides a clearer and more sensible approach.

4. Changes to Title V Permits

Both the Replacement Standards and the Phase 2 Standards will necessitate permit reopenings or revisions to some existing title V permits; other permits will incorporate the requirements upon renewal. 40 CFR §§ 70.7 and 71.7 include the requirements for Title V permit revisions, reopenings, and renewals. Also, approved Title V permitting authorities may have additional requirements. Please refer to the appropriate permitting authority and its individual Title V permits program to determine the necessary requirements and procedures.

With respect to incorporating minor revisions into the Title V permit, one commenter had asked, for example, whether revisions made to the NOC to reflect minor operating changes could be incorporated into the permit by reference rather than through the reopening procedures. Determining the appropriate Title V permit reopening or revision requirements is based on the nature of the change and the source specific permit terms and conditions, and is therefore difficult to generalize. We recommend that sources work with their Title V permit authorities to determine the appropriate requirements and procedures that are applicable to any specific situation. However, we would like to note that, when incorporating requirements by reference into the Title V permit is appropriate, this does not necessarily obviate the need for permit revisions if the material incorporated by reference is subsequently revised. For more information on incorporation by reference, please refer to the Office of Air Quality Planning and Standards' "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" (March 5, 1996), Section II.E.2.c. This paper can be found at: *http://www.epa.gov/ttn/oarpg/t5/memoranda/wtppr-2.pdf.*

C. Are There Any Changes to the Proposed Class 1 Permit Modification Procedure?

In the NPRM, we proposed a new Class 1, with prior Agency approval, permit modification procedure to help further minimize potential conflicts between the RCRA permit requirements and MACT requirements. See 69 FR 21384 and proposed § 270.42(k). During implementation of the Interim Standards for Phase 1 sources, it became evident that there are two significant instances where RCRA permit limits may overlap with MACT requirements: during initial (and future) performance testing and during the period between placement of the documentation of compliance (DOC) in the operating record and the final modification of the RCRA permit after receipt of the NOC. We discussed several existing approaches (e.g., a class 2 or 3 modification, request for approval submitted via the RCRA trial burn plan or coordinated MACT/RCRA test plan, or through a temporary authorization) for addressing these instances, noting that none provided an optimal solution.

All commenters agreed that the new Class 1 modification procedure is the appropriate and most efficient method to enable specific RCRA permit conditions to be waived during instances of overlap referred to above. However, a few commenters were concerned with the requirements in proposed § 270.42(k)(2)(ii) and (k)(3), that require sources to submit their permit modification request upon approval of the test plan and the requirement for the Director to approve or deny the request within 30 days, or within 60 days with an extension. This timeframe is feasible only for those sources that have received approval of their test plans at least 60 days prior to their scheduled date for commencing their performance test. We acknowledged the potential impracticality of this requirement in the proposal, but at the time believed that few sources, if any, would conduct their performance tests without an approved test plan. While this still may be true, we have learned that sources who received extensions for testing (so that they would have an approved plan), typically commenced their test shortly after approval. Consequently, this still would not allow enough time to review and approve the permit modification before the test begins. Thus, the new Class 1 modification would be of no benefit to facilities that conduct their tests without an approved test plan, or to facilities that received extensions and need to begin their tests upon or shortly after approval of the test plan. Also, we found one other circumstance where the timeframes could be problematic: If a permitting agency has allowed sources to begin pretesting/testing upon approval of the test plan. Again, a source would not be able to have RCRA permit requirements waived in time to begin its test.

We agree with commenters that the proposed requirements in 270.42(k)(2)(ii) and (iii) do not provide any flexibility to waive RCRA permit limits for sources that (1) do not have an approved test plan but choose to conduct their test; (2) are granted an extension to their test date because they do not yet have an approved test plan; and (3) may begin testing upon approval of their test plans. Our original intent to require prior Agency approval for the new Class 1 permit modification procedure was to ensure that the proposed test conditions would be sufficiently protective when specific RCRA requirements are waived and that a source has met the regulatory requirements for performance test plans. We still believe that review and approval is an important step; however, we also believe it should not be a barrier and therefore, should occur in advance of a source commencing its performance test. As a result, we have revised the proposed regulatory language in 270.42(k)(2)(i) to specify that sources submit their permit modification requests with their test plans, to allow potentially up to one year for approval (*i.e.*, the performance test plan is due one year before the test is to begin). Also, so that approval does not impede the commencement of the performance test, we have revised the proposed language in 270.42(k)(2)(ii) so that the Director can choose whether to issue approval of the permit modification request contingent upon approval of the performance test plan.[246] In that respect,

[246] In all likelihood, we anticipate that the RCRA permit authority will have reviewed the modification request along with the test plans, worked with its Air counterparts and the source to resolve any concerns, and have prepared the permit

Continued

the RCRA permit authority would continue to have an extra measure of assurance in circumstances that may demand it.

D. What Permitting Approach Is EPA Finalizing for New Units?

1. Why Did EPA Propose a Separate Permitting Approach?

As discussed in the proposal, the current RCRA regulations at §§ 264.340, 265.340, 266.100, 270.19, 270.22, 270.62, and 270.66 do not address how or when new combustion units will comply with the MACT standards. Consequently, the part 270 regulations imply that a new unit must obtain a complete RCRA permit before it can demonstrate compliance with the MACT standards. It was never our intent for new units to develop a trial burn plan and provide suggested conditions for the various phases of operation in the RCRA permit application, given that these conditions will become inactive or need to be removed from their permits upon demonstrating compliance with MACT. To rectify our previous omission, we suggested several options that would allow units newly entering the RCRA permit process [247] (and that will comply with the Subpart EEE requirement upon start-up) to forego certain RCRA permit requirements and performance standards. In developing the options that would enable new units to forego certain RCRA requirements, we noted the importance of public participation opportunities under the MACT/CAA framework equivalent to those provided under the RCRA framework. Thus, each option was constructed in such a way that would streamline the RCRA requirements, but continue to provide early and frequent public participation commensurate with the requirements of the RCRA Expanded Public Participation Rule (60 FR 63417, December 11, 1995).

2. What Options Did EPA Propose for Permitting New Units?

In our preferred approach, we proposed that new units not be required to develop a trial burn plan and provide suggested conditions for the various phases of operation in their RCRA permit application. Instead, new units would only be required to address the remaining RCRA activities at the facility in their permit application (or modification request) including corrective action, general facility standards, other combustor specific concerns such as materials handling, risk-based emission limits and operating requirements, and other hazardous waste management units. While this approach appears to be ideal from the standpoint of reducing the regulatory burden to sources and RCRA permit authorities, we noted that even though a new unit will be required to meet the RCRA public participation requirements as part of the permit application process, the operations and emission information specific to the combustor would no longer be provided. Thus, we focused on certain compliance activities under the MACT/CAA framework (i.e., the Notification of Intent to Comply requirements) that would allow for combustor-specific information to be made available to the public as it would have been under the full RCRA permit process.

Regarding the three additional approaches or "options", each considered a different point in the RCRA permit process where a new unit could "transition" to compliance with the MACT standards (see 69 FR 21319). Under the first option, a new unit could transition to MACT compliance after it had submitted its RCRA Part B application. The Part B however, would not include the trial burn plan information. The new unit would only be required to discuss the compliance activities related to the combustor as part of the RCRA informal public meeting. In the second option, we proposed that a new unit would transition after its RCRA permit has been issued. Here, the new unit would be required to develop a trial burn plan which provided its proposed operations and emissions information and to discuss its compliance activities via the RCRA informal public meeting. Then, a permit would be issued, but it would not contain operating and emissions requirements in order to avoid a future modification to remove them. For the third option, the transition point would have been after the new unit places the DOC in its operating record, which is the compliance point for MACT. This option is more inclusive than the second because it requires the new unit to have a draft permit that covers the construction and shakedown period.

3. Which Option Is EPA Finalizing?

For today's final rule, we are adopting our preferred, proposed approach: new units will not be required to follow the full RCRA permitting process for establishing combustor operations and emissions. Thus, new units are not subject to the combustor-specific RCRA permit requirements and performance standards (i.e., to develop a trial burn plan, provide suggested conditions for the various phases of operation in their permit application, and subsequently operate under those conditions). However, because these units remain hazardous waste treatment units, they are still required to obtain a RCRA permit, or to modify an existing RCRA permit to include a new unit, prior to construction. They need only address the remaining hazardous waste management activities at the facility in their permit application (or modification request) including corrective action, general facility standards, other combustor specific concerns such as materials handling, risk-based emission limits and operating requirements, and other hazardous waste management units. As we noted in the previous section and will discuss again more thoroughly in the next section, we are relying on the NIC process to provide the public with the combustor-specific information that previously would have been provided under the full RCRA permit process.

Almost all commenters supported our preferred approach to not require that new units complete the full RCRA permit process and to rely on the NIC requirements and the MACT/CAA framework to provide a level of public participation that is commensurate with the requirements under RCRA. Commenters generally agreed that our preferred approach achieves this goal while streamlining the RCRA permit process for new units. One commenter felt that the Title V and New Source Review programs (NSR) provide sufficient requirements to regulate new combustion units. We disagree that either or both of those programs fully address the hazardous waste and public participation components commensurate with that provided by the approach we are finalizing today. For instance, a unit may be constructed and operating before a Title V permit is issued, which directly conflicts with RCRA's early public participation requirements. Also, in some instances, public participation may not be a required component of state issued NSR permits (see footnote regarding public participation and SIPs below). However, we do believe that the NSR program will play an important role regarding the exchange of information, as we will discuss in the section below. With respect to the remaining three options presented in the proposal (69 FR 21319–

modification approval prior to issuance of the test plan approval.

[247] Units "newly" entering the RCRA permit process refers to a newly constructed facility, thus newly constructed hazardous waste combustion unit; an existing facility that constructs a new unit; or an existing facility that converts a non-hazardous fuel combustion unit to a hazardous waste fuel combustion unit.

21320) that suggested a transitional approach (i.e., each option explored progressive points in the RCRA permit process where facilities could transfer over to MACT without fully completing the RCRA process), nearly all commenters were in agreement that they would require more work to implement than is necessary and consequently oppose them.

4. How Will Permitting for New Units Work?

In the proposed rule, we created an approach that utilizes the NIC requirements and the MACT/CAA framework with the intent of ensuring that the requirements of the RCRA Expanded Public Participation Rule would continue to be fulfilled. The four requirements for public participation as they relate to hazardous waste combustion units are: (1) Permit applicants must hold an informal public meeting before applying for a permit; (2) permit agencies must announce the submission of a permit application which will tell community members where they can view the application while the agency reviews it; (3) permitting agencies may require a facility to set up an information repository at any point during the permitting process if warranted; and (4) permitting agencies must notify the public prior to a trial (or test) burn.

As discussed in the preamble to the proposal (69 FR 21318), we believe that the NIC process addresses the first two RCRA public participation requirements. The NIC process requires a source to make its draft NIC, which discusses the source's plan for coming into compliance with the MACT standards, available for public review and to hold an informal public meeting to discuss the activities contained in the NIC. While the NIC process gives the public an early opportunity to participate in the unit's compliance planning process early on, a few components are still missing before we can consider the first 2 RCRA public participation requirements to be fulfilled under the MACT framework. One component is that there is no permit action associated with the NIC requirements. However, the NSR program can provide a permit mechanism that will determine whether or not a source may be constructed.[248] The steps associated with obtaining an NSR permit, or a "pre-construction" permit, are similar, but not necessarily identical to that required under RCRA. They are: (1) Preparation of the permit application (sources must provide the location, design, construction, and operation information) and participation in pre-application meetings; (2) issuance of permit application completeness determination by the State; (3) development and negotiation of draft permit; (4) opportunity for public notice and comment on the draft permit; (5) response of permitting authority to public comments; (6) possible administrative and judicial appeals; and (7) permit issuance/denial.[249]

A second component is that the NIC does not provide the information on the proposed combustor operations or emissions information that would normally be available as part of the RCRA process. To address these gaps between RCRA and MACT, we are requiring an approach similar to that which was proposed. New sources must: (1) Prepare a draft NIC and make it available to the public at the same time as their RCRA pre-application meeting notice; (2) provide a draft of their comprehensive performance test (CPT) plan (to the public) to coincide with the draft NIC and RCRA pre-application meeting notices; and (3) hold their NIC public meeting with their RCRA informal public meeting. The first two requirements ensure that the public is provided with most of the same information that would have been available via the RCRA trial burn plan prior to the source burning hazardous waste. Other information not required by the NIC or CPT plan, such as the combustion unit's design specifications will, in most cases, be available to the public through the NSR permit application. We recommend that sources submit a copy of their NSR permit application to the RCRA permit authority so that this information is readily available for development of the RCRA permit. The third requirement allows the public to inquire and comment on both the new unit's proposed activities and operations. By requiring new sources to develop, notice, and hold a combined public meeting that encompasses the NIC, draft CPT plan, and RCRA pre-application notice information, the public will be provided with all information related to the combustor's compliance plans as well as its operating plans and emissions estimates prior to burning hazardous waste. See new requirements in § 63.1212.

With respect to the requirements we are finalizing today, we received only one comment that expressed concern. The concern is that the requirement to submit the CPT plan is too early in the compliance process. For example, the RCRA application is submitted approximately 2–3 years before start-up whereas the CPT plan is required 1.5 years after the final NIC is due.[250] The commenter feels that the facility would not have enough time to learn about the "detailed nuances of the system". However, the commenter does note that it is possible to submit the CPT plan, but it will not be as complete or refined as it would be if it was submitted according to the deadline for existing units. We agree with the commenter that a considerable amount of planning is required of the source to be able to draft the CPT plan at such an early stage, but we are only requiring that a draft of the CPT plan be made available, with the final CPT plan due 6 months prior to the source's compliance date. Moreover, at this early stage, we liken the development of the draft CPT plan to the development of the trial burn plan. Even though it may not be as complete or refined as it will be when the final CPT plan is due, we believe that it will still be of benefit to the public and the regulatory authority, but also to the source in terms of advance planning for the design of the unit through start-up of the unit.

The components thus far, have satisfied the first (2) two RCRA public participation requirements. The third RCRA public participation requirement enables a regulatory authority to evaluate the need for and require a facility to establish and maintain an information repository. The establishment of an information repository is typically required only when there are concerns or unique information needs of a community. The purpose of the information repository is to make information regarding the facility (and combustion unit) available to the public during the permit issuance process and during the life of the permit. In the preamble, we noted that

[248] We believe that the majority of new units will be classified as major sources for NSR permitting (requiring either prevention of significant deterioration or nonattainment permits), however, those that do not, will likely be required to obtain a minor NSR permit. In few cases, new sources (e.g., newly constructed as opposed to modified) may not be required to obtain an NSR permit if its potential to emit does not exceed the NSR threshold level.

[249] With respect to numbers 4 and 5, many States omitted the public participation steps in their federally approved SIPs. This was the reason why Sierra Club had been opposed to our efforts to simply rely on NSR permitting to provide public participation opportunities that would have been otherwise provided under the traditional RCRA permit process for new units. Today, however, many SIPs have been revised to address public participation requirements.

[250] Comprehensive performance test plans are required to be submitted one year in advance of the scheduled test. The submittal date would be as late as 2.5 years after the effective date of the rule assuming no extensions are granted.

although the Title V permit process contains a provision that any materials relevant to the permit decision be made available to interested persons (see § 70.7(h)(2) and § 71.11(d)), the information may not be made available until well after the combustor is constructed and operating. Consequently, we have chosen to adopt additional provisions under the NIC requirements that parallel the requirements of § 124.33.

We had proposed two options that would allow a regulatory authority to require, on a case-by-case basis, a source to establish an information repository specific to the combustor. The first option was to place such a provision in the NIC regulations and the second option was to amend the applicability language in § 124.33 to include combustion sources that will comply with Part 63, subpart EEE upon start-up. Two commenters felt that the second option would create problems as far as organization (i.e., by modifying the RCRA regulations to include a provision solely for new units complying with MACT). We agree that the second option could be confusing and that it would be more appropriate to keep all new requirements for new units in one set of regulations. Therefore, we are finalizing a provision that will allow for an information repository to be established specific to the combustor (recall that a repository established pursuant to the RCRA permit will include documents relevant to the facility only), if deemed appropriate, under the NIC regulations. See new § 63.1212(c). Under the NIC regulations, the repository could include the NIC, test plans, draft Title V permit and application, reports, et cetera.

The fourth and final RCRA public participation requirement to be fulfilled is for the regulatory authority to notify the public of an impending trial burn or test burn. As discussed in the RCRA Expanded Public Participation Rule, the RCRA permit authority will typically provide the notice at least 30 days in advance of the test (60 FR 63426, December 11, 1995). Similarly, the MACT regulations require an existing or new unit to provide notice to the public that the CPT plan (and the continuous monitoring system performance evaluation test plan) is available for review. The regulations in § 63.1207(e)(2) fulfill this requirement. Although the CPT plan may not be approved before the public is notified, the intent is to provide notice to the public of a future test. We believe that the MACT regulations provide public notice of the test plans that are commensurate with the RCRA regulations and thus, no additional regulatory revisions or amendments are needed.

4.a. Process for New Units Seeking an Initial RCRA Permit

We anticipate that the process for new units seeking an initial permit will work as follows. Any new unit would begin the process by developing and compiling the information necessary for the RCRA draft permit (e.g., information required for the part A application at § 270.13, the relevant general information for the part B application according to Part 270) and the applicable NSR permit.[251] The information needed to compile the draft NIC and draft CPT plan would be gathered simultaneously, as if the source were developing the trial burn plan. When the source has compiled its RCRA permit application, draft NIC and draft CPT plan, it would submit a RCRA pre-application meeting notice at least 30 days prior to the date scheduled for the RCRA informal public meeting according to §§ 124.31(b) and (d). At the time of the RCRA pre-application meeting notice, the source would also issue notice of the NIC public meeting (at least 30 days prior to the NIC meeting) according to § 63.1210(c)(3), so that the two meetings can occur at the same time. In order for the public to be able to view all information relevant to the combustor before the combined RCRA pre-application and NIC public meeting, the source would make the draft NIC and draft CPT plan available to the public for review at the same time the notices for the meetings are issued. To aid the RCRA permit authority in its development of the draft RCRA permit (*i.e.*, mainly for purposes of evaluating risk), we strongly recommend that the source also provide copies of the draft NIC, draft CPT plan, and NSR application (if applicable) to the RCRA permit authority. It is our hope that the availability of information will expedite the development of the draft permit. All notices should be presented to the public in sufficient time to allow for a combined RCRA informal public meeting and NIC public meeting.

Following the combined public meeting, the source will submit its RCRA permit application and the RCRA regulatory authority will prepare and issue a draft permit. The public will then have an opportunity to comment on the draft permit and request a public hearing. Upon resolution of any issues surrounding the draft permit, a final RCRA permit will be issued. The RCRA process is the same as before, but should be reasonably shorter. Finally, the new unit may begin burning hazardous waste when it can assure it will operate in compliance with the MACT standards (*i.e.*, by placing a documentation of compliance in its operating record on the day it begins burning hazardous waste). See new regulatory language at § 63.1212(c). To aid readers in understanding the above process, we have included a pictorial timeline. Please see figure 2.

Finally, it may also be feasible to combine an NSR pre-application meeting and public notice of the draft NSR permit with the process described above. Thus, we recommend that sources work closely with their Air and RCRA permit agencies so that the NSR public notices and meetings may be coordinated with the RCRA and NIC notices and meetings so time and resources are efficiently utilized.

4.b. Process for New Units Modifying an Existing RCRA Permit

The process of adding a new unit to an existing permit is accomplished through a Class 3 permit modification (see § 270.42 (c) for requirements). The requirements governing public notices of the draft NIC, draft CPT plan, and holding a combined public meeting are essentially the same as new units seeking an initial permit. The process is as follows. The source prepares and submits its RCRA permit modification request (and if applicable, NSR application). It must then publish a notice of the modification request seven days later, followed by a public meeting no earlier than 15 days after publication of the notice for the modification request, and no later than 15 days before the close of the 60-day comment period. As with new units that are submitting an initial RCRA permit application, it is also important for sources seeking to modify their permit to coordinate their NIC public meeting with their RCRA permit modification public meeting. This is made possible due to the flexibility of the NIC public meeting; it can be held any time prior to the 10 month deadline. After the combined public meeting and the close of the comment period, the permit authority will either grant or deny the modification request. If approved, the source may then begin construction or modification of the unit. To aid readers in understanding the timing of the

[251] Because the information required for NSR permit is less comprehensive than a RCRA permit, it allows for a much shorter time period for issuance. The average time for issuing a PSD permit, for example, after receiving an application is slightly more than 7 months, but varies depending upon public involvement and negotiation of the application content. USEPA. Docket A–2001–19, Document II–A–01. *NSR 90-Day Review Background Paper*, June 22, 2001.

above process, we have included a pictorial timeline. Please see figure 2.

Again, it may be feasible to combine an NSR pre-application meeting and public notice of the draft NSR permit with the process described above. Thus, we recommend that sources work closely with their Air and RCRA permit agencies so that the NSR public notices and meetings may be coordinated with the RCRA and NIC notices and meetings so time and resources are efficiently utilized.

E. What Other Permitting Requirements Were Discussed in the Proposal?

At proposal, we discussed where most Phase 1 sources would be in terms of their transition from their RCRA permit requirements to compliance with the MACT Interim Standards (see 69 FR 21321). The transition process was discussed with respect to both the RCRA permit and the Title V permit. However, when we discussed the Title V permit requirements in the proposal, we did not elaborate on the transition between the Interim Standards and Replacement Standards. Because we believe that such a discussion would be helpful to readers, we have included general information describing how the transition process would work for most sources in Section B. Did Commenters Express any Concerns Regarding the Current Permitting Requirements?, subsections 3 and 4.

For Phase 2 sources, we proposed the same permitting approach as we did for Phase 1 sources. Today, we are finalizing as proposed, the following for Phase 2 sources: (1) the new Phase 2 emissions standards will be placed only in the CAA regulations at 40 CFR part 63, subpart EEE, and be implemented through the air program; (2) with few exceptions, the analogous standards in the RCRA regulations no longer apply once a facility demonstrates compliance with the MACT standards in subpart EEE and any duplicative requirements have been removed from the RCRA permit; and (3) the new standards will be incorporated into operating permits issued under Title V of the CAA rather than be incorporated into RCRA permits. Consequently, we are finalizing the proposed changes to §§ 270.22 and 270.66 to implement the above. Also applicable to Phase 2 sources via today's final rule are the changes and additions we finalized in the 1999 final rule for Phase 1 sources. These include a streamlined RCRA permit modification procedure to allow sources to make upgrades to comply with MACT (§§ 270.42(j) and 270.42 appendix I, section L.9), a second streamlined RCRA permit modification procedure to remove conditions from a permit that are no longer applicable (§ 270.42 appendix I, section A.8), an addition to § 270.235 to specify conditions for start-up, shutdown, and malfunction plan and integrate them with the CAA program, and an amendment to the interim status regulations at § 270.72 to exempt interim status facilities from the reconstruction limitation when making upgrades to comply with MACT.

Also, we are finalizing three new permitting changes that are applicable to both Phase 1 and 2 sources. Two have been discussed previously in this section and are: (1) A new streamlined RCRA permit modification procedure designed to reduce overlap during the transition from RCRA to MACT (§§ 270.42(k) and 270.42, appendix I, L.10); and (2) regulatory provisions stating that new units are no longer subject to the full array of RCRA combustion permitting requirements. The third change is discussed above in Section IX. Site-Specific Risk Assessment Under RCRA and finalizes our response to a petition for rulemaking with respect to site-specific risk assessments (SSRAs). As part of this change we have decided to adopt regulatory language that specifically provides clarification of authority for RCRA permit writers to evaluate the need for and, where appropriate, require SSRAs and to add conditions to RCRA permits that they determine, based on the results of an SSRA, are necessary to protect human health and the environment.

Last, as explained in part four section II.A, we are finalizing our decision to regulate emissions of dioxin/furans, mercury, polycyclic organic matter, and polychlorinated biphenyls from Phase 2 area sources under section 112(d).[252] This means that Phase 2 area sources are subject to MACT standards only for these hazardous air pollutants (HAP) in the final rule. To reiterate, they are: Dioxin/furans, mercury, and polycyclic organic matter (controlled by the surrogates DRE and carbon monoxide/hydrocarbon). For the remaining HAP (hydrogen chloride and chlorine gas and metals other than mercury), Phase 2 area sources may either comply with the MACT standards for Phase 2 major sources or continue complying with the RCRA standards and requirements of their RCRA permit.

In the 2004 proposal, we stated that we were not making a positive area source finding for Phase 2 area sources as we have for Phase 1 area sources (69 FR 21212 and 21325). Regardless of this, however, the Phase 2 area sources are still subject to the requirement to obtain a Title V permit because they are subject to section 112 standards under this subpart. See § 502(a) of the CAA and 40 CFR §§ 70.3(b)(2) and 71.3(b)(2).

It is important to note that the Title V applications for the Phase 2 area sources will need to contain emissions information relative to all regulated air pollutants (to determine applicable requirements, fees, etc.) that are being emitted from the units subject to the MACT standards, not just the specific HAP pollutants regulated by the MACT standards (see §§ 70.5(c)(3)(i) and 71.5(c)(3)(i)). Although, the permit itself would contain standards only for the HAP subject to MACT standards (the § 112(c)(6) HAP). A Phase 2 area source which chooses to control hydrogen chloride, chlorine gas, and metals other than mercury by continuing to comply with the relevant RCRA standards and the requirements of its RCRA permit should note this choice in its Title V application and cite to the relevant requirements of this subpart. This will help ensure that the permitting authority is aware that these requirements apply in lieu of the MACT standards for Phase 2 major sources. The permitting authority should also document this choice in the statement of basis for the source's Title V permit. See §§ 70.7(a)(5) and 71.7(a)(5). Finally, for the units at a source which are subject to the subpart EEE MACT standards, all CAA applicable requirements to which these units are subject, *e.g.*, State Implementation Plan requirements, not just the relevant Subpart EEE requirements, must be included in the Title V permits issued to these sources. See §§ 70.3(c)(2) and 71.3(c)(2). For more information regarding § 112(c)(6) and how it relates to Phase 2 area sources, see Part Four, Section II.A., "Area Source Boilers and Hydrochloric Acid Production Furnaces".

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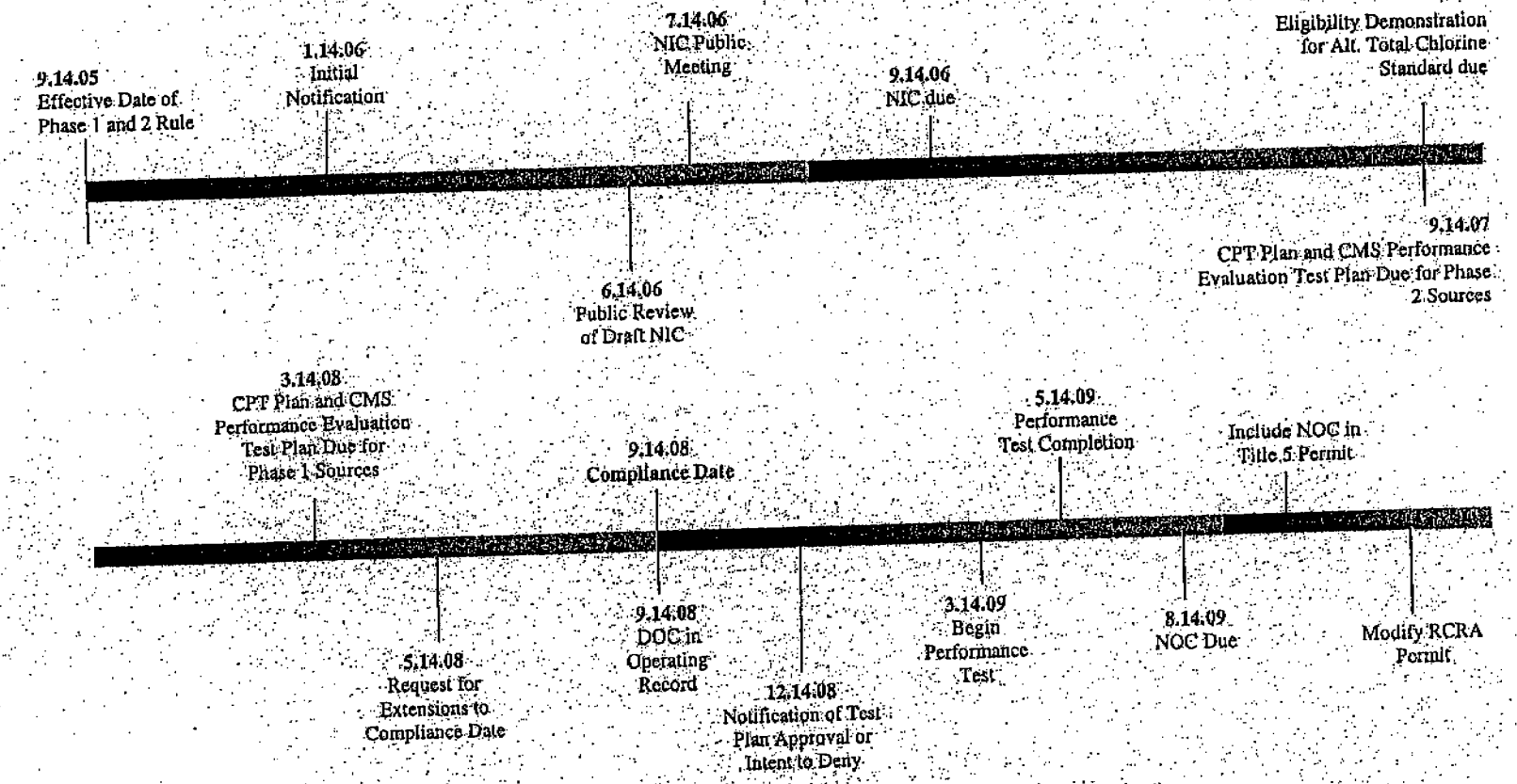
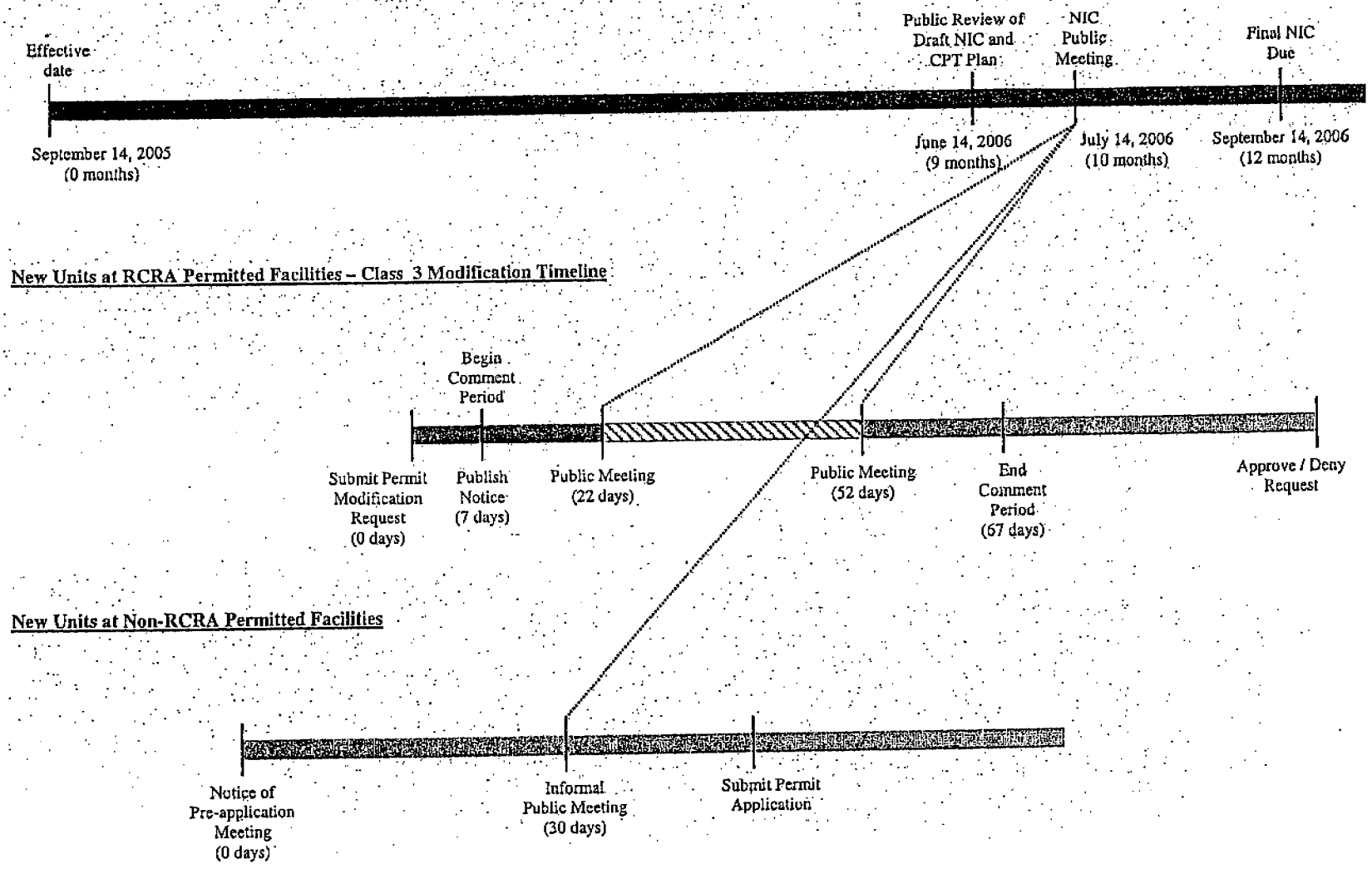
[252] As explained in the Comment Response Document vol. V, although § 502(a) allows EPA to exempt area sources from title V permitting requirements if EPA finds that those requirements would be (among other things) "unnecessarily burdensome", we believe that Title V requirements remain appropriate for these sources given the highly toxic nature of the HAP and the importance of affording opportunity for public participation as provided for in the Title V permit issuance process.

Figure 1. Time Line for Phase 1 Replacement Standards and Phase 2 Standards[253]



[253] Because of the variability of the Title V program requirements, most Title V permit actions (application due dates, revisions, reopenings, etc.) are not included in this timeline. Please refer to the particular source's current Title V permit status, the Title V regulations, and the individual permitting authority's Title V program requirements.

Figure 2. NIC and CPT Plan Time Line for New Units



Part Five: What Are the CAA Delegation Clarifications and RCRA State Authorization Requirements?

I. Authority for This Rule

Today's rule amends the promulgated standards located at 40 CFR part 63, subpart EEE. It amends the standards for the Phase 1 source categories—incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste, and it also amends subpart EEE to establish MACT standards for the Phase 2 source categories—boilers and hydrochloric acid production furnaces that burn hazardous waste. Additionally, this rule amends several RCRA regulations located in 40 CFR part 270 to reflect changes in applicability, addition of a new permit modification procedure, and additions related to site-specific assessments and permitting.

II. CAA Delegation Authority

Before discussing the clarifications being finalized today, it is important to first highlight a few key aspects of delegation authority. Recall from the proposal that a state, local, or tribal (S/L/T) agency must be delegated authority under CAA section 112(l) before it can exercise the delegable provisions' authorities. The delegable authorities can be found in 40 CFR 63.91(g)(1)(i), also known as Category I Authorities. A S/L/T agency that has applied for and received delegation authority can approve: test plans, requests for minor and in most cases, intermediate changes to monitoring and test methods, performance test waivers, and several other Category I Authorities. Please note that even though a S/L/T agency may have an approved Title V permit program, it cannot exercise delegable authorities or be the primary enforcement authority if it has not received delegation authority under CAA section 112(l). Moreover, when a S/L/T agency has not taken delegation of a section 112 standard, the agency can only incorporate the section 112 standard's requirements into its Title V permits, (and then implement and enforce these requirements through its title V permits) when it has adequate authority under State, local, or tribal law which allows it to conduct the above actions without delegation. See, *e.g.*, the proposed Federal Plan for Commercial and Industrial Solid Waste Incinerators, November 25, 2002 (67 FR 70640, 70652). Please also refer to 69 FR 21335 of the proposal and the fact sheet entitled, Clean Air Act Delegation for the HWC NESHAP at: *http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/factshts.htm* to learn more about the advantages of receiving delegation authority.

Also, we would like to point out that there are several delegation options that S/L/T agencies can receive. Regardless, many S/L/T agencies choose the "straight delegation" option when applying for delegation approval. Straight delegation means that these agencies have agreed to implement and enforce federal MACT standards as they have been written in the promulgated requirements. As a result, many EPA Regions and states have established memoranda of agreement that essentially provide automatic delegation of each future MACT, as opposed to the state applying for delegation of each future MACT, which requires a rulemaking to implement. For more information related to the delegation options and procedures, please refer to the fact sheet, Clean Air Act Delegation for the HWC NESHAP at: *http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/factshts.htm* and EPA's delegation website at: *http://www.epa.gov/ttnatw01/112(l)/112-lpg.html*.

III. Clarifications to CAA Delegation Provisions for Subpart EEE

In the proposal, we discussed the need to provide additional clarification for the delegable and non-delegable authorities within Subpart EEE based upon our implementation experience with the Phase 1 Interim Standards and the Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegation' Provisions final rule published on June 23, 2003 (68 FR 37334). Although the June 23, 2003 final rule provided clarification and streamlined the delegable provisions for each existing NESHAP, it overlooked several non-delegable and delegable authorities within Subpart EEE. It provided clarification on the non-delegable authorities of Subpart EEE as they relate to major alternatives to the standards themselves and to test methods, monitoring, or recordkeeping and reporting under the General Provisions.[254] However, it omitted major alternatives specific to Subpart EEE such as: test methods under §§ 63.1208(b) and 63.1209(a)(1); monitoring under § 63.1209(a)(5) and; recordkeeping and reporting under § 63.1211(a) through (d). Therefore, the following paragraphs will explain which authorities in Subpart EEE are delegable and are not delegable to S/L/T agencies that have been delegated authority and will provide some examples of or references to alternative requests associated with each delegable or non-delegable provisions authority.

To review, the regulations at 40 CFR 63.90 define three types of alternative requests. Alternative requests or "changes" to a particular delegable or non-delegable provision are classified as major, intermediate, or minor depending upon the degree (*i.e.*, potential to be nationally significance, potential to reduce the stringency of the standard, etc.) of change being requested. An alternative request that qualifies as a major change is not delegable to S/L/T agencies, even when they have delegation authority. These requests must be sent to the EPA Region or, if it concerns a test method under §§ 63.7(e)(2)(ii) and (f), 63.1208(b) and 63.1209(a)(1) or a standard under §§ 63.1200, 63.1206(a), or 63.1216–63.1221, then it must be sent to our Office of Air Quality Planning and Standards (OAPQS).[255] An alternative request that qualifies as an intermediate or minor change is delegable. However, the EPA Region may choose whether or not they will delegate authority to S/L/T agencies to approve intermediate and, even some minor changes during the delegation approval process. In addition to the regulations, the guidance document entitled, How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring (EPA 305–B–99–004, February 1999) provides a listing of delegable and non-delegable authorities in Tables 1 and 2, as well as descriptions and examples of major, intermediate, and minor changes in Attachment 1.

A. Alternatives to Requirements

Any change to a promulgated standard is considered a major change and as noted above, must be sent to OAQPS (see contact information in footnote). The reason why a change to a standard must be sent to EPA Headquarters is because the change must be established through national rulemaking, regardless of the degree of change sought. Thus, only OAQPS can approve alternative requests for changes to standards. Additionally, any change to applicability requirements and compliance dates (*e.g.*, requirements that ensure that the standards are achieved as EPA intended) are also

[254] For example, the final rule included approval of alternatives to requirements in §§ 63.1200, 63.1203, through 63.1205, and 63.1206(a); approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f); approval of major alternatives to monitoring under § 63.8(f) and; approval of major alternatives to recordkeeping and reporting under § 63.10(f).

[255] For contact information, please visit *www.epa.gov/ttn/emc/staffdir.html*.

considered major and also must be sent to OAQPS for approval. Specific to Subpart EEE, alternative requirement requests including those pursuant to §§ 63.1200, 63.1206(a), or 63.1216–63.1221 are considered major changes and consequently are non-delegable. The regulations at § 63.1214(c) correctly identified the requirements in Subpart EEE, however we have revised them today (as we proposed) to reflect the new sections that house the Phase 1 Replacement Standards and Phase 2 Standards.

There are a few exceptions to the above, however. Subpart EEE incorporates specific provisions for sources to request alternative standards which are delegable because they have been established through rulemaking. In fact, several alternative standards are self-implementing meaning that the source only need specify in their DOC which standard it will comply with. The alternative to the particulate matter standard in § 63.1206(b)(14) and the emissions averaging standards for cement kilns with in line kiln raw mills and preheater or preheater/precalciner kilns with dual stacks in § 63.1204(d) and (e) are three examples. There are also alternative standards that sources may petition to comply with. They include: Alternatives to the standards for existing and new LWAKs at § 63.1206(9) and cement kilns at § 63.1206(b)(10) and the alternative risk-based standard for total chlorine at § 63.1215. Sources choosing to comply with these alternative standards must receive approval from their delegated S/L/T agency prior to implementing them.[256] With respect to changes to compliance dates, requests under § 63.1213 specifically allow sources to request an extension to the compliance date for the installation of pollution prevention or waste minimization controls. Again, because this provision has been specified in subpart EEE, it is not considered a major change and is delegable.

B. Alternatives to Test Methods

With respect to test methods, we noted above that the final delegations rule stated that major alternatives to the test methods at §§ 63.7(e)(2)(ii) and (f) were not delegable. Therefore, as we proposed, it is necessary to add major alternatives to 63.1208(b), which specifies the test methods sources must use to determine compliance with subpart EEE. Also, we are adding the CEMS monitoring requirement under § 63.1209(a)(1). It is regarded as a test method because it serves as a benchmark method for demonstrating compliance with the emission standards. Both sections are delegable to S/L/T agencies as long as they have been delegated authority and as long as the alternative requests comprise minor or intermediate changes. However, a major change to either of these test method sections must be sent to OAQPS for approval.[257] Only OAQPS can approve major changes to test methods because they are designated in the standard as the means for determining compliance with an emission standard. The proposed revisions to § 63.1214 are finalized today to include major alternatives to test methods under §§ 63.1208(b) and 63.1209(a)(1) as non-delegable authorities.

C. Alternatives to Monitoring

For monitoring, the final delegations rule stated that major alternatives to monitoring at § 63.8(f) were not delegable, but did not reference monitoring specific to subpart EEE. In subpart EEE, the monitoring requirements are located in § 63.1209. This section also includes two provisions specific to alternative monitoring, thus removing some of the "guesswork" when trying to discern whether a request for change is minor, intermediate, or major. One is located at § 63.1209(a)(5), Petitions to use CEMS for other standards and the other is located at § 63.1209(g)(1), Alternative monitoring requirements other than continuous emissions monitoring systems. Each is discussed in the following paragraphs.

In the proposal, we explained that a request to use other monitoring in lieu of a CEMS is always considered a major change due to CEMS generally being considered a more accurate measure of compliance. However, if a source requests to use a CEMS in lieu of a required operating parameter, it may be considered an intermediate change. Since publication of the proposal, performance specifications have been promulgated for PM CEMS (and mercury CEMS).[258] Consequently, today we view requests per § 63.1209(a)(5) to use PM CEMS as intermediate changes to monitoring. Although the implementation of PM CEMS according to PS–11 (69 FR 1786 and 40 CFR part 60, Appendix B; January 12, 2004) and Procedure 2 (see also 40 CFR part 60, Appendix F) is largely "self-implementing," sources wishing to apply to use of PM CEMS should develop and submit QA/QC plans specifying audit frequencies to account for site-specific stack conditions. We believe that other site-specific issues that may need to be addressed prior to use of the CEMS, such as a source's request to deviate from PS–11 or a source's selection of the correct correlation curve(s), are properly addressed under EPA's established policies and procedures for alternative method requests. We believe that a petition to use PM CEMS under § 63.8(f) is still the appropriate mechanism, but that sources can submit their petitions to their delegated S/L/T agency for review and approval, and we recommend that EPA Regional offices work with these agencies to monitor implementation. Thus, with the exception of petitions to use PM CEMS in lieu of an operating parameter which is considered an intermediate change, we are finalizing our proposed revision to § 63.1214(c) to include major alternatives to monitoring under § 63.1209(a)(5) as a non-delegable authority.

Section 63.1209(g)(1), Alternative monitoring requirements other than continuous emissions monitoring systems, contains the other alternative monitoring provision. This provision allows sources to request alternative monitoring methods to monitor compliance, except for those standards that must be monitored with a CEMS (e.g., those in § 63.1209(a)(1)), and to request a waiver of an operating parameter limit. We provided several examples of alternative parameter monitoring for which a request may be submitted under this section in the proposal at 69 FR 21337. They include use of: a different detector, different monitoring location, a different method as recommended by the manufacturer, or a different averaging period that is more stringent than the applicable standard. In the proposal, we stated that we believe the majority of requests submitted pursuant to § 63.1209(g)(1) are not major and discussed in the preamble amending the language in § 63.1209(g)(1) so that these types of changes could be reviewed and approved by the delegated S/L/T agency. However, when we added

[256] The alternative risk-based standard for total chlorine at § 63.1215 requires sources to submit their eligibility demonstration to both the delegated S/L/T agency and to the Risk and Exposure Assessment Group in Research Triangle Park, NC for review, even though the delegated S/L/T agency can grant or deny approval.

[257] For contact information, please visit *www.epa.gov/ttn/emc/staffdir.html*.

[258] Although performance specifications have been promulgated for mercury CEMS, there has not been as much experience in implementing these devices for hazardous waste combustion sources (or similar sources) as there has been for PM CEMS at this time. Therefore, we believe it appropriate to continue sending requests to use mercury CEMS in lieu of an operating parameter to the appropriate EPA Region for review and approval.

language to § 63.1209(g)(1) to allow for the above, we inadvertently referred to an approved Title V program instead of a S/L/T agency which has taken delegation of subpart EEE. We have corrected and finalized the proposed language. Therefore, whether minor or intermediate, requests under § 63.1209(g)(1) may be sent to your delegated S/L/T agency for review and approval.

Please note that 63.1209(g)(1) cannot be used when requesting major changes to the monitoring required by the standard. Such changes typically involve new unproven monitoring methods. Unproven monitoring methods refer to those where the technology or procedures are not generally accepted by the scientific community (§ 63.90(a)). If you are uncertain whether your request constitutes a new unproven monitoring method, which is considered a major change, you should submit your request to your EPA Region. The regulatory language in 63.1209(g)(1) has been revised to reflect this clarification.

D. Alternatives to Recordkeeping and Reporting.

As with the others, the final delegation provisions' rule only cited the waiver of recordkeeping and reporting requirements of § 63.10(f) as a non-delegable provision. Thus, it is necessary to add the relevant subpart EEE recordkeeping and reporting requirements of § 63.1211. Section 63.1211 is delegable in its entirety to S/L/T agencies unless an alternative request is determined to be a major change. An alternative request that is a major change, such as decreases in record retention for all records, must be sent to your EPA Region for review and approval. Similar to the monitoring section, § 63.1211 contains a specific alternative provision. Section 63.1211(d) Data Compression, allows sources to request to use data compression techniques to record data from CMS and CEMS on a frequency less than that required by § 63.1209. We view the alternative request to be a minor change because available guidance provides criteria for defining fluctuation and data compression limits. See 64 FR 52961 and 52962, September 30, 1999. Therefore, requests submitted under 63.1211(d) can be consistently evaluated by delegated S/L/T agencies. Section 63.1214(c) has been revised to specify that major alternatives to 63.1211(a)—(c) are non-delegable authorities.

E. Other Delegation Provisions

Although not discussed in the proposal, it is important to note that issuing applicability determinations is another delegable authority. The EPA document How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring (EPA 305–B–99–004, February 1999) provides guidance regarding who has the lead for issuing applicability determinations. In general, Regions may delegate the authority to issue applicability determinations to S/L/T agencies when the determinations are routine in nature. However, delegation of authority for certain applicability determinations should be retained by the Regions. These include applicability determinations that: (1) Are unusually controversial or complex; (2) have bearing on more than one state or district (are multi-Regional); (3) appear to create conflict with previous policy or determinations; (4) are a legal issue which has not previously been considered (a matter of first impression); or (5) raise new policy questions. It is recommended that Regional offices require notification when S/L/T agencies issue applicability determinations.

IV. RCRA State Authorization and Amendments to the RCRA Regulations

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

We discussed in the proposal which RCRA regulations we intended to amend and their impact on state authorization procedures. Today, we are finalizing those amendments in §§ 270.10, 270.22, 270.32, 270.42, 27062, 270.66, and 270.235. In addition, we are amending the regulations in §§ 264.340 and 266.100 to reflect changes that have been made based upon comments. Today's amendments fall under both HSWA and non-HSWA authorities. That is, changes made to regulations applicable to boilers and industrial furnaces are promulgated under HSWA authority, whereas changes made to regulations applicable to incinerators are promulgated under non-HSWA authority. [259] All of the amendments made today are considered to be either less stringent or equivalent to the existing Federal program, which means that states are not required to adopt and seek authorization for these provisions regardless of whether they are finalized under non-HSWA or HSWA authorities. Nevertheless, we strongly encourage states to become authorized for today's amendments.

[259] When new requirements and prohibitions (that are more stringent than the previous federal regulations) are imposed under non-HSWA authority, the new federal requirements do not take effect in an authorized state until the state adopts the federal requirements as law. Conversely, when imposed under HSWA authority, the new federal requirements are federally enforceable in an authorized state until the necessary changes to a state's authorization are approved by EPA.

Experience has shown that when states have been authorized for previous amendments (i.e., those finalized in the 1999 rule) that were intended to facilitate the transition from the RCRA program to MACT and the CAA Title V program, the process has proven to be less cumbersome. For a more detailed discussion of non-HSWA and HSWA authorities with respect to how and when they take effect, please refer to the proposal's preamble discussion at 69 FR 21338.

Several RCRA sections that have been enacted as part of HSWA apply to today's rule: 3004(o), 3004(q), and 3005(c)(3). Thus, if a state is not authorized for the boiler and industrial furnace regulations, these provisions are federally enforceable in an authorized state until the necessary changes to a state's authorization are approved by us. See RCRA section 3006, 42 U.S.C. 6926. We are adding today's requirements to Table 1 in 271.1(j) where rulemakings promulgated pursuant to HSWA authority are identified.

Part Six: Impacts of the Final Rule

I. What Are the Air Impacts?

Table 1 below shows the emissions reductions achieved by the final rule for all existing hazardous waste combustors. For Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—the emission reductions represent the difference in emissions between sources controlled to today's standards and estimated emissions when complying with the interim MACT standards promulgated on February 13, 2002. Thus, the significant emissions reductions already achieved by the interim standards are not reflected in the estimates shown in Table 1.[260] For Phase II sources—solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces—the reductions represent the difference in emissions between today's standards and the current baseline of control provided by 40 CFR part 266, subpart H.

Nationwide baseline HAP and particulate matter emissions from hazardous waste combustors are estimated to be approximately 12,650 tons per year at the current baseline level of control. Depending on the number of facilities demonstrating compliance with health-based compliance alternatives for total chlorine, the total reduction of HAP and particulate matter for existing sources could be between approximately 2,260 and 3,380 tons per year. A discussion of the emission estimates methodology and results are presented in "Technical Support Document for HWC MACT Replacement Standards, Volume V: Emission Estimates and Engineering Costs" that is available in the docket.

TABLE 1.—NATIONWIDE ANNUAL EMISSIONS REDUCTIONS OF HAP AND OTHER POLLUTANTS

Pollutant	Estimated emission reductions (tons per year)
Dioxin/furans[1]	0.20
All HAP metals	19.5
Mercury	0.21
Semivolatile metals (Cd, Pb)	2.9
Low volatile metals (As, Be, Cr)	6.5
Other metals (Co, Mn, Ni, Sb, Se)	9.9
HCl and chlorine gas[2]	1220
Particulate matter	2,140

[1] Dioxin/furan emission reductions are expressed as grams TEQ per year.

[2] We are promulgating 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 (see Part Four, Section VII of the preamble for details). Given that a number of sources may elect to comply with the health-based compliance alternatives, the estimated reductions of total chlorine represent an upper bound estimate.

II. What Are the Water and Solid Waste Impacts?

We estimate that water usage for existing sources will increase between 400 million and 1.6 billion gallons per year as a result of today's rule. The upper range estimate represents the water usage assuming no sources elect to comply with the health-based compliance alternatives for total chlorine, while the lower range estimate represents water usage assuming all sources elect the alternative. Water usage increases are estimated for reducing combustion gas temperatures with evaporated spray coolers for dioxin/furan control as well as for new particulate matter and acid gas air pollution control equipment. The increased water usage will also result in an increase in wastewater generation. Depending on the number of sources that elect to comply with the health-based compliance alternatives for total chlorine, we also estimate that up to 775 million gallons of wastewater may be generated.

We estimate that the generation of solid waste will increase between approximately 8,700 tons and 12,200 tons per year depending on the number of sources that elect to comply with the health-based compliance alternatives for total chlorine. Of these totals, approximately 250 tons per year will be classified as hazardous waste subject to RCRA Subtitle C regulations. We estimate the remainder—between 8,450 and 11,950 tons per year—will be classified and managed as a non-hazardous industrial waste subject to Subtitle D of RCRA. The costs associated with these disposal and water requirements are accounted for in the annualized compliance cost estimates. A discussion of the methodology used to estimate impacts is presented in "Technical Support Document for HWC MACT Replacement Standards, Volume V: Emission Estimates and Engineering Costs" that is available in the docket. We note that the nonair quality health and environmental impacts effects for both floor and beyond-the-floor options are discussed in the technical support document and are part of our consideration of such factors under section 112(d)(2).

III. What Are the Energy Impacts?

We estimate that the national annual energy usage as a result of this rule will increase between approximately 73 million and 85 million kilowatt hours (kWh) depending on the number of sources that elect to comply with the health-based compliance alternatives for total chlorine. The increase results from the electricity required to operate air pollution control equipment installed to meet the standards. The increase energy usage costs are accounted for in the annualized compliance cost estimates. A discussion of the methodology used to estimate impacts is presented in "Technical Support Document for HWC MACT Replacement Standards, Volume V: Emission Estimates and Engineering Costs." We note that the energy effects for both floor and beyond-the-floor options are discussed in the technical support document and are part of our consideration of such factors under section 112(d)(2).

IV. What Are the Control Costs?

Control costs, as presented in this section, refer only to engineering, operation, and maintenance costs associated with unit/system upgrades necessary to meet the final standards. These costs do not incorporate any market-based adjustments. All costs presented in this section are annualized estimates in 2002 dollars.

[260] USEPA, "Final Technical Support Document for HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs," Section 3, July 1999.

We estimate there are a total of 267 sources [261] that may be subject to requirements of this final rule. Of this total, there are 116 boilers (104 liquid fuel boilers plus 12 solid fuel boilers), 92 on-site incinerators, 25 cement kilns, 15 commercial incinerators, nine (or seven) lightweight aggregate kilns, and ten hydrochloric acid (HCl) production furnaces.

Total national private sector engineering costs for the final standards are estimated at $40.2 million per year.[262] This estimate reflects total non market adjusted upgrade costs (engineering, plus administrative and permitting), excluding chlorine control costs.[263] All Phase II sources combined (liquid fuel boilers, coal fired boilers, and HCl production furnaces) represent 86 percent of this total. The average private sector engineering cost, *excluding* permitting and administrative, is projected to be highest for liquid fuel boilers, at $256,300 per source. Coal fired boilers are second at approximately $170,246 per source. Total engineering costs to cement kilns and HCl production furnaces are estimated to average $113,600, and $16,645 per source, respectively. Commercial incinerators are projected to experience engineering costs averaging $12,300 per source. On-site incinerators and LWAKs will face the lowest engineering costs at $10,200 and $3,330, respectively.

For all Phase I sources (141 sources; commercial incinerators, on-site incinerators, cement kilns, and lightweight aggregate kilns), total average annualized non market-adjusted compliance costs (*including* permitting and administrative [264]) are estimated at $39,700 per source. The combined Phase II sources (126 sources; solid and liquid fuel-fired boilers and hydrochloric acid production furnaces) have total average annualized non market-adjusted compliance costs of approximately $274,500 per source. Across all sectors covered by today's rule (Phase I and Phase II sources), total annualized compliance costs were found to average $150,500 per source.

Private sector engineering costs (control) costs have also been assessed on a per ton (U.S.) basis. Captive energy recovery sources (solid and liquid fuel-fired boilers, and hydrochloric acid production furnaces) burned a total of 944,667 tons of hazardous waste in 2003. These facilities are projected to experience the highest average incremental control costs, at approximately $37 per ton of waste burned. Commercial energy recovery sources (cement kilns and LWAKs), burning an estimated 999,076 tons in 2003, are projected to experience average incremental control costs of approximately of $3.00 per ton. Captive (on-site) and commercial incinerators burn an estimated 925,828 tons and 447,524 tons per year, respectively. These sources are estimated to experience average incremental engineering costs of $2.15 per ton and $0.80 per ton, respectively.

The aggregate control costs presented in this section do not reflect the anticipated real world cost burden on the economy. Any market disruption, such as the requirements in this final rule, will cause a short-term disequilibrium in the hazardous waste burning market, resulting in a natural economic process designed to reach the new market equilibrium. Actual cost impacts to society are more accurately measured by taking into account market adjustments in the targeted industry, plus secondary (societal) costs. Total market-adjusted costs plus secondary costs are commonly termed Social Costs, and are generally less than total engineering costs due to efficiencies implemented during the market adjustment process. Social Costs theoretically represent the total real world costs of all goods and services society must give up in order to gain the added protection to human health and the environment. Social Costs are presented in Part VI of this Section.[265]

V. What Are the Economic Impacts?

Economic impacts may be measured through several factors. This section presents estimated economic impacts relative to market exits, waste reallocations, and employment impacts. Economic impacts presented in this section are distinct from social costs, which correspond only to the estimated monetary value of market disturbances.

A. Market Exit Estimates

The hazardous waste combustion industry operates in a dynamic market, with systems entering and exiting the market on a routine basis. Our analysis defines "market exit" as ceasing to burn hazardous waste. We have projected post-rule hazardous waste combustion system market exits based on economic feasibility only. Social, liability, and informational issues are not incorporated into our market exit analysis.

Market exit estimates are derived from a breakeven analysis designed to determine system viability. This analysis is subject to several assumptions, including: Cost assumptions concerning the per sector baseline cost of hazardous waste burning, cost estimates for necessary pollution control devices (including operation and maintenance), prices for combustion services, and estimated waste quantities burned at these facilities. It is important to note that, for most sectors, exiting the hazardous waste combustion market is not equivalent to closing a plant. (Actual plant closure may occur only in the case of a commercial incinerator closing all systems.)

We estimate that 39 systems, representing about 15 percent of the total affected universe, may stop burning hazardous waste in response to the final standards. Approximately 59,000 tons of hazardous waste may be diverted from these closed systems.

These estimates assume no chlorine controls are put in place as a direct result of the rule.[266] Of the estimated 39 market exits, 26 are projected to be on-site incinerators and 8 are liquid fuel boilers. Three commercial incinerator systems may exit the market in response to the final rule. However, these systems are considered economically marginal in the baseline. Two coal-fired boiler systems are also projected to exit the market. No cement kilns, lightweight aggregate kilns, or HCl production furnaces are projected to exit the market as a result of the final rule. Market exit estimates were found to be identical

[261] For purposes of this discussion, a source is defined as the air pollution control system associated with one or more hazardous waste combustion unit(s). A facility may operate one or more sources. Note that this total includes two LWAK units limited by system burn constraints. Exclusion of these two units results in a total of 265 independent sources.

[262] Not included here are total annual government costs. These costs, with or without chlorine control, are approximately $0.5 million/year.

[263] We are finalizing the incorporation of section 112(d)(4) of the Clean Air Act to establish risk-based standards for total chlorine for hazardous waste combustors (except for hydrochloric acid production furnaces). The low-end of this cost range assumes all facilities emit total chlorine levels below risk-based levels of concern. Under this scenario, no total chlorine controls are assumed to be necessary. The total engineering cost with chlorine control is estimated at $46.7 million/year.]

[264] See Exhibit 4–3 in the economic assessment background document.

[265] Beyond-the-Floor standards were assessed for all floors. These findings are available in Appendix F and G of the engineering background document: See: Final Technical Support Document for HWC MACT Standards, Volume V—Emissions Estimates and Engineering Costs.

[266] Even though we are allowing sources (except hydrochloric acid production furnaces) to invoke § 112(d)(4) in lieu of MACT chlorine control requirements, we have not attempted to estimate the following: (1) The total number of sources that may elect to implement this provision, and, (2) what level of control may be necessary following a § 112(d)(4) risk-based determination, since this would vary on a site-by-site basis.

when the cost of chlorine control is included in the model.

B. Waste Reallocations

Some on-site combustion systems (sources) may no longer be able to cover their hazardous waste burning costs as a result of final rule requirements. These sources are projected to divert or reroute their wastes to different hazardous waste combustion sources (usually some type of commercial unit).[267] For multiple system facilities, this diversion may include on-site (non-commercial) waste consolidation among fewer systems at the same facility. Under current market conditions, non-combustion alternatives are generally not economically feasible, and in any case, would normally be unable to achieve the RCRA Land Disposal Restriction Treatment standards, which are based on the performance of combustion technology (which optimizes destruction of organic HAP).

As mentioned above, our economic model indicates that approximately 59,000 tons (U.S.) of hazardous waste may be reallocated. This figure represents approximately 1.8 percent of the total 2003 quantity of hazardous waste burned at all sources. On-site consolidations account for nearly 24 percent (13,915 tons) of all diverted waste. Commercial incinerators are projected to receive the vast majority (42,722 tons, or 73 percent) of all off-site waste reallocations. Cement kilns and LWAKs are projected to receive the remaining reallocation (2,289 tons). Currently, there is more than adequate capacity to accommodate all off-site hazardous waste diversions.

C. Employment Impacts

Today's rule is projected to induce employment shifts across all affected sectors. These shifts may occur as specific combustion facilities find it no longer economically feasible to keep all of their systems running, or to stay in the hazardous waste market at all. When this occurs, workers at these locations may lose their jobs or experience forced relocations. At the same time, the rule is projected to result in positive employment impacts, as new purchases of pollution control equipment stimulate additional hiring in the pollution control manufacturing sector, and as additional staff are required at selected combustion facilities to accommodate reallocated waste and/or various compliance activities.

1. Employment Impacts—Dislocations (Losses)

Employment dislocations in the combustion industry are projected to occur when facilities consolidate waste into fewer systems, or when a facility exits the hazardous waste combustion market altogether. Operation and maintenance labor hours are expected to be reduced for each system that stops burning hazardous waste. For each facility that completely exits the market, employment dislocations may also include supervisory and/or administrative personnel.

Total employment dislocations resulting from implementation of the final standards are estimated at 310 full-time-equivalent (FTE) jobs. On-site incinerators account for about 62 percent of this total, followed by commercial incinerators (about 24 percent), and liquid-fuel boilers (about 12 percent). The large number of on-site incinerators drives the impacts within this sector.

2. Employment Impacts—Positive

In addition to employment dislocations, our analysis indicates that today's rule may also result in positive employment impacts. These positive impacts are projected to occur to both the air pollution control industry and to combustion firms as they hire personnel to accommodate reallocated waste and/or comply with the various requirements of the rule. Hazardous waste combustion sources are projected to need additional operation and maintenance personnel for the new pollution control equipment and other compliance activities, such as new reporting and record keeping requirements.

The total annual positive employment impact associated with the final standards is estimated at 323 FTEs. Positive employment impacts to the air pollution control industry[268] are projected at 93 FTEs, or about 29 percent of this total. At 183 jobs, liquid-fuel boilers are projected to experience the greatest positive employment impact among all combustors.

While it may appear that our analysis suggests overall net positive employment impacts, such a conclusion would be inappropriate. Because the positive employment impacts and employment dislocations occur in different sectors of the economy, they should not be added together. Doing so would mask important distributional effects of the rule. In addition, these employment estimates reflect within sector impacts only and therefore do not account for potential displacements across sectors. This may occur if investment funds are diverted from other areas of the larger economy.

VI. What Are the Social Costs and Benefits of the Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. Our economic assessment conducted in support of today's final rule evaluated compliance (control) costs, and economic impacts, as discussed above. The Assessment also analyzed social costs, benefits, small entity impacts, and other impacts (e.g., children's health, unfunded mandates). To conduct this analysis, we examined the current combustion market and practices, developed and implemented a methodology for examining compliance and social costs, applied an economic model to analyze industry economic impacts (discussed above), examined benefits, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts. The data applied in this analysis were the most recently available at the time of the analysis. Because our data were limited, the findings from these analyses should be more accurately viewed as national estimates.

A. Combustion Market Overview

The hazardous waste industry consists of three key segments: hazardous waste generators, fuel blenders/intermediaries, and hazardous waste burners. Hazardous waste is combusted at four main types of facilities: commercial incinerators, on-site incinerators, waste burning kilns (cement kilns and lightweight aggregate kilns), and industrial boilers. Commercial incinerators are generally larger in size and designed to manage virtually all types of solids, as well as liquid wastes. On-site incinerators are more often designed as liquid-injection systems that handle liquids and pumpable solids. Waste burning kilns and boilers generally burn hazardous wastes to generate heat and power for their manufacturing processes.

As discussed above, we have identified a total of 267 hazardous waste burning sources (systems) currently in operation in the United States. Liquid fuel-boilers account for 104 sources, followed by on-site incinerators at 92 sources. Cement kilns, hydrochloric acid production furnaces, and commercial incinerators account for 25, 10, and 15 sources, respectively. Solid

[267] This analysis includes the cost of waste transport to alternative combustion sources, burning fees, and purchase of alternative fuels (if appropriate).

[268] Manufacturers and distributors of air pollution control devices are projected to increase sales as a result of this action.

fuel boilers and lightweight aggregate kilns make up the remainder, at 12 and nine systems, respectively. These 267 sources are operated at a total of 145 different facilities. A single facility may have one or more combustion systems. Facilities with multiple systems may have different types of hazardous waste burning units. Combustion systems operating at chemical manufacturing facilities (NAICS 325) were found to account for about 70 percent of the total number of facilities and manage about 58 percent of all hazardous waste burned in 2003.

The EPA Biennial Reporting System (BRS) reports a total demand for all combusted hazardous waste, across all facilities, at 3.32 million tons (U.S. ton) in 2003. Commercial energy recovery (cement kilns and lightweight aggregate kilns) burned about 30 percent of this total. Hazardous waste destruction at on-site incinerators and commercial incinerators accounted for 28 percent and 13 percent, respectively. Captive energy recovery accounted for the remainder, at 29 percent of the total.

About 65 percent of all hazardous waste burned in 2003 was organic liquids. This is followed by solids (14 percent), inorganic liquids (11 percent), and sludges (10 percent). Hazardous gases were found to represent a negligible portion, at about 0.08 percent of the total quantity burned in 2003. In terms of hazardous waste generating sources, the Basic Organic Chemical Manufacturing e sector (NAICS 325) generated approximately 32 percent of all hazardous waste burned in 2001, followed by pesticides and agricultural chemicals, business services, organic fibers, medicinal chemicals, pharmaceuticals, plastics materials and resins, petroleum, and miscellaneous.

Companies that generate large quantities of uniform hazardous wastes generally find it more economical and efficient to combust these wastes on-site using their own noncommercial systems. Commercial incineration facilities manage a wide range of hazardous waste streams generated in small to medium quantities by diverse industries. Cement kilns, lightweight aggregate kilns, and boilers derive heat and energy by burning high-Btu (solvents and organics) liquid hazardous wastes.[269] Sometimes these wastes are blended with fossil fuels where system operators choose to not derive all of their energy input from hazardous waste.

Regulatory requirements, liability concerns, and economics influence the demand for hazardous waste combustion services. Regulatory forces influence the demand for combustion by mandating certain hazardous waste treatment standards (land disposal restriction requirements, etc.). Liability concerns of waste generators affect combustion demand because combustion, by destroying organic wastes, greatly reduces the risk of future environmental problems. Finally, if alternative waste management options are more expensive, hazardous waste generators will likely choose to send their wastes to combustion facilities in order to increase overall profitability.

Throughout much of the 1980s, hazardous waste combustors enjoyed a strong competitive position and generally maintained a high level of profitability. During this period, EPA regulations helped stimulate a greatly expanded market. In addition, federal permitting requirements, as well as powerful local opposition to siting of new incinerators, constrained the entry of new combustion systems. As a result, combustion prices rose steadily, ultimately reaching record levels in 1987. The high profits of the late 1980s induced many firms to enter the market, in spite of the difficulties and delays anticipated in the permitting and siting process.

Hazardous waste markets have changed significantly since the late 1980s. In the early 1990s, substantial overcapacity resulted in fierce competition, declining prices, poor financial performance, numerous project cancellations, system consolidations, and facility closures. Since the mid 1990s, several additional combustion facilities have closed, while many of those that have remained open have consolidated their operations. Available (prior to this final rule) excess commercial capacity is currently estimated at about 21 percent of the total 2003 quantity combusted.

B. Baseline Specification

Proper and consistent baseline specification is vital to the accurate assessment of incremental costs, benefits, and other economic impacts associated with today's rule. The baseline essentially describes the world absent the rule. The incremental impacts of today's rule are evaluated by predicting post MACT compliance responses with respect to the baseline. The baseline, as applied in this analysis, is the point at which today's rule is promulgated. Thus, incremental cost and economic impacts are projected beyond the standards established in the February 13, 2002 Interim Standards Final Rule.

C. Analytical Methodology and Findings—Social Cost Analysis

Total social costs include the value of resources used to comply with the standards by the private sector, the value of resources used to administer the regulation by the government, and the value of output lost due to shifts of resources away from the current market equilibrium. To evaluate these shifts in resources and changes in output requires predicting changes in behavior by all affected parties in response to the regulation, including responses of directly-affected entities, as well as indirectly-affected private parties.

For this analysis, social costs are grouped into two categories: Economic welfare (changes in consumer and producer surplus), and government administrative costs. The economic welfare analysis conducted for today's rule uses a simplified partial equilibrium approach. In this analysis, changes in economic welfare are measured by summing the changes in consumer and producer surplus. This simplified approach bounds potential economic welfare losses associated with the rule by considering two scenarios: Compliance costs assuming no market adjustments, and market adjusted compliance costs.

The annualized private sector compliance (engineering) costs of $40.2 million, as presented in Section IV, assume no market adjustments. Our best estimate of total social costs incorporates rational market adjustments and all government costs. Under this scenario, increased compliance (engineering) costs are examined in the context of likely incentives hazardous waste combustion facilities have to continue burning, and the competitive balance in the market.

Total annualized market-adjusted net private-sector costs are estimated at $22.1 million.[270] In addition to the net private sector costs, total annual government costs are approximately $0.50 million. Thus, our best estimate of total social costs of this final rule is $22.6 million per year.

The $22.1 million figure incorporates a net gain to selected Phase I sources and an estimated $3.6 million cost

[269] Many cement kilns are also able to burn a certain level of non liquid waste.

[270] We are finalizing alternative risk-based total chlorine standards for hazardous waste combustors (except for hydrochloric acid production furnaces). The net private sector costs of $22.1 million/year may be considered a lower-bound estimate that assumes facilities emit total chlorine (TCI) below risk-based levels of concern (i.e., no TCI controls are assumed to be necessary). Total net private sector market-adjusted costs would increase to approximately $28.1 million per year if we were to assume all sources were to comply with technology-based TCI standards (as opposed to the risk-based standards).

(price) increase to pre-existing customers of commercial hazardous waste combustion facilities. On-site incinerators are projected to experience total market-adjusted cost increases of approximately $1.5 million/year. All phase II sources account for approximately $31.9 million in increased costs. Our economic model indicates that, of the Phase I source categories, commercial incinerators, cement kilns, and LWAKs would experience net gains following all market adjustments. The total net gain for these three source categories is estimated at $14.8 million per year. Commercial incinerators would receive about 98 percent of the total gain ($14.5 million/year). Gains to commercial facilities occur due to marginally higher prices, increased waste receipts, and relatively low upgrade costs, when compared to the other sources.

D. Analytical Methodology and Findings—Benefits Assessment

This section discusses the monetized and non monetized benefits to human health and the environment potentially associated with today's final rule. Monetized human health benefits are derived from reductions in particulate matter (PM) and dioxin/furan exposure, and are based on a Value of Statistical Life (VSL) estimate of $6.2 million.[271] Non monetized benefits are associated with human health, ecological, and waste minimization factors.

1. Monetized Benefits

Total monetized human health benefits for the final standards are estimated to range from $5.61 million/year to $6.31 million/year. This estimate includes human health benefits associated with avoided PM and dioxin/furans exposure. The range is driven by alternative discount rate assumptions (no discount rate, 3 percent, or 7 percent) for mortality valuation. PM benefits represent 99 percent of the total monetized human health benefits.

Particulate Matter

Results from our risk assessment extrapolation procedure[272] are used to evaluate incremental human health benefits potentially associated with particulate matter emission reductions from hazardous waste combustion facilities. This analysis applied avoided human health benefits factors from the March 2004 Assessment document,[273] combined with more recent emissions estimates for particulate matter.

Reduced PM emissions are estimated to result in monetized human health benefits of approximately $6.29 million per year. This is an undiscounted figure. Avoided PM morbidity cases account for $3.42 million of this total, and include: respiratory illness, cardiovascular disease, chronic bronchitis, work loss days, and minor restricted activity. Chronic bronchitis accounts for approximately 89 percent of the total value of avoided PM morbidity cases. All morbidity cases are assumed to be avoided within the first year following reduced PM emissions and are not discounted under any scenario.

Avoided premature deaths (mortality) are valued at $2.87 million per year, undiscounted. Assuming a discount rate of three and seven percent, PM mortality benefits would be $2.52 million and $2.19 million, respectively. Our discounted analysis of PM mortality benefits assumes that 30 percent of premature mortalities occur during the first year, 50 percent occur evenly from the second through the fifth years, and the remaining 20 percent occur evenly from the sixth through the twentieth years.[274] Due to limitations in the risk analysis, this assessment of PM benefits does not consider corresponding health benefits associated with the reduction of HAP metals carried by the PM.

Dioxin/furan—Dioxin/furan emissions are projected to be reduced by a total of 0.2 grams per year under the final standards. In the July 23, 1999 Addendum to the Assessment, cancer risk reductions linked to consumption of dioxin-contaminated agricultural products accounted for the vast majority of the 0.36 cancer cases per year that were expected to be avoided due to the 1999 standards. Cancer risk reductions associated with the final standards are expected to be less than 0.36 cases per year, but greater than zero.

At this time, the Agency is still using a cancer risk slope factor of 1.56×10^5 [mg/kg/day]$^{-1}$ for dioxin. This cancer slope factor is derived from the Agency's 1985 health assessment document for polychlorinated dibenzo-p-dioxins[275] and represents an upper bound 95th percentile confidence limit of the excess cancer risk from a lifetime exposure. For the past several years the Agency has been conducting a reassessment of the human health risks associated with dioxin and dioxin-like compounds. In October of 2004 this reassessment[276] was delivered to the National Academy of Sciences (NAS) for review.

Evidence compiled from this draft reassessment indicates that the carcinogenic effects of dioxin/furans may be six times as great as believed in 1985, reflecting an upper bound cancer risk slope factor of 1×10^6 [mg/kg/day]$^{-1}$ for some individuals. Agency scientists' more likely (central tendency) estimates (derived from the ED_{01} rather than the LED_{01}) result in slope factors and risk estimates that are within 2–3 times of the upper bound estimates (i.e., between 3×10^5 [mg/kg/day]$^{-1}$ and 5×10^5 [mg/kg/day]$^{-1}$) based on the available epidemiological and animal cancer data. However, risks could be as low as zero for some individuals. Use of the alternative upper bound cancer risk slope factor could result in a higher human health monetized health benefit associated with premature cancer deaths avoided in response to the final standard for dioxin/furans. The assessment of upper bound cancer risk using this alternative slope factor should not be considered current Agency policy. The standards for dioxin in today's final rule were not based on this draft reassessment.

Total non-discounted human health benefits associated with projected dioxin reductions are estimated at $0.02 million/year. These benefits may range from $0.01 million/year to nearly zero, applying a discount rate of 3 percent and 7 percent, respectively. Our discounted estimates incorporate an assumed latency period of 21 and 34 years from exposure to death.

2. Non-Monetized Benefits

We examined, but did not monetize human health benefits potentially associated with reduced exposure to lead, mercury, and total chlorine. Non monetized ecological benefits

[271] Monetized benefits associated with avoided premature mortality reflect a VSL range of $1.1 million to $11.4 million, with a central VSL estimate of $6.2 million. These values are derived from willingness-to-pay based VSL estimates presented in U.S. EPA, Regulatory Impact Analysis for the Final Clean Air Interstate Rule, March 2005.

[272] Inferential Risk Analysis in Support of Standards for Emissions of Hazardous Air Pollutants from Hazardous Waste Combustors.

[273] Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Replacement Standards: Proposed Rule, March 2004 (Chapter 6), and Addendum to the Assessment.

[274] See: U.S. EPA. March 2005. Regulatory Impact Analysis for the Final Interstate Air Quality Rule.

[275] USEPA, 1985. Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins. EPA/600/8-84/014F. Final Report. Office of Health and Environmental Assessment. Washington, DC. September, 1985.

[276] U.S.EPA. Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds National Academy Sciences (NAS) Review Draft, December 2003. [Note: Toxicity risk factors presented in this document should not be considered EPA's official estimate of dioxin toxicity, but rather reflect EPA's ongoing effort to reevaluate dioxin toxicity].

potentially associated with reductions in dioxin/furan; selected metals, total chlorine, and particulate matter were also examined. Finally, waste minimization is examined as a non-monetized benefit.

Lead—The final standards are expected to reduce lead emissions by approximately 2.5 tons per year. In comparison, the 1999 standards were expected to reduce lead emissions by 89 tons per year, and were expected to reduce cumulative lead exposures for two children, ages zero to five, to less than 10 μg/dL. The lead benefits associated with these final standards are therefore expected to be modest. The final standards will also result in reduced lead levels for children of sub-populations with especially high levels of exposure. Children of subsistence fishermen, commercial beef farmers, and commercial dairy farmers who face the greatest levels of cumulative lead exposure may also experience comparable reductions in overall exposure as a result of the MACT standards.

Mercury—The HWC MACT final standards are expected to reduce mercury emissions by approximately 0.21 tons per year, approximately 93 percent less than the four-ton reduction expected under the 1999 Standards. We do not attempt to quantify the mercury-related benefits associated with today's final standards. However, because the reduction in mercury emissions represents a fraction of the reduction expected under the 1999 Standards, the mercury-related benefits of the final standards are likely to be less than the corresponding benefits under the 1999 Standards.

To characterize the benefits associated with reduced mercury emissions, the 1999 Assessment measured changes in hazard quotients for populations living near hazardous waste combustion facilities. For any given population, the hazard quotient is the ratio of the actual level of exposure to a safe level of exposure. A hazard quotient greater than one implies that a population is potentially at risk. The exposure quotient analysis in the 1999 Assessment found that the measurable benefits of reduced mercury emissions under the 1999 Standards were likely to be small because baseline exposures were relatively low. In addition, many of the studies examining the adverse health effects of mercury are inconclusive. Over the past several years, however, scientists have conducted three large-scale studies of individuals in the Faroe Islands, New Zealand, and the Seychelles Islands examining the relationship between mercury exposure in women and the neuro-development of their unborn children.[277] The New Zealand and Faroe Islands studies both found a statistically significant relationship between maternal methylmercury exposure and IQ decrements in the unborn children of these women. In its 2000 report on the toxicological effects of methylmercury, the National Research Council suggested that integrating the results of all three studies could be useful for risk assessment purposes.[278] Such an integrative risk assessment, later published by Ryan et al. in 2005, served as the basis of the Agency's health effects analysis for the Clean Air Mercury Rule (CAMR).[279] The regulatory impact analysis for CAMR summarizes several of the adverse health effects that may be linked to mercury and reviews the epidemiological literature examining the link between these effects and exposure to mercury.[280]

Total Chlorine—We were not able to quantify the benefits associated with reductions in total chlorine emissions. Total chlorine is a combination of hydrogen chloride and chlorine gas. The final standards are projected to reduce total annual chlorine emissions by about 107 tons per year[281] (HCl production furnaces only). Hydrogen chloride is corrosive to the eyes, skin, and mucous membranes. Acute inhalation can cause eye, nose, and respiratory tract irritation and inflammation, and pulmonary edema. Chronic occupational inhalation has been reported to cause gastritis, bronchitis, and dermatitis in workers. Long term exposure can also cause dental discoloration and erosion. Chlorine gas inhalation can cause bronchitis, asthma and swelling of the lungs, headaches, heart disease, and meningitis. Acute exposure causes more severe respiratory and lung effects, and can result in fatalities in extreme cases. The exposure levels established under 112(d)(4) are expected to reduce chlorine exposure for people in close proximity to hazardous waste combustion facilities, and are therefore likely to reduce the risk of all associated health effects.

Ecological Benefits—We examined ecological benefits through a comparison of the 1999 Assessment and today's final standards. Ecological benefits in the 1999 Assessment were based on reductions of approximately 100 tons per year in dioxin/furans and selected metals. Lead was the only pollutant of concern for aquatic ecosystems, while mercury appeared to be of greatest concern for terrestrial ecosystems. Dioxin/furan and lead emission reductions also provided some potential benefits for terrestrial ecosystems. The final standards are expected to reduce dioxin/furan and selected metal emissions by about 12 percent to 13 percent of the 1999 estimate, resulting in fewer incremental benefits than those estimated for the 1999 Assessment (and later, for the 2002 Interim Standards). However, the 1999 Assessment did not estimate the ecological benefits of MACT standards for hazardous waste burning industrial boilers and HCl production furnaces. These systems were excluded from the universe in 1999 but are part of the universe addressed by today's final standards. As a result, while the total ecological benefits of the final rule are likely to be modest, areas near facilities with boilers may enjoy more significant ecological benefits under the final standards than areas near facilities that have already complied with the 2002 Interim standards.

Mercury, lead, and chlorides are among the HAPs that can cause damage to the health and visual appearance of

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[277] Grandjean, P., K. Murata, E. Budtz-Jorgensen, and P. Weihe. 2004. "Autonomic Activity in Methylmercury Neurotoxicity: 14–Year Follow-Up of a Faroese Birth Cohort." Journal of Pediatrics.144:169–76; Kjellstrom, T., P. Kennedy, S. Wallis, A. Stewart, L. Friberg, B. Lind, P. Witherspoon, and C. Mantell. 1989. Physical and mental development of children with prenatal exposure to mercury from fish. Stage 2: Interviews and psychological tests at age 6. National Swedish Environmental Protection Board Report No. 3642; Crump, K.S., T. Kjellstrom, A.M. Shipp, A. Silvers, and A. Stewart. 1998. "Influence of prenatal mercury exposure upon scholastic and psychological test performance: benchmark analysis of a New Zealand cohort." Risk Analysis. 18(6):701–713; Davidson, P.W., G.J. Myers, C. Cox, C. Axtell, C. Shamlaye, J. Sloane-Reeves, E. Cernichiari, L. Needham, A. Choi, Y. Wang, M. Berlin, and T.W. Clarkson. 1998. "Effects of prenatal and postnatal methylmercury exposure from fish consumption on neurodevelopment: outcomes at 66 months of age in the Seychelles Child Development Study." Journal of the American Medical Association. 280(8):701–707; and Myers, G.J., P.W. Davidson, C. Cox, C.F. Shamlaye, D. Palumbo, E. Cernichiari, J. Sloane-Reeves, G.E. Wilding, J. Kost, L.S. Huang, and T.W. Clarkson. 2003. "Prenatal methylmercury exposure from ocean fish consumption in the Seychelles child development study." Lancet. 361(9370):1686–92.

[278] National Research Council of the National Academy of Sciences, Toxicological Effects of Methylmercury. 2000, p. 299.

[279] Ryan, L.M. Effects of Prenatal Methylmercury on Childhood IQ: A Synthesis of Three Studies. Report to the U.S. Environmental Protection Agency, 2005; U.S. EPA. Regulatory Impact Analysis of the Clean Air Mercury Rule: Final Report. March 2005.

[280] U.S. EPA. Regulatory Impact Analysis of the Clean Air Mercury Rule: Final Report. March 2005.

[281] This is a lower bound estimate that assumes all other sources will implement 112(d)(4) and will not move to reduce TCl emissions from current baseline levels.

plants.[282] While the total value of forest health is difficult to estimate, visible deterioration in the health of forests and plants can cause a measurable change in recreation behavior. Several studies that measure the change in outdoor recreation behavior according to forest health have attempted to place a value on aesthetic degradation of forests.[283] Although these studies are available, additional research is needed to fully understand the effects of these Haps on the forest ecosystem. Thus, these benefits are not quantified in this analysis.

Emissions that are sufficient to cause structural and aesthetic damage to vegetation are likely to affect growth as well. Little research has been done on the effects of compounds such as chlorine, heavy metals (as air pollutants), and PM on agricultural productivity.[284] Even though the potential for visible damage and production decline from metals and other pollutants suggests the final standards could increase agricultural productivity, we have not monetized the benefits of these changes.

3. Waste Minimization Benefits

Facilities that burn hazardous waste and remain in operation following implementation of the final standards are expected to experience marginally increased costs as a result of these standards. This will result in an incentive to pass these increased costs on to their customers in the form of higher combustion prices. In the 1999 Assessment we conducted a waste minimization analysis to inform the expected price change. The analysis concluded that the demand for hazardous waste combustion is relatively inelastic. While a variety of waste minimization alternatives are available for managing hazardous waste streams that are currently combusted, the costs of these alternatives generally exceed the cost of combustion. When the additional costs of compliance with the MACT standards are taken into account, waste minimization alternatives still tend to exceed the higher combustion costs. This relative inelasticity suggests that, in the short term, large reductions in the amount of hazardous waste requiring combustion are not likely to occur. However, over the longer term (*i.e.* as production systems are updated), companies may continue to seek alternatives to expensive hazardous waste-management. This may include process adjustments that result, to some degree in source reduction of hazardous waste and the increased generation of non hazardous waste. To the extent that increases in combustion prices provide additional incentive to adopt more efficient processes, the final standards may contribute to longer term process-based hazardous waste minimization efforts.

No hazardous waste minimization impacts are captured in our quantitative analysis of costs and benefits.[285] A quantitative assessment of the benefits associated with waste minimization may result in double-counting of some of the benefits described earlier. For example, waste minimization may reduce emissions of hazardous air pollutants and therefore have a positive effect on public health. Furthermore, emission reductions beyond those necessary for compliance with the final standards are not addressed in the benefits assessment. In addition, waste minimization is likely to result in specific types of benefits not captured in this Assessment. For example, waste generators that engage in waste minimization may experience a reduction in their waste handling costs and could also reduce the risk related to waste spills and waste management. Finally, waste minimization procedures potentially stimulated by today's action may result in additional costs to facilities that implement these technologies. These factors have not been assessed in our analysis but are likely to at least partially offset corresponding benefits.

4. Conclusion

Total non-discounted monetized human health benefits associated with the final standards are estimated at $6.31 million/year. Annualized discounted benefits were found to range from $5.61 million to $5.95 million/year. The range reflects an alternative discount rate of 3 percent and 7 percent for mortality benefits.

It is important to emphasize that monetized benefits represent only a portion of the total benefits associated with this rule. A significant portion of the benefits are not monetized, as discussed above, due to data and analytical limitations. Specifically, ecological benefits, and human health benefits associated with reductions in chlorine, mercury, and lead are not quantified or monetized. In some regions these benefits may be significant. In addition, specific sub-populations near combustion facilities, including children and minority populations, may be disproportionately affected by environmental risks and may therefore enjoy more significant benefits. Visibility benefits associated with reduced PM are also expected from this final rule. For a complete discussion of the methodology, data, findings, and limitations associated with our benefits analysis the reader is encouraged to review the Assessment document,[286] and the Addendum to the Assessment.

Part Seven: How Does the Final Rule Meet the RCRA Protectiveness Mandate?

As discussed in more detail below, we believe today's final standards are generally protective of human health and the environment. We therefore finalize and apply these standards, in most instances, in lieu of the RCRA air emission standards applicable to these sources.

I. Background

Section 3004(a) of RCRA requires the Agency to promulgate standards for hazardous waste treatment, storage, and disposal facilities as necessary to protect human health and the environment. The standards for hazardous waste incinerators generally rest on this authority. In addition, § 3004(q) requires the Agency to promulgate standards for emissions from facilities that burn

[282] Although the primary pollutants which are detrimental to vegetation aesthetics and growth are tropospheric ozone, sulfur dioxide, and hydrogen fluoride (three pollutants which are not regulated in the MACT standards), some literature exists on the relationship between metal deposition and vegetation health. (Mercury Study Report to Congress Volume VI, 1997) (Several studies are cited in this report.)

[283] See, for example, Brown, T.C. et al. 1989. Scenic Beauty and Recreation Value: Assessing the Relationship, In J. Vining, ed., *Social Science and Natural Resources Recreation Management*, Westview Press, Boulder, Colorado; this work studies the relationship between forest characteristics and the value of recreational participation. Also see Peterson, D.G. et al. 1987, Improving Accuracy and Reducing Cost of Environmental Benefit Assessments. Draft Report to the U.S. EPA, by Energy and Resource Consultants, Boulder, Colorado; Walsh et al. 1990, Estimating the public benefits of protecting forest quality, Journal of Forest Management, 30:175–189., and Homes et al. 1992, Economic Valuation of Spruce-Fir Decline in the Southern Appalachian Mountains: A comparison of Value Elicitation Methods. Presented at the Forestry and the Environment: Economic Perspectives Conference, March 1, 1992 Jasper, Alberta, Canada for estimates of the WTP of visitors and residents to avoid forest damage.

[284] MacKenzie, James J., and Mohamed T. El-Ashry, *Air Pollution's Toll on Forests and Crops* (New Haven, Yale University Press, 1989).

[285] Note that this rule does, in fact, consider hazardous waste feed control. Feed control can be implemented by each source through waste minimization procedures. See: Final Technical Support Document for HWC MACT Standards, Volume V–Emissions Estimates and Engineering Costs.

[286] Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards. September 2005.

hazardous waste fuels (e.g., cement and lightweight aggregate kilns, boilers, and hydrochloric acid production furnaces) as necessary to protect human health and the environment. Using RCRA authority, the Agency has established emission (and other) standards for hazardous waste combustors that are either entirely risk-based (e.g., site-specific standards for metals under the Boiler and Industrial Furnace rule), or are technology-based but determined by a generic risk assessment to be protective (e.g., the DRE standard for incinerators and BIFs).

The MACT standards finalized today implement the technology-based regime of CAA § 112(d). There is, however, a residual risk component to air toxics standards. Section 112(f) of the Clean Air Act requires the Agency to impose, within eight years after promulgation of the technology-based standards promulgated under § 112(d) (i.e., the authority for today's final standards), additional controls if needed to protect public health with an ample margin of safety or to prevent adverse environmental effect.

RCRA § 1006(b) directs that EPA "integrate all provisions of [RCRA] for purposes of administration and enforcement and * * * avoid duplication, to the maximum extent possible, with the appropriate provisions of the Clean Air Act * * *" Thus, although considerations of risk are not ordinarily part of the MACT process, in order to avoid duplicative standards where possible, we have evaluated the protectiveness of the standards finalized today.

As noted above, under RCRA, EPA must promulgate standards "as may be necessary to protect human health and the environment." RCRA § 3004(a) and (q). Technology-based standards developed under CAA § 112 do not automatically satisfy this requirement, but may do so in fact. See 59 FR at 29776 (June 6, 1994) and 60 FR at 32593 (June 23, 1995) (RCRA regulation of secondary lead smelter emissions unnecessary at this time given stringency of technology-based standard and pendency of § 112(f) determination). If the MACT standards, as a factual matter, are sufficiently protective to also satisfy the RCRA mandate, then no independent RCRA standards are required. Conversely, if MACT standards are inadequate, the RCRA authorities would have to be used to fill the gap.

II. Evaluation of Protectiveness

For the purpose of satisfying the RCRA statutory mandates, the Agency has conducted an evaluation of the degree of protection afforded by the MACT standards being finalized today. We have not conducted a comprehensive risk assessment for this rulemaking as was done for incinerators, cement kilns, and lightweight aggregate kilns in the 1999 MACT rule where we concluded that the promulgated standards were generally protective and therefore, the RCRA standards need not be retained. However, we noted that in certain instances, permit authorities may invoke the omnibus authority (RCRA § 3005(c)(3) and its implementing regulations at § 270.10(k)) if there is some reason to believe that additional controls beyond those required pursuant to 40 CFR parts 63, 264, 265, and 266 may be needed to ensure protection of human health and the environment under RCRA.

For this final rule, we instead compared the risk-related characteristics of the sources covered by the 1999 rule to the sources covered by today's rule (e.g., estimated emissions, stack characteristics, meteorology, and population). For a description of the methodology and technical discussion of its application, see "Inferential Risk Analysis in Support of Standards for Emissions of Hazardous Air Pollutants from Hazardous Waste Combustors," in the docket for today's rule. We performed a large array of statistical comparisons and from these we attempted to make inferences about whether risks would be expected to be about the same, less than, or greater than the risks estimated for 1999 rule. We think the comparative analysis lends additional support to our view that today's final standards are generally protective. We received no comments either in support of or in opposition to our use of the comparative analysis to evaluate the protectiveness of the standards being finalized today or our view that the standards are generally protective.

While we regard the final standards as generally protective, the comparative analysis suggests some concern for solid fuel-fired boilers (SFBs) with regard to the particulate matter standard (and certain metals such as antimony and thallium), mercury, and total chlorine standards (other than the alternative risk-based chlorine standards). The analysis also suggests some concern for hydrochloric acid (HCl) production furnaces with regard to the dioxin/furan standard, where carbon monoxide and total hydrocarbon serve as surrogate control. However, because both SFBs and HCl production furnaces comprise such small source categories (4 SFB facilities and 8 HCl production facilities), it is difficult to reach firm conclusions. For example, for SFBs it was not possible to conduct hypothesis tests that could be considered valid involving correlations among variables for a number of variables in the analysis because of the small number of data points and the power of the tests to detect differences for those that were conducted was very low, which greatly diminishes the value of the results. (Indeed, no differences in correlations were found for SFBs at the 0.1 significance level—the level of significance that was used in the analysis.) Similarly, for HCl production furnaces the power of the tests to detect differences in correlations was quite low. It must be noted that the comparative analysis methodology was not intended for comparisons that involve relatively few facilities because it is grounded in tests of hypotheses and levels of statistical significance which generally require substantial amounts of data to produce firm conclusions. Nevertheless, in consideration of the indications of possible risks for the aforementioned standards, permit authorities may want to consider site-specific factors in determining whether or not the MACT standards are sufficiently protective for facilities that fall into these categories.

The comparative analysis may also raise possible concerns for lightweight aggregate kilns (LWAKs) and liquid fuel-fired boilers (LFBs) with dry APCDs with regard to the dioxin/furan standards, in view of the ongoing uncertainty in cancer and other health effects levels for chlorinated dioxins and furans. In particular, some recent estimates of the carcinogenicity of these compounds that consider both human and animal data, are higher than earlier estimates derived from animal data alone. However, like SFBs and HCl production furnaces, LWAKs and LFBs with dry APCDs both comprise small source categories (3 LWAK facilities and 7 dry APCD LFB facilities). This makes it very difficult to reach firm conclusions and suggests the need to consider site-specific factors in determining whether the MACT standards are sufficiently protective in these instances.

Except as noted, we believe today's final standards provide a substantial degree of protection to human health and the environment. We therefore do not believe that we need to retain the existing RCRA standards for boilers and hydrochloric acid production furnaces (just as we found that existing RCRA standards for incinerators, cement kilns, and lightweight aggregate kilns were no longer needed after the 1999 rule). However, as previously discussed in

more detail in Part Four, Section IX, site-specific risk assessments may be warranted on an individual source basis to ensure that the MACT standards provide adequate protection in accordance with RCRA.

Part Eight: Statutory and Executive Order Reviews

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)] the Agency, in conjunction with OMB's Office of Information and Regulatory Affairs (OIRA), must determine whether a regulatory action is "significant" and therefore subject to OMB review and the full requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this action may raise novel legal or policy issues due to the methodology applied in development of the final standards. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

The total social costs for this rule are estimated at $22.6 million per year[287]. This figure is significantly below the $100 million threshold established under point number one above. Thus, this rule is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment in support of today's final rule. This document is entitled: Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards, September 2005. We have also prepared an Addendum to this Assessment entitled: Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards, September 2005. This Addendum captures changes made to the rulemaking following completion of the full Assessment document. The Assessment and Addendum were designed to adhere to analytical requirements established under Executive Order 12866, and corresponding Agency and OMB guidance; subject to data, analytical, and resource limitations. Findings presented under Part Six of this Preamble were developed in accordance with this guidance. The RCRA docket established for today's rulemaking maintains a copy of the Assessment and Addendum for public review. Interested persons are encouraged to read both documents to gain a full understanding of the analytical methodology, findings, and limitations associated with this report.

[287] This figure includes approximately $0.5 million/year in total government costs. Total social costs would increase to approximately $28.6 million per year if we were to assume all sources were to comply with technology-based TC1 standards.

II. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.08) listing the information collection requirements of this final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. This ICR is available for public viewing in the EPA Docket Center, Room B102, 1301 Constitution Avenue NW., Washington, DC. Copy may also be obtained from the EDOCKET on the EPA Web site, or by calling (202) 566–1744. The information collection requirements are not enforceable until OMB approves them.

The public burden associated with this final rule is projected to affect 238 HWC units and is estimated to average 211 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $5,640 per respondent annually.

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

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

The EPA requested comments (see 70 FR 20748, Apr. 21, 2005) on the need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., 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. This analysis must be completed unless the agency is able to certify that the rule will 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.

The RFA provides default definitions for each type of small entity. Small entities are 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. We have determined that hazardous waste combustion facilities are not owned by small governmental jurisdiction or nonprofit organizations. Therefore, only small businesses were analyzed for small entity impacts. For the purposes of the impact analyses, small entity is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration.

Affected individual waste combustors (incinerators, cement kilns, lightweight aggregate kilns, solid and liquid fuel-boilers, and hydrochloric acid production furnaces) will bear the impacts of today's rule. These units will incur direct economic impacts (positive or negative) as a result of today's rule. Few of the hazardous waste combustion facilities affected by this rule were found to be owned by small businesses, as defined by the Small Business Administration (SBA). From our universe of 145 facilities, we identified eight facilities that are currently owned by small businesses. Four of these facilities are liquid boilers, two are on-site incinerators, one is a cement kiln, and one is a lightweight aggregate kiln (LWAK). Our analysis indicates that none of these facilities are likely to incur annualized compliance costs greater than one percent of gross annual corporate revenues. Cost impacts of the final standards were found to range from less than 0.01 percent to 0.46 percent of annual gross corporate revenues.

The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this determination. This analysis is incorporated as Appendix H of the *Assessment* document, and updated in the *Addendum*.

IV. Unfunded Mandates Reform Act of 1995

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) calls on all federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments.

Today's final rule is not subject to the requirements of sections 202, 204 and 205 of UMRA. In general, a rule is subject to the requirements of these sections if it contains "Federal mandates" that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Today's final rule does not result in $100 million or more in expenditures for any of these categories. The aggregate annualized social cost for today's rule is estimated at $22.6 million.

V. 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."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation.

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 the Order. The rule focuses on requirements for facilities burning hazardous waste, without affecting the relationships between Federal and State governments. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did include various State representatives on our Agency workgroup. These representatives participated in the development of this rule.

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

Executive Order 13175: 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." Our Agency workgroup for this rule included Tribal representation. We have determined that this final rule does not have tribal implications, as specified in the Order. No Tribal governments are known to own or operate hazardous waste combustors subject to the requirements of this final rule. Furthermore, this rule focuses on requirements for all regulated sources without affecting the relationships between tribal governments in its implementation, and applies to all regulated sources, without distinction of the surrounding populations affected. Thus, Executive Order 13175 does not apply to this rule.

VII. Executive Order 13045: Protection of Children From Environmental Health Risks 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

VIII. 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 Fed. Reg. 28355 (May 22, 2001)). This rule, as finalized, will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. Furthermore, this rule is not an economically significant action under Executive Order 12866.

IX. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves environmental monitoring or measurement. Both Performance Based Measurement System (PBMS) and specific measurement methods are finalized under this rule. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. Where allowed, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

X. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' (February 11, 1994) requires us to complete an analysis of today's rule with regard to equity considerations. The Order is designed to address the environmental and human health conditions of minority and low-income populations. This section briefly discusses potential impacts (direct or disproportional) today's rule may have in the area of environmental justice.

We have recently analyzed demographic data from the U.S. Census, and have previously examined data from two other reports: "Race, Ethnicity, and Poverty Status of the Populations Living Near Cement Plants in the United States" (EPA, August 1994) and "Race, Ethnicity, and Poverty Status of the Populations Living Near Hazardous Waste Incinerators in the United States" (EPA, October 1994). These reports examine the number of low-income and minority individuals living near a relatively large sample of cement kilns and hazardous waste incinerators and provide county, state, and national population percentages for various sub-populations. The demographic data in these reports provide several important findings when examined in conjunction with the risk reductions projected from today's rule.

We find that combustion facilities, in general, are not located in areas with disproportionately high minority and low-income populations. However, there is evidence that hazardous waste burning cement kilns are somewhat more likely to be located in areas that have relatively higher low-income populations. Furthermore, there are a small number of commercial hazardous waste incinerators located in highly urbanized areas where there is a disproportionately high concentration of minorities and low-income populations within one and five mile radii. The reduced emissions at these facilities due to today's rule could represent meaningful environmental and health improvements for these populations. Overall, today's rule should not result in any adverse or disproportional health or safety effects on minority or low-income populations. Any impacts on these populations are likely to be positive due to the reduction in emissions from combustion facilities near minority and low-income population groups. The Assessment document available in the RCRA docket established for today's rule discusses our Environmental Justice analysis.

XI. Congressional Review

The Congressional Review Act (CRA), 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. Prior to publication of the final rule in the Federal Register, we will submit all necessary information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. Under the CRA, 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).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

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

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

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

40 CFR Part 270

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

40 CFR Part 271

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

Dated: September 14, 2005.

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 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2,

300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended in the table under center heading "National Emission Standards for Hazardous Air Pollutants for Source Categories" by adding entry "63.1200–63.1221" in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * * * *	
63.1200–63.1221	2050–0171

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

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

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

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

■ 2. Section 63.14 is amended by:

■ a. Removing paragraphs (i)(1) and (i)(2).

■ b. Redesignating paragraph (i)(3) as (i)(1).

■ c. Adding and reserving new paragraph (i)(2).

■ d. Revising paragraph (k).

The revisions and additions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(2) [Reserved]

* * * * *

(k) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800:

(1) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice).

(i) Method 0023A, "Sampling Method for Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources," dated December 1996 and in Update III, IBR approved for § 63.1208(b)(1) of Subpart EEE of this part.

(ii) Method 9071B, "n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples," dated April 1998 and in Update IIIA, IBR approved for § 63.7824(e) of Subpart FFFFF of this part.

(iii) Method 9095A, "Paint Filter Liquids Test," dated December 1996 and in Update III, IBR approved for §§ 63.7700(b) and 63.7765 of Subpart EEEEE of this part.

(2) [Reserved]

■ 3. Section 63.1200 is amended by:

■ a. Revising the introductory text.

■ b. Revising paragraph (a)(2).

■ c. Adding entry (4) in Table 1 in paragraph (b).

The revisions and additions read as follows:

§ 63.1200 Who is subject to these regulations?

The provisions of this subpart apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste cement kilns, hazardous waste lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces. Hazardous waste combustors are also subject to applicable requirements under parts 260 through 270 of this chapter.

(a) * * *

(2) Both area sources and major sources subject to this subpart, but not previously subject to title V, are immediately subject to the requirement to apply for and obtain a title V permit in all States, and in areas covered by part 71 of this chapter.

(b) * * *

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

If	And If	Then
* * * * * * *		
(4) You meet the definition of a small quantity burner under § 266.108 of this chapter		You are not subject to the requirements of this subpart (Subpart EEE).

* * * * *

■ 4. Section 63.1201 is amended in paragraph (a) by revising the definitions of "Hazardous waste combustor", "New source", and "TEQ", and adding definitions for "Btu", "Hazardous waste hydrochloric acid production furnace", "Hazardous waste liquid fuel boiler", "Hazardous waste solid fuel boiler", and "System removal efficiency" in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Btu means British Thermal Units.

* * * * *

Hazardous waste combustor means a hazardous waste incinerator, hazardous waste burning cement kiln, hazardous waste burning lightweight aggregate kiln, hazardous waste liquid fuel boiler, hazardous waste solid fuel boiler, or hazardous waste hydrochloric acid production furnace.

* * * * *

Hazardous waste hydrochloric acid production furnace and *Hazardous Waste HCl production furnace* mean a halogen acid furnace defined under § 260.10 of this chapter that produces aqueous hydrochloric acid (HCl) product and that burns hazardous waste at any time.

* * * * *

Hazardous waste liquid fuel boiler means a boiler defined under § 260.10 of this chapter that does not burn solid fuels and that burns hazardous waste at any time. Liquid fuel boiler includes boilers that only burn gaseous fuel.

* * * * *

Hazardous waste solid fuel boiler means a boiler defined under § 260.10 of this chapter that burns a solid fuel and that burns hazardous waste at any time.

* * * * *

New source means any affected source the construction or reconstruction of which is commenced after the dates specified under §§ 63.1206(a)(1)(i)(B), (a)(1)(ii)(B), and (a)(2)(ii).

* * * * *

System removal efficiency means [1 − Emission Rate (mass/time) / Feedrate (mass/time)] X 100.

* * * * *

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

* * * * *

■ 5. Section 63.1203 is amended by:

■ a. Revising an undesignated center heading above the section heading.

■ b. Revising the section heading.

■ c. Revising paragraph (c)(3)(2).

The revisions and additions read as follows:

Interim Emissions Standards and Operating Limits For Incinerators, Cement Kilns, and Lightweight Aggregate Kilns

§ 63.1203 What are the standards for hazardous waste incinerators that are effective until compliance with the standards under § 63.1219?

* * * * *

(c) * * *

(3) * * *

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

* * * * *

■ 6. The section heading to § 63.1204 and paragraph (c)(3)(ii) are revised to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns that are effective until compliance with the standards under § 63.1220?

* * * * *

(c) * * *

(3) * * *

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

* * * * *

■ 7. The section heading to § 63.1205 and paragraph (c)(3)(ii) are revised to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns that are effective until compliance with the standards under § 63.1221?

* * * * *

(c) * * *

(3) * * *

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

* * * * *

■ 8. Section 63.1206 is amended by:

■ a. Revising paragraph (a).

■ b. Revising paragraphs (b)(1)(ii), (b)(6) introductory text, (b)(7)(i)(A), (b)(7)(ii), (b)(9)(i) introductory text, (b)(9)(i)(A), (b)(9)(iv)(A), (b)(9)(vi), (b)(9)(vii) introductory text, (b)(9)(viii)(D), (b)(9)(ix)(D), (b)(10)(i) introductory text, (b)(10)(i)(A), (b)(10)(vi), (b)(10)(vii) introductory text, (b)(10)(viii)(D), (b)(10)(ix)(D), (b)(11), (b)(13)(i) introductory text, (b)(13)(ii), and (b)(14).

■ c. Adding paragraph (b)(16).

■ d. Revising paragraphs (c)(1)(i) introductory text, (c)(3)(iv), (c)(6)(iii)(B) introductory text, (c)(6)(iv) introductory text, and (c)(7).

■ e. Adding paragraphs (c)(8) and (c)(9).

The revisions and additions read as follows:

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

(a) *Compliance dates.* (1) *Compliance dates for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste.* (i) *Compliance date for standards under §§ 63.1203, 63.1204, and 63.1205.* (A) *Compliance dates for existing sources.* You must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(B) *New or reconstructed sources.* (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(1)(i)(B)(*2*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

(*2*) For a standard under §§ 63.1203, 63.1204, and 63.1205 that is more stringent than the standard proposed on April 19, 1996, you may achieve compliance no later than September 30, 2003 if you comply with the standard proposed on April 19, 1996 after September 30, 1999. This exception does not apply, however, to new or

reconstructed area source hazardous waste combustors that become major sources after September 30, 1999. As provided by § 63.6(b)(7), such sources must comply with the standards under §§ 63.1203, 63.1204, and 63.1205 at startup.

(ii) *Compliance date for standards under §§ 63.1219, 63.1220, and 63.1221.* (A) *Compliance dates for existing sources.* You must comply with the emission standards under §§ 63.1219, 63.1220, and 63.1221 and the other requirements of this subpart no later than the compliance date, October 14, 2008, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(B) *New or reconstructed sources.* (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§ 63.1219, 63.1220, and 63.1221 and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraph (a)(1)(ii)(B)(*2*) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

(*2*) For a standard under §§ 63.1219, 63.1220, and 63.1221 that is more stringent than the standard proposed on April 20, 2004, you may achieve compliance no later than October 14, 2008, if you comply with the standard proposed on April 20, 2004, after October 12, 2005. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after October 14, 2008. As provided by § 63.6(b)(7), such sources must comply with the standards under §§ 63.1219, 63.1220, and 63.1221 at startup.

(2) *Compliance dates for solid fuel boilers, liquid fuel boilers, and hydrogen chloride production furnaces that burn hazardous waste for standards under §§ 63.1216, 63.1217, and 63.1218.* (i) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than the compliance date, October 14, 2008, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(ii) *New or reconstructed sources.* (A) If you commenced construction or reconstruction of your hazardous waste combustor after October 12, 2005, you must comply with the new source emission standards of this subpart by the later of October 12, 2005, or the date the source starts operations, except as provided by paragraph (a)(2)(ii)(B) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 20, 2004, and a source's compliance date, are not considered to be reconstruction costs.

(B) For a standard in the subpart that is more stringent than the standard proposed on April 20, 2004, you may achieve compliance no later than October 14, 2008, if you comply with the standard proposed on April 20, 2004, after October 12, 2005. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after October 14, 2008. As provided by § 63.6(b)(7), such sources must comply with this subpart at startup.

(3) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, your compliance date is the earlier of the date you postmark the Notification of Compliance under § 63.1207(j)(1) or the dates specified in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., 40 CFR part 63, subparts LLL, DDDDD, and NNNNN) or 129 of the Clean Air Act in lieu of the emission standards under §§ 63.1203, 63.1204, 63.1205, 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) *Compliance with the carbon monoxide and hydrocarbon emission standards.* This paragraph applies to sources that elect to comply with the carbon monoxide and hydrocarbon emissions standards of this subpart by documenting continuous compliance with the carbon monoxide standard using a continuous emissions monitoring system and documenting compliance with the hydrocarbon standard during the destruction and removal efficiency (DRE) performance test or its equivalent.

* * * * *

(7) * * * (i) * * *

(A) You must document compliance with the Destruction and Removal Efficiency (DRE) standard under this subpart only once provided that you do not modify the source after the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

* * * * *

(ii) *Sources that feed hazardous waste at locations other than the normal flame zone.* (A) Except as provided by paragraph (b)(7)(ii)(B) of this section, if you feed hazardous waste at a location in the combustion system other than the normal flame zone, then you must demonstrate compliance with the DRE standard during each comprehensive performance test;

(B)(*1*) A cement kiln that feeds hazardous waste at a location other than the normal flame zone need only demonstrate compliance with the DRE standard during three consecutive comprehensive performance tests provided that:

(*i*) All three tests achieve the DRE standard in this subpart; and

(*ii*) The design, operation, and maintenance features of each of the three tests are similar;

(*iii*) The data in lieu restriction of § 63.1207(c)(2)(iv) does not apply when complying with the provisions of paragraph (b)(7)(ii)(B) of this section;

(*2*) If at any time you change your design, operation, and maintenance features in a manner that could reasonably be expected to affect your ability to meet the DRE standard, then you must comply with the requirements of paragraph (b)(7)(ii)(A) of this section.

* * * * *

(9) * * * (i) You may petition the Administrator to request alternative standards to the mercury or hydrogen chloride/chlorine gas emission standards of this subpart, to the semivolatile metals emission standards under §§ 63.1205, 63.1221(a)(3)(ii), or 63.1221(b)(3)(ii), or to the low volatile metals emissions standards under §§ 63.1205, 63.1221(a)(4)(ii), or 63.1221(b)(4)(ii) if:

(A) You cannot achieve one or more of these standards while using maximum achievable control technology (MACT) because of raw material contributions to emissions of mercury, semivolatile metals, low

volatile metals, or hydrogen chloride/chlorine gas; or

* * * * *

(iv) * * * (A) The alternative standard petition you submit under paragraph (b)(9)(i)(A) of this section must include data or information documenting that raw material contributions to emissions prevent you from complying with the emission standard even though the source is using MACT, as defined under paragraphs (b)(9)(viii) and (ix) of this section, for the standard for which you are seeking relief.

* * * * *

(vi) You must include data or information with semivolatile metals, low volatile metals, and hydrogen chloride/chlorine gas alternative standard petitions that you submit under paragraph (b)(9)(i)(A) of this section documenting that semivolatile metals, low volatile metals, and hydrogen chloride/chlorine gas emissions attributable to the hazardous waste only will not exceed the emission standards of this subpart.

(vii) You must not operate pursuant to your recommended alternative standards in lieu of emission standards specified in this subpart:

* * * * *

(viii) * * *

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 2,000,000 µg/dscm or less, and use of an air pollution control device with a hydrogen chloride/chlorine gas removal efficiency of 85 percent or greater.

(ix) * * *

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 14,000,000 µg/dscm or less, and use of an air pollution control device with a hydrogen chloride/chlorine gas removal efficiency of 99.6 percent or greater.

(10) * * * (i) You may petition the Administrator to request alternative standards to the mercury or hydrogen chloride/chlorine gas emission standards of this subpart, to the semivolatile metals emission standards under §§ 63.1204, 63.1220(a)(3)(ii), or 63.1220(b)(3)(ii), or to the low volatile metals emissions standards under §§ 63.1204, 63.1220(a)(4)(ii), or 63.1220(b)(4)(ii) if:

(A) You cannot achieve one or more of these standards while using maximum achievable control technology (MACT) because of raw material contributions to emissions of mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas; or

* * * * *

(vi) You must include data or information with semivolatile metals, low volatile metals, and hydrogen chloride/chlorine gas alternative standard petitions that you submit under paragraph (b)(10)(i)(A) of this section documenting that emissions of the regulated metals and hydrogen chloride/chlorine gas attributable to the hazardous waste only will not exceed the emission standards in this subpart.

(vii) You must not operate pursuant to your recommended alternative standards in lieu of emission standards specified in this subpart:

* * * * *

(viii) * * *

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 720,000 µg/dscm or less.

(ix) * * *

(D) For hydrogen chloride/chlorine gas, a hazardous waste chlorine feedrate corresponding to an MTEC of 420,000 µg/dscm or less.

(11) *Calculation of hazardous waste residence time.* You must calculate the hazardous waste residence time and include the calculation in the performance test plan under § 63.1207(f) and the operating record. You must also provide the hazardous waste residence time in the Documentation of Compliance under § 63.1211(c) and the Notification of Compliance under §§ 63.1207(j) and 63.1210(d).

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of this subpart as follows:

* * * * *

(ii) Lightweight aggregate kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the hydrocarbon standards of this subpart as follows:

(A) Existing sources must comply with the 20 parts per million by volume hydrocarbon standard of this subpart;

(B) New sources must comply with the 20 parts per million by volume hydrocarbon standard of this subpart.

(14) *Alternative to the particulate matter standard for incinerators.* (i). *General.* In lieu of complying with the particulate matter standards under § 63.1203, you may elect to comply with the following alternative metal emission control requirements:

(ii) *Alternative metal emission control requirements for existing incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(iv) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

* * * * *

(16) *Compliance with subcategory standards for liquid fuel boilers.* You must comply with the mercury, semivolatile, low volatile metal, and total chlorine standards for liquid fuel boilers under § 63.1217 as follows:

(i) You must determine the as-fired heating value of each batch of hazardous waste fired by each firing system of the boiler so that you know the mass-weighted heating value of the hazardous waste fired at all times.

(ii) If the as-fired heating value of the hazardous waste is 10,000 Btu per pound or greater, you are subject to the thermal emission concentration standards (lb/million Btu) under § 63.1217.

(iii) If the as-fired heating value of the hazardous waste is less than 10,000 Btu/lb, you are subject to the mass or volume emission concentration

standards (μg/dscm or ppmv) under § 63.1217.

(iv) If the as-fired heating value of hazardous wastes varies above and below 10,000 Btu/lb over time, you are subject to the thermal concentration standards when the heating value is 10,000 Btu/lb or greater and the mass concentration standards when the heating value is less than 10,000 Btu/lb. You may elect to comply at all times with the more stringent operating requirements that ensure compliance with both the thermal emission concentration standards and the mass or volume emission concentration standards.

* * * * *

(c) * * * (1) * * * (i) You must operate only under the operating requirements specified in the Documentation of Compliance under § 63.1211(c) or the Notification of Compliance under §§ 63.1207(j) and 63.1210(d), except:

* * * * *

(3) * * *

(iv) *Failure of the AWFCO system.* If the AWFCO system fails to automatically and immediately cutoff the flow of hazardous waste upon exceedance of a parameter required to be interlocked with the AWFCO system under paragraph (c)(3)(i) of this section, you have failed to comply with the AWFCO requirements of paragraph (c)(3) of this section. If an equipment or other failure prevents immediate and automatic cutoff of the hazardous waste feed, however, you must cease feeding hazardous waste as quickly as possible.

* * * * *

(6) * * *

(iii) * * *

(B) Be trained under the requirements of, and certified under, one of the following American Society of Mechanical Engineers (ASME) standards: QHO–1–1994, QHO–1a–1996, or QHO–1–2004 (Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators). If you elect to use the ASME program:

* * * * *

(iv) Control room operators of cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces must be trained and certified under:

* * * * *

(7) *Operation and maintenance plan*—(i) You must prepare and at all times operate according to an operation and maintenance plan that describes in detail procedures for operation, inspection, maintenance, and corrective measures for all components of the combustor, including associated pollution control equipment, that could affect emissions of regulated hazardous air pollutants.

(ii) The plan must prescribe how you will operate and maintain the combustor in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels achieved during the comprehensive performance test.

(iii) This plan ensures compliance with the operation and maintenance requirements of § 63.6(e) and minimizes emissions of pollutants, automatic waste feed cutoffs, and malfunctions.

(iv) You must record the plan in the operating record.

(8) *Bag leak detection system requirements.* (i) If your combustor is equipped with a baghouse (fabric filter), you must continuously operate either:

(A) A bag leak detection system that meets the specifications and requirements of paragraph (c)(8)(ii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(8)(iii) and (iv) of this section; or

(B) A particulate matter detection system under paragraph (c)(9) of this section.

(ii) *Bag leak detection system specification and requirements.* (A) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, under § 63.1209(g)(1), that a higher detection limit would routinely detect particulate matter loadings during normal operations;

(B) The bag leak detection system shall provide output of relative or absolute particulate matter loadings;

(C) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(D) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(E) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(F) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(G) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

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

(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. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(A) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(B) You must alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following:

(*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 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 or baghouse 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, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds;

(C) In calculating the operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; and

(D) If corrective action is required, each alarm shall be counted as a minimum of 1 hour.

(9) *Particulate matter detection system requirements for electrostatic precipitators and ionizing wet scrubbers.* If your combustor is equipped with an electrostatic precipitator or ionizing wet scrubber, and you elect not to establish under § 63.1209(m)(1)(iv) site-specific control device operating parameter limits that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, you must continuously operate a particulate matter detection system that meets the specifications and requirements of paragraph (c)(9)(i) through (iii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(iv) through (v) of this section.

(i) *Particulate matter detection system requirements.*—(A) The particulate matter detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, 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 particulate matter detection system 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 particulate matter detection system 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;

(E) You must include procedures for installation, operation, maintenance, and quality assurance of the particulate matter detection system in the site-specific continuous monitoring system test plan required under § 63.8(e)(3) of this chapter.

(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 provided by either paragraph (c)(9)(ii) or paragraph (c)(9)(iii) of this section.

(ii) *Establishing the alarm set-point without extrapolation.* (A) The alarm set-point is the average of the test run averages of the detector response achieved during the comprehensive performance test demonstrating compliance with the particulate matter emission standard.

(B) During the comprehensive performance test, you may simulate 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.

(C) You must comply with the alarm set-point on a 6-hour rolling average, updated each hour with a one-hour block average that is the average of the detector responses over each 15-minute block;

(iii) *Establishing the alarm set-point with extrapolation.* You may extrapolate the average of the test run averages of the detector response achieved during the comprehensive performance test as provided by paragraph (c)(9)(iii)(A) of this section to establish an alarm level after you approximate the correlation of the detector response to particulate matter concentration as prescribed by paragraph (c)(9)(iii)(B) of this section. You must comply with the extrapolated alarm set-point on a 6-hour rolling average, updated each hour with a one-hour block average that is the average of the detector responses over each 15-minute block.

(A) You may extrapolate the detector response up to a particulate matter concentration that is 50% of the particulate matter emission standard or 125% of the highest particulate matter concentration used to develop the correlation under paragraph (c)(9)(iii)(B) of this section, whichever is greater. The extrapolated emission concentration must not exceed the particulate matter emission standard.

(B) To establish an approximate correlation of the detector response to particulate matter emission concentrations, you should use as guidance Performance Specification-11 for PM CEMS (40 CFR Part 60, Appendix B), except that you need only conduct 5 runs to establish the initial correlation under Section 8.6 of Performance Specification 11.

(C) For quality assurance, you should use as guidance Procedure 2 of Appendix F to Part 60 of this chapter and the detector manufacturer's recommended procedures for periodic quality assurance checks and tests, except that:

(*1*) You must conduct annual Relative Response Audits as prescribed by Procedure 2 of Appendix F to Part 60 of this chapter (Section 10.3(6));

(*2*) You need only conduct Relative Response Audits on a 3-year interval after passing two sequential annual Relative Response Audits.

(D) An exceedance of the particulate matter emission standard by a particulate matter detection system for which particulate emission concentrations have been approximately correlated with the detector response under paragraph (c)(9)(iii) of this section is not evidence that the standard has been exceeded. The approximate correlation is used for compliance assurance to determine when corrective measures must be taken rather than for compliance monitoring.

(iv) *Particulate matter 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 particulate matter detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standard in this subpart.

(A) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(B) You must alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include shutting down the combustor.

(v) *Excessive exceedances notification.* If you operate the combustor when the detector response exceeds the alarm set-point 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 or emission control device 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, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken;

(B) You must record the percent of the operating time during each 6-month period that the alarm sounds;

(C) In calculating the operating time percentage, if inspection of the emission control device demonstrates that no corrective action is required, no alarm time is counted; and

(D) If corrective action is required, each alarm shall be counted as a minimum of 1 hour.

■ 9. Section 63.1207 is amended by:
■ a. Revising paragraph (b)(1).
■ b. Adding paragraph (b)(3).
■ c. Revising paragraphs (c)(1) and (c)(2)(iii).
■ d. Adding paragraph (c)(3).
■ e. Revising paragraph (d)(4)(i).
■ f. Revising paragraphs (e)(2) and (e)(3)(iv).
■ g. Revising paragraphs (f)(1)(ii)(D), (f)(1)(x) introductory text, (f)(1)(xiii), (f)(1)(xiv), (f)(1)(xvi), and (f)(1)(xxv).
■ h. Adding paragraph (f)(1)(xv).
■ i. Revising paragraph (h)(2)(i).
■ j. Revising paragraph (j)(3).
■ k. Revising paragraph (l)(1) introductory text.
■ l. Revising paragraph (m)(2) introductory text.

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(b) * * *

(1) *Comprehensive performance test.* You must conduct comprehensive performance tests to demonstrate compliance with the emission standards provided by this subpart, establish limits for the operating parameters provided by § 63.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

* * * * *

(3) *One-Time Dioxin/Furan Test for Sources Not Subject to a Numerical Dioxin/Furan Standard.* For solid fuel boilers and hydrochloric acid production furnaces, for lightweight aggregate kilns that are not subject to a numerical dioxin/furan emission standard under § 63.1221, and liquid fuel boilers that are not subject to a numerical dioxin/furan emission standard under § 63.1217, you must conduct a one-time emission test for dioxin/furan under feed and operating conditions that are most likely to reflect daily maximum operating variability, similar to a dioxin/furan comprehensive performance test.

(i) You must conduct the dioxin/furan emissions test no later than the deadline for conducting the initial comprehensive performance test.

(ii) You may use dioxin/furan emissions data from previous testing to meet this requirement, provided that:

(A) The testing was conducted under feed and operating conditions that are most likely to reflect daily maximum operating variability, similar to a dioxin/furan compliance test;

(B) You have not changed the design or operation of the source in a manner that could significantly affect stack gas dioxin/furan emission concentrations; and

(C) The data meet quality assurance objectives that may be determined on a site-specific basis.

(iii) You may use dioxin/furan emissions data from a source to represent emissions from another on-site source in lieu of testing (i.e., data in lieu of testing) if the design and operation, including hazardous waste feed and other feedstreams, of the sources are identical.

(iv) You must include the results of the one-time dioxin/furan emissions test with the results of the initial comprehensive performance test in the Notification of Compliance.

(v) You must repeat the dioxin/furan emissions test if you change the design or operation of the source in a manner that may increase dioxin/furan emissions.

(c) * * * (1) *Test date.* Except as provided by paragraphs (c)(2) and (c)(3) of this section, you must commence the initial comprehensive performance test not later than six months after the compliance date.

(2) * * * (iii) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply for the duration of the interim standards (i.e., the standards published in the Federal Register on February 13, 2002, 67 FR 6792). See 40 CFR parts 63, 264, 265, 266, 270, and 271 revised as of July 1, 2002. Paragraph (c)(2)(i)(A) of this section does not apply until EPA promulgates permanent replacement standards pursuant to the Settlement Agreement noticed in the Federal Register on November 16, 2001 (66 FR 57715).

* * * * *

(3) For incinerators, cement kilns, and lightweight aggregate kilns, you must commence the initial comprehensive performance test to demonstrate compliance with the standards under §§ 63.1219, 63.1220, and 63.1221 not later than 12 months after the compliance date.

(d) * * *

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

* * * * *

(e) * * *

(2) You must make your site-specific test plan and CMS performance evaluation test plan available to the public for review no later than 60 calendar days before initiation of the test. You must issue a public notice to all persons on your facility/public mailing list (developed pursuant to 40 CFR 70.7(h), 71.11(d)(3)(i)(E) and 124.10(c)(1)(ix)) announcing the availability of the test plans and the location where the test plans are available for review. The test plans must be accessible to the public for 60 calendar days, beginning on the date that you issue your public notice. The location must be unrestricted and provide access to the public during reasonable hours and provide a means for the public to obtain copies. The notification must include the following information at a minimum:

(i) The name and telephone number of the source's contact person;

(ii) The name and telephone number of the regulatory agency's contact person;

(iii) The location where the test plans and any necessary supporting documentation can be reviewed and copied;

(iv) The time period for which the test plans will be available for public review; and

(v) An expected time period for commencement and completion of the performance test and CMS performance evaluation test.

(3) * * *

(iv) *Public notice.* At the same time that you submit your petition to the Administrator, you must notify the public (e.g., distribute a notice to the facility/public mailing list developed pursuant to 40 CFR 70.7(h), 71.11(d)(3)(i)(E) and 124.10(c)(1)(ix)) of your petition to waive a performance test. The notification must include all of the following information at a minimum:

(A) The name and telephone number of the source's contact person;

(B) The name and telephone number of the regulatory agency's contact person;

(C) The date the source submitted its site-specific performance test plan and CMS performance evaluation test plans; and

(D) The length of time requested for the waiver.

(f) * * *

(1) * * *

(ii) * * *

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standards of this subpart continue to be representative of the most difficult to destroy organic compounds in your hazardous waste feedstreams;

* * * * *

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(v) or 63.1209(n)(2)(vii):

* * * * *

(xiii) For cement kilns with in-line raw mills, if you elect to use the emissions averaging provision of this subpart, you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required by the emission averaging provision;

(xiv) For preheater or preheater/precalciner cement kilns with dual stacks, if you elect to use the emissions averaging provision of this subpart, you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required by the emission averaging provision;

(xv) If you request to use Method 23 for dioxin/furan you must provide the information required under § 63.1208(b)(1)(i)(B);

(xvi) If you are not required to conduct performance testing to document compliance with the mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas emission standards under paragraph (m) of this section, you must include with the comprehensive performance test plan documentation of compliance with the provisions of that section.

* * * * *

(xxv) If your source is equipped with a dry scrubber to control hydrogen chloride and chlorine gas, you must document in the comprehensive performance test plan key parameters that affect adsorption, and the limits you establish for those parameters based on the sorbent used during the performance test, if you elect not to specify and use the brand and type of sorbent used during the comprehensive performance test, as required by § 63.1209(o)(4)(iii)(A); and

* * * * *

(h) * * *

(2) * * *

(i) Operations when stack emissions testing for dioxin/furan, mercury, semivolatile metals, low volatile metals, particulate matter, or hydrogen chloride/chlorine gas is being performed; and

* * * * *

(j) * * *

(3) See §§ 63.7(g), 63.9(h), and 63.1210(d) for additional requirements pertaining to the Notification of Compliance (*e.g.*, you must include results of performance tests in the Notification of Compliance).

* * * * *

(l) *Failure of performance test*—(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to your compliance date.

* * * * *

(m) * * *

(2) You are not required to conduct performance tests to document compliance with the mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas emission standards under the conditions specified in this paragraph (m)(2). You are 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:

* * * * *

■ 10. Section 63.1208 is amended by removing and reserving paragraph (a) and revising paragraphs (b)(1)(i) and (b)(5) to read as follows:

§ 63.1208 What are the test methods?

(a) [Reserved]

(b) * * *

(1) * * * (i) To determine compliance with the emission standard for dioxins and furans, you must use:

(A) Method 0023A, Sampling Method for Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofurans emissions from Stationary Sources, EPA Publication SW–846 (incorporated by reference— see § 63.14); or

(B) Method 23, provided in appendix A, part 60 of this chapter, after approval by the Administrator.

(*1*) You may request approval to use Method 23 in the performance test plan required under § 63.1207(e)(i) and (ii).

(*2*) In determining whether to grant approval to use Method 23, the Administrator may consider factors including whether dioxin/furan were detected at levels substantially below the emission standard in previous testing, and whether previous Method 0023 analyses detected low levels of dioxin/furan in the front half of the sampling train.

(*3*) Sources that emit carbonaceous particulate matter, such as coal-fired boilers, and sources equipped with activated carbon injection, will be deemed not suitable for use of Method 23 unless you document that there would not be a significant improvement in quality assurance with Method 0023A.

* * * * *

(5) *Hydrogen chloride and chlorine gas*—(i) *Compliance with MACT standards.* To determine compliance with the emission standard for hydrogen chloride and chlorine gas (combined), you must use:

(A) Method 26/26A as provided in appendix A, part 60 of this chapter; or

(B) Methods 320 or 321 as provided in appendix A, part 63 of this chapter, or

(C) ASTM D 6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method to measure emissions of hydrogen chloride, and Method 26/26A to measure emissions of chlorine gas, provided that you follow the provisions in paragraphs (b)(5)(C)(*1*) through (*6*) of this section. ASTM D 6735–01 is available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

(*1*) A test must include three or more runs in which a pair of samples is obtained simultaneously for each run according to section 11.2.6 of ASTM Method D6735–01.

(*2*) You must calculate the test run standard deviation of each set of paired samples to quantify data precision, according to Equation 1 of this section:

$$RSD_a = (100)\,AbsoluteValue\left[\frac{C1_a - C2_a}{C1_a + C2_a}\right] \qquad \text{(Eq. 1)}$$

Where:

RSD_a = The test run relative standard deviation of sample pair a, percent.

$C1_a$ and $C2_a$ = The HCl concentrations, milligram/dry standard cubic meter (mg/dscm), from the paired samples.

(*3*) You must calculate the test average relative standard deviation according to Equation 2 of this section:

$$RSD_{TA} = \frac{\sum_{a=1}^{p} RSD_a}{p} \qquad \text{(Eq. 2)}$$

Where:

RSD_{TA} = The test average relative standard deviation, percent.

RSD_a = The test run relative standard deviation for sample pair a.

p = The number of test runs, ≥3.

(*4*) If RSDTA is greater than 20 percent, the data are invalid and the test must be repeated.

(*5*) The post-test analyte spike procedure of section 11.2.7 of ASTM Method D6735–01 is conducted, and the percent recovery is calculated according to section 12.6 of ASTM Method D6735–01.

(*6*) If the percent recovery is between 70 percent and 130 percent, inclusive, the test is valid. If the percent recovery is outside of this range, the data are considered invalid, and the test must be repeated.

(ii) *Compliance with risk-based limits under § 63.1215.* To demonstrate compliance with emission limits established under § 63.1215, you must use Method 26/26A as provided in appendix A, part 60 of this chapter, Method 320 as provided in appendix A, part 63 of this chapter, Method 321 as provided in appendix A, part 63 of this chapter, or ASTM D 6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method (following the provisions of paragraphs (b)(5)(C)(*1*) through (*6*) of this section), except:

(A) For cement kilns and sources equipped with a dry acid gas scrubber, you must use Methods 320 or 321 as provided in appendix A, part 63 of this chapter, or ASTM D 6735–01 to measure hydrogen chloride, and the back-half, caustic impingers of Method 26/26A as provided in appendix A, part 60 of this chapter to measure chlorine gas; and

(B) For incinerators, boilers, and lightweight aggregate kilns, you must use Methods 320 or 321 as provided in appendix A, part 63 of this chapter, or ASTM D 6735–01 to measure hydrogen chloride, and Method 26/26A as provided in appendix A, part 60 of this chapter to measure total chlorine, and calculate chlorine gas by difference if:

(*1*) The bromine/chlorine ratio in feedstreams is greater than 5 percent; or

(*2*) The sulfur/chlorine ratio in feedstreams is greater than 50 percent.

* * * * *

■ 11. Section 63.1209 is amended by:
■ a. Revising paragraphs (a)(1)(ii), (a)(1)(iv)(D), (a)(1)(v)(D), and (a)(5).
■ b. Revising paragraph (b)(2)(ii).
■ c. Revising the heading of paragraph (g)(1) introductory text and paragraph (g)(1)(i).
■ d. Adding paragraph (g)(1)(iv).
■ e. Revising paragraphs (k)(1)(i) and (k)(2)(i).
■ f. Revising paragraph (l)(1).
■ g. Revising paragraphs (m)(1)(iv) introductory text and (m)(3).
■ h. Revising paragraph (n)(2).
■ i. Revising the heading of paragraph (o) introductory text and paragraph (o)(1).
■ j. Adding paragraph (r).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(1) * * *

(ii) (A) *Cement kilns under § 63.1204*—Except as provided by paragraphs (a)(1)(iv) and (a)(1)(v) of the section, you must use a COMS to demonstrate and monitor compliance with the opacity standard under §§ 63.1204(a)(7) and (b)(7) at each point where emissions are vented from these affected sources including the bypass stack of a preheater or preheater/precalciner kiln with dual stacks.

(B) *Cement kilns under § 63.1220*—Except as provided by paragraphs (a)(1)(iv) and (a)(1)(v) of the section and 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), you must use a COMS to demonstrate and monitor compliance with the opacity standard under §§ 63.1220(a)(7) and (b)(7) at each point where emissions are vented from these affected sources including the bypass stack of a preheater or preheater/precalciner kiln with dual stacks.

(C) You must maintain and operate each COMS in accordance with the requirements of § 63.8(c) except for the requirements under § 63.8(c)(3). The requirements of § 63.1211(c) shall be complied with instead of § 63.8(c)(3); and

(D) Compliance is based on a six-minute block average.

* * * * *

(iv) * * *

(D) To remain in compliance, all six-minute block averages must not exceed the opacity standard.

(v) * * *

(D) To remain in compliance, all six-minute block averages must not exceed the opacity standard.

* * * * *

(5) *Petitions to use CEMS for other standards.* You may petition the Administrator to use CEMS for compliance monitoring for particulate matter, mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine gas under § 63.8(f) in lieu of compliance with the corresponding operating parameter limits under this section.

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If you operate a carbon injection system, the accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The calibration of the device must be verified at least once each calendar quarter at a frequency of approximately 120 days.

* * * * *

(g) * * *

(1) *Requests to use alternatives to operating parameter monitoring requirements.* (i) You may submit an application to the Administrator under this paragraph for approval of alternative operating parameter monitoring requirements to document compliance with the emission standards of this subpart. For requests to use additional CEMS, however, you must use paragraph (a)(5) of this section and § 63.8(f). Alternative requests to operating parameter monitoring requirements that include unproven monitoring methods may not be made under this paragraph and must be made under § 63.8(f).

* * * * *

(iv) *Dual Standards that incorporate the Interim Standards for HAP metals.* (A) *Semivolatile and Low Volatile Metals.* You may petition the Administrator to waive a feedrate operating parameter limit under paragraph (n)(2) of this section for either the emission standards expressed in a thermal emissions format or the interim standards based on documentation that the feedrate operating parameter limit is not needed to ensure compliance with the relevant standard on a continuous basis.

(B) *Mercury.* You may petition the Administrator to waive a feedrate operating parameter limit under paragraph (l)(1) of this section for either the feed concentration standard under §§ 63.1220(a)(2)(i) and (b)(2)(i) or the interim standards based on documentation that the feedrate operating parameter limit is not needed to ensure compliance with the relevant standard on a continuous basis.

* * * * *

(k) * * *

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

* * * * *

(2) * * * (i) For sources other than cement kilns, you must measure the temperature of each combustion chamber at a location that best represents, as practicable, the bulk gas temperature in the combustion zone. You must document the temperature measurement location in the test plan you submit under §§ 63.1207(e) and (f);

* * * * *

(l) *Mercury.* * * *

(1) *Feedrate of mercury.* (i) For incinerators and solid fuel boilers, when complying with the mercury emission standards under §§ 63.1203, 63.1216 and 63.1219, you must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages.

(ii) For liquid fuel boilers, when complying with the mercury emission standards of § 63.1217, you must establish a rolling average limit for the mercury feedrate as follows on an averaging period not to exceed an annual rolling average:

(A) You must calculate a mercury system removal efficiency for each test run and calculate the average system removal efficiency of the test run averages. If emissions exceed the mercury emission standard during the comprehensive performance test, it is not a violation because the averaging period for the mercury emission standard is (not-to-exceed) one year and compliance is based on compliance with the mercury feedrate limit with an averaging period not-to-exceed one year.

(B) If you burn hazardous waste with a heating value of 10,000 Btu/lb or greater, you must calculate the mercury feedrate limit as follows:

(*1*) The mercury feedrate limit is the emission standard divided by [1 − system removal efficiency].

(*2*) The mercury feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of mercury in hazardous waste feedstreams per million Btu of hazardous waste fired.

(*3*) You must comply with the hazardous waste mercury thermal concentration limit by determining the feedrate of mercury in all hazardous waste feedstreams (lb/hr) at least once a minute and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste mercury feedrate (lb/hr) / hazardous waste thermal feedrate (MM Btu/hr)].

(*4*) You must calculate a rolling average hazardous waste mercury thermal concentration that is updated each hour.

(*5*) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(C) If you burn hazardous waste with a heating value of less than 10,000 Btu/lb, you must calculate the mercury feedrate limit as follows:

(*1*) You must calculate the mercury feedrate limit as the mercury emission standard divided by [1 − System Removal Efficiency].

(*2*) The feedrate limit is expressed as a mass concentration per unit volume of stack gas (μg/dscm) and is converted to a mass feedrate (lb/hr) by multiplying it by the average stack gas flowrate of the test run averages.

(*3*) You must comply with the feedrate limit by determining the mercury feedrate (lb/hr) at least once a minute to calculate a 60-minute average feedrate.

(*4*) You must update the rolling average feedrate each hour with this 60-minute feedrate measurement.

(*5*) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(D) If your boiler is equipped with a wet scrubber, you must comply with the following unless you document in the performance test plan that you do not feed chlorine at rates that may substantially affect the system removal efficiency of mercury for purposes of establishing a mercury feedrate limit based on the system removal efficiency during the test:

(*1*) Scrubber blowdown must be minimized during a pretest conditioning period and during the performance test:

(*2*) Scrubber water must be preconditioned so that mercury in the

water is at equilibrium with stack gas at the mercury feedrate level of the performance test; and

(3) You must establish an operating limit on minimum pH of scrubber water as the average of the test run averages and comply with the limit on an hourly rolling average.

(iii) For cement kilns:

(A) When complying with the emission standards under §§ 63.1220(a)(2)(i) and (b)(2)(i), you must:

(1) Comply with the mercury hazardous waste feed concentration operating requirement on a twelve-hour rolling average;

(2) Monitor and record in the operating record the as-fired mercury concentration in the hazardous waste (or the weighted-average mercury concentration for multiple hazardous waste feedstreams);

(3) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the as-fired mercury concentration operating requirement is exceeded;

(B) When complying with the emission standards under §§ 63.1204, 63.1220(a)(2)(ii) and (b)(2)(ii), you must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages;

(C) Except as provided by paragraph (l)(1)(iii)(D) of this section, when complying with the hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) under §§ 63.1220(a)(2)(iii) and (b)(2)(iii), you must:

(1) Comply with the MTEC operating requirement on a twelve-hour rolling average;

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

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

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

(5) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the MTEC operating requirement is exceeded;

(D) In lieu of complying with paragraph (l)(1)(iii)(C) of this section, you may:

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iii)(B)(4) of this section is below the operating requirement under paragraphs §§ 63.1220(a)(2)(iii) and (b)(2)(iii); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iv)(D)(1) of this section.

(iv) For lightweight aggregate kilns:

(A) When complying with the emission standards under §§ 63.1205, 63.1221(a)(2)(i) and (b)(2)(i), you must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages;

(B) Except as provided by paragraph (l)(1)(iv)(C) of this section, when complying with the hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) under §§ 63.1221(a)(2)(ii) and (b)(2)(ii), you must:

(1) Comply with the MTEC operating requirement on a twelve-hour rolling average;

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

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

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

(5) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when the MTEC operating requirement is exceeded;

(C) In lieu of complying with paragraph (l)(1)(iv)(B) of this section, you may:

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iv)(B)(4) of this section is below the operating requirement under paragraphs §§ 63.1221(a)(2)(ii) and (b)(2)(ii); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iv)(C)(1) of this section.

(v) *Extrapolation of feedrate levels.* In lieu of establishing mercury feedrate limits as specified in paragraphs (l)(1)(i) through (iv) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207 (e) and (f) to use the mercury feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. The extrapolation methodology will be reviewed and approved, as warranted, by the Administrator. The review will consider in particular whether:

(A) Performance test metal feedrates are appropriate (*i.e.*, whether feedrates are at least at normal levels; depending on the heterogeneity of the waste, whether some level of spiking would be appropriate; and whether the physical form and species of spiked material is appropriate); and

(B) Whether the extrapolated feedrates you request are warranted considering historical metal feedrate data.

* * * * *

(m) * * *

(1) * * *

(iv) *Other particulate matter control devices.* For each particulate matter control device that is not a fabric filter or high energy wet scrubber, or is not an electrostatic precipitator or ionizing wet scrubber for which you elect to monitor particulate matter loadings under § 63.1206(c)(9) of this chapter for process control, you must ensure that the control device is properly operated and maintained as required by § 63.1206(c)(7) and by monitoring the operation of the control device as follows:

* * * * *

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators, solid fuel boilers, and liquid fuel boilers must establish a maximum ash feedrate limit as a 12-hour rolling average based on the average of the test run averages. This requirement is waived, however, if you comply with the particulate matter detection system requirements under § 63.1206(c)(9).

(n) * * *

(2) *Maximum feedrate of semivolatile and low volatile metals.* (i) *General.* You must establish feedrate limits for semivolatile metals (cadmium and lead) and low volatile metals (arsenic, beryllium, and chromium) as follows, except as provided by paragraph (n)(2)(vii) of this section.

(ii) For incinerators, cement kilns, and lightweight aggregate kilns, when complying with the emission standards under §§ 63.1203, 63.1204, 63.1205, and 63.1219, and for solid fuel boilers when complying with the emission standards

under §63.1216, you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iii) *Cement kilns under § 63.1220*—(A) When complying with the emission standards under §§ 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the hazardous waste thermal concentrations for the runs.

(B) When complying with the emission standards under §§ 63.1220(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iv) *Lightweight aggregate kilns under § 63.1221*—(A) When complying with the emission standards under §§ 63.1221(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams as specified in paragraphs (n)(2)(iii)(A) of this section.

(B) When complying with the emission standards under §§ 63.1221(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(v) *Liquid fuel boilers under § 63.1217.* (A) *Semivolatile metals.* You must establish a rolling average limit for the semivolatile metal feedrate as follows on an averaging period not to exceed an annual rolling average.

(1) *System removal efficiency.* You must calculate a semivolatile metal system removal efficiency for each test run and calculate the average system removal efficiency of the test run averages. If emissions exceed the semivolatile metal emission standard during the comprehensive performance test, it is not a violation because the averaging period for the semivolatile metal emission standard is one year and compliance is based on compliance with the semivolatile metal feedrate limit that has an averaging period not to exceed an annual rolling average.

(2) *Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater.* You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 − System Removal Efficiency].

(*i*) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of semivolatile metals in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(*ii*) You must comply with the hazardous waste semivolatile metal thermal concentration limit by determining the feedrate of semivolatile metal in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste semivolatile metal feedrate (lb/hr) / hazardous waste thermal feedrate (MM Btu/hr)].

(*iii*) You must calculate a rolling average hazardous waste semivolatile metal thermal concentration that is updated each hour.

(*iv*) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(3) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* (*i*) You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 − System Removal Efficiency].

(*ii*) The feedrate limit is expressed as a mass concentration per unit volume of stack gas (μg/dscm) and is converted to a mass feedrate (lb/hr) by multiplying it by the average stack gas flowrate (dscm/hr) of the test run averages.

(*iii*) You must comply with the feedrate limit by determining the semivolatile metal feedrate (lb/hr) at least once a minute to calculate a 60-minute average feedrate.

(*iv*) You must update the rolling average feedrate each hour with this 60-minute feedrate measurement.

(*v*) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(B) *Chromium.* (1) *Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater.* (*i*) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(*ii*) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste chromium feedrate (lb/hr) / hazardous waste thermal feedrate (MM Btu/hr)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

(2) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages. You must update the rolling average feedrate each hour with a 60-minute average feedrate measurement.

(vi) *LVM limits for pumpable wastes.* You must establish separate feedrate limits for low volatile metals in pumpable feedstreams using the procedures prescribed above for total low volatile metals. Dual feedrate limits for both pumpable and total feedstreams are not required, however, if you base the total feedrate limit solely on the feedrate of pumpable feedstreams.

(vii) *Extrapolation of feedrate levels.* In lieu of establishing feedrate limits as specified in paragraphs (l)(1)(i) through (iii) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207(e) and (f) to use the semivolatile metal and low

volatile metal feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. The extrapolation methodology will be reviewed and approved, as warranted, by the Administrator. The review will consider in particular whether:

(A) Performance test metal feedrates are appropriate (*i.e.*, whether feedrates are at least at normal levels; depending on the heterogeneity of the waste, whether some level of spiking would be appropriate; and whether the physical form and species of spiked material is appropriate); and

(B) Whether the extrapolated feedrates you request are warranted considering historical metal feedrate data.

* * * * *

(o) *Hydrogen chloride and chlorine gas.* * * *

(1) *Feedrate of total chlorine and chloride.* (i) *Incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, and hydrochloric acid production furnaces.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

(ii) *Liquid fuel boilers.* (A) *Boilers that feed hazardous waste with a heating value not less than 10,000 Btu/lb.* (*1*) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chlorine (organic and inorganic) in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(*2*) You must establish a 12-hour rolling average feedrate limit as the average of the test run averages.

(*3*) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine (organic and inorganic) content and heating value (million Btu/lb) of hazardous waste feedstreams at all times to calculate a 60-minute average feedrate measurement as [hazardous waste chlorine feedrate (lb/hr) / hazardous waste thermal feedrate (million Btu/hr)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

(B) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages. You must update the rolling average feedrate each hour with a 60-minute average feedrate measurement.

* * * * *

(r) *Averaging periods.* The averaging periods specified in this section for operating parameters are not-to-exceed averaging periods. You may elect to use shorter averaging periods. For example, you may elect to use a 1-hour rolling average rather than the 12-hour rolling average specified in paragraph (l)(1)(i) of this section for mercury.

■ 12. Section 63.1210 is amended by:
■ a. Revising the table in paragraph (a)(1) and the table in paragraph (a)(2).
■ b. Redesignating paragraph (b) as (d).
■ c. Adding new paragraph (b).
■ d. Adding new paragraph (c).

The revisions and additions 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)(7)(ii)(C)	Notification of excessive bag leak 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).

(2) * * *

Reference	Notification, request, petition, or application 6
63.9(i)	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.
63.10(e)(3)(ii)	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f)	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii), 63.1220(d)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii), 63.1220(e)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c)	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C)	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(8)(iii)(B)	If you elect to conduct particulate matter CEMS correlation testing and wish to have federal particulate matter and opacity standards and associated operating limits waived during the testing, you must notify the Administrator by submitting the correlation test plan for review and approval.
63.1206(b)(8)(v)	You may request approval to have the particulate matter and opacity standards and associated operating limits and conditions waived for more than 96 hours for a correlation test.

Reference	Notification, request, petition, or application 6
63.1206(b)(9)	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(10)	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(14)	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15)	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C)	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C)	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D)	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2)	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3)	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.
63.1207(e)(3), 63.7(h)	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2)	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D)	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v)	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i)	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4)	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3)	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f)	You may request: (1) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (2) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1)	You may request approval of: (1) Alternatives to operating parameter monitoring requirements, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (2) a waiver of an operating parameter limit.
63.1209(l)(1)	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d)	You may request to use data compression techniques to record data on a less frequent basis than required by § 63.1209.

(b) *Notification of intent to comply (NIC).* These procedures apply to sources that have not previously complied with the requirements of paragraph (b) of this section, and to sources that previously complied with the NIC requirements of § 63.1210, which were in effect prior to October 11, 2000, that must make a technology change requiring a Class 1 permit modification to meet the standards of §§ 63.1219, 63.1220, and 63.1221.

(1) You must prepare a Notification of Intent to Comply that includes all of the following information:

(i) General information:

(A) The name and address of the owner/operator and the source;

(B) Whether the source is a major or an area source;

(C) Waste minimization and emission control technique(s) being considered;

(D) Emission monitoring technique(s) you are considering;

(E) Waste minimization and emission control technique(s) effectiveness;

(F) A description of the evaluation criteria used or to be used to select waste minimization and/or emission control technique(s); and

(G) A general description of how you intend to comply with the emission standards of this subpart.

(ii) As applicable to each source, information on key activities and estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. You must include all of the following key activities and dates in your NIC:

(A) The dates by which you anticipate you will develop engineering designs for emission control systems or process changes for emissions;

(B) The date by which you anticipate you will commit internal or external resources for installing emission control systems or making process changes for emission control, or the date by which you will issue orders for the purchase of component parts to accomplish emission control or process changes.

(C) The date by which you anticipate you will submit construction applications;

(D) The date by which you anticipate you will initiate on-site construction, installation of emission control equipment, or process change;

(E) The date by which you anticipate you will complete on-site construction, installation of emission control equipment, or process change; and

(F) The date by which you anticipate you will achieve final compliance. The individual dates and milestones listed in paragraphs (b)(1)(ii)(A) through (F) of this section as part of the NIC are not requirements and therefore are not

enforceable deadlines; the requirements of paragraphs (b)(1)(ii)(A) through (F) of this section must be included as part of the NIC only to inform the public of how you intend to comply with the emission standards of this subpart.

(iii) A summary of the public meeting required under paragraph (c) of this section;

(iv) If you intend to cease burning hazardous waste prior to or on the compliance date, the requirements of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section do not apply. You must include in your NIC a schedule of key dates for the steps to be taken to stop hazardous waste activity at your combustion unit. Key dates include the date for submittal of RCRA closure documents required under subpart G, part 264 or subpart G, part 265 of this chapter.

(2) You must make a draft of the NIC available for public review no later than 30 days prior to the public meeting required under paragraph (c)(1) of this section or no later than 9 months after the effective date of the rule if you intend to cease burning hazardous waste prior to or on the compliance date.

(3) You must submit the final NIC to the Administrator no later than one year following the effective date of the emission standards of this subpart.

(c) *NIC public meeting and notice.* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart, you must hold at least one informal meeting with the public to discuss anticipated activities described in the draft NIC for achieving compliance with the emission standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses;

(2) You must submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the Administrator as part of the final NIC, in accordance with paragraph (b)(1)(iii) of this section;

(3) You must provide public notice of the NIC meeting at least 30 days prior to the meeting and you must maintain, and provide to the Administrator upon request, documentation of the notice. You must provide public notice in all of the following forms:

(i) *Newspaper advertisement.* You must publish a notice in a newspaper of general circulation in the county or equivalent jurisdiction of your facility. In addition, you must publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdiction where such publication would be necessary to inform the affected public. You must publish the notice as a display advertisement.

(ii) *Visible and accessible sign.* You must post a notice on a clearly marked sign at or near the source. If you place the sign on the site of the hazardous waste combustor, the sign must be large enough to be readable from the nearest spot where the public would pass by the site.

(iii) *Broadcast media announcement.* You must broadcast a notice at least once on at least one local radio station or television station.

(iv) *Notice to the facility mailing list.* You must provide a copy of the notice to the facility mailing list in accordance with § 124.10(c)(1)(ix) of this chapter.

(4) You must include all of the following in the notices required under paragraph (c)(3) of this section:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the source and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the source location;

(iv) A statement encouraging people to contact the source at least 72 hours before the meeting if they need special access to participate in the meeting;

(v) A statement describing how the draft NIC (and final NIC, if requested) can be obtained; and

(vi) The name, address, and telephone number of a contact person for the NIC.

(5) The requirements of this paragraph do not apply to sources that intend to cease burning hazardous waste prior to or on the compliance date.

■ 13. Section 63.1211 is amended by:

■ a. Revising the table in paragraph (b).

■ b. Revising paragraph (c)(1).

The revisions read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

* * * * *

(b) * * *

Reference	Document, Data, or Information
63.1200, 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii), 63.1220(d)(1)(ii)	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii), 63.1220(d)(2)(ii)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii), 63.1220(e)(2)(ii)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii)	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11)	Calculation of hazardous waste residence time.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A)	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(c)(2)	Feedstream analysis plan.

Reference	Document, Data, or Information
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.
63.1209(k)(7)(i)(C)	Results of carbon bed performance monitoring.
63.1209(q)	Documentation of changes in modes of operation.
63.1211(c)	Documentation of compliance.

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date. Upon inclusion of the Documentation of Compliance in the operating record, hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns regulated under the interim standards of §§ 63.1203, 63.1204, and 63.1205 are no longer subject to compliance with the previously applicable Notification of Compliance.

* * * * *

■ 14. Section 63.1212 is added to subpart EEE to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC?

(a) *Certification of intent to comply.* The Notice of Intent to Comply (NIC) must contain the following certification signed and dated by a responsible official as defined under § 63.2 of this chapter: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) *New units.* Any source that files a RCRA permit application or permit modification request for construction of a hazardous waste combustion unit after October 12, 2005 must:

(1) Prepare a draft NIC according to § 63.1210(b) and make it available to the public upon issuance of the notice of NIC public meeting per § 63.1210(c)(3);

(2) Prepare a draft comprehensive performance test plan pursuant to the requirements of § 63.1207 and make it available for public review upon issuance of the notice of NIC public meeting;

(3) Provide notice to the public of a pre-application meeting pursuant to § 124.30 or notice to the public of a permit modification request pursuant to § 270.42 and;

(4) Hold an informal public meeting 30 days following notice of NIC public meeting and notice of the pre-application meeting or notice of the permit modification request.

(c) *Information Repository specific to new combustion units.* (1) Any source that files a RCRA permit application or modification request for construction of a new hazardous waste combustion unit after October 12, 2005 may be required to establish an information repository if deemed appropriate.

(2) The Administrator may assess the need, on a case-by-case basis for an information repository. When assessing the need for a repository, the Administrator shall consider the level of public interest, the presence of an existing repository, and any information available via the New Source Review and Title V permit processes. If the Administrator determines a need for a repository, then the Administrator shall notify the facility that it must establish and maintain an information repository.

(3) The information repository shall contain all documents, reports, data, and information deemed necessary by the Administrator. The Administrator shall have the discretion to limit the contents of the repository.

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

(5) The Administrator shall require the source to provide a written notice about the information repository to all individuals on the source mailing list.

(6) The source shall be responsible for maintaining and updating the repository with appropriate information throughout a period specified by the Administrator. The Administrator may close the repository at his or her discretion based on the considerations in paragraph (c)(2) of this section.

■ 15. Section 63.1214 is amended by revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 63.1214 Implementation and enforcement.

* * * * *

(c) * * *

(1) Approval of alternatives to requirements in §§ 63.1200, 63.1203, 63.1204, 63.1205, 63.1206(a), 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221.

(2) Approval of major alternatives to test methods under §§ 63.7(e)(2)(ii) and (f), 63.1208(b), and 63.1209(a)(1), as defined under § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under §§ 63.8(f) and 63.1209(a)(5), as defined under § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under §§ 63.10(f) and 63.1211(a) through (c), as defined under § 63.90, and as required in this subpart.

■ 16. Section § 63.1215 is added to subpart EEE to read as follows:

§ 63.1215 What are the health-based compliance alternatives for total chlorine?

(a) *General.* (1) *Overview.* You may establish and comply with health-based compliance alternatives for total chlorine under the procedures prescribed in this section for your hazardous waste combustors other than hydrochloric acid production furnaces. You may comply with these health-based compliance alternatives in lieu of the emission standards for total chlorine provided under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. To identify and comply with the limits, you must:

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride ($Cl^{(-)}$) equivalent for each on-site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(4) of this section;

(ii) Apportion the total chlorine emission concentration between HCl and Cl_2 according to paragraph (b)(6)(i) of this section, and calculate HCl and Cl_2 emission rates (lb/hr) using the gas flowrate and other parameters from the most recent regulatory compliance test.

(iii) Calculate the annual average HCl-equivalent emission rate as prescribed in paragraph (b)(2) of this section.

(iv) Perform an eligibility demonstration to determine if your HCl-equivalent emission rate meets the national exposure standard and thus is below the annual average HCl-equivalent emission rate limit, as prescribed by paragraph (c) of this section;

(v) Submit your eligibility demonstration for review and approval, as prescribed by paragraph (e) of this section, which must include information to ensure that the 1-hour average HCl-equivalent emission rate limit is not exceeded, as prescribed by paragraph (d) of this section;

(vi) Demonstrate compliance with the annual average HCl-equivalent emission rate limit during the comprehensive performance test, as prescribed by the testing and monitoring requirements under paragraph (e) of this section;

(vii) Comply with compliance monitoring requirements, including establishing feedrate limits on total chlorine and chloride, and operating parameter limits on emission control equipment, as prescribed by paragraph (f) of this section; and

(viii) Comply with the requirements for changes, as prescribed by paragraph (h) of this section.

(2) *Definitions.* In addition to the definitions under § 63.1201, the following definitions apply to this section:

1-Hour Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using 1-hour RELs as the health risk metric for acute exposure.

1-Hour Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using 1-hour RELs as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Acute Reference Exposure Level (aREL) means health thresholds below which there would be no adverse health effects for greater than once in a lifetime exposures of one hour. ARELs are developed by the California Office of Health Hazard Assessment and are available at *http://www.oehha.ca.gov/air/acute_rels/acuterel.html.*

Annual Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure.

Annual Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure and which ensures that maximum annual average ambient concentrations of HCl equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Hazard Index (HI) means the sum of more than one Hazard Quotient for multiple substances and/or multiple exposure pathways. In this section, the Hazard Index is the sum of the Hazard Quotients for HCl and chlorine.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For chronic inhalation exposures, the HQ is calculated under this section as the air concentration divided by the RfC. For acute inhalation exposures, the HQ is calculated under this section as the air concentration divided by the aREL.

Look-up table analysis means a risk screening analysis based on comparing the HCl-equivalent emission rate from the affected source to the appropriate HCl-equivalent emission rate limit specified in Tables 1 through 4 of this section.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

(b) *HCl-equivalent emission rates.* (1) You must express total chlorine emission rates for each hazardous waste combustor as HCl-equivalent emission rates.

(2) *Annual average rates.* You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$ER_{LTtw} = ER_{HCl} + ER_{Cl2} \times (RfC_{HCl}/RfC_{Cl2})$

Where:

ER_{LTtw} is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl2} is the emission rate of chlorine in lbs/hr

RfC_{HCl} is the reference concentration of HCl

RfC_{Cl2} is the reference concentration of chlorine

(3) *1-hour average rates.* You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$ER_{STtw} = ER_{HCl} + ER_{Cl2} \times (aREL_{HCl}/aREL_{Cl2})$

Where:

ER_{STtw} is the 1-hour average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl2} is the emission rate of chlorine in lbs/hr

$aREL_{HCl}$ is the 1-hour Reference Exposure Level of HCl

$aREL_{Cl2}$ is the 1-hour Reference Exposure Level of chlorine

(4) You must use the RfC values for hydrogen chloride and chlorine found at *http://epa.gov/ttn/atw/toxsource/summary.html.*

(5) You must use the aREL values for hydrogen chloride and chlorine found at *http://www.oehha.ca.gov/air/acute_rels/acuterel.html.*

(6) *Cl_2/HCl ratios*—(i) *Ratio for calculating annual average HCl-equivalent emission rates.* (A) To calculate the annual average HCl-equivalent emission rate (lb/hr) for each combustor, you must apportion the total chlorine emission concentration (ppmv chloride ($Cl^{(-)}$) equivalent) between HCl and chlorine according to the historical average Cl_2/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl_2 emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the annual average HCl-equivalent emission rate using these HCl and Cl_2 emission rates and the equation in paragraph (b)(2) of this section.

(ii) *Ratio for calculating 1-hour average HCl-equivalent emission rates.* (A) To calculate the 1-hour average HCl-equivalent emission rate for each combustor as a criterion for you to determine under paragraph (d) of this section if an hourly rolling average feedrate limit on total chlorine and chloride may be waived, you must apportion the total chlorine emission concentration (ppmv chloride ($Cl^{(-)}$) equivalent) between HCl and chlorine

according to the historical highest Cl_2/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl_2 emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the 1-hour average HCl-equivalent emission rate using the se HCl and Cl_2 emission rates and the equation in paragraph (b)(3) of this section.

(iii) *Ratios for new sources.* (A) You must use engineering information to estimate the Cl_2/HCl volumetric ratio for a new source for the initial eligibility demonstration.

(B) You must use the Cl_2/HCl volumetric ratio demonstrated during the initial comprehensive performance test to demonstrate in the Notification of Compliance that your HCl-equivalent emission rate does not exceed your HCl-equivalent emission rate limit.

(C) When approving the test plan for the initial comprehensive performance test, the permitting authority will establish a periodic testing requirement, such as every 3 months for 1 year, to establish a record of representative Cl_2/HCl volumetric ratios.

(*1*) You must revise your HCl-equivalent emission rates and HCl-equivalent emission rate limits after each such test using the procedures prescribed in paragraphs (b)(6)(i) and (ii) of this section.

(*2*) If you no longer are eligible for the health-based compliance alternative, you must notify the permitting authority immediately and either:

(*i*) Submit a revised eligibility demonstration requesting lower HCl-equivalent emission rate limits, establishing lower HCl-equivalent emission rates, and establishing by downward extrapolation lower feedrate limits for total chlorine and chloride; or

(*ii*) Request a compliance schedule of up to three years to demonstrate compliance with the emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221.

(iv) *Unrepresentative or inadequate historical Cl_2/HCl volumetric ratios.* (A) If you believe that the Cl_2/HCl volumetric ratio for one or more historical regulatory compliance tests is not representative of the current ratio, you may request that the permitting authority allow you to screen those ratios from the analysis of historical ratios.

(B) If the permitting authority believes that too few historical ratios are available to calculate a representative average ratio or establish a maximum ratio, the permitting authority may require you to conduct periodic testing to establish representative ratios.

(v) *Updating Cl_2/HCl ratios.* You must include the Cl_2/HCl volumetric ratio demonstrated during each performance test in your data base of historical Cl2/HCl ratios to update the ratios you establish under paragraphs (b)(6)(i) and (ii) of this section for subsequent calculations of the annual average and 1-hour average HCl-equivalent emission rates.

(7) *Emission rates are capped.* The hydrogen chloride and chlorine emission rates you use to calculate the HCl-equivalent emission rate limit for incinerators, cement kilns, and lightweight aggregate kilns must not result in total chlorine emission concentrations exceeding:

(i) For incinerators that were existing sources on April 19, 1996: 77 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) For incinerators that are new or reconstructed sources after April 19, 1996: 21 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(iii) For cement kilns that were existing sources on April 19, 1996: 130 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(iv) For cement kilns that are new or reconstructed sources after April 19, 1996: 86 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(v) For lightweight aggregate kilns that were existing sources on April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(vi) For lightweight aggregate kilns that are new or reconstructed sources after April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen.

(c) *Eligibility demonstration*—(1) *General.* (i) You must perform an eligibility demonstration to determine whether the total chlorine emission rates you select for each on-site hazardous waste combustor meet the national exposure standards using either a look-up table analysis prescribed by paragraph (c)(3) of this section, or a site-specific compliance demonstration prescribed by paragraph (c)(4) of this section.

(ii) You must also determine in your eligibility demonstration whether each combustor may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average limit on the feedrate of total chlorine and chloride, as provided by paragraph (d) of this section.

(2) *Definition of eligibility.* (i) Eligibility for the risk-based total chlorine standard is determined by comparing the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor to the annual average HCl-equivalent emission rate limit.

(ii) The annual average HCl-equivalent emission rate limit ensures that the Hazard Index for chronic exposure from HCl and chlorine emissions from all on-site hazardous waste combustors is less than or equal to 1.0, rounded to the nearest tenths decimal place (0.1), 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.

(iii) Your facility is eligible for the health-based compliance alternative for total chlorine if either:

(A) The annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the appropriate value in the look-up table determined under paragraph (c)(3) of this section; or

(B) The annual average HCl-equivalent emission rate for each on-site hazardous waste combustor is below the annual average HCl-equivalent emission rate limit you calculate based on a site-specific compliance demonstration under paragraph (c)(4) of this section.

(3) *Look-up table analysis.* Look-up tables for the eligibility demonstration are provided as Tables 1 and 2 to this section.

(i) Table 1 presents annual average HCl-equivalent emission rate limits for sources located in flat terrain. For purposes of this analysis, flat terrain is terrain that rises to a level not exceeding one half the stack height within a distance of 50 stack heights.

(ii) Table 2 presents annual average HCl-equivalent emission rate limits for sources located in simple elevated terrain. For purposes of this analysis, simple elevated terrain is terrain that rises to a level exceeding one half the stack height, but that does not exceed the stack height, within a distance of 50 stack heights.

(iii) To determine the annual average HCl-equivalent emission rate limit for a

source from the look-up table, you must use the stack height and stack diameter for your hazardous waste combustors and the distance between the stack and the property boundary.

(iv) If any of these values for stack height, stack diameter, and distance to nearest property boundary do not match the exact values in the look-up table, you must use the next lowest table value.

(v) *Adjusted HCl-equivalent emission rate limit for multiple on-site combustors.* (A) If you have more than one hazardous waste combustor on site, the sum across all hazardous waste combustors of the ratio of the adjusted HCl-equivalent emission rate limit to the HCl-equivalent emission rate limit provided by Tables 1 or 2 cannot exceed 1.0, according to the following equation:

$$\sum_{i=1}^{n} \frac{\text{HCl-Equivalent Emission Rate Limit Adjusted}_i}{\text{HCl-Equivalent Emission Rate Limit Table}_i} \leq 1.0$$

Where:

i = number of on-site hazardous waste combustors;

HCl-Equivalent Emission Rate Limit Adjusted$_i$ means the apportioned, allowable HCl-equivalent emission rate limit for combustor i, and

HCl-Equivalent Emission Rate Limit Table$_i$ means the HCl-equivalent emission rate limit from Table 1 or 2 to § 63.1215 for combustor *i*.

(B) The adjusted HCl-equivalent emission rate limit becomes the HCl-equivalent emission rate limit.

(4) *Site-specific compliance demonstration.* (i) You may use any scientifically-accepted peer-reviewed risk assessment methodology for your site-specific compliance demonstration to calculate an annual average HCl-equivalent emission rate limit for each on-site hazardous waste combustor. An example of one approach for performing the demonstration for air toxics can be found in the EPA's "Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document," which may be obtained through the EPA's Air Toxics Web site at *http://www.epa.gov/ttn/fera/risk_atra_main.html.*

(ii) The annual average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum annual average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1).

(iii) To determine the annual average HCl-equivalent emission rate limit, your site-specific compliance demonstration must, at a minimum:

(A) Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations;

(B) Estimate the inhalation exposure for the actual individual most exposed to the facility's emissions from hazardous waste combustors, considering off-site locations where people reside and where people congregate for work, school, or recreation;

(C) Use site-specific, quality-assured data wherever possible;

(D) Use health-protective default assumptions wherever site-specific data are not available, and:

(E) Contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

(iv) Your site-specific compliance demonstration need not:

(A) Assume any attenuation of exposure concentrations due to the penetration of outdoor pollutants into indoor exposure areas;

(B) Assume any reaction or deposition of the emitted pollutants during transport from the emission point to the point of exposure.

(d) *Assurance that the 1-hour HCl-equivalent emission rate limit will not be exceeded.* To ensure that the 1-hour HCl-equivalent emission rate limit will not be exceeded when complying with the annual average HCl-equivalent emission rate limit, you must establish a 1-hour average HCl-equivalent emission rate for each combustor, establish a 1-hour average HCl-equivalent emission rate limit for each combustor, and consider site-specific factors including prescribed criteria to determine if the 1-hour average HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride. If the 1-hour average HCl-equivalent emission rate limit may be exceeded, you must establish an hourly rolling average feedrate limit on total chlorine as provided by paragraph (f)(3) of this section.

(1) *1-hour average HCl-equivalent emission rate.* You must calculate the 1-hour average HCl-equivalent emission rate from the total chlorine emission concentration you select for each source as prescribed in paragraph (b)(6)(ii)(C) of this section.

(2) *1-hour average HCl-equivalent emission rate limit.* You must establish the 1-hour average HCl-equivalent emission rate limit for each affected source using either a look-up table analysis or site-specific analysis:

(i) *Look-up table analysis.* Look-up tables are provided for 1-hour average HCl-equivalent emission rate limits as Table 3 and Table 4 to this section. Table 3 provides limits for facilities located in flat terrain. Table 4 provides limits for facilities located in simple elevated terrain. You must use the Tables to establish 1-hour average HCl-equivalent emission rate limits as prescribed in paragraphs (c)(3)(iii) through (c)(3)(v) of this section for annual average HCl-equivalent emission rate limits.

(ii) *Site-specific analysis.* The 1-hour average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum 1-hour average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1). You must follow the risk assessment procedures under paragraph (c)(4) of this section to estimate short-term inhalation exposures through the estimation of maximum 1-hour average ambient concentrations.

(3) *Criteria for determining whether the 1-hour HCl-equivalent emission rate may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride.* An hourly rolling average feedrate limit on total chlorine and chloride is waived if you determine considering the criteria listed below that the long-term feedrate limit (and averaging period) established under paragraph (c)(4)(i) of this section will also ensure that the 1-hour average HCl-equivalent emission rate will not exceed the 1-hour average HCl-equivalent emission rate limit you calculate for each combustor.

(i) The ratio of the 1-hour average HCl-equivalent emission rate based on the total chlorine emission rate you select for each hazardous waste combustor to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(ii) The potential for the source to vary total chlorine and chloride

feedrates substantially over the averaging period for the feedrate limit established under paragraph (c)(4)(i) of this section.

(e) *Review and approval of eligibility demonstrations*—(1) *Content of the eligibility demonstration*—(i) *General.* The eligibility demonstration must include the following information, at a minimum:

(A) Identification of each hazardous waste combustor combustion gas emission point (e.g., generally, the flue gas stack);

(B) The maximum and average capacity at which each combustor will operate, and the maximum rated capacity for each combustor, using the metric of stack gas volume (under both actual and standard conditions) emitted per unit of time, as well as any other metric that is appropriate for the combustor (e.g., million Btu/hr heat input for boilers; tons of dry raw material feed/hour for cement kilns);

(C) Stack parameters for each combustor, including, but not limited to stack height, stack diameter, stack gas temperature, and stack gas exit velocity;

(D) Plot plan showing all stack emission points, nearby residences and property boundary line;

(E) Identification of any stack gas control devices used to reduce emissions from each combustor;

(F) Identification of the RfC values used to calculate annual average HCl-equivalent emission rates and the aREL values used to calculate 1-hour average HCl-equivalent emission rates;

(G) Calculations used to determine the annual average and 1-hour average HCl-equivalent emission rates and rate limits, including calculation of the Cl_2/HCl ratios as prescribed by paragraph (b)(6) of this section;

(ii) *Additional content to implement the annual average HCl-equivalent emission rate limit.* You must include the following in your eligibility demonstration to implement the annual average HCl-equivalent emission rate limit:

(A) For incinerators, cement kilns, and lightweight aggregate kilns, calculations to confirm that the annual average HCl-equivalent emission rate that you calculate from the total chlorine emission rate you select for each combustor does not exceed the limits provided by paragraph (b)(7) of this section;

(B) Comparison of the annual average HCl-equivalent emission rate limit for each combustor to the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor;

(C) The annual average HCl-equivalent emission rate limit for each hazardous waste combustor, and the limits on operating parameters required under paragraph (g)(1) of this section;

(D) Determination of the long-term chlorine feedrate limit, including the total chlorine system removal efficiency for sources that establish an (up to) annual rolling average feedrate limit under paragraph (g)(2)(ii) of this section;

(iii) *Additional content to implement the 1-hour average HCl-equivalent emission rate limit.* You must include the following in your eligibility demonstration to implement the 1-hour average HCl-equivalent emission rate limit:

(A) Determination of whether the combustor may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average chlorine feedrate limit, including:

(1) Determination of the 1-hour average HCl-equivalent emission rate from the total chlorine emission rate you select for the combustor;

(2) Determination of the 1-hour average HCl-equivalent emission rate limit using either look-up Tables 3 and 4 to this section or site-specific risk analysis;

(3) Determination of the ratio of the 1-hour average HCl-equivalent emission rate to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(4) The potential for the source to vary total chlorine and chloride feedrates substantially over the averaging period for the long-term feedrate limit established under paragraphs (g)(2)(i) and (g)(2)(ii) of this section; and

(B) Determination of the hourly rolling average chlorine feedrate limit, including the total chlorine system removal efficiency.

(iv) *Additional content of a look-up table demonstration.* If you use the look-up table analysis to establish HCl-equivalent emission rate limits, your eligibility demonstration must also contain, at a minimum, the following:

(A) Documentation that the facility is located in either flat or simple elevated terrain; and

(B) For facilities with more than one on-site hazardous waste combustor, documentation that the sum of the ratios for all such combustors of the HCl-equivalent emission rate to the HCl-equivalent emission rate limit does not exceed 1.0.

(v) *Additional content of a site-specific compliance demonstration.* If you use a site-specific compliance demonstration, your eligibility demonstration must also contain, at a minimum, the following information to support your determination of the annual average HCl-equivalent emission rate limit for each combustor:

(A) Identification of the risk assessment methodology used;

(B) Documentation of the fate and transport model used;

(C) Documentation of the fate and transport model inputs, including the stack parameters listed in paragraph (d)(1)(i)(C) of this section converted to the dimensions required for the model;

(D) As applicable:

(1) Meteorological data;

(2) Building, land use, and terrain data;

(3) Receptor locations and population data, including areas where people congregate for work, school, or recreation; and

(4) Other facility-specific parameters input into the model;

(E) Documentation of the fate and transport model outputs; and

(F) Documentation of any exposure assessment and risk characterization calculations.

(2) *Review and approval*—(i) *Existing sources.* (A) If you operate an existing source, you must submit the eligibility demonstration to your permitting authority for review and approval not later than 12 months prior to the compliance date. You must also submit a separate copy of the eligibility demonstration to: U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), Attn: Group Leader, Research Triangle Park, North Carolina 27711, electronic mail address *REAG@epa.gov.*

(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 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 nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration.

(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 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.

(ii) *New or reconstructed sources.* (A) *General.* The procedures for review and approval of eligibility demonstrations applicable to existing sources under paragraph (e)(2)(i) of this section also apply to new or reconstructed sources, except that the date you must submit the eligibility demonstration is as prescribed in this paragraph (e)(2)(ii).

(B) If you operate a new or reconstructed source that starts up before April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before April 12, 2007, you must either:

(*1*) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221, by October 12, 2005, or upon startup, whichever is later, except for a standard that is more stringent than the standard proposed on April 20, 2004 for your source. If a final standard is more stringent than the proposed standard, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(*2*) Submit an eligibility demonstration for review and approval under this section by April 12, 2006, and comply with the HCl-equivalent emission rate limits and operating requirements you establish in the eligibility demonstration.

(C) If you operate a new or reconstructed source that starts up on or after April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP on or after April 12, 2007, you must either:

(*1*) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221 upon startup. If the final standard is more stringent than the standard proposed for your source on April 20, 2004, however, and if you start operations before October 14, 2008, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(*2*) Submit an eligibility demonstration for review and approval under this section 12 months prior to startup.

(f) *Testing requirements*—(1) *General.* You must comply with the requirements for comprehensive performance testing under § 63.1207.

(2) *System removal efficiency.* (i) You must calculate the total chlorine removal efficiency of the combustor during each run of the comprehensive performance test.

(ii) You must calculate the average system removal efficiency as the average of the test run averages.

(iii) If your source does not control emissions of total chlorine, you must assume zero system removal efficiency.

(3) *Annual average HCl-equivalent emission rate limit.* If emissions during the comprehensive performance test exceed the annual average HCl-equivalent emission rate limit, eligibility for emission limits under this section is not affected. This emission rate limit is an annual average limit even though compliance is based on a 12-hour or (up to) an annual rolling average feedrate limit on total chlorine and chloride because the feedrate limit is also used for compliance assurance for the semivolatile metal emission standard

(4) *1-hour average HCl-equivalent emission rate limit.* Total chlorine emissions during each run of the comprehensive performance test cannot exceed the 1-hour average HCl-equivalent emission rate limit.

(5) *Test methods.* (i) If you operate a cement kiln or a combustor equipped with a dry acid gas scrubber, you must use EPA Method 320/321 or ASTM D 6735–01, or an equivalent method, to measure hydrogen chloride, and the back-half (caustic impingers) of Method 26/26A, or an equivalent method, to measure chlorine gas.

(ii) *Bromine and sulfur considerations.* If you operate an incinerator, boiler, or lightweight aggregate kiln and your feedstreams contain bromine or sulfur during the comprehensive performance test at levels specified under paragraph (e)(2)(ii)(B) of this section, you must use EPA Method 320/321 or ASTM D 6735–01, or an equivalent method, to measure hydrogen chloride, and Method 26/26A, or an equivalent method, to measure chlorine and hydrogen chloride, and determine your chlorine emissions as follows:

(A) You must determine you chlorine emissions to be the higher of the value measured by Method 26/26A, or an equivalent method, or the value calculated by difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26a, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method.

(B) The procedures under paragraph (f)(2)(ii) of this section for determining hydrogen chloride and chlorine emissions apply if you feed bromine or sulfur during the performance test at the levels specified in this paragraph (f)(5)(ii)(B):

(*1*) If the bromine/chlorine ratio in feedstreams is greater than 5 percent by mass; or

(*2*) If the sulfur/chlorine ratio in feedstreams is greater than 50 percent by mass.

(g) *Monitoring requirements.* (1) *General.* You must establish and comply with limits on the same operating parameters that apply to sources complying with the MACT standard for total chlorine under § 63.1209(o), except that feedrate limits on total chlorine and chloride must be established according to paragraphs (g)(2) and (g)(3) of this section:

(2) *Feedrate limit to ensure compliance with the annual average HCl-equivalent emission rate limit.* (i) For sources subject to the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) to ensure compliance with the semivolatile metals standard:

(A) The feedrate limit (and averaging period) for total chlorine and chloride to ensure compliance with the annual average HCl-equivalent emission rate limit is the same as required by § 63.1209(n)(4), except as provided by paragraph (g)(2)(i)(B) of this section.

(B) The numerical value of the total chlorine and chloride feedrate limit (*i.e.*, not considering the averaging period) you establish under § 63.1209(n)(4) must not exceed the value you calculate as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency], where the system removal efficiency is calculated as prescribed by paragraph (f)(2) of this section.

(ii) For sources exempt from the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) because they comply with § 63.1207(m)(2), the feedrate limit for total chlorine and chloride to ensure compliance with the annual average HCl-equivalent emission rate must be established as follows:

(A) You must establish an average period for the feedrate limit that does not exceed an annual rolling average;

(B) The numerical value of the total chlorine and chloride feedrate limit (*i.e.*, not considering the averaging period) must not exceed the value you calculate as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency], where the system removal efficiency is calculated as prescribed by paragraph (f)(2) of this section.

(C) You must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(3) *Feedrate limit to ensure compliance with the 1-hour average HCl-equivalent emission rate limit.* (i) You must establish an hourly rolling average feedrate limit on total chlorine and chloride to ensure compliance with the 1-hour average HCl-equivalent emission rate limit unless you determine that the hourly rolling average feedrate limit is waived under paragraph (d) of this section.

(ii) You must calculate the hourly rolling average feedrate limit for total chlorine and chloride as the 1-hour average HCl-equivalent emission rate limit (lb/hr) divided by [1 − system removal efficiency], where the system removal efficiency is calculated as prescribed by paragraph (f)(2)(ii) of this section.

(h) *Changes*—(1) *Changes over which you have control.* (i) *Changes that would affect the HCl-equivalent emission rate limit.* (A) If you plan to change the design, operation, or maintenance of the facility in a manner than would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, you must submit to the permitting authority prior to the change a revised eligibility demonstration documenting the lower emission rate limits and calculations of reduced total chlorine and chloride feedrate limits.

(B) If you plan to change the design, operation, or maintenance of the facility in a manner than would increase the annual average or 1-hour average HCl-equivalent emission rate limit, and you elect to increase your total chlorine and chloride feedrate limits. You must also submit to the permitting authority prior to the change a revised eligibility demonstration documenting the increased emission rate limits and calculations of the increased feedrate limits prior to the change.

(ii) *Changes that could affect system removal efficiency.* (A) If you plan to change the design, operation, or maintenance of the combustor in a manner than could decrease the system removal efficiency, you are subject to the requirements of § 63.1206(b)(5) for conducting a performance test to reestablish the combustor's system removal efficiency and you must submit a revised eligibility demonstration documenting the lower system removal efficiency and the reduced feedrate limits on total chlorine and chloride.

(B) If you plan to change the design, operation, or maintenance of the combustor in a manner than could increase the system removal efficiency, and you elect to document the increased system removal efficiency to establish higher feedrate limits on total chlorine and chloride, you are subject to the requirements of § 63.1206(b)(5) for conducting a performance test to reestablish the combustor's system removal efficiency. You must also submit to the permitting authority a revised eligibility demonstration documenting the higher system removal efficiency and the increased feedrate limits on total chlorine and chloride.

(2) *Changes over which you do not have control that may decrease the HCl-equivalent emission rate limits.* These requirements apply if you use a site-specific risk assessment under paragraph (c)(4) of this section to demonstrate eligibility for the health-based limits.

(i) *Proactive review.* You must review the documentation you use in your eligibility demonstration every five years from the date of the comprehensive performance test and submit for review and approval with the comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, or a revised eligibility demonstration.

(ii) *Reactive review.* If in the interim between your comprehensive performance tests you have reason to know of changes that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, you must submit a revised eligibility demonstration as soon as practicable but not more frequently than annually.

(iii) *Compliance schedule.* If you determine that you cannot demonstrate compliance with a lower annual average HCl-equivalent emission rate limit during the comprehensive performance test because you need additional time to complete changes to the design or operation of the source, you may request that the permitting authority grant you additional time to make those changes as quickly as practicable.

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Table 1 of §63.1215: Annual Average HCl-Equivalent Emssion Rate Limits (lb/hr)—Flat Terrain

	Distance to property boundary (m)											
Stack Diameter = 0.3 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	3.7E-01	4.9E-01	7.3E-01	9.1E-01	1.6E+00	2.3E+00	4.1E+00	5.7E+00	6.1E+00	1.0E+01	1.6E+01	2.9E+01
10	1.0E+00	1.0E+00	1.1E+00	1.5E+00	2.1E+00	2.7E+00	4.8E+00	5.7E+00	6.5E+00	1.1E+01	1.8E+01	3.2E+01
20	2.3E+00	2.3E+00	2.3E+00	2.3E+00	2.7E+00	3.7E+00	5.6E+00	7.4E+00	1.0E+01	1.9E+01	2.9E+01	5.2E+01
30	4.1E+00	4.1E+00	4.1E+00	4.2E+00	4.7E+00	6.0E+00	9.5E+00	1.3E+01	1.8E+01	3.3E+01	4.8E+01	7.9E+01
50	1.2E+01	1.2E+01	1.2E+01	1.2E+01	1.3E+01	1.5E+01	2.0E+01	2.8E+01	3.8E+01	7.1E+01	1.0E+02	1.6E+02
Stack Diameter = 0.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	6.5E-01	9.3E-01	1.4E+00	1.8E+00	3.0E+00	4.4E+00	7.2E+00	9.2E+00	1.3E+01	1.5E+01	2.0E+01	3.4E+01
10	1.4E+00	1.4E+00	1.6E+00	2.1E+00	3.9E+00	5.4E+00	8.3E+00	1.0E+01	1.3E+01	1.7E+01	2.3E+01	3.8E+01
20	3.7E+00	3.7E+00	3.7E+00	3.9E+00	4.9E+00	6.5E+00	8.5E+00	1.0E+01	1.3E+01	2.2E+01	3.2E+01	5.5E+01
30	5.5E+00	5.5E+00	5.5E+00	5.5E+00	5.6E+00	6.7E+00	1.0E+01	1.4E+01	1.9E+01	3.4E+01	4.9E+01	8.1E+01
50	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.5E+01	2.1E+01	2.8E+01	3.9E+01	7.2E+01	1.0E+02	1.6E+02
Stack Diameter = 1.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.2E+00	3.6E+00	4.0E+00	5.4E+00	9.6E+00	1.3E+01	1.8E+01	2.3E+01	2.8E+01	4.5E+01	5.3E+01	6.5E+01
20	5.9E+00	5.9E+00	5.9E+00	6.1E+00	9.6E+00	1.3E+01	1.8E+01	2.3E+01	2.8E+01	4.5E+01	5.3E+01	7.5E+01
30	1.0E+01	1.0E+01	1.0E+01	1.0E+01	1.2E+01	1.3E+01	1.8E+01	2.3E+01	2.8E+01	4.5E+01	6.1E+01	9.3E+01
50	1.8E+01	1.8E+01	1.8E+01	1.8E+01	1.8E+01	1.8E+01	2.3E+01	3.1E+01	4.2E+01	7.7E+01	1.1E+02	1.7E+02
70	7.4E+01	7.4E+01	7.4E+01	7.4E+01	7.4E+01	7.4E+01	8.0E+01	1.0E+02	1.4E+02	2.1E+02	2.7E+02	4.0E+02
Stack Diameter = 1.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	4.1E+00	5.3E+00	6.4E+00	7.9E+00	1.3E+01	2.1E+01	2.7E+01	3.6E+01	4.6E+01	7.6E+01	9.1E+01	1.1E+02
20	7.6E+00	7.6E+00	7.6E+00	7.9E+00	1.3E+01	2.1E+01	2.7E+01	3.6E+01	4.6E+01	7.6E+01	9.1E+01	1.2E+02
30	1.3E+01	1.3E+01	1.3E+01	1.3E+01	1.6E+01	2.1E+01	2.7E+01	3.6E+01	4.8E+01	7.6E+01	9.1E+01	1.2E+02
50	2.3E+01	2.3E+01	2.3E+01	2.3E+01	2.3E+01	2.3E+01	2.7E+01	3.6E+01	4.8E+01	8.6E+01	1.2E+02	1.8E+02
70	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.1E+02	1.4E+02	1.8E+02	3.0E+02	4.0E+02	5.8E+02
Stack Diameter = 2.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	5.0E+00	6.3E+00	7.7E+00	9.8E+00	1.7E+01	2.8E+01	3.3E+01	4.4E+01	5.9E+01	1.0E+02	1.4E+02	1.6E+02
20	9.3E+00	9.3E+00	9.4E+00	1.0E+01	1.7E+01	2.8E+01	3.3E+01	4.4E+01	5.9E+01	1.0E+02	1.4E+02	1.8E+02
30	1.6E+01	1.6E+01	1.6E+01	1.6E+01	1.9E+01	2.8E+01	3.3E+01	4.4E+01	5.9E+01	1.0E+02	1.4E+02	1.8E+02
50	2.9E+01	2.9E+01	2.9E+01	2.9E+01	2.9E+01	2.9E+01	3.3E+01	4.4E+01	5.9E+01	1.0E+02	1.4E+02	2.0E+02
70	1.4E+02	1.4E+02	1.4E+02	1.4E+02	1.4E+02	1.4E+02	1.4E+02	1.8E+02	2.3E+02	3.4E+02	4.3E+02	6.4E+02
100	3.0E+02	3.0E+02	3.0E+02	3.0E+02	3.0E+02	3.0E+02	3.0E+02	3.0E+02	3.5E+02	5.2E+02	6.8E+02	9.2E+02
Stack Diameter = 3.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	6.5E+00	8.9E+00	7.7E+00	9.8E+00	2.2E+01	3.4E+01	5.4E+01	7.4E+01	9.8E+01	1.3E+02	1.6E+02	1.6E+02
20	1.6E+01	1.6E+01	1.7E+01	2.0E+01	2.5E+01	3.7E+01	5.6E+01	7.4E+01	9.8E+01	1.5E+02	2.1E+02	3.0E+02
30	2.0E+01	2.0E+01	2.0E+01	2.0E+01	2.5E+01	3.7E+01	5.6E+01	7.4E+01	9.8E+01	1.7E+02	2.2E+02	3.0E+02
50	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.4E+01	5.1E+01	5.6E+01	7.4E+01	9.8E+01	1.7E+02	2.2E+02	3.0E+02
70	2.3E+02	2.3E+02	2.3E+02	2.3E+02	2.3E+02	2.4E+02	2.4E+02	2.9E+02	3.6E+02	4.1E+02	5.0E+02	7.0E+02
100	3.5E+02	3.5E+02	3.5E+02	3.5E+02	3.5E+02	3.5E+02	3.5E+02	3.5E+02	3.9E+02	6.3E+02	7.5E+02	8.7E+02
Stack Diameter = 4.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
30	2.5E+01	2.5E+01	2.5E+01	2.5E+01	3.4E+01	5.6E+01	8.1E+01	1.1E+02	1.4E+02	2.2E+02	2.8E+02	4.3E+02
50	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.3E+01	6.2E+01	8.1E+01	1.1E+02	1.4E+02	2.4E+02	3.1E+02	4.4E+02
70	2.6E+02	2.6E+02	2.6E+02	2.6E+02	2.7E+02	2.8E+02	3.3E+02	4.6E+02	4.6E+02	5.0E+02	5.7E+02	7.7E+02
100	5.7E+02	5.7E+02	5.7E+02	5.7E+02	5.7E+02	5.7E+02	5.7E+02	5.7E+02	5.8E+02	8.6E+02	9.3E+02	1.1E+03

Table 2 of §63.1215: Annual Average HCl-Equivalent Emission Rate Limits (lbs/hr)—Simple Elevated Terrain

	Distance to property boundary (m)										
Stack Diameter = 0.3 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.3E-01	1.8E-01	2.5E-01	3.7E-01	6.4E-01	8.9E-01	1.4E+00	2.0E+00	3.1E+00	7.7E+00	1.3E+01	2.6E+01
10	3.8E-01	3.8E-01	4.4E-01	6.1E-01	6.4E-01	8.9E-01	1.4E+00	2.0E+00	3.1E+00	7.7E+00	1.3E+01	2.6E+01
20	1.1E+00	1.1E+00	1.1E+00	1.2E+00	1.2E+00	1.5E+00	2.3E+00	3.4E+00	5.2E+00	1.2E+01	2.0E+01	3.9E+01
30	2.4E+00	2.4E+00	2.4E+00	2.4E+00	2.7E+00	3.5E+00	4.2E+00	5.2E+00	7.0E+00	1.5E+01	2.6E+01	4.9E+01
50	7.7E+00	7.7E+00	7.7E+00	7.7E+00	7.7E+00	8.6E+00	8.6E+00	8.6E+00	8.6E+00	2.0E+01	3.4E+01	6.5E+01
Stack Diameter = 0.5 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.8E-01	2.6E-01	3.5E-01	5.6E-01	1.4E+00	1.6E+00	2.3E+00	3.4E+00	5.2E+00	9.6E+00	1.5E+01	2.8E+01
10	5.3E-01	5.3E-01	6.1E-01	8.5E-01	1.4E+00	1.6E+00	2.3E+00	3.4E+00	5.2E+00	9.6E+00	1.5E+01	2.8E+01
20	1.5E+00	1.5E+00	1.5E+00	1.5E+00	1.5E+00	1.6E+00	2.3E+00	3.4E+00	5.2E+00	1.2E+01	2.0E+01	3.9E+01
30	2.9E+00	2.9E+00	2.9E+00	2.9E+00	2.9E+00	3.5E+00	4.2E+00	5.5E+00	8.1E+00	1.7E+01	2.8E+01	5.2E+01
50	8.0E+00	8.0E+00	8.0E+00	8.0E+00	8.0E+00	8.8E+00	1.2E+01	1.2E+01	1.2E+01	2.3E+01	3.7E+01	6.9E+01
Stack Diameter = 1.0 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	9.7E-01	9.7E-01	1.1E+00	1.7E+00	3.7E+00	3.7E+00	4.2E+00	5.5E+00	7.5E+00	1.5E+01	2.3E+01	4.1E+01
20	2.7E+00	2.7E+00	2.7E+00	3.0E+00	3.7E+00	3.7E+00	4.2E+00	5.5E+00	7.5E+00	1.5E+01	2.3E+01	4.3E+01
30	4.3E+00	4.3E+00	4.3E+00	4.3E+00	4.3E+00	4.3E+00	4.3E+00	5.5E+00	8.1E+00	1.7E+01	2.8E+01	5.2E+01
50	9.5E+00	9.5E+00	9.5E+00	9.5E+00	9.5E+00	9.5E+00	1.2E+01	1.4E+01	1.6E+01	3.1E+01	4.8E+01	8.3E+01
70	4.0E+01	4.0E+01	4.0E+01	4.0E+01	4.0E+01	4.0E+01	4.0E+01	4.1E+01	4.1E+01	4.1E+01	5.8E+01	9.8E+01
Stack Diameter = 1.5 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.0E+00	2.0E+00	2.3E+00	3.4E+00	5.1E+00	6.0E+00	6.0E+00	6.6E+00	9.3E+00	1.9E+01	3.0E+01	5.4E+01
20	3.5E+00	3.5E+00	3.5E+00	3.9E+00	5.1E+00	6.0E+00	6.0E+00	6.6E+00	9.3E+00	1.9E+01	3.0E+01	5.4E+01
30	6.0E+00	6.0E+00	6.0E+00	6.0E+00	6.0E+00	6.0E+00	6.0E+00	6.6E+00	9.3E+00	1.9E+01	3.0E+01	5.5E+01
50	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.2E+01	1.4E+01	1.6E+01	3.1E+01	4.8E+01	8.3E+01
70	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.1E+01	5.1E+01	6.2E+01	7.8E+01	1.2E+02
Stack Diameter = 2.0 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.6E+00	2.6E+00	3.0E+00	4.2E+00	6.3E+00	9.2E+00	9.2E+00	1.0E+01	1.4E+01	2.5E+01	3.7E+01	6.3E+01
20	4.2E+00	4.2E+00	4.2E+00	4.7E+00	6.3E+00	9.2E+00	9.2E+00	1.0E+01	1.4E+01	2.5E+01	3.7E+01	6.3E+01
30	8.4E+00	8.4E+00	8.4E+00	8.4E+00	9.2E+00	9.2E+00	9.2E+00	1.0E+01	1.4E+01	2.5E+01	3.7E+01	6.3E+01
50	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.4E+01	1.5E+01	1.6E+01	3.1E+01	4.8E+01	8.3E+01
70	5.9E+01	5.9E+01	5.9E+01	5.9E+01	5.9E+01	5.9E+01	5.9E+01	5.9E+01	5.9E+01	7.0E+01	1.0E+02	1.5E+02
100	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	8.2E+01	1.1E+02	1.7E+02
Stack Diameter = 3.0 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.3E+00	3.4E+00	3.9E+00	5.5E+00	1.1E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	3.3E+01	5.0E+01	8.6E+01
20	6.5E+00	6.5E+00	6.5E+00	7.6E+00	1.1E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	3.3E+01	5.0E+01	8.6E+01
30	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.2E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	3.3E+01	5.0E+01	8.6E+01
50	1.7E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	1.7E+01	8.5E+01	1.2E+02	1.9E+02
70	8.0E+01	8.0E+01	8.0E+01	8.0E+01	8.0E+01	8.0E+01	8.0E+01	8.0E+01	8.0E+01	1.3E+02	1.9E+02	2.4E+02
100	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.9E+02	2.4E+02
Stack Diameter = 4.0 m											
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
30	1.3E+01	1.3E+01	1.3E+01	1.3E+01	1.5E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	4.0E+01	6.0E+01	9.8E+01
50	2.1E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	2.1E+01	4.0E+01	6.0E+01	9.8E+01
70	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.1E+02	1.5E+02	2.3E+02
100	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	2.2E+02	3.4E+02

Table 3 of §63.1215: 1-Hour Average HCl-Equivalent Emission Rates (lb/hr)--Flat Terrain

	Distance to property boundary (m)											
Stack Diameter = 0.3 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	3.9E+00	5.1E+00	7.6E+00	9.6E+00	1.6E+01	2.4E+01	4.3E+01	5.3E+01	6.2E+01	1.1E+02	1.7E+02	3.1E+02
10	9.7E+00	9.6E+00	1.1E+01	1.4E+01	2.0E+01	2.6E+01	4.6E+01	5.3E+01	6.2E+01	1.1E+02	1.7E+02	3.1E+02
20	2.2E+01	2.2E+01	2.2E+01	2.2E+01	2.5E+01	3.5E+01	5.3E+01	7.0E+01	9.5E+01	1.8E+02	2.8E+02	4.9E+02
30	3.9E+01	3.9E+01	3.9E+01	4.0E+01	4.4E+01	5.7E+01	9.0E+01	1.2E+02	1.7E+02	3.1E+02	4.5E+02	7.5E+02
50	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.4E+02	1.9E+02	2.6E+02	3.6E+02	6.7E+02	9.7E+02	1.5E+03
Stack Diameter = 0.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	6.9E+00	9.8E+00	1.5E+01	1.8E+01	3.2E+01	4.6E+01	7.5E+01	9.7E+01	1.2E+02	1.6E+02	2.1E+02	3.6E+02
10	1.3E+01	1.4E+01	1.5E+01	2.0E+01	3.7E+01	5.1E+01	7.9E+01	9.7E+01	1.2E+02	1.6E+02	2.2E+02	3.6E+02
20	3.5E+01	3.5E+01	3.5E+01	3.6E+01	4.6E+01	6.2E+01	8.1E+01	9.7E+01	1.2E+02	2.1E+02	3.0E+02	5.2E+02
30	5.2E+01	5.2E+01	5.2E+01	5.2E+01	5.3E+01	6.4E+01	9.8E+01	1.3E+02	1.8E+02	3.2E+02	4.7E+02	7.7E+02
50	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.4E+02	2.0E+02	2.7E+02	3.7E+02	6.8E+02	9.7E+02	1.5E+03
Stack Diameter = 1.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.0E+01	3.4E+01	3.8E+01	5.1E+01	9.0E+01	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.0E+02	6.1E+02
20	5.5E+01	5.5E+01	5.5E+01	5.6E+01	9.0E+01	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.0E+02	7.1E+02
30	9.6E+01	9.6E+01	9.6E+01	9.6E+01	1.1E+02	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.8E+02	8.6E+02
50	1.7E+02	1.7E+02	1.7E+02	1.7E+02	1.7E+02	1.7E+02	2.2E+02	2.9E+02	4.0E+02	7.3E+02	1.0E+03	1.6E+03
70	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.6E+02	9.9E+02	1.3E+03	2.0E+03	2.6E+03	3.8E+03
Stack Diameter = 1.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.9E+01	5.0E+01	6.1E+01	7.5E+01	1.2E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.0E+03
20	7.1E+01	7.1E+01	7.2E+01	7.5E+01	1.2E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.1E+03
30	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.5E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.1E+03
50	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.5E+02	3.4E+02	4.6E+02	8.1E+02	1.1E+03	1.7E+03
70	9.6E+02	9.6E+02	9.6E+02	9.6E+02	9.6E+02	9.6E+02	1.0E+03	1.3E+03	1.7E+03	2.9E+03	3.8E+03	5.5E+03
Stack Diameter = 2.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	4.7E+01	6.0E+01	7.3E+01	9.2E+01	1.7E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.5E+03
20	8.8E+01	8.8E+01	8.8E+01	9.4E+01	1.7E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.7E+03
30	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.8E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.7E+03
50	2.7E+02	2.7E+02	2.7E+02	2.7E+02	2.7E+02	2.7E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.9E+03
70	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.4E+03	1.7E+03	2.2E+03	3.2E+03	4.1E+03	6.9E+03
100	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	3.3E+03	5.0E+03	6.5E+03	7.7E+03
Stack Diameter = 3.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	6.2E+01	6.5E+01	7.3E+01	9.2E+01	2.1E+02	3.3E+02	5.1E+02	7.0E+02	9.3E+02	1.2E+03	1.5E+03	1.5E+03
20	1.5E+02	1.5E+02	1.6E+02	1.9E+02	2.4E+02	3.5E+02	5.3E+02	7.0E+02	9.3E+02	1.4E+03	2.0E+03	2.8E+03
30	1.9E+02	1.9E+02	1.9E+02	1.9E+02	2.4E+02	3.5E+02	5.3E+02	7.0E+02	9.3E+02	1.6E+03	2.1E+03	2.8E+03
50	4.0E+02	4.0E+02	4.0E+02	4.0E+02	4.2E+02	4.8E+02	5.3E+02	7.0E+02	9.3E+02	1.6E+03	2.1E+03	2.8E+03
70	2.2E+03	2.2E+03	2.2E+03	2.2E+03	2.2E+03	2.3E+03	2.3E+03	2.8E+03	3.4E+03	3.9E+03	4.7E+03	6.6E+03
100	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.7E+03	6.0E+03	7.1E+03	8.2E+03
Stack Diameter = 4.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
30	2.3E+02	2.3E+02	2.3E+02	2.4E+02	3.2E+02	5.3E+02	7.7E+02	1.0E+03	1.3E+03	2.1E+03	2.6E+03	4.1E+03
50	4.8E+02	4.8E+02	4.8E+02	4.8E+02	5.0E+02	5.8E+02	7.7E+02	1.0E+03	1.3E+03	2.3E+03	3.0E+03	4.2E+03
70	2.4E+03	2.4E+03	2.4E+03	2.4E+03	2.5E+03	2.6E+03	3.2E+03	4.3E+03	4.5E+03	4.7E+03	5.4E+03	7.2E+03
100	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.5E+03	6.1E+03	6.8E+03	1.0E+04

Table 4 of §63.1215: 1-Hour Average HCl-Equivalent Emission Rate Limits (lb/hr)–Simple Elevated Terrain

Stack Height (m) \ Distance to property boundary (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
Stack Diameter = 0.3 m												
5	1.4E+00	1.9E+00	2.6E+00	3.8E+00	6.8E+00	9.4E+00	1.5E+01	2.1E+01	3.3E+01	8.1E+01	1.4E+02	2.7E+02
10	4.0E+00	4.0E+00	4.6E+00	6.4E+00	6.6E+00	9.4E+00	1.5E+01	2.1E+01	3.3E+01	8.1E+01	1.4E+02	2.7E+02
20	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.2E+01	1.5E+01	2.4E+01	3.5E+01	5.4E+01	1.3E+02	2.1E+02	4.0E+02
30	2.3E+01	2.3E+01	2.3E+01	2.3E+01	2.5E+01	3.3E+01	4.4E+01	5.6E+01	7.3E+01	1.6E+02	2.7E+02	5.2E+02
50	7.3E+01	7.3E+01	7.3E+01	7.3E+01	7.3E+01	8.3E+01	9.0E+01	9.0E+01	9.0E+01	2.1E+02	3.5E+02	6.8E+02
Stack Diameter = 0.5 m												
5	1.9E+00	2.7E+00	3.7E+00	5.9E+00	1.4E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.0E+02	1.6E+02	3.0E+02
10	5.6E+00	5.6E+00	6.4E+00	8.9E+00	1.4E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.0E+02	1.6E+02	3.0E+02
20	1.6E+01	1.6E+01	1.6E+01	1.6E+01	1.6E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.3E+02	2.1E+02	4.0E+02
30	2.7E+01	2.7E+01	2.7E+01	2.7E+01	2.7E+01	3.3E+01	4.4E+01	5.6E+01	8.5E+01	1.8E+02	2.9E+02	5.5E+02
50	7.6E+01	7.6E+01	7.6E+01	7.6E+01	7.6E+01	8.3E+01	1.1E+02	1.3E+02	1.3E+02	2.4E+02	3.9E+02	7.2E+02
Stack Diameter = 1.0 m												
10	1.0E+01	1.0E+01	1.2E+01	1.7E+01	3.9E+01	3.9E+01	4.5E+01	5.8E+01	7.9E+01	1.6E+02	2.4E+02	4.4E+02
20	2.6E+01	2.6E+01	2.6E+01	2.8E+01	3.9E+01	3.9E+01	4.5E+01	5.8E+01	7.9E+01	1.6E+02	2.4E+02	4.5E+02
30	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.5E+01	5.8E+01	8.5E+01	1.8E+02	2.9E+02	5.5E+02
50	8.9E+01	8.9E+01	8.9E+01	8.9E+01	8.9E+01	8.9E+01	1.1E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	4.0E+02	4.1E+02	4.3E+02	6.1E+02	1.0E+03
Stack Diameter = 1.5 m												
10	2.1E+01	2.1E+01	2.5E+01	3.6E+01	5.4E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	5.7E+02
20	3.3E+01	3.3E+01	3.3E+01	3.7E+01	5.4E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	6.7E+02
30	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	5.8E+02
50	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.2E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.9E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	6.5E+02	8.2E+02	1.3E+03
Stack Diameter = 2.0 m												
10	2.7E+01	2.7E+01	3.2E+01	4.4E+01	6.6E+01	9.7E+01	9.7E+01	1.1E+02	1.5E+02	2.6E+02	3.9E+02	6.6E+02
20	4.0E+01	4.0E+01	4.0E+01	4.4E+01	6.6E+01	9.7E+01	9.7E+01	1.1E+02	1.5E+02	2.6E+02	3.9E+02	6.6E+02
30	7.9E+01	7.9E+01	7.9E+01	7.9E+01	9.1E+01	9.7E+01	9.7E+01	1.1E+02	1.5E+02	2.6E+02	3.9E+02	6.6E+02
50	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	7.3E+02	1.1E+03	1.5E+03
100	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	1.2E+03	1.7E+03
Stack Diameter = 3.0 m												
10	3.5E+01	3.5E+01	4.1E+01	5.8E+01	1.2E+02	1.6E+02	1.8E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
20	6.2E+01	6.2E+01	6.2E+01	7.2E+01	1.2E+02	1.6E+02	1.8E+02	1.8E+02	1.8E+02	3.6E+02	5.2E+02	9.0E+02
30	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.2E+02	1.6E+02	1.8E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	8.0E+02
50	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
70	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	8.9E+02	1.3E+03	2.0E+03
100	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	2.0E+03	2.6E+03
Stack Diameter = 4.0 m												
30	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.4E+02	2.0E+02	2.2E+02	2.2E+02	2.2E+02	4.2E+02	6.3E+02	1.0E+03
50	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	4.2E+02	6.3E+02	1.0E+03
70	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.1E+03	1.6E+03	2.4E+03
100	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	2.3E+03	3.6E+03

■ 17. Section 63.1216 and an undesignated center heading are added to subpart EEE to read as follows:

Emissions Standards and Operating Limits for Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Production Furnaces

§ 63.1216 What are the standards for solid fuel boilers that burn hazardous waste?

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

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section;

(2) Mercury in excess of 11 μg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 μg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2, emissions in excess of 380 μg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If

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

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

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 440 parts per million by volume, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 68 mg/dscm corrected to 7 percent oxygen.

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

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section;

(2) Mercury in excess of 11 µg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 µg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2, emissions in excess of 190 µg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 73 parts per million by volume, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 34 mg/dscm corrected to 7 percent oxygen.

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

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

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

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

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

(e) *Alternative to the particulate matter standard.* (1) *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing solid fuel boilers.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 380 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) Alternative metal emission control requirements for new solid fuel boilers. (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 190 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic,

beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for arsenic, beryllium, and chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 18. Section 63.1217 is added to read as follows:

§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

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

(1)(i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution control system; or

(ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury, except as provided for in paragraph (a)(2)(iii) of this section:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 19 μg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value 10,000 Btu/lb or greater, emissions in excess of 4.2×10^{-5} lbs mercury attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(iii) The boiler operated by Diversified Scientific Services, Inc. with EPA identification number TND982109142, and which burns radioactive waste mixed with hazardous waste, must comply with the mercury emission standard under § 63.1219(a)(2);

(3) For cadmium and lead combined, except for an area source as defined under § 63.2,

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 150 μg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 8.2×10^{-5} lbs combined cadmium and lead emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 370 μg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.3×10^{-4} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.08×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 80 mg/dscm corrected to 7 percent oxygen.

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

(1)(i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution control system; or

(ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 6.8 μg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.2×10^{-6} lbs mercury emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 78 μg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value greater than or equal to 10,000 Btu/lb, emissions in excess of 6.2×10^{-6} lbs combined cadmium and lead emissions attributable to the hazardous waste per

million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 12 μg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.4×10^{-5} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.08×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 20 mg/dscm corrected to 7 percent oxygen.

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

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

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

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

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

(e) *Alternative to the particulate matter standard.* (1) *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing liquid fuel boilers.* (i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 150 μg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 370 μg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value of 10,000 Btu/lb or greater:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 8.2×10^{-5} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain either in excess of 1.3×10^{-4} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(3) *Alternative metal emission control requirements for new liquid fuel boilers.* (i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 78 μg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 12 μg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value greater than or equal to 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 6.2×10^{-6} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain either in excess of 1.4×10^{-5} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 19. Section 63.1218 is added to read as follows:

§ 63.1218 What are the standards for hydrochloric acid production furnaces that burn hazardous waste?

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

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section;

(2) For mercury, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(3) For lead and cadmium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(4) For arsenic, beryllium, and chromium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) For hydrogen chloride and chlorine gas, either:

(i) Emission in excess of 150 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$ equivalent, dry basis and corrected to 7 percent oxygen; or

(ii) Emissions greater than the levels that would be emitted if the source is achieving a system removal efficiency (SRE) of less than 99.923 percent for total chlorine and chloride fed to the combustor. You must calculate SRE from the following equation:

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

Where:

Cl in = mass feedrate of total chlorine or chloride in all feedstreams, reported as chloride; and

Cl out = mass emission rate of hydrogen chloride and chlorine gas, reported as chloride, in exhaust emissions prior to release to the atmosphere.

(7) For particulate matter, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section.

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

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section;

(2) For mercury, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(3) For lead and cadmium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(4) For arsenic, beryllium, and chromium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) For hydrogen chloride and chlorine gas, either:

(i) Emission in excess of 25 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$ equivalent, dry basis and corrected to 7 percent oxygen; or

(ii) Emissions greater than the levels that would be emitted if the source is achieving a system removal efficiency (SRE) of less than 99.987 percent for total chlorine and chloride fed to the combustor. You must calculate SRE from the following equation:

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

Where:

Cl in = mass feedrate of total chlorine or chloride in all feedstreams, reported as chloride; and

Cl out = mass emission rate of hydrogen chloride and chlorine gas, reported as chloride, in exhaust emissions prior to release to the atmosphere.

(7) For particulate matter, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas

emissions in excess of the levels provided by paragraph (b)(6) of this section.

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

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

Where:

Win = mass feedrate of one POHC in a waste feedstream; and

Wout = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

(e) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for arsenic, beryllium, and chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 20. Section 63.1219 and a new undesignated center heading are added to subpart EEE to read as follows:

Replacement Emissions Standards and Operating Limits for Incinerators, Cement Kilns, and Lightweight Aggregate Kilns

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

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

(1) For dioxins and furans:

(i) For incinerators equipped with either a waste heat boiler or dry air pollution control system, either:

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

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

(ii) Emissions in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for incinerators not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

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

(3) Cadmium and lead in excess of 230 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 92 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) Hydrogen chloride and chlorine gas (total chlorine) in excess of 32 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 0.013 gr/dscf corrected to 7 percent oxygen.

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

(1)(i) Dioxins and furans in excess of 0.11 ng TEQ/dscm corrected to 7 percent oxygen for incinerators equipped with either a waste heat boiler or dry air pollution control system; or

(ii) Dioxins and furans in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen for sources not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

(2) Mercury in excess of 8.1 µg/dscm, corrected to 7 percent oxygen;

(3) Cadmium and lead in excess of 10 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 23 µg/dscm, combined

emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

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

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

(6) Hydrogen chloride and chlorine gas in excess of 21 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 0.0015 gr/dscf, corrected to 7 percent oxygen.

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

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

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

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

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

(e) *Alternative to the particulate matter standard.* (1). *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing incinerators.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 230 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 92 μg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) *Alternative metal emission control requirements for new incinerators.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 10 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 23 μg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

■ 21. Section 63.1220 is added to subpart EEE to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

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

(1) For dioxins and furans, either:

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

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

(2) For mercury, both:

(i) An average as-fired concentration of mercury in all hazardous waste feedstreams in excess of 3.0 parts per million by weight; and

(ii) Emissions in excess of 120 μg/dscm, corrected to 7 percent oxygen; or

(iii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 μg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 7.6×10^{-4} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 330 μg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) Emissions in excess of 2.1×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 56 μg/dscm, combined emissions, corrected to 7 percent oxygen;

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

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

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

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

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

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

(6) Hydrogen chloride and chlorine gas in excess of 120 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis, corrected to 7 percent oxygen; and

(7) For particulate matter, both:

(i) Emissions in excess of 0.028 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).

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

(1) For dioxins and furans, either:

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

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

(2) For mercury, both:

(i) An average as-fired concentration of mercury in all hazardous waste feedstreams in excess of 1.9 parts per million by weight; and

(ii) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(iii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 6.2×10^{-5} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) Emissions in excess of 1.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 54 µg/dscm, combined emissions, corrected to 7 percent oxygen;

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

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

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

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

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

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

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

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

(2) Hydrocarbons not exceeding 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous

monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7); and

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

(6) Hydrogen chloride and chlorine gas in excess of 86 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, both:

(i) Emissions in excess of 0.0023 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).

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

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

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

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

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

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

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

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

(v) In lieu of conducting a performance test to demonstrate compliance with the dioxin/furan emission standards for the mode of operation when the raw mill is on-line, you may specify in the performance test workplan and Notification of Compliance the same operating parameter limits required under § 63.1209(k) for the mode of operation when the raw mill is on-line as you establish during performance testing for the mode of operation when the raw mill is off-line.

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

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

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

Where:

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

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

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

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

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

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

(B) Compliance is based on one-year block averages beginning on the day you submit the initial notification of compliance.

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

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

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

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

(2) *Emissions averaging.* You may comply with the mercury, semivolatile metal, low volatile metal, and hydrogen

chloride/chlorine gas emission standards specified in this section on a gas flowrate-weighted average basis under the following procedures:

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

(g) [Reserved].

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

■ 22. Section 63.1221 is added to subpart EEE to read as follows:

§ 63.1221 What are the replacement standards for hazardous waste burning lightweight aggregate kilns?

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

(1) For dioxins and furans, either:

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

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

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.0×10^{-4} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 250 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 9.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

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

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

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.025 gr/dscf, corrected to 7 percent oxygen.

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

(1) For dioxins and furans, either:

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

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

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.7×10^{-5} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 43 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 3.3×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 μg/dscm, combined emissions, corrected to 7 percent oxygen;

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

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

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride ($Cl^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.0098 gr/dscf corrected to 7 percent oxygen.

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

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

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

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

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

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

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Section 260.11 is amended by

■ a. Revising the first sentence in paragraph (a).

■ b. Revising paragraph (c)(1).

The revisions and additions read as follows:

§ 260.11 References.

(a) When used in parts 260 through 268 of this chapter, the following publications are incorporated by reference. * * *

* * * * *

(c) * * *

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 264.1035 and 265.1035.

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

■ 2. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(5) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2) through (b)(5) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

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(5) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of §§ 63.1206(b)(14) and 63.1219(e) of this chapter.

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

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

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

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

§ 265.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator

demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

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

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

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 2. Section 266.100 is amended by revising the first sentence of paragraph (b)(1) and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 266.100 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4) of this section, the standards of this part do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

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(3) If you own or operate a boiler or hydrochloric acid production furnace that is an area source under § 63.2 of this chapter and you elect not to comply with the emission standards under §§ 63.1216, 63.1217, and 63.1218 of this chapter for particulate matter, semivolatile and low volatile metals, and total chlorine, you also remain subject to:

(i) Section 266.105—Standards to control particulate matter;

(ii) Section 266.106—Standards to control metals emissions, except for mercury; and

(ii) Section 266.107—Standards to control hydrogen chloride and chlorine gas.

(4) The particulate matter standard of § 266.105 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under §§ 63.1216(e) and 63.1217(e) of this chapter.

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

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

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

■ 2. Section 270.6 is revised to read as follows:

§ 270.6 References.

(a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.** Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, *libraryhq@epa.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800:

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 270.24 and 270.25.

(2) [Reserved].

■ 3. Section 270.10 is amended by adding paragraph (l) to read as follows:

§ 270.10 General application requirements.

* * * * *

(l) If the Director concludes, based on one or more of the factors listed in paragraph (l)(1) of this section that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

(2) [Reserved]

■ 4. Section 270.19 is amended by revising paragraph (e) to reads as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

■ 5. Section 270.22 is amended by revising the introductory text to read as follows:

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

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply. The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

* * * * *

■ 6. Section 270.24 is amended by revising paragraph (d)(3) to read as follows:

§ 270.24 Specific part B information requirements for process vents.

* * * * *

(d) * * *

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 270.6) or other engineering texts acceptable to the Regional Administrator that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

* * * * *

■ 7. Section 270.25 is amended by revising paragraph (e)(3) to read as follows:

§ 270.25 Specific part B information requirements for equipment.

* * * * *

(e) * * *

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 270.6) or other engineering texts acceptable to the Regional Administrator that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

* * * * *

■ 8. Section 270.32 is amended by adding paragraph (b)(3) to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(b) * * *

(3) If, as the result of an assessment(s) or other information, the Administrator or Director determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, 264 or 266 to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

* * * * *

■ 9. Section 270.42 is amended by:
■ a. Revising paragraph (j)(1).
■ b. Redesignating paragraph (j)(2) as (j)(3).
■ c. Adding new paragraph (j)(2).
■ d. Adding new paragraph (k); and
■ e. Adding a new entry 10 in numerical order in the table under section L of Appendix I.

The revisions and additions read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR part 63 §§ 63.1200–63.1499 revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

(2) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

* * * * *

(k) *Waiver of RCRA permit conditions in support of transition to the part 63 MACT standards.* (1) You may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

(i) Identify the specific RCRA permit operating and emissions limits which you are requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, as his or her discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) you must:

(i) Submit your modification request to the Director at the same time you submit your test plans to the Administrator; and

(ii) The Director may elect to approve or deny the request continent upon approval of the test plans.

* * * * *

Appendix I to § 270.42—Classification of Permit Modification

Modifications	Class
* * * * * * *	
L. * * *	[1] 1
10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(k) are followed..	
* * * * * * *	

[1] Class 1 modifications requiring prior Agency approval.

* * * * *

■ 10. Section 270.62 is amended by revising the introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

* * * * *

■ 11. Section 270.66 is amended by revising the introductory text to read as follows:

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

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply. The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

* * * * *

■ 12. Section 270.235 is amended by:

■ a. Revising the section heading and paragraphs (a)(1) introductory text and (a)(2) introductory text.

■ b. Revising paragraphs (b)(1) introductory text and (b)(2).

■ c. Adding new paragraph (c).

The revisions read as follows:

* * * * *

§ 270.235 Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.

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

* * * * *

(2) *Addressing permit conditions upon permit reissuance.* The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Administrator a Notification of Compliance documenting compliance with the standards of part 63, subpart EEE, of this chapter may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup,

shutdown, and malfunction events under any of the following options:

* * * * *

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

* * * * *

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

(c) *New units.* Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to RCRA permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) Comply with the requirements specified in § 63.1206(c)(2) of this chapter; or

(2) Request to include in the RCRA permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The director will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

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

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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

Promulgation date	Title of Regulation	Federal Register reference	Effective date
*	*	*	*
Oct. 12, 2005	Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.	[Insert FR page numbers]	Oct. 12, 2005.

[FR Doc. 05–18824 Filed 10–11–05; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Thursday,
October 13, 2005

Part III

Environmental Protection Agency

40 CFR Parts 3, 9, 51 et al.
Cross-Media Electronic Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 9, 51, 60, 63, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

[FRL–7977–1]

RIN 2025–AA07

Cross-Media Electronic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing the framework by which it will accept electronic reports from regulated entities in satisfaction of certain document submission requirements in EPA's regulations. EPA will provide public notice when the Agency is ready to receive direct submissions of certain documents from regulated entities in electronic form consistent with this rulemaking via an EPA electronic document receiving system. This rule does not mandate that regulated entities utilize electronic methods to submit documents in lieu of paper-based submissions. In addition, EPA is not taking final action on the electronic recordkeeping requirements at this time.

States, tribes, and local governments will be able to seek EPA approval to accept electronic documents to satisfy reporting requirements under environmental programs that EPA has delegated, authorized, or approved them to administer. This rule includes performance standards against which a state's, tribe's, or local government's electronic document receiving system will be evaluated before EPA will approve changes to the delegated, authorized, or approved program to provide electronic reporting, and establishes a streamlined process that states, tribes, and local governments can use to seek and obtain such approvals.

DATES: This rule shall become effective January 11, 2006.

ADDRESSES: The public record for this rulemaking has been established under docket number OEI–2003–0001 and is located in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. (See **SUPPLEMENTARY INFORMATION** below.)

FOR FURTHER INFORMATION CONTACT: For general information on this final rule, contact the docket above. For more detailed information on specific aspects of this rulemaking, contact David Schwarz (2823T), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov*, or Evi Huffer (2823T), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Affected Entities

This rule will potentially affect states, tribes, and local governments that have been delegated, authorized, or approved, or which seek delegation, authorization, or approval to administer a federal environmental program under Title 40 of the Code of Federal Regulations (CFR). For purposes of this rulemaking, the term "state" includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

The rule will also potentially affect private parties subject to any requirements in Title 40 of the CFR that require a document to be submitted to EPA. Affected Entities include, but are not necessarily limited to:

Category	Examples of affected entities
Local government	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Private	Industry owners and operators, waste transporters, privately owned treatment works or other treatment works treating domestic sewage, privately owned water works, small businesses of various kinds, sponsors such as laboratories that submit or initiate/support studies, and testing facilities that both initiate and conducts studies.
Tribe and State governments.	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.
Federal government	Federally owned treatment works and industrial dischargers, and federal facilities subject to hazardous waste regulation.

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2003–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Cross-Media Electronic Reporting Rule (CROMERR) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Office of Environmental Information Docket is (202) 566–1752. You may have to pay a reasonable fee for copying.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials. After selecting the "Using EDOCKET" icon, select "quick search," then key in the appropriate docket identification number. Double click on the document identification number to bring up the docket contents.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

Organization of This Document

Information in this Preamble is organized as follows:

I. Overview
- A. Why does the Agency seek to provide electronic alternatives to paper-based reporting and recordkeeping?
- B. What does the electronic reporting rule do?
- C. What is the status of the proposed electronic recordkeeping provisions?
- D. How were stakeholders consulted during the development of today's final rule?
- E. What alternatives to today's final rule did EPA consider?

II. Background
- A. What has been EPA's electronic reporting policy?
- B. How does today's final rule change EPA's electronic reporting policy?

III. Scope of the Electronic Reporting Rule
- A. Who may submit electronic documents?
- B. Which documents can be filed electronically?
- C. How does this final rule implement electronic reporting?

IV. Major Changes from Proposed Electronic Reporting Provisions
- A. How does the rule streamline the approval of electronic reporting under authorized state, tribe, and local government programs?
  1. Review of the proposal
  2. Comments on the proposal
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- B. How has EPA revised the requirements that state, tribe, and local government electronic reporting programs must satisfy?
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  2. Comments on the proposed criteria for electronic document receiving systems
  3. Revisions to the criteria in the final rule
- C. How has EPA accommodated electronic submissions with follow-on paper certifications?
- D. How has EPA changed proposed definitions of terms?
  1. Definition of "acknowledgment"
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V. Requirements for Direct Electronic Reporting to EPA
- A. What are the requirements for electronic reporting to EPA?
- B. What is the status of existing electronic reporting to EPA?
- C. What is EPA's Central Data Exchange?
  1. Overview of general goals
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VI. Requirements for Electronic Reporting under EPA-Authorized Programs
- A. What is the general regulatory approach?
- B. When must authorized state, tribe, or local government programs revise or modify their programs to allow electronic reporting?
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  1. Timeliness of data generation
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  5. Opportunity to review and repudiate copy of record
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  8. Opportunity to review
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  12. Determining the identity of the individual uniquely entitled to use a signature device

VII. What are the Costs of Today's Rule?
- A. Summary of proposal analysis
- B. Final rule costs
- C. General changes to methodology and assumptions

VIII. Statutory and Executive Order Reviews
- A. Executive Order 12866
- B. Executive Order 13132
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act
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- F. National Technology Transfer and Advancement Act
- G. Executive Order 13045
- H. Executive Order 13175
- I. Executive Order 13211 (Energy Effects)
- J. Congressional Review Act

I. Overview

A. Why does the Agency seek to provide electronic alternatives to paper-based reporting and recordkeeping?

In the **Federal Register** of August 31, 2001 (66 FR 46162), EPA published a notice of proposed rulemaking, announcing the goal of making electronic reporting and electronic recordkeeping available under EPA regulatory programs. The Agency believes that the submission and storage of electronic documents in lieu of paper documents can:

- Reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges;
- Improve the data and the various business processes associated with its use in ways that may not be reflected directly in cost-reduction, e.g., through improvements in data quality, and the speed and convenience with which data may be transferred and used; and
- Maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exists in the paper environment.

Recent federal policy and law are also strong drivers of electronic alternatives to traditional reporting and recordkeeping. The Government Paperwork Elimination Act (GPEA) of 1998, Title XVII of Public Law 105–277, requires the Director of the Office of Management and Budget (OMB) to ensure that executive agencies provide for the option of the electronic maintenance, submission, or disclosure of information as a substitute for paper when practicable, and for the use and acceptance of electronic signatures, when practicable. See GPEA section 1704. Given the enormous strides in data transfer and management technologies, particularly in connection with the Internet, replacing paper with electronic data transfer now promises increased productivity across almost all facets of business and government.

In seeking to make electronic alternatives available that were not contemplated when most existing EPA regulations were written, EPA was mindful of the need to maintain our ability to carry out our statutory environmental and health protection mission, in part through ensuring the integrity of environmental compliance documents. Accordingly, the intended

effect of the proposed regulation was to permit and encourage the use of electronic technologies in a manner that is consistent with EPA's overall mission and that preserves the integrity of the Agency's compliance and enforcement activities.

The Agency believes that it is essential to ensure that electronic reports can play the same role as their paper counterparts in providing evidence of what was reported and to what identified individuals certified with respect to the report. Otherwise, electronic reporting places at risk the continuing viability of self-monitoring and self-reporting that provides the framework for compliance under most of our environmental programs. The purpose of today's final rule is therefore twofold. Today's rule is intended to provide regulated industry, EPA, and state, tribe, and local governments with electronic reporting alternatives that improve the efficiency, the speed, and the quality of regulatory reporting. At the same time, the rule is intended to ensure the legal dependability of electronic documents submitted under environmental programs. This includes, among other things, ensuring that individuals will be held as responsible and accountable for the electronic signatures, which they execute, and for the documents to which such signatures attest as they currently are in cases of documents where they execute handwritten signatures.

B. What does the electronic reporting rule do?

EPA is announcing today the final regulatory provisions in a new part 3 of Title 40 of the CFR for electronic reporting to EPA and under authorized state, tribe, and local government programs. "Authorized program" is shorthand for a federal program that EPA has delegated, authorized, or approved a state, tribe or local government to administer under other provisions of title 40 of the CFR, where the delegation, authorization, or approval has not been withdrawn or expired. Section 3.3 of the rule codifies this usage in the regulatory text. This use of "authorized" does not mean that EPA is precluded from an enforcement action by a prior enforcement action being taken by a state, tribe, or local government under its authorized program. The final rule incorporates changes made after publication of the proposed rule that are discussed in detail in section IV of this Preamble. This rule establishes electronic reporting as an acceptable regulatory alternative across a broad spectrum of EPA programs, and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts.

The requirements in Subpart B of the rule apply to entities that choose to submit electronic documents for direct reporting to EPA, including state, tribe, and local government facilities that choose to submit electronic documents to EPA to satisfy requirements that apply to them under other provisions of title 40 of the CFR. However, the scope of this final rule excludes any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data. The requirements in Subpart D of the rule provide for electronic reporting under authorized state, tribe, and local government programs and apply to the governmental entities administering the authorized programs. Under the final rule, states, tribes, and local governments have the choice of using electronic submission rather than paper for reporting under their authorized programs. Comments on the proposed rule indicated that some states and local governments are now requiring electronic reporting under those programs. Existing electronic document receiving systems must receive EPA approval in accordance with Subpart D in order to meet the requirements of part 3.

This rule does not require that any document be submitted electronically, and it does not require any state, tribe, or local authorized program to receive electronic documents. Public access to environmental compliance information is not affected by today's action.

Additionally, the scope of the final rule specifically excludes the submission of any electronic document via magnetic or optical media—for example via diskette, compact disk (CD), digital video disc (DVD), or tape—as well as the transmission of documents via hard copy facsimile or "fax." The exclusion of magnetic or optical media submissions from the scope of this rule in no way indicates EPA's rejection of these technologies as a valid approach to paperless reporting. Magnetic and optical media submissions fulfill the goal of providing alternatives to submission on paper. EPA has already successfully implemented a paperless reporting alternative that utilizes magnetic and optical media submissions to fulfill many regulatory reporting requirements. Such instances include reporting related to the hazardous waste, Toxic Release Inventory, and pesticide registration programs. EPA expects these magnetic and optical media approaches to paperless reporting to continue, and nothing in today's rule should be interpreted to proscribe or discourage them.

For entities that report to EPA directly and do so by submitting electronic documents, today's action requires that these documents be submitted either to the Agency's centralized electronic document receiving system, called the "Central Data Exchange" (CDX), or to alternative systems designated by the Administrator as described herein and in a separate **Federal Register** notice. Entities that submit electronic documents directly to EPA will satisfy the requirements in today's rule by successfully submitting their reports to one of these systems. While we do not intend to codify any of the details of how CDX operates or how it is constructed, the characteristics of the CDX and the submission scenarios are described later in this Preamble. In addition, the CDX design specifications are included as a part of this rulemaking docket.

Many facilities submit documents directly to states, tribes, or local governments under authorized programs. For currently authorized programs that receive or wish to begin receiving electronic documents in lieu of paper, this rule requires EPA approval of program revisions or modifications that address their electronic reporting implementations. For programs initially seeking authorization, this rule requires EPA approval of any electronic reporting components of the programs. In both cases, EPA approval will be based largely on an assessment of the program's "electronic document receiving system" that is or will be used to implement electronic reporting. For this purpose, this rule includes performance-based standards that EPA will use to determine that an electronic document receiving system is acceptable. To implement electronic reporting under currently authorized programs, EPA is creating a streamlined procedure that states, tribes, and local governments may use to revise or modify their authorized programs to incorporate electronic reporting. Today's rulemaking also includes special provisions for authorized programs' electronic document receiving systems that exist at the time of publication of this final rule.

It is worth noting that EPA can approve changes to authorized state, tribe, or local programs that involve the use of CDX to receive data submissions from their reporting communities, and EPA is exploring opportunities to

leverage CDX resources for use by states, tribes, and local governments. As currently implemented, CDX provides the major systems infrastructure components necessary to achieve electronic reporting consistent with the standards in this rule for assessing state, tribe, or local government electronic document receiving systems. Additionally, EPA has set the goal of making CDX operations fully consistent with the requirements in today's rule within two years.

While today's rule establishes electronic reporting as a regulatory alternative, EPA will make the electronic submission alternative available for specific reports or other documents only as EPA announces its readiness to receive them through CDX or another designated system. EPA will publish announcements in the Federal Register as CDX and other systems become available for particular environmental reports. These elements are discussed in more detail in section V of this Preamble.

In a notice published concurrently with today's rule, EPA clarifies the status of electronic reporting directly to EPA systems that exist as of the rule's publication date. In accordance with 40 CFR 3.10, EPA is designating for the receipt of electronic submissions, all EPA electronic document receiving systems currently existing and receiving electronic reports as of the date of the notice. This designation is valid for a period of up to two years from the date of publication of the notice. During this two-year period, entities that report directly to EPA may continue to satisfy EPA reporting requirements by reporting to the same systems as they did prior to CROMERR's publication unless EPA publishes a notice that announces changes to, or migration from, that system. Any existing system continuing to receive electronic reports at the expiration of this two-year period must receive redesignation by the Administrator under § 3.10. Notice of such redesignation will be published in the Federal Register.

C. What is the status of the proposed electronic recordkeeping provisions?

At this time, EPA is only finalizing the provisions for electronic reporting to EPA and under authorized programs. The August 31, 2001, proposal, however, also addressed records that EPA or authorized programs require entities to maintain under any of the environmental programs governed by Title 40 of the CFR or related state, tribe, and local laws and regulations. For such records, EPA proposed specific provisions for administering the maintenance of electronic records under these environmental regulations. EPA proposed criteria under which the Agency would consider electronic records to be trustworthy, reliable, and generally equivalent to paper records in satisfying regulatory requirements. For entities that choose to keep records electronically, the proposal would have required the adoption of best practices for electronic records management. For facilities maintaining records to satisfy the requirements of authorized programs, the proposal would have allowed for EPA approval of changes to the authorized programs to provide for electronic recordkeeping. Under the proposal, approval would have been based on a determination that the authorized program would require best practices for electronic records management, corresponding to EPA's provisions for electronic records maintained to satisfy EPA recordkeeping requirements.

Further, EPA proposed that once the rule took effect, any records subject to the rule that were maintained to satisfy the requirements of EPA programs could only be maintained electronically after EPA announced in the Federal Register that EPA was ready to allow electronic records maintenance to satisfy the specified recordkeeping requirements. Also under the proposal, records maintained under an authorized state, tribe, or local government program could only be maintained electronically once EPA had approved the necessary changes to the authorized program.

Based on the comments received on the proposed electronic recordkeeping provisions, EPA reconsidered its approach to electronic recordkeeping and is not issuing final recordkeeping rules at this time. The Agency is conducting additional analysis and intends to publish a supplemental notice or re-proposal to solicit additional comments before a final rule on electronic recordkeeping is issued. We will be reviewing provisions related to the methods used to ensure accuracy, accessibility and the ability to detect alterations of records stored electronically, as well as other possible controls for electronic recordkeeping. The Agency intends to utilize this review to engage states, tribes, local governments, and industry in meaningful consultation to ensure that the EPA has the best available information on which to base its decisions. In conjunction with these consultations—and before issuing any notice or re-proposal—EPA will conduct additional analysis on the costs and benefits of alternative approaches, and the technical feasibility of various options, with a focus on impacts to small businesses. Today's rule does not authorize the conversion of existing paper documents retained to comply with existing recordkeeping requirements under other provisions of Title 40 of the CFR to an electronic format for record-retention purposes.

D. How were stakeholders consulted during the development of today's final rule?

This final rule reflects more than ten years of interaction with stakeholders that included states, tribes, and local governments, industry groups, environmental non-government organizations, national standard setting committees, and other federal agencies. As detailed in the proposal, many of our most significant interactions involved electronic reporting pilot projects conducted with state agency partners, including the States of Pennsylvania, New York, Arizona, and several others. In May, 1997, work began with approximately 35 states on the State Electronic Commerce/Electronic Data Interchange Steering Committee (SEES) convened by the National Governors' Association (NGA) Center for Best Practices (CBP). Also, EPA sponsored a series of conferences and meetings, beginning in June, 1999, with the explicit purpose of seeking stakeholder advice before drafting the proposal. Reports of these conferences and meetings are available in the docket for this rulemaking, along with the product of the SEES effort, a document entitled, "A State Guide for Electronic Reporting of Environmental Data," and reports on some of the more recent state/EPA electronic reporting pilots.

For the proposal, EPA provided a 6-month public comment period, which closed on February 27, 2002. During that time, we received 184 sets of written comments on the proposed rule. The commenters represented a broad spectrum of interested parties: States, local governments, specific businesses, trade associations, and other federal agencies. Substantive changes to the electronic reporting provisions based on public comments are discussed in detail in section IV of this Preamble. In addition, EPA received comments at four public meetings held around the country and at two meetings with states held in Washington, DC. The comments and meeting summaries can be found in the docket to this rulemaking. Today's final rule reflects many of the comments and concerns raised by commenters on the proposal. (A complete discussion of the options considered by EPA and other background information on the Agency's policy on electronic reporting

can be found in the proposed rule.) The majority of comments focused on the costs and burden of the proposed Subpart D electronic recordkeeping provisions. EPA's response to public comments to the proposal can be found in the rulemaking docket, in the Response to Comments document.

E. What alternatives to today's final rule did EPA consider?

EPA considered both a more stringent and a less stringent alternative to the regulatory approach taken in this rule. The more stringent alternative is reflected in the electronic provisions published, August 31, 2001, in the Notice of Proposed Rulemaking for CROMERR. The proposed version of CROMERR was more stringent by virtue of setting much more prescriptive, detailed requirements that electronic document receiving systems would have to satisfy. For example:

- Proposed § 3.2000(d) contained very specific requirements for submitter identity management that a system would have to satisfy, including detailed requirements for renewal of registration and revocation of registration under specified circumstances;
- Proposed § 3.2000(e) contained very detailed requirements for the signature/certification scenario that a system would have to provide for, specifying the exact sequence of steps to be followed in electronically signing a submission, and requiring such features as on-screen, scroll-through presentation of the data to be submitted for review of the signatory prior to signing.

EPA received significant public comment on this approach, both from states and from regulated companies, and there were at least three closely related themes. The first was that such prescriptive requirements would greatly limit the flexibility of states to implement electronic reporting in a cost-effective way. The second theme was that many of the requirements—especially those specifying the signature/certification scenario—were not appropriate to many cases where electronic reporting would occur. Third and finally, many of these commenters expressed skepticism that these very detailed requirements represented the only possible approach to ensuring the legal dependability of electronic submissions and signatures. These themes are discussed in detail in section IV.B of this Preamble.

EPA also considered a less stringent alternative that would have refrained from specifying requirements to establish the identity of an individual to whom a signature device or credential (e.g. a PIN, password, or PKI certificate) is issued. This less stringent alternative would have omitted the provision for identity-proofing in the final § 3.2000(b)(5)(vii). In terms of regulatory impact, this would be a significant reduction in stringency. Most of the burden on regulated entities imposed by today's rule is associated with the registration process involved in obtaining a signature device or credential, and any requirement to establish the registrant's identity raises the aggregate burden substantially.

EPA rejected this less stringent alternative, because we believe that it would seriously undermine the rule's ability to assure the legal dependability of electronic submissions. It is a basic principle of electronic authentication (E-authentication) that individuals being authenticated are who they say they are. E-authentication depends critically on the degree of trust we can place in the credential the individual presents, and such trust depends heavily on the process of establishing the individual's identity (or "identity-proofing") when he or she first registers for the credential. If the identity-proofing process is not sufficiently stringent and credible, then it may be uncertain who is using the credential in a specific instance where it is presented. Where the credential is used to create an electronic signature, inadequate identity-proofing may create uncertainty as to who the signatory is, as a result, the signature may be rendered undependable for any legal purpose. Accordingly, EPA believes that, notwithstanding the cost, it is necessary to specify that identity-proofing be conducted. The § 3.2000(b)(5)(vii) identity-proofing requirement is explained in detail in section VI.E.12 of this Preamble.

II. Background

A. What has been EPA's electronic reporting policy?

On September 4, 1996, EPA published a document entitled "Notice of Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (EDI)" (61 FR 46684) (hereinafter referred to as 'the 1996 Policy'), where "EDI" generally refers to the transmission, in a standard syntax, of unambiguous information between computers of organizations that may be completely external to each other. This notice announced EPA's basic policy for accepting electronically submitted environmental reports, and its scope was intended to include any regulatory, compliance, or informational (voluntary) reporting to EPA via EDI.

For purposes of the 1996 policy, the standard transmission formats used by EPA were to be based on the EDI standards developed and maintained by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. By linking our approach to the ANSI X12 standards, we hoped to take advantage of the robust ANSI-based EDI infrastructure already in place for commercial transactions, including a wide array of commercial off-the-shelf (COTS) software packages and communications network services, and a growing industry community of EDI experts available both to EPA and to the regulated community. At the time EPA was writing this policy, ANSI-based EDI was arguably the dominant mode of electronic commerce across almost all business sectors, from aerospace to wood products, at least in the United States. (A complete discussion of EPA's 1996 policy can be found in the preamble to the proposed rule.)

With this final rule, EPA is making changes to the 1996 policy for three primary reasons. First, and most important, the technology environment has changed substantially since the 1996 policy was written. Web-based electronic commerce and public key infrastructure (PKI) are two examples. While both were available and in use for some purposes in 1996, they had not yet achieved the level of acceptance and use that they enjoy today. We could not have anticipated in 1996 that this evolution would occur as rapidly as it has. Clearly, these developments require that we extend our approach to electronic reporting beyond EDI and Personal Identification Numbers (PINs). In addition, they teach us that it is generally unwise to base regulatory requirements on the existing information technology environment or on assumptions about the speed and direction of technological evolution.

Second, we believe that technology-specific provisions would be very complex and unwieldy. The resulting regulation would likely place unacceptable burdens on regulated entities trying to understand and comply.

Third, and finally, an electronic reporting architecture that makes a centralized EPA or state system the platform for such functions as electronic signature/certification is now quite viable—and quite consistent with the standard practices of Web-based electronic commerce. Given the state of technology six years ago, we could not

have considered this approach in the 1996 policy.

B. How does today's final rule change EPA's electronic reporting policy?

For practical purposes, the most important change that today's rule makes is in our technical approach to electronic reporting. In contrast to the 1996 policy, today's rule does not generally specify or limit the range of allowable electronic submission technologies and formats. Under today's rule, complaint electronic reporting approaches can include user-friendly 'smart' electronic forms to be completed on-line or downloaded for completion off-line at the user's personal computer, as well as data transfers via the Internet or secure email in a variety of standard and common off-the-shelf, application-based formats. Similarly, in terms of electronic signature technology, the rule allows for a range of approaches, including various implementations of PINs and passwords, the use of private or personal information, digital signatures based on PKI certificates, and other signature technologies as they become viable for our applications. As EPA or authorized programs implement electronic submission for specific reports, the rule allows them to select one or more of the available submission and signature approaches according to their circumstances and the program-specific requirements.

EPA's goals are to make this electronic reporting alternative as simple, attractive and cost-effective as possible for reporting entities, while ensuring that electronically submitted documents are as legally dependable as their paper counterparts. We believe that today's rule achieves these goals, but—unlike the 1996 policy—without requiring specific technologies or setting detailed procedural steps for the submission of electronic documents. Our strategy—as initially set out in the August 31, 2001, notice of proposed rulemaking, and as finalized today—is to impose as few specific requirements as possible on reporting entities, and to generally keep requirements neutral with respect to technology. As a consequence, today's rule enables EPA, the states, tribes, and local governments to offer regulated companies diverse approaches to electronic reporting that can be tailored to their technical capabilities and to the level of automation they wish to achieve. In addition, the strategy gives EPA, the states, tribes, and local governments the flexibility to adapt electronic reporting systems to evolving technologies without requiring that regulations be amended with each technological innovation.

However, this regulatory strategy does not mean abandoning any control over how electronic documents are submitted. In place of specific technologies or detailed procedural steps, today's rule requires that electronic submissions be made to CDX or other designated EPA systems, or to state, tribe, or local government systems that are determined to satisfy a certain specified set of technology-neutral performance standards. As a practical matter, the use of these systems (e.g., CDX or others that meet the specified performance standards) will involve submission procedures that we believe are sufficient to ensure the legal dependability of electronic reports so that they meet the needs of our compliance and enforcement programs. In addition, while the specified performance standards may be technology-neutral, agency electronic reporting systems that implement the standards will incorporate suites of very specific technologies that will further determine the process for actual electronic submission. Sections V.B and V.C of this Preamble describe these requirements and the associated technologies in some detail for the case of reporting directly to EPA via CDX.

III. Scope of the Electronic Reporting Rule

EPA is today promulgating a new Part 3 in Title 40 of the CFR. The new Part applies to all persons who submit reports or other documents to EPA under Title 40, and to state, tribe, and local programs that administer or seek to administer authorized programs under Title 40. The new part 3 does not address contracts, grants or financial management regulations contained in Title 48 of the CFR.

A. Who may submit electronic documents?

Any entity that submits documents addressed in this rule (see section III.B., below) directly to EPA can submit them electronically as soon as EPA announces that CDX or a designated alternative system is ready to receive these reports. (See section V of this Preamble for a discussion on requirements for electronic reporting to EPA, and section V.B for a discussion of the status of electronic reporting directly to EPA systems that exist as of the rule's publication date.) Under this rule, the affected entities may elect to utilize the electronic reporting alternative. These entities are not required by this final rule to report electronically; however, they may be required to report electronically under other Title 40 regulations, and nothing in today's rule limits EPA's ability to require electronic reporting under other parts of Title 40.

In general, entities may submit documents electronically as provided for under authorized state, tribe, or local government programs. Nothing in this rule prohibits state, tribe, or local governments from requiring electronic reporting under applicable state, tribe, or local law.

B. Which documents can be filed electronically?

This rule addresses document submissions required by or permitted under any EPA or authorized state, tribe, or local program governed by EPA's regulations in Title 40 of the CFR. Nonetheless, EPA will need time to develop the hardware and software components required for each individual type of document. Similarly, states, tribes, and local governments will need time to evaluate their electronic document receiving systems to ensure that they meet the standards promulgated in today's final rule. Accordingly, once this rule takes effect, specific documents submitted directly to EPA that are not already being submitted electronically to existing EPA systems can only be submitted electronically after EPA announces in the **Federal Register** that CDX or an alternative system is ready to receive those specific documents. (See section V.B of this Preamble for a discussion of the status of electronic reporting directly to EPA systems that exist as of the rule's publication date.) Documents may be submitted electronically under the provisions of an authorized state, tribe, or local program.

C. How does this final rule implement electronic reporting?

The new 40 CFR part 3 consists of four (4) Subparts. Subpart A provides that any requirement in Title 40 to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions (specified in Subpart B) once the Agency publishes a notice that electronic document submission is available for that requirement. Subpart A also provides that electronic reporting can be made available under EPA-authorized state, tribe, or local environmental programs. In addition, Subpart A makes clear: (1) that electronic document submission, while permissible under the terms of this rule, is not required by any provision of this rule; and (2) that this rule confers no right or privilege to submit data electronically and does not obligate EPA or states, tribes, or local

agencies to accept electronic data. Subpart A also contains key definitions and discusses compliance and enforcement.

Subpart B sets forth the general requirements for acceptable electronic documents submitted to EPA. It provides that electronic documents must be submitted either to CDX or to other EPA designated systems. It also includes general requirements for electronic signatures. The requirements in Subpart B apply to entities that submit electronic documents for direct reporting to EPA, including states, tribes, and local governments that submit electronic documents to EPA to satisfy requirements that apply to them under Title 40 of the CFR. Subpart B does not apply to any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data. Additionally, Subpart B does not apply to the submission of any electronic document via magnetic or optical media—for example via diskette, compact disk, or tape—or to the transmission of documents via hard copy facsimile or "fax."

Subpart C is reserved for future EPA electronic recordkeeping requirements.

Finally, Subpart D sets forth the process and standards for EPA approval of changes to authorized state, tribe, and local environmental programs to allow electronic reporting to satisfy requirements under these programs. Again, for purposes of Subpart D, "electronic reporting" entails submission via telecommunications, and Subpart D requirements do not apply in cases of submission via magnetic or optical media or hard copy "fax." With respect to electronic reporting, Subpart D includes simplified performance-based standards for acceptable state, tribe, or local agency electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. It also provides a streamlined process for approving applications for revisions to authorized programs for electronic reporting.

Given the provisions of Subpart A, a regulated entity wishing to determine whether electronic reporting directly to EPA was available under some specific regulation will have to verify that EPA has published a Federal Register notice announcing their availability and will have to locate any additional provisions or instructions governing the electronic alternative for the particular reporting requirement. To facilitate this determination, EPA intends to maintain an easily accessed list of EPA reports for which electronic reporting has been implemented—cross-referencing the applicable Federal Register notices—on the Exchange Network and Grants webpage at *www.epa.gov/exchangenetwork.*

IV. Major Changes From Proposed Electronic Reporting Provisions

A. How does the rule streamline the approval of electronic reporting under authorized state, tribe, and local government programs?

1. *Review of the proposal.* EPA proposed that states, tribes, and local governmental entities would use the procedures for program revision or modification provided in existing program-specific regulations governing state, tribe, or local authorized programs.

In the Preamble to the proposed rule, we noted that our approach raised certain administrative concerns, especially in cases where a governmental entity wished to use a single system to accept electronic submissions across a number of authorized programs, corresponding to EPA's use of CDX to receive reports across EPA programs. To receive EPA approval for such implementations, the governmental entity would have to apply for revision or modification under each authorized program affected, using procedures that might vary substantially from program to program. While these procedures might vary, each substantive review would still refer to the same proposed part 3 criteria, and—in the case of a single system implementation—would apply these criteria to the same system. EPA intended this approach to facilitate an administrative streamlining of the approval process, by allowing a single EPA review of all cross-program applications associated with a particular electronic document receiving system, which would enable EPA to make a single decision to approve or disapprove all the associated applications. While this approach would not eliminate multiple applications, it would at least simplify the interactions between the applicant and EPA during substantive review, and would speed EPA action on the applications themselves.

EPA also considered more radical streamlining alternatives, including a centralized approval process provided for by regulation, and the proposal requested comment on whether any of these alternatives would be preferable to the administrative approach to streamlining.

2. *Comments on the proposal.* In comments on the provisions for electronic reporting under authorized programs, a recurring theme was the complexity of the proposed requirements for EPA approval of program revisions or modifications to allow electronic reporting. The comments in many cases seemed directed equally to the approval process and to the proposed criteria for approval. Comments on the criteria are discussed in more detail in section IV.B.2 of this Preamble.

As for the comments that clearly addressed the process, there were two major concerns. The first was that the process, due to the various current program authorization regulations, is inherently complicated, time-consuming and resource-intensive. In a few cases, commenters noted the particular worry that having to seek EPA approval for each program implementing electronic reporting would be especially burdensome, and that EPA's proposed approach of streamlining the internal review component of the program revision process would be of little help.

The second concern was the impact of the rule on electronic reporting that was already underway. Commenters noted that many authorized programs are already accepting electronic submissions, or would be by the time the final rule is published, and they worried about the timing of the requirement that the electronic document receiving systems they use for this purpose be approved by EPA under associated program revision or modification procedures. Under the proposed provisions, such systems would have to be EPA-approved as soon as the rule became effective, which was not practicable. Given the need to address the criteria for approval, such applications could only be initiated once the rule was finalized, and they might take months to complete and get approved, or substantially longer in cases where the revision or modification required state legislative or regulatory changes. During the months or years that the revision or modification was in process, the authorized program would either have to shut down their electronic document receiving systems or, of necessity, operate them out of compliance with the rule. Commenters were particularly concerned with the disruptive impacts of having to shut these systems down. They pointed out that reversion to paper-based submissions in such cases may be difficult and expensive, both for the agencies and for the submitting entities that are affected, and that resuming

system operation after a long hiatus may require resources more typically associated with system start-up. Additional comments on program revision or modification and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *Revisions in the final rule.* To address the concern that the proposed program revision or modification to accommodate electronic reporting was too complicated and burdensome, the final rule provides streamlined procedures for adding electronic reporting to existing authorized programs. These are optional procedures that a state, tribe, or local government may use if it chooses, in place of the applicable program-specific procedures, to seek EPA approval for revisions or modifications that provide for electronic reporting. EPA believes that in most cases these optional procedures will be substantially simpler and quicker than their program-specific alternatives. These new procedures are discussed in detail in section VI.C of this Preamble.

To address the concern that the required program revisions or modifications may disrupt authorized programs that already have electronic reporting underway, the final rule provides for a two-year delayed compliance date—in effect, a two-year "grace period"—before such programs have to submit their applications for revision or modification. Programs will be allowed this grace period where they have systems that fit the definition of "existing electronic document receiving system," explained in section VI.B.2 of this Preamble. In addition, these provisions allow the grace period to be extended, on a case-by-case basis, where an authorized program may need to wait for legislative or regulatory changes before a complete application can be submitted.

B. How has EPA revised the requirements that state, tribe, and local government electronic reporting programs must satisfy?

1. *Review of the proposal.* EPA proposed a detailed set of criteria that would have to be met by any system that is used to receive electronic documents submitted to satisfy document submission requirements under any EPA-authorized state, tribe, or local environmental program. The proposed criteria addressed the capabilities that EPA believed a state, tribe, or local government's electronic document receiving system must have regarding six function-specific categories: (1) System security, (2) electronic signature method, (3) submitter registration, (4) signature/certification scenario, (5) transaction record, and (6) system archives.

These criteria were based upon EPA's consideration of the roles that many electronically submitted documents will likely play in environmental program management, including compliance monitoring and enforcement, and the need to ensure that such roles were not compromised by the transition from paper to electronic submission. In many respects electronic submission enhances a document's utility for environmental programs: it significantly reduces the resources and time involved in making the content available to its users, and can greatly facilitate data quality assurance and analysis. Nonetheless, electronic submissions may also be open to challenge, primarily with respect to their authenticity, and particularly where they are used to establish the actions and intentions of the submitters. We normally consider such uses in the case of environmental reporting, especially where electronic submissions are made to report on an entity's compliance status and where the submission includes a responsible individual's certification to the truth of what is reported. For such cases, EPA identified a programmatic need to be able to authenticate the submission content and the certification—for example, to be able to address issues of fraud or false reporting where they arise—and it is primarily this need that was addressed by the six proposed criteria.

The point of the proposal's six function-specific categories was to ensure the authenticity of electronic documents submitted in lieu of paper reports, so that they will be able to play the same role as their paper counterparts in providing evidence of what was reported and to what an identified individual certified with respect to the report. For example, in the case of paper submissions, the evidence surrounding a handwritten signature is normally sufficient to demonstrate that the signature is authentic and rebut any attempt by the signatory to repudiate it and EPA intends the standards in today's rule to provide evidence for electronic signatures that has a corresponding level of non-repudiation. Since these evidentiary issues typically arise in the context of judicial or other legal proceedings, electronic documents need the same "legal dependability" as their paper counterparts. The over-arching standard in the concept of "legal dependability" is that any electronic document that may be used as evidence to prosecute an environmental crime or to enforce against a civil violation should have no less evidentiary value than its paper equivalent. For example, where there is a question of deliberate falsification of compliance data—it must be possible to establish the signatory's identity beyond a reasonable doubt no matter whether the submission was electronic or paper.

A seventh, more general proposed criterion, entitled "Validity of Data," addressed the standard of legal dependability directly. The idea, in general, was that a system used to receive electronic documents must be capable of reliably generating evidence for use in private litigation, in civil enforcement proceedings, and in criminal proceedings in which the standard for conviction is proof beyond a reasonable doubt that the electronic document was actually signed by the individual identified as the signatory and that the data it contains was not submitted in error. The six more detailed, function-specific criteria represented the requirements for satisfying this more general "Validity of Data" criterion. Taken together, the seven proposed criteria were intended to ensure the legal dependability of electronically submitted documents by providing:

- Standards for valid electronic signatures and authentic electronic documents to be admitted as evidence in a judicial proceeding;
- Assurance that electronic documents can be authenticated to provide evidence of what an individual submitted and/or attested to; and
- Assurance that electronic signatures resist repudiation by the signatory.

By providing for these and other facets of an electronic document's legal dependability, proposed CROMERR was intended to preserve the ability of EPA and its authorized programs to hold individuals accountable when they certify, attest or agree to the content of compliance reports under environmental laws and statutes. By the same token, proposed CROMERR was also intended to ensure that EPA and its authorized programs will have the documentary evidence they need to bring actionable cases of false or fraudulent reporting into court.

2. *Comments on the proposed criteria for electronic document receiving systems.* EPA received a substantial number of comments on the proposed criteria for state, tribe, and local electronic document receiving systems, both in written submissions and at meetings with the public and with state and local government officials. While a

few of these comments questioned the "Validity of Data" criterion, the great majority dealt with the detailed function-specific criteria. There were at least three recurring and closely related themes. First, the criteria were too prescriptive and inflexible, and would prevent state, tribe, and local agencies from adapting their electronic reporting approaches to their needs and changing circumstances, and foreclose new and creative ways to achieve legal dependability. Second, the criteria would make electronic reporting unnecessarily complex, costly, and burdensome. Third, while the criteria might be appropriate for some cases, the "one size fits all" approach was not workable for all reports in all programs.

Commenters tended to associate these three themes with certain misperceptions about the proposed requirements for signature method and the signature/certification scenario. Concerning signature method, a common concern was that the criteria would require states to implement PKI-based digital signatures. Commenters generally appear to have inferred this from proposed § 3.2000(c) Electronic Signature Method, together with EPA's own choice of PKI for some submissions to CDX, as discussed in the Preamble. Whatever EPA's plans for CDX, state, tribe, and local government systems do not have to conform to the CDX model. Implementing a particular system of necessity requires the choice of specific technologies. To make those choices does not imply that these are the only possible choices that would satisfy whatever requirements the rule places on electronic reporting systems. Concerning § 3.2000(c), commenters tended to focus on paragraph (5) of this section, which stated that the signature method had to ensure "that it is impossible to modify an electronic document without detection once the electronic signature has been affixed." EPA did not intend for this provision to establish PKI-digital signature as the required signature method. Given current technology, approaches to satisfying the § 3.2000(c)(5) requirement frequently involve the computation of a number—called a "hash"—that has a unique relation to the content of the electronic document such that any change to the document content would change the computed hash. Given the hash, the associated document can be confirmed as unmodified at any time by calculating a new hash and showing that the new and original hashes are identical. Using such a hash-based approach, it is important to ensure that the hash has been secured from tampering, and encryption is probably the most straightforward way to do this. Encryption can be accomplished in a number of ways. Approaches include PKI-based digital signature, digital signature where the asymmetric key-pair is not associated with a PKI certificate, and various forms of symmetric-key cryptography. Additionally, it may be possible to avoid cryptography altogether by storing the hash value in a system with appropriately controlled access. Thus, a solution using PKI-based digital signatures represents only one among a number of possible approaches to satisfying the proposed §3.2000(c)(5) requirement.

A number of commenters also misinterpreted the criteria under proposed § 3.2000(e) Electronic signature/certification scenario (especially the provisions for signatory's review of data under § 3.2000(e)(1)(i)) as requiring signatories to scroll through their submissions on-screen before they affix their electronic signatures, and requiring state systems to enforce this required "scroll-through". However, the proposal provided not that the signatory must review the data on-screen, but rather that he or she be given the opportunity to do so. The example of the enforced on-screen "scroll-through" then envisioned for CDX, and provided in the CDX section of the proposal's preamble, was in error. EPA did not intend to require this "scroll-through" of submitted data prior to signature. EPA certainly does expect and encourage reporting entities to review data intended for electronic submission prior to signature, but does not mandate this or any other particular mode or method of signatory review in today's rule.

Returning to the three comment themes—of prescriptiveness, cost and burden, and a "one size fits all" approach—commenters who raised the prescriptiveness issue generally argued that, even supposing that there were no specific objections to the detailed § 3.2000 provisions, EPA had failed to make the case that every single requirement under these provisions is necessary to ensure the legal dependability of electronic submissions. Commenters who argued that the proposed rule would be too costly and burdensome generally focused on § 3.2000(c)(5) and § 3.2000(e)(1)(i), discussed above, or on the proposed § 3.2000(d) registration and signature agreement provisions. There were many comments to the effect that the complex § 3.2000(d) registration and re-registration requirements would pose substantial barriers to regulated company participation in electronic reporting and involve unacceptable expenses for implementing agencies. Commenters also noted that the required § 3.2000(e)(1)(i) would be difficult to integrate with company workflow practices in many cases. Finally, there is the "one size fits all" issue. Some of the comments raised this as another version of the "prescriptiveness" issue, but adding that the proposal developed just one model of electronic reporting and attempted to make it fit the differing circumstances of the various state, tribe, and local agencies that would have to comply. Other comments emphasize the point that the proposal takes requirements apparently tailored to assuring an electronic document's authenticity and applies them to all cases of electronic reporting, whether or not the question of authenticity is likely to arise.

EPA has considered these and related comments in writing today's rule. We do not wish to set overly prescriptive requirements and so foreclose acceptable electronic reporting alternatives that could offer equivalent or better assurance of legal dependability while, perhaps, being easier for a state, tribe, or local agency to implement. We do not wish to set requirements that impose unnecessary costs or burdens. And, while we do not see a "bright line" around the universe of cases where document authenticity might be of concern, we also do not wish to address authenticity with requirements that leave states, tribes, and local governments with too little flexibility in how they may adapt their electronic reporting implementations to their particular circumstances. Accordingly, EPA has decided to finalize criteria for electronic document receiving systems that directly articulate the underlying goal of assuring the legal dependability of electronic documents authenticity, and to add more specific requirements only to the extent that they are needed to achieve this underlying goal. Accordingly, the provisions of today's rule have been clarified as general performance standards necessary to ensure the legal dependability of the electronic documents they receive. Additional comments on the proposed criteria and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *Revisions to the criteria in the final rule.* In today's final rule, we intend to fulfill the underlying goal of the proposed § 3.2000 criteria for electronic document receiving systems. This is to assure the authenticity and non-

repudiation of electronic documents submitted in lieu of paper reports, so that they are as legally dependable—that is, as admissible in evidence and accorded the same evidentiary weight—as their paper counterparts. As noted earlier, this goal was expressed most directly in the proposed § 3.2000(b) "Validity of Data" criterion. Accordingly, for the final rule, we started with the proposed § 3.2000(b) and then clarified the remaining proposed § 3.2000 criteria as general performance standards for electronic document receiving systems, which were incorporated as needed to assure the legal dependability of the electronic documents such systems receive. The resulting § 3.2000(b) in the final electronic reporting rule reflects the requirements discussed in the table below. The citation for the corresponding language in the proposed rulemaking is also provided.

Citation/subject area in proposed rule	Citation/requirement in final section 3.2000(b)
Proposed § 3.2000(g), addressing system archives	Section 3.2000(b)'s leading clause requires that the system be able to generate the required data as needed and in a timely manner.
Proposed §§ 3.2000(e)(3) and 3.2000(f), addressing signature/certification scenarios and transaction record.	Section 3.2000(b)'s leading clause and § 3.2000(b)(4) require that the system be able to generate a "copy of record" that is made available to the submitters and/or signatories for review and repudiation.
Proposed §§ 3.2000(c) and 3.2000(d), addressing the electronic signature method and submitter registration process.	Section 3.2000(b)(5)(i) requires that the system be able to show that any electronic signature on an electronic document was created by an authorized signatory with a device that the identified signatory was uniquely entitled and able to use.
Proposed § 3.2000(c)(5), addressing requirement that it be impossible to modify an electronic document without detection once it has been electronically signed.	Section 3.2000(b)(5)(ii) requires that the system be able to show that the electronic document cannot be altered without detection once it has been electronically signed.
Proposed § 3.2000(e), addressing the signature/certification scenario	Sections 3.2000(b)(5)(iii)—(iv) require that the system be able to show that, before signing, any signatory had the opportunity to review what he or she was certifying to in a human-readable format, and to review the certification statement including any provisions relating to criminal penalties for false certification.
Proposed § 3.2000(d), addressing the submitter registration process	Section 3.2000(b)(5)(v) requires that the system be able to show that the signatory signed an "electronic signature agreement" or a "subscriber agreement" acknowledging his or her obligations connected with preventing the compromise of the signature device.
Proposed § 3.2000(e)(2), addressing acknowledgment	Section 3.2000(b)(5)(vi) requires that the system be able to show that it automatically sent an acknowledgment of any electronic submission it received that bears an electronic signature; the acknowledgment must identify the electronic document, the signatory and the date and time of receipt, and be sent to an address that does not share the access controls of the account used to make the submission.
Proposed § 3.2000(d)(1)–(3), addressing submitter registration.	Section 3.2000(b)(5)(vii) requires, for each electronic signature device used create an electronic signature on documents that the system receives, that the system be able to establish the identity of the individual uniquely entitled to use that device and his or her relation to the entity on whose behalf he or she signs the documents.

The requirements in § 3.2000(b)(5)(iii)–(iv) of today's rule, concerning "opportunity to review," do not place the responsibility for providing an opportunity, or for showing whether or not an opportunity was actually taken, on the state, tribe, or local government electronic document receiving system. What is required is that the system provide evidence sufficient to show that an opportunity was provided; this point is explained in greater detail in sections VI.E.8 and VI.E.9 of this Preamble.

EPA believes that the standards in § 3.2000(b) of today's rule, as developed from the proposed "Validity of Data" criterion, together with other proposed criteria clarified as general performance standards, represent the minimum set of requirements for electronic document receiving systems necessary to ensure the legal dependability of the electronic documents such systems receive. For example, the requirement for a copy of record is necessary to ensure that there is an authoritative answer to the question of what information content a signatory was certifying to or attesting to. The related requirement that the system be able to provide timely access to copies of record and related data reflects a practical concern that the data be accessible in time and in a format to serve the purposes for which it is needed.

Concerning the requirement that signature devices be uniquely assigned to, and held by individuals, EPA believes that an acceptable electronic document receiving system must be able to attribute a signature to a specific individual, to help assure that the signatory cannot repudiate responsibility for the signature. Non-repudiation is also strengthened by the signed electronic signature agreement, which establishes that the signatory was informed of his or her obligation to keep the signature device from compromise by ensuring that it is not made available to anyone else. Requiring the signature agreement, as well as the opportunity to review what they are signing, helps establish that where signatures appear on electronic documents, the signatories had the requisite intent to certify. That is, these requirements help ensure that the signatories knew what they were signing, knew what signing meant, and understood the legal implications of false certification. As for the requirement that document content cannot be altered without detection after signature, an acceptable electronic document receiving system must provide evidence sufficient to allow a court to attribute the intention to certify to the document's current content to the signatory, so that he or she cannot repudiate this content.

Finally, today's § 3.2000(b)(5)(vii) requirement that the system be able to establish the identity of the individual who is assigned a signature is based on proposed § 3.2000(d). Proposed § 3.2000(d) logically entails today's § 3.2000(b)(5)(vii), because satisfying the

provisions of the former guarantees compliance with the latter. However, today's § 3.2000(b)(5)(vii) limits the scope of the proposed § 3.2000(d)(3) requirement that, in registering for their signature devices, registrants must execute their electronic signature agreements on paper with handwritten signatures. In today's § 3.2000(b)(5)(vii), this requirement is limited to a special class of "priority report" submittals. (See section VI.E.12 of this Preamble.) In addition, today's § 3.2000(b)(5)(vii) offers alternatives to this handwritten signature requirement, to allow electronic reporting solutions that are completely free of paper transactions. The alternative provisions, found in today's § 3.2000(b)(5)(vii)(A)–(B), are elaborations of the proposed § 3.2000(d)(1) requirement for "evidence [of identity] that can be verified by information sources that are independent of the registrant and the entity or entities" for which the registrant will submit electronic documents. The elaborations are necessary to assure that individuals' identities can be established without being able to rely on their handwritten signatures—and, in the final rule, the requirements apply only to "priority report" submittals, and only where the choice is made to not use paper in the execution of electronic signature agreements. Section VI.E.12 of this Preamble outlines all of today's § 3.2000(b)(5)(vii) provisions in much more detail. In any event, we have made these changes to the proposed § 3.2000(d) approach to help address commenters' concerns with "one size fits all" provisions, as well as to allow states, tribes, and local government as much flexibility as possible as they implement their electronic reporting systems.

In sum, the overall approach to the standards for electronic document receiving systems in today's rule reflects a balancing of the concerns raised by the public comments, especially those relating to the proposal's burden on states, tribes, local governments and regulated entities, against the need to ensure the legal dependability of electronic documents submitted under authorized programs. Finally, EPA notes that to date the Agency has had limited experience with the practical application of electronic signatures and electronic reporting generally. With the benefit of practical experience accepting electronic reports under this rule, EPA may determine that this rule needs to be revisited, to either add or eliminate certain safeguards. In addition, while EPA has sought to write this rule so that its provisions are technology-neutral, it remains possible that revisions will be required to reflect technological changes or changes in prevailing industry norms and practices. If these or other circumstances require it, EPA thus reserves the right to revisit the issues addressed in this rule.

C. How has EPA accommodated electronic submissions with follow-on paper certifications?

Currently there are EPA and state programs that take electronic submissions where the requirements for a signed certification statement are met with a follow-on paper submission with handwritten signatures. A number of commenters suggested that such an approach be recognized and allowed to continue under the electronic reporting rule. EPA has no wish to proscribe such an approach, and does not judge whether or not follow-on paper signature/certification is to be preferred to the approach where the signature/certification is electronic. To make this clear in the final rule, we have added a clause to § 3.10(b) that allows follow-on handwritten signatures to substitute for electronic signatures on submissions to EPA where "EPA announces special provisions" for this purpose. A corresponding clause in § 3.2000(a)(2) of today's rule makes a similar allowance for electronic reporting under authorized state, tribe, or local programs, again, where "the program makes special provisions to accept a handwritten signature on a separate paper submission."

Among other things, these "special provisions" would allow follow-on paper signature submission only if it were reliably linked or cross-referenced with the associated electronic document. The linking or cross-referencing is necessary in part to ensure that we can always determine which signature submissions belong with which electronic documents. Paper signature submissions must also provide sufficient evidence that the signatory intended to certify to or attest to the content of the electronic document as this content is recorded in the copy of record for the submission. There are various approaches to cross-referencing or linking that would meet these needs, most of which involve the inclusion of extra data elements in the signature submission that reference the associated electronic document. Such data elements might include summary data from the electronic document, the date and time of the electronic submission, or even the calculated hash value of the electronic document. EPA may use these and other alternatives if a decision is made to provide for direct electronic reporting to EPA with follow-on paper signatures. For such submissions to authorized programs, we have added to § 3.2000(a)(2) of today's rule the requirement that authorized program provisions for follow-on paper signature submissions "ensure that the paper submission contains references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or agree to the content of that electronic document."

D. How has EPA changed proposed definitions of terms?

The "Definitions" section of the final rule, § 3.3, provides new definitions for "copy of record," "electronic signature agreement," and "valid electronic signature," as well as the revisions to the definition for "electronic signature device," to help articulate the final § 3.2000(b) standards for electronic document receiving systems. These terms are explained in more detail in section VI, below. (See especially, sections VI.E.2., VI.E.10. and VI.E.6.) Similarly, in section VI.B.2 of this Preamble we note the role of the new definition for "existing electronic document receiving system;" and, in section VI.E.12 we discuss the new definitions for "agreement collection certification," "disinterested individual," "information or objects of independent origin," "local registration authority," "priority reports," and "subscriber agreement." Section 3.3 also reflects a number of clarifying and/or simplifying changes for definitions of terms, as follows.

1. *Definition of "acknowledgment."* This definition has been added in conjunction with § 3.2000(b)(5)(vi) of today's rule, to make clear that in the context of this rule, acknowledgment means a confirmation of electronic document receipt.

2. *Definition of "electronic document."* This definition has been revised from the proposed version in several ways. First, the use of "communicate" has been eliminated, thereby eliminating the need for a separate definition of that term. Second, the exclusion of magnetic and optical media and facsimile submissions has been eliminated. We believe it is clearer to exclude such submissions from the scope of CROMERR under § 3.1, entitled "Who does this part apply to?" Today's rule now provides this exclusion in §§ 3.1(b) and 3.1(c). Third, the definition has also been revised so that it explains what a "document" is in an electronic medium. Instead of saying that an "*electronic document* means a

document. * * *," the final version says that "*electronic document* means any information in digital form. * * *," where *information* is explained as potentially including "data, text, sounds, codes, computer programs, software or databases." Fourth, this definition clarifies that in this context, "data," is used in its normal sense as denoting a delimited set of data elements, each of which is a unit of meaning in a document and consists of a content or value together with an understanding of what the meaning and/or context of the content or value is. Finally, the definition stipulates that where an electronic document includes data, the understanding of what the data content or value means must either be explicitly included in the electronic document or be readily available through such sources as an applicable data element dictionary, or a form or template that specifies what each data element means when it is presented in the specific file format used for the electronic document's submission.

A consequence of this approach is that the identity of an electronic document consisting wholly of data is independent of the format in which it is presented or submitted. That is to say, rearranging or reformatting the data elements in an electronic document does not change it into a different one, at least so long as the signatory's intention and understanding of what the data elements each mean is preserved in the process. This does not conflict with the ordinary understanding of the term "document," since we speak quite often of "reformatting a document," with the clear understanding that what results will be the same document in a new format. Correspondingly, under the definition of "copy of record," a "true and correct" copy of an electronic document does not necessarily have to reflect the format in which the document was submitted, provided that the document consists wholly of data. This independence of document identity from format may not always hold where other kinds of information are included in the electronic document, e.g. text or images; in such cases a copy of record may have to include format or formatting information.

3. *Definition of "electronic signature."* This definition has been revised by substituting "information in digital form" for "electronic record," to avoid problems with defining "electronic record." The definition has also been revised to make clear that the electronic signature for an electronic document need not always be "included" within that document; in some cases it may just be "logically associated" with it. This point is explained further in section VI.E.2 of this Preamble, in discussing the copy of record requirement.

4. *Definition of "electronic signature device."* The definition of "electronic signature device" has been revised to clarify that where a device is used to create an individual's electronic signature, then the device must be unique to that individual, and he or she must be uniquely entitled to use it at the time that the signature is created. Correspondingly, the device is compromised if it is available for use by any other individual, that is, if some other individual is able to use the device to create signatures if he or she wishes. To the extent that §§ 3.10(b) and 3.2000(b)(5)(i) of the final rule prohibit the acceptance of signatures created with compromised devices, via the definition of "valid electronic signature," the element of compromise rules out the sharing of electronic signature devices or delegating their use to create individuals' electronic signatures. Additionally, the definition includes the element that an individual needs to be entitled to use the electronic signature device; that is, the individual needs to be the "owner" of the device. The nature of the device itself will determine the way in which an individual comes to own it. In the case of personal identification numbers or certificate-based private/public key pairs, there is normally some process of formally assigning the device to the individual, often through a trusted third party. In other cases, for example password or personal information-based signature devices, the process may have the individuals invent and assign the devices to themselves " the basis for their ownership of the devices being determined by the circumstances or context within which they do this.

5. *Definition of "transmit."* In the proposed rulemaking the term "submit" was defined as the "means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system." However, the term "submit" is used more widely in the rule in ways that are not consistent with this definition. Accordingly, in the final rule the function of successful and accurate conveyance of an electronic document is now termed "transmit."

6. *Definition of "valid electronic signature."* Beyond its role in § 3.2000(b), this definition has also been added to help clarify and simplify the signature requirements associated with electronic reporting, both directly to EPA, in § 3.10, and under authorized programs, in § 3.2000(a)(2). The definition specifies three main conditions for validity. The first refers to features of the signature that are intrinsic to the items of information of which it consists: The signature must consist of the kind of information that has been established as appropriate for the signing of the document in question, and the specific information content must pass the validation tests which the system uses to determine that the signature belongs uniquely to the identified signatory. The second condition refers to the status of the electronic signature device used to create the signature, and ensuring that the device was not compromised at the time it was used to create the signature. This ties validity to the element of *compromise* within the definition of "electronic signature device." That is, at the time of signature, the device must not have been made available to someone other than the individual who is entitled to use it. The third condition refers to the signatory's status at the time of signature as someone who is authorized to sign the document in question by virtue of his or her legal status and/or relationship to the entity on whose behalf the signature is executed. In the context of environmental reporting, this condition would make invalid electronic signatures on company compliance reports created by individuals who do not work for or in any way represent the company. Generally, in the context of environmental reporting, individuals who sign submissions to environmental agencies are explicitly authorized to do so, by their management and/or by the agency to which they report. However, in some cases the authorization may be implicit in the signatory's legal status and relationship to the regulated entity. For example, an owner or operator of a company is generally authorized to sign notifications or letters to an environmental agency whether or not this is explicitly provided for by law or regulation.

As "valid electronic signature" is used in §§ 3.10 and 3.2000(a)(2), the validity of an electronic signature is necessary for the signatory's electronic submission to satisfy a federal or authorized program reporting requirement. Additionally, as the term is used in § 3.2000(b), it also refers to a performance requirement for an electronic document receiving system, namely that the system must not accept and must be able to detect submissions with signatures that are not valid. These requirements in terms of "validity" are

meant to provide a form of insurance for electronic signatures to protect against the risks of repudiation. Nonetheless, a signatory may be legally bound by a signature even where not all the requirements for its validity have been met, *e.g.*, where the signature has been executed with a compromised electronic signature device. The signatory of an electronic submission cannot avoid responsibility for its contents by pointing to a technical flaw or other defect in the signature process.

V. Requirements for Direct Electronic Reporting to EPA

A. What are the requirements for electronic reporting to EPA?

Under the final rule, the requirements for electronic reporting to EPA remain essentially unchanged from those in the proposal. Section 3.10 provides, first, that electronic documents must be submitted to an appropriate EPA electronic document receiving system. Generally this will be EPA's Central Data Exchange (CDX), although EPA can also designate additional systems for the receipt of electronic documents and is doing so in a separate **Federal Register** notice. Second, where a paper document must bear a signature under existing regulations, an electronic document that substitutes for the paper document must be signed (by the person authorized to sign under the current applicable provision) with a valid electronic signature.

Only electronic submissions that meet these two requirements will be recognized as satisfying a federal environmental reporting requirement, although failure to satisfy these requirements will not preclude EPA from bringing an enforcement action based on the submission or otherwise relying on the submission. A new compliance and enforcement section has been added to the final rule to clarify certain compliance and enforcement issues related to electronic reporting. Section 3.4 makes clear that EPA can seek and obtain any appropriate federal civil or criminal penalties or other remedies for failure to comply with an EPA reporting requirement if a person submits an electronic document to EPA under this rule that fails to comply with the provisions of § 3.10. Similarly, § 3.4 makes clear that EPA can seek and obtain any appropriate federal civil or criminal penalties or other remedies for failure to comply with a state, tribe, or local government reporting requirement if a person submits an electronic document to a state, tribe, or local government under an authorized program and fails to comply with the applicable provisions for electronic reporting. Section 3.4 also contains provisions originally published under § 3.10(d) and (e) of the proposal, stipulating that the electronic signature will make the person who signs the document responsible, bound, or obligated to the same extent as he or she would be signing the corresponding paper document by hand.

The § 3.10 requirement that there be an electronic signature applies only where a paper document would have to bear a signature were it to be submitted, either because this is required by a statute or regulation, or because a signature is required to complete the paper form. The rule does not impose any new or additional signature requirements for documents that are submitted in electronic form. In addition, as noted in section IV.C of this Preamble, § 3.10(b) of today's rule also allows EPA to make special provisions, in specific cases, for accepting handwritten signatures in follow-on paper submissions in lieu of the required electronic signatures. In such cases, it is critical that the special provisions ensure that the electronic document cannot be altered without detection and is reliably linked to the handwritten signature.

As in the proposal, this final rule does not specify any required hardware or software. Accordingly, the rule text does not include any detail about CDX per se or about what will be required of regulated entities who wish to use it. Nonetheless, as stated in the proposal, our goals include the sharing of detail on how CDX implements direct electronic reporting to EPA. Section V.C.4 of this Preamble explains how CDX has changed since we described it in the proposal, especially in relation to the many comments we received on CDX-related issues.

B. What is the status of existing electronic reporting to EPA?

In a notice published concurrently with today's rule, EPA clarifies the status of electronic reporting directly to EPA systems that exist as of the rule's publication date. In accordance with 40 CFR 3.10, EPA is designating for the receipt of electronic submissions, all EPA electronic document receiving systems currently existing and receiving electronic reports as of the date of this notice. This designation is valid for a period of up to two years from the date of publication of this notice. During this two-year period, entities that report directly to EPA may continue to satisfy EPA reporting requirements by reporting to the same systems as they did prior to CROMERR's publication unless EPA publishes a notice that announces changes to, or migration from, that system. Any existing systems continuing to receive electronic reports at the expiration of this two-year period must receive redesignation by the Administrator under § 3.10. Notice of such redesignation will be published in the **Federal Register**.

EPA's goal is that all its systems for receiving electronic reports be consistent with the CROMERR standards for electronic document receiving systems, set forth in § 3.2000(b) of today's rule. EPA generally hopes to achieve this consistency within a two-year transition period for existing EPA systems; however, EPA is not bound by the § 3.2000(b) standards of today's rule or the two-year period. This two-year period is similar to the two-year transition period provided under § 3.1000(a)(3) for systems operated under EPA-authorized programs. In a number of cases, EPA may work toward this goal by migrating existing electronic reporting to CDX or to other, new CROMERR-consistent systems. As we change or migrate existing electronic reporting programs to achieve consistency with the CROMERR standards, we intend to provide sufficient advance notice to reporting entities so that any new requirements can be accommodated without causing significant disruption to their electronic reporting activities.

C. What is EPA's Central Data Exchange?

1. *Overview of general goals.* The proposal described EPA's "Central Data Exchange" as a system to be developed and maintained by EPA's Office of Environmental Information (OEI) that would serve as EPA's gateway or "portal" for receiving documents electronically from our reporting community. The goal of CDX was to augment, and, where appropriate, streamline and consolidate EPA's environmental reporting functions by offering our reporting community faster, easier, and more secure submission options through a single venue for electronic submission of environmental data. As a cornerstone of EPA's efforts to advance electronic government, CDX would support the electronic submission needs of thousands of regulated entities submitting data to EPA for certain air, water, waste, and toxic substances programs. Ultimately, EPA planned to offer, wherever practicable, all regulated entities that report directly to EPA, an option to file their specific environmental documents

electronically through CDX. Regulated entities that submit reports under an authorized program would also be able to file their documents through CDX in cases where the state, tribe or local government that administered the program chose to use CDX as a gateway for electronic data submissions from its reporting community.

The reporting community using CDX would be able to access web "reporting" forms with built-in data quality checks, and/or submit standard file formats through common, user-friendly interfaces that allowed them to electronically submit data across vastly different environmental programs. Both the reporting community and EPA would benefit by gaining access to environmental reports more quickly and with fewer errors, and by avoiding the inefficiencies of having to keystroke data from paper reports. CDX was also being developed to support a newly emerging Environmental Information Exchange Network (EIEN) that would facilitate the electronic exchange of environmental data between EPA and state, tribe, and local environmental agencies. However, in keeping with the scope of the proposed rule the description of CDX features and functions in this section apply only to electronic submissions to CDX from regulated entities; the description doesn't apply to EIEN exchanges with CDX in which states, tribes, or local governments participate as a part of their authorized programs or as a part of administrative arrangements with EPA to share data.

The Concept of Uniformity. The proposal also characterized CDX as providing an environment that would promote a uniformity of technologies and processes. By adopting CDX to support the electronic reporting needs across various EPA programs, EPA hoped to avoid the proliferation of program-specific electronic reporting approaches that could lead to duplicative investments in electronic document receiving systems and possibly conflicting requirements for submitters.

The CDX Functions and Building Blocks. As described in the proposed rule, CDX was being designed with the goal of fully satisfying the criteria that the proposal specified for state, tribe, and local electronic document receiving systems; similarly, EPA would ensure that other systems the Administrator designated to receive electronic submissions satisfied the criteria as well. The proposal discussed how CDX would implement CROMERR-compliant electronic reporting by describing the primary CDX functions and the system building blocks that would support these functions. The functions described in the proposal included: (1) Access management, (2) data interchange, (3) signature/certification management, (4) submitter and data authentication, (5) transaction logging, (6) copy of record provisions and acknowledgment, (7) archiving, (8) error checking, (9) translation and forwarding, and (10) outreach. The proposal then described five building blocks that would support CDX functions, which were: (1) Digital signatures based on PKI, where CDX would rely predominately on a third party vendor under the General Services Administration (GSA) Access Certificates for Electronic Services (ACES), (2) a process for registering users and managing their access to the CDX, (3) a client server-architecture, (4) EDI standards, as the primary format for exchanging environmental data, and (5) a consistent user interface for making electronic submissions.

2. *Comments on the proposal.* EPA received more than 100 comments on the CDX concept as described in the proposal. A number of these comments were related to one of four main subject areas, as follows.

Comments on Uniformity of Approach. Several comments expressed concern about the proposed characterization of CDX as promoting "uniformity of process and technology". The phrase was used to highlight the benefits of CDX, which included EPA's plans to avoid the costly proliferation of redundant systems. However, comments pointed out that this "uniformity" implied an inflexible and overly prescriptive set of CDX technical and security requirements, which would discourage CDX use. Such comments were similar to those discussed in section IV.B.2 of this Preamble, raising concerns about the prescriptiveness and "one size fits all" approach of the proposed criteria for electronic document receiving systems.

EPA understands that "uniformity of process and technology" could imply inflexibility, and this is not generally how we intended to develop CDX. In fact, CDX is currently using a wide range of technologies and processes to address CDX's functions that are tailored to individual EPA program submission requirements, including the technical capabilities of the reporting community for the particular program. EPA recognizes that, for example, permitting, compliance monitoring, and the conduct of studies involve fundamentally different business processes, and that the associated submission of electronic documents may have to be handled differently in each case. In some instances CDX may support a more interactive "workflow" environment for submitting data; in others, CDX may accept batch transmissions of user-formatted files. It is also true that the technical capabilities of a particular reporting community vary considerably, so CDX will offer more than one electronic submission option in many cases. CDX currently provides support for web-forms, file, and record-level submissions in various formats including flat file and XML and EPA plans to continue this flexible approach.

Comments on registration process. Comments from regulated entities raised concerns about the costs and time required to register individuals in each company, and EPA's failure to address the increasingly common cases where the preparer of an environmental report and the certifying official are different individuals.

Because electronic submission is being offered as an option to the reporting community, EPA recognizes the need to design CDX registration to be as user-friendly as practicable, in part by taking account of the flow of work, or "workflow" involved in meeting a particular environmental reporting requirement. For example, since proposal, EPA has developed approaches to register both preparers and certifying officials for at least two reporting programs. Changes to the CDX registration process are discussed in more detail in section V.C.4.

Comments on digital signatures based on PKI. Comments pointed out that reliance on PKI for all cases of electronic signature may violate the GPEA directive to vary electronic signature approaches with the circumstances of their use. Several comments underlined this concern by pointing to PKI's costs and burdens. The comments objected that registering through CDX and acquiring digital signature certificates would be overly complicated, and would require that registrants provide private or personal information. Some comment also expressed concern about the incompatibility of a PKI-based approach with workflow, given that environmental reports were frequently prepared by staff and then signed by the facility owner, with staff turnover being frequent. Another concern was the implications of CDX PKI software for company system security, for example, given the need to download CDX software through the company firewall.

EPA agrees that it should generally minimize the complexity and cost of electronic signatures or this will deter potential users of CDX from submitting

electronic documents. In implementing CDX, EPA has revised the initial plan for electronic signatures to include non-PKI electronic signatures. Section V.C.4 discusses how we are changing the "digital signature based on PKI building block."

Comments on EDI Standards. Comments expressed both encouragement and concern over CDX's prospective implementation of standards-based exchange formats for data submissions. An exchange format is a predefined file structure, including data elements and higher level syntax that describes how the data extracted from a system must be arranged in a file for transmission to another system. A standards-based format adheres to certain widely-accepted industry, national, or international file structure definitions. Several comments expressed concern about the costs of configuring their systems to generate a CDX-specified standard format; others expressed concerns about the costs of potential changes to the format once it is implemented on their systems. By contrast, other comments strongly supported requiring standards-based formats—even recommending that we require such formats by rule for EPA and EPA-authorized state, tribe, and local electronic document receiving systems.

CDX's approach to standards-based formats has changed considerably since the proposal, in large part because of the emergence of Internet-based approaches, most notably Extensible Mark-up Language (XML). These changes are discussed in more detail in section V.C.4. EPA believes that the use of standard formats can be encouraged without requiring this by rule. Additional comments on CDX and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *The aspects of CDX that have not changed since proposal.*

General Goals. EPA's continues its efforts to establish CDX as the gateway or "portal" for receiving documents electronically from the Agency's reporting community. In so doing, EPA's goal—to augment, and where appropriate, to streamline and consolidate EPA's environmental reporting functions through CDX—remains unchanged. The functions that comprise CDX operations continue to remain the same though the range of technologies and processes used to support these functions has considerably broadened. CDX continues to implement electronic reporting capabilities for EPA's many environmental programs, while advancing the efforts of EIEN in coordination with state, territorial, tribes, and other partners.

General Approach to Electronic Reporting Implementation. In general, current instructions for client-side access of CDX suggest Internet access and a system that uses both Microsoft Windows and Microsoft Internet Explorer (IE). EPA acknowledges that the Government Paperwork Elimination Act (GPEA) directs OMB to develop procedures for agencies to follow in using and accepting electronic documents and signatures and these procedures "may not inappropriately favor one industry or technology." Consistent with this GPEA directive, EPA is committed to considering ways to allow other vendors' technologies to access CDX. Accordingly, over the six months following the publication of today's rule, EPA intends to assess the full range of issues that affect CDX's ability to support multiple platforms and browsers. These issues include the technical requirements for the electronic signature options, form entry options, data upload options, network interface options, current capabilities of the CDX hardware/software platform, and potential impacts of new client-side platforms on the CDX life cycle management, technical support requirements, and help desk training and support. Based on this assessment, EPA intends to determine the target universe of client-side platforms and browsers that CDX can feasibly accommodate, and will identify the actions and timeline necessary to build out CDX support for this target universe.

As described in the proposal, CDX users will need to:

- Register with CDX, during which time they may need to supply information used to identify themselves, their company, and the EPA documents they wish to submit electronically;
- Verify and/or correct registration information; and
- Access their CDX web account through a secure website, and agree to the terms and conditions of using the site, which include safeguarding their self-generated password, before using web forms or uploading files to submit electronic documents or data to EPA.

These are the minimum steps for gaining access to CDX at this time. Additional steps are involved in acquiring an electronic signature device, although these steps have changed somewhat since the proposal and are discussed in section V.C.4. CDX also offers at least two general methods for reporting electronically for many programs it supports, either through file submission or through a "smart web form". However, the types of formats and approaches for submitting data through CDX have broadened, and these too are discussed in section V.C.4.

4. *The major changes that EPA has made to CDX since proposal.* Over the last two years, CDX has evolved from a prototype system to a fully operational electronic document receiving system. CDX supports tens of thousands of registered users providing data to dozens of environmental reporting programs across the major EPA media offices. CDX registered users include representatives from state, tribe, and local agencies, industries, laboratories, and other federal agencies. While CDX continues to provide a secure, single point of registration, access, and exchange between reporting entities and EPA programs, the building blocks supporting the CDX functions have changed substantially. These changes reflect EPA's experience operating CDX over the past two years, evolving trends in Internet technologies, and comments received on the proposed rule from potential CDX users.

Digital signatures based on PKI. The proposal described the CDX approach to electronic signatures in terms of digital signatures and PKI. Since proposal, EPA has come to appreciate the complexity and costs of implementing PKI, and to recognize that non-PKI electronic signatures, as described in section IV.B.2 of the preamble today's rule, may be acceptable in many cases. Thus, for electronic reports currently submitted to CDX, only in one case is PKI used for electronic signature. The other cases involve PIN-based electronic signatures or other non-PKI electronic signature approaches. As an example of the latter, this year we anticipate implementing electronic signatures for an EPA reporting requirement by having signatories use a password that is self-generated during CDX registration in combination with certain items of information that are unlikely to be available to anyone except the signatory. This is a "knowledge-based" approach, which is being used extensively by commercial software vendors supporting the United States Internal Revenue Service (IRS) for electronic tax filings or "e-filings', and is being adopted by other agencies. EPA expects that these non-PKI-based approaches to signature will continue to dominate CDX implementations of electronic reporting. We currently intend to use PKI where such needs as security or assuring very robust non-repudiation of signature make this the most appropriate approach.

In addition, EPA's approach to PKI itself—described in the proposal as relying on ACES—is also undergoing change. Changes with respect to the role and method of identity proofing for those persons who apply for PKI certificates is being further evaluated. As proposed, the identity proofing was to be conducted by the third party ACES vendor; currently, CDX identity proofing is conducted for the most part by EPA's own contractor staff, who are able to issue digital certificates to members of the reporting community with less cost and in less time than the ACES vendor. EPA has also begun to explore alternatives to ACES for PKI certificates, partly because ACES-provided certificates do not support message encryption, which EPA may need for certain environmental reporting applications. In addition, EPA is considering its use of ACES in the light of recent federal advances in establishing interoperability across federal PKI domains, which may allow EPA to eventually leverage PKI's of other federal agencies or institute an in-house PKI.

CDX Registration. Since the proposed rule, CDX has broadened it approach to registration to better accommodate the workflow involved in specific environmental reporting programs. While CDX still requires registration, there are three distinct areas where the registration process has changed since proposal. First, the proposal described CDX registration as the first step toward the issuance of a PKI-based digital signature, and it was implied that all persons opting to use CDX would need a digital signature. As noted above, this is no longer the case. Second, in the proposal, CDX registration began when a person received an EPA invitation letter that contained a temporary code and instructions on how to access the CDX registration website. CDX has adopted additional approaches to initiating registration for certain EPA programs, for example, embedding a link to CDX registration in reporting software that is distributed to the program's reporting community, or providing a public website where prospective CDX users can submit initial registration data EPA. While CDX continues to register persons by invitation letter for reporting under certain environmental programs, registration options will continue to broaden as the number of environmental programs supported by CDX expands.

Finally, in the proposal, CDX registration was completed when the registrant printed out a "signature holder" agreement from the CDX registration website, signed this agreement and mailed it to EPA's CDX. CDX will continue this approach for reports where electronic signatures are required, although EPA is exploring the use of an entirely paperless signature agreement process for at least some of these cases. CDX registration to submit reports that do not include electronic signatures will not involve a "signature holder" agreement.

EDI Standards. The proposal described EPA's plans to use EDI as the basis of standards-based formats for exchanging data between reporting entities and CDX. Since proposal, CDX development has reflected a significant evolution in formatting standards to accommodate the Internet—away from EDI and toward the use of XML. XML consists of a set of predefined tags and message structures that, like EDI, allows machine-to-machine exchange of data in a mutually agreed upon format, enabling exchange of data across different systems. However, unlike EDI, XML is tailored to Internet-based communications and security protocols. Additionally, an XML formatted file in combination with a style sheet can be displayed in a Web browser. Such features would allow CDX to use the same standard format both for exchanging data files and for designing web forms. The structure of XML also addresses some of the challenges in archiving data received, because the XML tags that accompany the data in an XML file can be used to interpret the data's context without the aid of additional software. This could facilitate the recovery of data from archived files, and reduces the need to maintain the versions of the software originally used to generate the files.

CDX and specific EPA programs may address the question of which (if any) standards-based format to use for a particular report on a case-by-case basis, and EPA intends to develop appropriate technical instructions for CDX submitters as program-specific reporting formats are adopted. These instructions normally will be distributed to the affected reporting communities via links on the CDX website and/or through program and CDX outreach efforts. EPA is working with authorized state, tribe, and local programs to develop standards-based reporting formats to meet their shared needs. In many instances, CDX contemplates a long transition period between file formats currently used to exchange data with regulated entities and any new, standards-based formats. During this transition, CDX may offer submitters several electronic submission options; these may include an existing data format familiar to submitters, one or more new standards-based formats, and some other approach such as a smart-form hosted on a secure website.

Client-side architecture and transaction environment. The proposal described a downloaded "client" that would generally supplement the browser to support the signature and security for CDX; such "client side" software is no longer needed for all cases of electronic reporting to CDX. However, in some cases CDX now uses various technologies to transparently insert routines into browsers during a user session to support special functions—for example to support the creation of a PKI-based electronic signature with an ACES business class certificate.

D. How will EPA provide notice of changes to CDX?

As noted in the proposal, the fully-implemented CDX will be subject to change over time, to take advantage of opportunities offered by evolving technologies, as well as to improve the system. EPA's decision to avoid codifying technology-specific or detailed procedural provisions for electronic reporting is meant, in part, to accommodate changes to CDX without requiring that we amend our regulations. Nonetheless, EPA recognizes that such changes can affect regulated entities that participate in electronic reporting; therefore, the final rule provides for advance notice when EPA intends to make changes to CDX. As discussed in the proposal, we distinguish four categories of changes:

- "Significant" changes that are likely to affect the kinds of hardware, software or services involved in transmitting electronic reports (§ 3.20(a)(1));
- "Other" changes that will affect the process or the timing of transmitting electronic reports to CDX, but without affecting the kinds of hardware, software or services involved in making the transmissions (§ 3.20(a)(2));
- "Emergency" changes necessary to protect the security or operational integrity of CDX (§ 3.20(b)).
- "*De minimis* or transparent" changes that will have minimal or no impact on the process or the timing of transmitting electronic reports to CDX.

"Significant" changes include changes to the types of file formats CDX will accept—for example a change from extended markup language (XML) formats to some non-XML format—as well as changes to the technologies that may be used for file transfer to CDX or for creating electronic signatures on transmitted reports. "Significant" changes will not generally include optional upgrades to software, the

provision of additional formatting (or other technical) options, or changes to CDX that simply reflect changes to the underlying regulatory reporting requirements. "Other" changes include an increase in—or re-ordering of—the steps involved in transmitting electronic reports, changes to the registration or credential (*e.g.*, PIN, password, PKI certificate) provisioning process that could affect users ability to access CDX, and changes to reporting formats that involve the reconfiguration of software. "Emergency" changes include such things as an upgrade to the system firewall protection. Finally, "*de minimis* or transparent" changes include the myriad small or "back end" fixes and improvements that EPA makes to CDX each week that have minimal or no impact on the transmission process. Such changes may range from fixing a typo on a data entry screen to re-engineering the system's archiving routines.

To address "significant" changes, § 3.20(a)(1) of the final rule provides that EPA will give public notice in the **Federal Register** of such changes and will seek comment. EPA proposed to provide this notice at least a year in advance of contemplated implementation, but based on experience developing and operating a CDX prototype, EPA no longer believes that a single time-frame is appropriate in all situations. For example, "significant" changes that could affect the transmission of an annual report may respond to needs or events that arise less than a year in advance of the report's due date. On the other hand, some "significant" changes may require more than a year for reporting entities to accommodate. Accordingly, the final rule provides that these **Federal Register** notices will propose and seek public comment on an implementation schedule for a "significant" change, along with describing and inviting comment on the change itself. To address "other" changes to CDX, § 3.20(a)(2) of the final rule provides that EPA will give notice at least 60 days in advance of implementation. The notice in this case will typically be to CDX users, and the method of notice may be electronic, perhaps using the facilities of CDX itself. For "emergency" and "*de minimis* or transparent" changes, EPA will make decisions on whether, when, and how to provide public notice on a case-by-case basis.

VI. Requirements for Electronic Reporting Under EPA-Authorized Programs

A. What is the general regulatory approach?

As explained in Part V of this preamble, the requirements in § 3.10 of today's rule apply to reporting entities that submit electronic reports directly to EPA. By contrast, today's rule contains no requirements that apply directly to entities who submit electronic reports to state, tribe, or local government agencies. However, Subpart D of today's rule does contain requirements that apply to state, tribe, or local government agencies that operate EPA-authorized programs. Subpart D of today's rule requires that such agencies that receive, or wish to begin receiving, electronic reports under an authorized program must apply to EPA for a revision or modification of that program and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving system that the state, tribe, or local government will use to implement the electronic reporting. Additionally, Subpart D provides for special procedures for program revisions and modifications that provide for electronic reporting, to be used at the option of the state, tribe, or local government in place of procedures available under existing program-specific authorization regulations.

Generally speaking, EPA believes that even absent today's rule, an authorized program's electronic reporting implementation would still need EPA's approval under a program revision or modification. At least where electronic reports may play a role in enforcement proceedings, the authorized program's electronic reporting implementation has the potential to affect program enforceability, and as such, revises or modifies the program. Today's rule makes this explicit in § 3.1000. In addition, the final rule includes program-specific amendments to various provisions in 40 CFR to cross reference those rules to the new Part 3. With this approach, EPA hopes to support and promote state, tribe, and local government efforts to make electronic reporting available under their authorized programs, both by clarifying the requirement that EPA approve these electronic reporting initiatives, and by providing a single, uniform set of standards and a specially-designed process to facilitate electronic reporting approval for otherwise authorized programs.

B. When must authorized state, tribe, or local government programs revise or modify their programs to allow electronic reporting?

1. *The general requirement.* As discussed earlier, this rule does not require states, tribes, or local governments to allow or require electronic reporting. Where they choose to do so, § 3.1000 generally provides that they must revise or modify such programs to ensure that their electronic reporting implementation will meet the requirements of section 3.2000. Additionally, once these authorized programs begin operating the electronic reporting systems under EPA-approved revisions or modifications, they must keep EPA informed of changes to laws, policies or the electronic reporting systems that could affect the program's compliance with § 3.2000. Where the Administrator determines that such changes require EPA review and approval, EPA may ask the authorized program to submit an application for revision or modification to address the changes. Alternatively, the authorized program can apply for a revision or modification on its own initiative.

For any of these program revisions or modifications, states, tribes, or local governments may use either the application procedures provided under § 3.1000(b)–(e) or the program-specific procedures provided in other parts of Title 40 or the applicable statute. Whichever procedure is used, the state, tribe, or local government must submit an application that complies with the requirements of § 3.1000(b)(1), discussed in section VI.C.1. Section 3.1000(b)(1) identifies the elements of an electronic reporting program that EPA would need to consider in order to approve a state's, tribe's, or local government's approach to receiving electronic documents, in lieu of paper, to satisfy requirements under their EPA-authorized programs.

2. *Deferred compliance for existing systems.* For authorized programs that have "existing" electronic document receiving systems as of the date this final rule is published, EPA is deferring the deadline for these programs to submit their applications for program revisions or modifications with respect to such systems. The deferral is generally two years from the date of this rule's publication. This approach is consistent with similar provisions under other regulations governing program authorization where new requirements are imposed. Additionally, EPA conducted extensive discussions with entities operating authorized programs about how much time they generally

would need to bring their systems into compliance with today's rule, given their funding cycles, program review schedules under "performance partnership" agreements, the timeframes for making any necessary system upgrades and completing an application for program revision or modification, and any necessary legislative or regulatory changes. Based upon these discussions, we believe that this two-year period is generally sufficient to allow these programs to make the transition to CROMERR-compliant systems without having to discontinue their electronic reporting operations. Today's rule also allows authorized programs to request extensions to the two-year deadline where the timeframe for regulatory or legislative changes may be somewhat longer.

EPA's purpose in deferring the application deadline for program revisions or modifications with respect to existing electronic reporting is to avoid disrupting authorized programs' electronic reporting initiatives that are already underway. With this goal in mind, EPA has defined "existing electronic document receiving system" broadly, to include not only those that are actually operational at the time the final rule is published, but also those that are substantially developed. We recognize that it would be disruptive to require that authorized programs shut down their operational systems during the time it would take to prepare, submit and have their applications for revision or modification approved. However, there is often a very fine line between an operational system and a system under development; for example, where the developmental work is to scale a working prototype up to production. In addition, at least the later stages of development are likely to be restrained substantially or even halted if a system must await EPA approval to operate, and this may affect system costs, availability of contractor staff and their ability to complete the system in a timely manner. Avoiding such disruptions to substantially developed systems is part of the goal of the deferred compliance provisions. To define what counts as a "substantially developed" system for this purpose, the definition of "existing electronic document receiving system" uses evidence that system services or specifications are already established by existing contracts or other binding agreements. Where an agency has already made legally binding agreements to procure a significant proportion of the services and/or components that will constitute the system then such a system would be considered "existing" under this rule.

While many or most authorized programs with existing systems may need this two-year compliance deferral, some may have no difficulty submitting a completed application well before the end of two years. We strongly encourage such early submissions when feasible. This will make better use of EPA's review resources and will provide earlier certainty of compliance with this rule for existing state, tribe, and local government electronic reporting programs that are subject to this rule. In addition, EPA believes that, whether through informal consultation or formal application, identifying and addressing any existing system issues as early as possible is the best way to avoid disruption to electronic reporting initiatives currently underway.

C. What alternative procedures does EPA provide for revising or modifying authorized state, tribe, or local government programs for electronic reporting?

Under § 3.1000, this rule provides procedures which a state, tribe, or local government, at its option, can use to seek approval for revisions or modifications with respect to electronic reporting under its existing authorized programs. These optional procedures are available both for revisions or modifications that seek initial EPA approval for electronic reporting programs, and also for revisions or modifications to accommodate substantial changes to electronic reporting programs that already have EPA approval.

Although there is always the alternative of using the program-specific procedures provided in other parts of 40 CFR, EPA believes that, normally, a state, tribe, or local government would find the procedures provided in this rule to be shorter, simpler, and easier. The § 3.1000 procedures allow submission of a single, relatively simple application to request revisions or modifications that address electronic reporting across any number of authorized programs. Additionally, the procedures provide for a single, straightforward EPA review process, with deadlines for EPA action written into the rule. EPA believes that these procedures will be especially useful where the state, tribe, or local government is planning to implement all of its program-specific electronic reporting with a single system. Rather than requiring approval program-by-program, § 3.1000 allows the system to be addressed in a single application package that can be reviewed in its entirety and responded to within a relatively short and predictable time-frame.

1. *The application.* To request modifications or revisions under this rule, § 3.1000(b)(1) requires a state, tribe, or local government to submit an application that generally contains three elements. The first is a certification that state, tribe, or local government laws and/or regulations provide sufficient legal authority to implement electronic reporting in conformance with § 3.2000 and to enforce the affected authorized programs using electronic documents collected under those programs; the application must also include copies of the relevant laws and/or regulations. This certification of legal authority is not meant to address actual conformance with § 3.2000(b); that is, the certification is not meant to reflect a judgment about the capabilities of an agency's electronic document receiving system. However, the certification would address § 3.2000(c), and must be signed by the governmental official who is legally competent to certify with respect to legal authority on behalf of his or her government. In the case of a state, this official must be the Attorney General or his or her designee. In the case of tribes or local governments, this official must be the chief executive or administrative official or officer or his or her designee. EPA realizes that obtaining an Attorney General's certification for state applications may involve considerable administrative burden; however, as a legal matter, EPA believes that Attorneys General or their designees are the only officials capable of certifying with respect to their states' legal authority. Where there are substantial administrative obstacles to involving the Attorney General in such certifications, EPA urges the state Attorney General to provide for a legally-competent designee who is available to participate in the submission of the state's application.

The second element of the application, and the most substantive, is a listing and description of the electronic document receiving systems that do or will receive the electronic submissions addressed by the requested program revisions or modifications. The application should specify the electronic submissions each system will be used to receive, and which (if any) of these submissions involve electronic signatures. In describing each system, the application should explain how the system will satisfy the applicable requirements of § 3.2000. Many of these requirements apply only to systems that receive submissions with electronic

signatures; accordingly, the descriptions for systems that receive no electronically signed submissions will be relatively short and simple. For each of the § 3.2000 requirements that do apply, the description should explain the functions the system will perform to satisfy the requirement, and the technologies that will be used to achieve this functionality. EPA does not expect such explanations to include detailed technical specifications of the systems, but rather to provide conceptual descriptions of the technical approach and functionality. In implementing this rule, EPA will provide applicants with more detailed recommendations for preparing these system descriptions, including examples and an application checklist.

The third element of the application is simply a schedule of upgrades to each system addressed by the application—to the extent that such upgrades can be anticipated—together with a brief discussion of how the upgrades will assure continued compliance with § 3.2000. This third element should be thought of as an appendix to the second, recognizing that the functionality with which each electronic document receiving system addresses the § 3.2000 requirements normally exists within the dynamic environment of the system life cycle.

2. *Review for completeness.* Once EPA receives an application submitted under the procedures in this rule, EPA will, within 75 calendar days, send a letter that either notifies the applicant that its application is complete or identifies deficiencies that render the application incomplete. An applicant that receives a notice of deficiencies may amend the application and resubmit it. From the date EPA receives the amended application, EPA will, within 30 calendar days, respond with a letter that either notifies the applicant that the amended application is complete or else identifies remaining deficiencies. If an amended application is not submitted within a reasonable time period to remedy identified deficiencies, EPA has the authority to review and act on the incomplete application, as explained in section VI.C.3.

3. *EPA actions on applications.* EPA will act on an application by either approving or denying the requested program revisions or modifications. In the case of a consolidated application for revision or modification of more than one program, EPA need not take the same action on each revision or modification; some may be approved while others are denied. EPA will have 180 calendar days from the time it sends a notice of completeness to act on an application in its entirety. Except in certain cases of requested revisions or modifications associated with existing systems (see section VI.C.4) or with an authorized public water system program under 40 CFR part 142 (see section VI.C.5), if EPA does not act on a program revision or modification by the end of the 180-day review period, then that revision and/or modification is considered automatically approved by EPA. The rule allows this review period to be extended, at the request of the state, tribe, or local government submitting the application. This may accommodate situations where EPA and the applicant are working through issues that may take more than the 180-day review period to resolve, and they mutually find it in their best interest to continue discussion before EPA makes its decision.

Where EPA approves a program revision or modification (by either affirmative or automatic approval), the approval becomes effective when EPA publishes a notice of the approval in the **Federal Register**. Where EPA denies a requested revision or modification, EPA will explain the reasons for the action and advise the applicant of the steps that can be taken to remedy the application's defects and will generally try to work with the applicant to address the issues that have posed an obstacle to approval. Additionally, in some cases, denial of approval under the § 3.1000 process may result from EPA's determination that the application raises certain issues that are highly program-specific and that these cannot be adequately addressed through the procedures provided in this rule. For example, there may be issues that require a discussion of program features that the § 3.1000(b)(1) application would not cover. In such cases, EPA will identify the issues that exceed the scope of the § 3.1000 process and will advise the applicant to request the revision or modification under the applicable program-specific procedures provided in other parts of Title 40.

4. *Revisions or modifications associated with existing systems.* Some applications will request modification or revision to an authorized program with an "existing electronic document receiving system". As noted in section VI.B.2, the deadline for submitting such applications is two years after the publication of today's rule. Where such applications are submitted and are determined to be complete before the two-year deadline, EPA will have a 180-day review-period for any program modification or revision being requested, as explained in section VI.B.3. However, where EPA sends notification that an application is complete after the two-year deadline has passed, for example, because the application was submitted relatively late in the two-year period, EPA will have 360 days to act on any requested modification or revision addressed by the application. As with the cases where EPA has 180 days to act, this 360-day review period can be extended at the request of the state, tribe, or local government submitting the application.

The rule provides for this extended review period to deal with the possibility that EPA will receive a large number of applications associated with existing systems just before the two-year deadline expires. If the number of such applications is sufficiently large, EPA may not be able to act on all of them within a 180-day review period. States, tribes, or local governments that wish to avoid the extended review may do so by submitting their applications addressing existing systems early enough in the two-year period to ensure that EPA can determine completeness before the deadline. As noted in section VI.B.2, EPA strongly encourages such early submissions wherever they are feasible.

5. *Public hearings for Part 142 revisions or modifications.* Where a complete application requests a revision or modification of an authorized public water system program under 40 CFR part 142, EPA will make a preliminary determination on the request—either an approval or a denial—by the end of the 180-day review period (or the 360-day extended review period discussed in section VI.C.4). EPA will then publish a notice of the preliminary determination in the **Federal Register**. The notice will state the reasons for the preliminary determination, and will inform interested members of the public that they may request a public hearing on the preliminary determination. Such hearing requests must be submitted within 30 days of the notice's **Federal Register** publication. If no requests are submitted, and the Administrator does not hold a hearing on his or her own motion, then the preliminary determination will be effective 30 days after the initial **Federal Register** publication.

If a request for hearing is granted, or the Administrator determines that a hearing is warranted, EPA will publish an additional **Federal Register** notice announcing—at least 15 days in advance of any such hearing—the date and time of any hearing, contact information, and the purpose of the hearing. At the hearing, a hearing officer will receive oral and written testimony, and will forward a record of the hearing to the EPA Administrator. After

reviewing the record of the hearing, EPA will by order either affirm or rescind the preliminary determination, and will publish notice of this decision in the Federal Register. If the order is to approve the revision or modification, the approval will be effective upon publication of the order in the Federal Register.

6. *Re-submissions and amendments.* States, tribes, or local governments whose § 3.1000 applications for revisions or modifications have been denied in whole or in part may reapply for reconsideration, using either the § 3.1000 procedures again, or, at their option, the applicable program-specific procedures. A state, tribe, or local government may also, on occasion, choose to amend a § 3.1000 application after the Administrator has determined the application to be complete. In such cases, the application will be considered to have been withdrawn and resubmitted as a new package, and a new 75-day completeness determination process will begin. An applicant may choose to withdraw and resubmit the package in this manner, for example, if it becomes clear relatively early into the 180-day review period that the application cannot be approved in its current form. For such re-submissions, EPA will work diligently to expedite the completeness determination.

D. What general requirements must state, tribe, and local government electronic reporting programs satisfy?

States, tribes, and local governments that accept electronic reports in lieu of paper under their authorized programs must satisfy the requirements of § 3.2000(b) and (c). Section 3.2000(b) sets forth the standards that acceptable electronic document receiving systems must satisfy, and these are explained in detail in section VI.E. In parallel with § 3.4 on federal compliance and enforcement, § 3.2000(c) requires that the state, tribe, or local government be able to seek and obtain any appropriate civil, criminal or other remedies under state, tribe, or local law for failure to comply with a reporting requirement if a person submits an electronic document that fails to comply with the applicable provisions for electronic reporting. Similarly, § 3.2000(c) contains provisions to ensure that an electronic signature provided to a state, tribe, or local government will make the person who signs the document responsible, bound, and/or obligated to the same extent as he or she would be signing the corresponding paper document.

Additionally, under § 3.2000(a)(2), the authorized program must require that any electronic document it accepts bear a valid electronic signature wherever the corresponding paper document would have to be signed under existing regulations or guidance, with the signatory being the same person who is authorized and/or required to sign under the current applicable provision. As in the case of direct reporting to EPA (see section V.A), the requirement for an electronic signature will apply only where the document would have to bear a signature were it to be submitted on paper, either because this is required by statute or regulation, or because a signature is required to complete the paper form. This rule does not require that authorized programs impose any new or additional signature requirements for electronic documents that are submitted in lieu of paper and were not previously required to be signed when submitted in paper form.

As with direct reporting to EPA, § 3.2000(a)(2) also allows an authorized program to make special provisions for the required signatures to be executed on follow-on paper submissions. As noted in section IV.C, such provisions must ensure that the paper submission containing the signatures is adequately cross-referenced with the electronic document being signed, and must be described as a part of the § 3.1000(b)(1) application. Systems that receive electronic documents with such follow-on paper signature submissions are subject to all applicable § 3.2000(b) requirements, including the requirement that the electronic document cannot be altered without detection after the signature has been executed.

E. What standards must state, tribe, and local government electronic document receiving systems satisfy?

Section 3.2000(b) specifies the standards that electronic document receiving systems must satisfy if they are to be approved for use by states, tribes, or local governments to receive electronic documents in lieu of paper under an EPA-authorized program. EPA's purpose in specifying such standards remains the same as it was when EPA specified the proposed § 3.2000 criteria in proposed CROMERR. As discussed in section IV.B.1, that purpose was to ensure that electronically submitted documents have the same "legal dependability" as their paper counterparts, so that any electronic document that may be used as evidence to prosecute an environmental crime or to enforce against a civil violation has no less evidentiary value than its paper equivalent. EPA has been motivated to provide for the legal dependability of electronic documents submitted under authorized programs by considering, among other things:

- The roles that many electronically submitted documents would likely play in environmental program management, including compliance monitoring and enforcement;
- EPA's statutory obligation to ensure that authorized or delegated programs maintain the enforceability of environmental law and regulations; and
- The consequent need to ensure that enforceability is not compromised as authorized programs make the transition from paper to electronic submission of compliance or enforcement-related documents.

The § 3.2000(b) standards for electronic document receiving systems in today's rule provide an expanded version of what had been the proposed § 3.2000(b) "Validity of Data" criterion. Like proposed § 3.2000(b), final § 3.2000(b) requires that electronic document receiving systems reliably enable EPA, states, tribes, and local governments to prove, in civil and criminal enforcement proceedings, that the electronic documents they receive and maintain are what they purport to be, that any changes to their content are documented, and that any associated signatures were actually executed by the designated signatories intending to certify that content. Systems must be able to satisfy the § 3.2000(b) requirements for any electronic documents they receive that are submitted in lieu of paper to satisfy an authorized program requirement.

The following discussion highlights some of the § 3.2000(b) requirements for electronic document receiving systems. The first five of these requirements (timeliness of data generation, copy of record, integrity of the electronic document, submission knowingly, and opportunity to review and repudiate copy of record) apply to all electronic document receiving systems. The other highlighted requirements (validity of the electronic signature, binding the signature to the document, opportunity to review, understanding the act of signing, the electronic signature or subscriber agreement, acknowledgment of receipt, and determining the identity of an individual) apply only to systems that receive electronically signed documents.

1. *Timeliness of data generation.* Section 3.2000(b) reflects the role that electronic document receiving systems play in supporting a wide range of compliance and enforcement-related activities, including compliance research and analysis, civil actions, and

litigation, and the fact that the success of such activities may be affected by the relative ease or difficulty of accessing the data related to electronic submissions. Accordingly, electronic document receiving systems must provide timely access to such data, especially to data relevant to the questions of what was submitted, by whom, and, where signatures are involved, who the signatories were and to what they certified. Much of this data may be assembled in the copy of record, together with any data needed to establish that the copy is a "true and correct copy of an electronic document received," as specified by the § 3.3 copy of record definition. To help the litigator develop evidence and present it in the courtroom, it is advisable that the copy of record be maintained and made accessible in a form and format that requires the minimum possible "assembly" of its elements, so that its connection with what was received and what was certified to by any signatories is easy to understand and to demonstrate to others.

2. *Copy of record.* Under § 3.2000(b), an acceptable electronic document receiving system must retain and be able to make available a copy of record for each electronic document it receives that is submitted in lieu of paper to satisfy requirements under an authorized program. For such submissions, the copy of record is intended to serve as the electronic surrogate for what we refer to as the "original" of the document received where we are doing business on paper. The copy of record is meant to provide an authoritative answer to the question of what was actually submitted and, as applicable, what was signed and certified to in the particular case.

As defined in § 3.3, a copy of record must satisfy at least four requirements. First, it must be a true and correct copy of the electronic document that was received. In the case of documents consisting of data, this means that the copy of record must contain exactly the set of data elements that constituted the electronic document that was submitted. In the case of a document consisting of other forms of information, e.g., text or images, being a "true and correct copy," may mean including file and or visual format information along with the items of information themselves, to the extent the meaning of these items is dependent on format. (See the discussion of the definition of "electronic document," in section IV.D.1.) For the copy of record to fulfill its intended role, it is not enough that it be a true and correct copy; it must also be capable of being shown to be a true and correct copy; otherwise, it cannot meet other related system requirements, such as establishing document integrity. (See section VI.E.3, below.) The copy of record is shown to be true and correct in part by virtue of its not being repudiated by the submitters and/or signatories where it is made available for their review and repudiation. (See section VI.E.5., below.) In addition, the system must provide sufficient evidence to show how the copy of record was derived from and accurately reflects the electronic document as it was received by the system; such evidence is also necessary to establish document integrity. To provide for such evidence, the system may need to establish a chain of custody for the copy of record, particularly if there are a number of processing steps that separate the copy of record from the file as it enters the system. On the other hand, where the copy of record captures and preserves the file containing the electronic document exactly in the form and format in which it is received, then a chain of custody may not be necessary. Considerations of "timeliness" favor maintaining copies of record in a way that would not require a chain of custody. (See section VI.E.1., above.)

Second, the copy of record must include all the electronic signatures that have been executed to sign the document or components of the document. The method of inclusion may vary, depending on the nature of the signature. With a digital signature, created by encrypting a hash of the document being signed with the private key in a private/public key-pair, the signature is simply a number that can and should be contained as a copy of record element. There is no risk of signature theft in this case. Each digital signature is bound to the specific document it signs, and the private key, which is actually used for signing, is inaccessible to a would-be intruder.

With other forms of signature such as personal identification numbers (PINs) or passwords, items of personal information, or biometric images or values, including the signature as a copy of record element may raise signature theft issues. At least in theory, such signatures could be detached or copied from a copy of record and re-used spuriously without detection. To address this risk, the signature, especially in the case of a PIN or password, may be encrypted for storage, perhaps together with a hash of the document signed, to bind the signature to the document content. Another approach may be to validate the signatory's identity, *e.g.* by comparing a signatory-generated password with an encrypted version maintained securely at the electronic document receiving system. In such cases, the signatory-generated password—which might be regarded as the signature—never actually appears on the electronic document, so the signature that is "included" in the copy of record may be an encrypted form of the signature, or possibly nothing exactly corresponding to a signature at all, but rather pointers or references to the processes or encrypted data that provide the actual link to the signatory. There are analogous strategies for biometric signatures. For example, the validity of a biometric (*e.g.*, a finger print, a retinal scan, etc.) may be established by using certain statistical algorithms to evaluate data provided by the biometric. In such cases, the copy of record might document the process of validating the signature, but without including the biometric data that was used to show that the signature was valid. On any of these approaches, the copy of record may satisfy the requirement that the copy "include" the signatures, provided that what the copy does contain serves to establish whether the electronic document in question was signed and by whom.

Third, the copy of record must include the date and time of receipt to help establish its relation to submission deadlines, to the circumstances of its submission, and to other possibly associated documents that may have been submitted or alleged to have been submitted. This is not generally problematic, except in cases of continuous streams of data conveyed to the system. For such continuous data, reasonable alternatives may be substituted that serve the same purposes, for example, associating stages of the data flow with dates and times, say, at hourly intervals. Similarly, the copy of record may include other additional information to the extent that this is needed to establish the meaning of the content and the circumstances of receipt. Such additional information might include data field labels, signatory information such as references to PKI certificates, and transmission source information.

Fourth, the copy of record must be viewable in a human-readable format that clearly indicates what the submitter and, where applicable, the signatory intended that each of the data elements or other information items in the document means. This supports the copy of record's role as a surrogate "original" of the paper document, and serves to establish the content of the document as it was signed and/or

submitted. The copy of record may satisfy this requirement in many different ways. It might actually include explicit labels or descriptions for each data element or information item, or preserve a visual format in which the data were submitted. Alternatively, it may incorporate a conventional ordering of the items or elements, where the information that associates such ordered data with labels, descriptions, or other means of visual display is maintained externally and can be invoked as needed—for example, to make the data elements appear within fields in the image of a filled-out form. Where the electronic document is created off-line by the submitter and conveyed as a whole to the receiving system, it is preferable for the copy of record to reflect the mechanism or format for indicating meaning supplied in the submission. For example, if the submission is in some standard electronic data interchange format, then the copy of record might usefully preserve that format. Taking this approach will help to resolve potential chain of custody issues if questions arise about whether the copy of record is true and correct. However, in cases where the electronic document is created on-line, for example, through the use of a web-form, the format for the copy of record will of necessity be an artifact of the electronic document receiving system itself. This is not problematic, as long as the system provides a way to ensure that the meaning of each data element as supplied by the submitter remains unambiguous.

Some commenters objected to copy of record requirements because of the potential expense of redesigning systems that are not currently capable of creating and storing electronic copies of records. EPA notes, however, that systems satisfying copy of record requirements need not preserve the electronic documents received in separate or special storage apart from the files that maintain the data or information content of the documents. For example, data loaded from submitted electronic documents to a database may satisfy copy of record requirements where the stored content includes the signatures, the date/time of receipt, and an adequate chain of custody. This may be the most practical copy of record approach for receiving continuous data streams. Such an approach does not preclude satisfying the requirement that the copy of record be viewable in a human-readable format. The requirement does not mean that the data must be stored in a human-readable format, so long as there is a well-documented way to display the stored data in such a format. In addition, nothing in the "copy of record" definition requires such copies to be electronic. Particularly where the signature involves some easily represented numerical value, the copy of record may be created and maintained in an imaging medium or on paper, provided that such copies can be shown to have been created by the electronic document receiving system to be true and correct copies of the electronic documents received. Whether such alternatives are appropriate as interim or even long-term solutions will depend on individual circumstances. It may be difficult to provide a copy of record for review and possible repudiation if the copy is not available as an electronic document that can be viewed on-line or downloaded through the network.

3. *Integrity of the electronic document.* Under § 3.2000(b)(1)—(2), an acceptable electronic document receiving system must be able to establish that a given electronic document was not altered without detection in transmission or at any time after receipt, and any such alterations must be fully documented. For purposes of § 3.2000(b)(1)—(2), EPA excludes alterations that have no effect on the document's information content. Examples of excluded alterations include the separation of a transmitted file into packets and their error-free recombination, the error-free processes of file compression and extraction, as well as certain disk maintenance functions that may, for example, involve physically repositioning file components on the storage medium. To satisfy § 3.2000(b)(1)—(2) requirements with respect to alterations that do affect information content, a system may rely on a number of different but complementary capabilities, including general provisions for system security, access control, and secure transmission. Additionally, the system's copy of record provisions help make the case that the electronic document is unaltered, or has been altered only as documented (for example, through a chain of custody), a case which is strengthened where submitters and/or signatories have had the opportunity to review the copy and have not contacted the system to repudiate the copy. Finally there are specific technical approaches to ensuring integrity, based, for example, on calculating hash values associated with the document content.

4. *Submission knowingly.* Under § 3.2000(b)(3), an acceptable electronic document receiving system must provide evidence that the submitter had some reliable way of knowing and/or confirming that the submission took place. This requirement is necessary to help establish submitter responsibility for the electronic document and to rule out spurious submissions, whether by accident or through the actions of an unauthorized submitter or "hacker." EPA believes that to satisfy this requirement, the system must have some follow-on communication with the submitter related to the submission. This could be a communication initiated by the submitter in cases where it is realistic to rely on submitters to regularly check the system for evidence of documents submitted; where such submitter interactions are relied upon, they must be documented. Alternatively, the system must send some form of acknowledgment of submission as a response to the submitter named, and must document such acknowledgments, recording at least their date, time, content and the addresses to which they were sent. For cases where the electronic document bears an electronic signature, this acknowledgment is explicitly provided for under § 3.2000(b)(5)(vi). (See section VI.E.11.)

5. *Opportunity to review and repudiate copy of record.* Under § 3.2000(b)(4), the copy of record must be available for review and timely repudiation by the individuals to whom the document is attributed, as its submitters and/or signatories. The fact that the copy was available for this review and was not repudiated provides strong support for its being a "true and correct copy of an electronic document received," as specified by the § 3.3 copy of record definition. Program managers normally would set reasonable end dates for this process, especially where there is concern that the copy is not "officially" a copy of record until the process is complete.

Satisfying this "opportunity to review" provision involves at least two requirements. The first is that the identified submitters and/or signatories must have some way of knowing that their submission was received, and that a copy of record is available for review. This requires some follow-on communication with the submitters and signatories related to the submission—initiated either by the submitters/signatories or by the system, as discussed in section VI.E.4. Approaches should be avoided that allow the initial submission and provision of copy of record to occur as a part of the same on-line session, because in cases of spurious submission the identified submitters/signatures may never learn

that a copy of record exists. Second, to ensure that the opportunity to review and repudiate is meaningful, the copy of record must be viewable in a human-readable format that clearly and accurately associates all the information elements of the electronic document with descriptions or labeling of those elements. This second requirement is consistent with the definition of "copy of record," as discussed in section VI.E.2.

6. *Validity of the electronic signature.* Under § 3.2000(b)(5)(i), for each electronic document that is required to bear an electronic signature, the receiving system must be able to establish that each electronic signature was a valid electronic signature at the time of signing. Under § 3.3, as discussed in section IV.D.5, a valid electronic signature must satisfy three conditions. The first is that the signature must be created with a signature device that is "owned" by the individual designated as signatory—"owned" in the sense that this individual is uniquely entitled to use it for creating signatures. To establish this, an electronic document receiving system must be able to identify signature device "owners" and must be able to determine that an identified signatory is the owner of the device used to create the signature in question. Section 3.2000(b)(5)(vii) explicitly requires the ability to identify signature device owners, and section VI.E.12 of this Preamble discusses the § 3.2000(b)(5)(vii) requirements in detail.

Concerning the determination that an identified signatory is the owner of the device used to create the signature, the system needs to have unique signature validation criteria for each identified signature device owner who submits electronically signed documents; the system must be able to apply these criteria to each signature on documents received. For example, in the case of a digital signature, the validation criteria include the existence of a valid PKI certificate for the identified signatory and the ability of the associated public key to decrypt the encrypted message digest that constitutes the signature. In the case of a PIN, the validation criterion may be simply that the PIN added to the document as a signature matches the PIN on file for the identified signatory.

The second condition for an electronic signature to be considered valid is that the signature must be created with a device that has not been compromised. That is, at the time of signing, the electronic signature device must in fact be available only to the individual identified as its owner, and to no one else. Otherwise, the use of the device to create the electronic signature may not provide evidence that a specific, identifiable individual has certified to the truth or accuracy of an electronic document. Accordingly, an acceptable electronic document receiving system must provide evidence that the electronic documents it receives and maintains do not contain signatures executed with compromised devices. Such evidence will document the system's approach to three related functions: prevention of signature device compromise, detection of compromises where they occur, and rejection of known compromised submissions.

The approach to prevention will include the way the system notifies submitters of their obligations to avoid signature compromise, including the obligation not to share or delegate the use of the device as a part of the electronic signature agreement. (See sections IV.D.4 and VI.D.8. of this Preamble, respectively.) Prevention also involves choosing the kinds of signature devices to support and determining how they are to be used. Some devices are inherently vulnerable to compromise, for example, because protection from spurious use relies on "secret" (such as a PIN or password) that has to be shared when the device is used. However, vulnerable devices can sometimes be strengthened with appropriate implementation. In the case of a PIN or password, adding an element that does not rely on secrecy—e.g. a physical "token," such as a smart card or employee badge—that had to be used along with the PIN or password may greatly reduce the device's vulnerability. Alternatively, a system accepting secret-based signatures might be programmed to query the would-be signatory about a randomly selected piece of private information that has been (or could be) verified. This approach would also reduce vulnerability to compromise, since the discovery of a secret number or password does not convey other private information about the secret's owner.

For detection of compromises, there are two complementary approaches. The first is to ensure that the system recognizes the signs of spurious submission, for example, duplicate reports, off-schedule submissions, and deviations from normal content or procedure. The second is to ensure that the system empowers submitters to detect and report spurious submissions by providing the regular "out of band" acknowledgments discussed in section VI.E.11. Once spurious submissions are detected, the system must ensure their rejection, and the rejection of any subsequent submissions that use the same device. An acceptable receiving system must provide for timely revocation or suspension of access by those individuals with compromised signature devices.

Finally, a signature must be created by an individual who is authorized to do so, primarily by virtue of his or her relationship with the regulated entity on whose behalf the signature is executed. An electronic document receiving systems must be able to determine whether the identified signatories have the necessary relationship with the regulated entity that enables them to sign the documents being submitted. Generally, the system would obtain the information necessary for these determinations along with establishing the identity of the signature device owners. Section VI.E.12 of this Preamble discusses this point in more detail.

The system must also have some way to keep this information up-to-date, for example, some way to reject signatures where it is known that the signature device owner is no longer authorized to sign the electronic document in question. As with the initial registration process, the provisions for updating this information may vary. For some cases, it may be sufficient to rely on voluntary notifications from registrants when, e.g., their job status changes. For other cases, it may be appropriate to identify a responsible company official who is charged with managing the authorizations of employees signing documents on behalf of the company, to include keeping records of changes in authorization status and/or sending notifications. For certain cases, the system might limit a signature device owner's authorization to a defined period, which could be extended only through a re-registration process.

7. *Binding the signature to the document.* Under § 3.2000(b)(5)(ii), an acceptable electronic document receiving system must establish that electronic documents cannot be altered without detection once such documents are signed. Well-implemented provisions for copy of record help satisfy this requirement. The fact that a signatory has not repudiated a document's copy of record that he or she has had the opportunity to review provides evidence that the copy accurately reflects the document as it was signed. However, even where the signatory affirms the authenticity of the copy of record at the time of review, he or she may still repudiate the document at a later date. Therefore, an acceptable electronic document receiving system

must provide a method of ensuring that any breach of a signed document's integrity can be detected. As discussed in section IV.B.2., such methods are available in the form of signatures that incorporate a hash value of the content being signed, or in the form of signature processes that involve the creation of this hash and its maintenance in association with the signed document. Encrypting the hash value, for example, by executing a digital signature, provide the strongest approach to rebutting claims that the hash has been manipulated. Encryption may not be necessary to the extent that the system provides other means to prevent tampering and establish that the hash has not been altered since it was calculated.

8. *Opportunity to review.* Where a signatory is certifying to the truth or accuracy of document content, the certification represents the signatory as knowing and understanding the content, as well as certifying to its truth. Under § 3.2000(b)(5)(iii), an acceptable electronic document receiving system must be able to provide evidence that the signatory had the opportunity to review what he or she was signing in a human-readable format. Providing this evidence may be relatively simple, depending on the signature/certification scenarios that the system provides for or allows. In a case where the system only allows signature/certification during an on-line client-server session, and where the server always explicitly gives the signatory the option of scrolling through an appropriately-formatted display of the submission content before signing, documenting these server functions should suffice to provide the required evidence. Cases that may be similarly straightforward include those where signature/certification takes place off-line, at the signatory's computer, but using software provided by or certified by the governmental entity whose system will receive the signed electronic document. In this case, the evidence is provided by documenting how the software works. Less straightforward are cases where the signature/certification software is completely beyond the control of the governmental entity. In such cases, evidence of the opportunity to review may need to rely on the use of a submission format that demonstrably allows a human-readable display of the content. For example, the fact that the file format is a Word or Excel file and that the file provides a human readable display when opened with the right program may constitute sufficient evidence that the opportunity to review has been provided.

9. *Understanding the act of signing.* Where a signatory is certifying to the truth or accuracy of document content, the certification affirmatively represents that the signatory understands both what the act of signing means and that he or she is subject to criminal liability for false certification. Reporting formats in the paper medium provide evidence that certifications are made with the requisite understandings by placing the certification statement in a clearly visible position near the place where signatures are to be affixed and by prominently displaying the statement that there are criminal penalties for false certification. Under § 3.2000(b)(5)(iv), an acceptable electronic document receiving system must ensure that such statements are presented in conjunction with electronic signature/certification. Satisfying this requirement is straightforward where the system itself provides for the signature process or where the governmental entity receiving the submission provides or otherwise has control over the signature/certification software being used. In other cases, satisfaction will depend on requiring that the signatories and/or submitters incorporate such statements into their documents before they are signed or into screens that are displayed prior to signature. Confidence that the requirement is satisfied will depend in part on the extent to which the submission process involves the use of common, easy-to-display file structures together with the software to display the files being signed.

10. *The electronic signature or subscriber agreement.* Under § 3.2000(b)(5)(v), an acceptable electronic document receiving system must be able to provide evidence that any signatory of documents received by the system has signed an electronic signature agreement or subscriber agreement with respect to the electronic signature device he or she uses to sign the documents. "Electronic signature agreement" and "subscriber agreement" are defined under § 3.3, the latter referring to electronic signature agreements that are executed with ink on paper. (The distinct role of subscriber agreements is explained in section VI.E.12.) By signing such agreements, an individual agrees to protect his or her signature device from compromise, that is, to keep a secret code secret, a hardware token secured, etc., and not to deliberately compromise the device by making it available to others. He or she also agrees to promptly report any evidence that the device has been compromised, for example, to promptly notify the system manager if he or she receives system acknowledgments of submissions he or she did not make, or if the device has become available to others. Finally, by signing the electronic signature or subscribed agreement, an individual agrees that use of his or her electronic signature device to sign documents creates obligations and/or legally binds him or her to the same extent as he or she would be bound or obligated by executing handwritten signatures. EPA believes that such agreements are necessary to assure—and provide evidence—that the signatory recognizes his or her obligations with respect to the electronic signature device. Insofar as the institutions surrounding the use of electronic signatures are relatively new, EPA believes that express recognition of signatory obligations through explicit agreements avoids potential ambiguity or misunderstandings.

11. *Acknowledgment of receipt.* Where an electronic signature is used to certify to the truth or accuracy of document content—with criminal liability for false certification—then it is especially important to ensure that any individual identified as signatory has the opportunity to detect and repudiate any spurious submissions made in his or her name through unauthorized access to signature device and/or the electronic document receiving system. To provide for this, § 3.2000(b)(5)(vi) requires the system to automatically send acknowledgments of document receipt to the individuals in whose names the submissions are made, the acknowledgments in each case identifying the document in question, the signatories, and the date and time of receipt.

Additionally, § 3.2000(b)(5)(vi) requires that each acknowledgment be sent to an address with access controls different and separate from those that enable the submission itself, so that in cases of compromised access, the individual in whose name a submission is made would still receive the acknowledgment without interference. This is sometimes referred to as "out of band" acknowledgment. In web-based commerce, this is fairly standard practice—a purchase is normally acknowledged directly to the internet protocol (IP) address from which the purchase is made, as a part of the on-line session, but also is confirmed through a follow-up communication to an email address. Note that while the "out of band" acknowledgment is normally sent electronically, electronic transmission is not required. A paper acknowledgment sent by U.S. Mail, or a voice acknowledgment via telephone would serve the same purpose so long

as these are documented by the system so they may be produced, possibly as evidence, at a later date.

12. *Determining the identity of the individual uniquely entitled to use a signature device.* As discussed in section VI.E.6, a system cannot accept an electronic signature as valid unless it establishes an identity between the individual designated as signatory and the owner of the device used to create the signature. Any circumstance casting doubt on the device's ownership undermines the certainty that signatures created with the device are valid; if it's not certain whose device created the signature then it's not certain whether the actual signatory is the individual who is designated as signatory in the submitted document. Additionally, it must be clear what the signature device owner's relation is to the entity on whose behalf a document is signed, in order to be certain that this device owner is an authorized signatory. This is also a condition of signature validity. (See section VI.E.6.) Accordingly, to assure that electronically signed documents are legally reliable, a system accepting such documents must have a process for determining who owns the signature devices used to create the signatures, and their relations to the entities on whose behalf they sign submitted documents. Section 3.2000(b)(5)(vii) explicitly reflects this performance standard by requiring that a system provide for such determinations "with legal certainty." That is, the system must be able to provide evidence sufficient to prove the signature device owner's identity and relation to entities on whose behalf he or she signs in a context where designated signatories may have an interest in repudiating their signature device ownership or in distancing themselves from the entities on whose behalf they are supposed to have signed.

Section 3.2000(b)(5)(vii) does not specify how this performance standard is to be met, however, at a minimum, an "identity-proofing" capability must involve access to a set of descriptions that apply uniquely to the individual in question and refer to attributes that are durable, documented, and objective. Such descriptions must be capable of being shown at any time to uniquely identify the individual without having to depend on anyone who might have an interest in repudiating the identification. Section 3.2000(b)(5)(vii) requires that more specific conditions be met for the special class of electronically signed documents that are included in the list that defines "priority report" under § 3.3 and Appendix 1 to Part 3. The priority reports are those that EPA has identified as likely to be material to potential enforcement litigation. Given this likelihood, it is important to provide not only for the provability of signature device ownership in principle, but for the practical need to make this proof with the resources typically available to enforcement staff and within the constraints of the judicial process in criminal and civil proceedings. To address this practical dimension of identity-proofing in the case of priority reports, § 3.2000(b)(5)(vii) adds three conditions to the general performance standard. The first is that the identity of a signature device owner must be verified before the system accepts any electronic signature created with the device. The second, in § 3.2000(b)(5)(vii)(A), is that this verification must be "by attestation of disinterested individuals." The third condition, also contained in § 3.2000(b)(5)(vii)(A), specifies that the verification be "based on information or objects of independent origin, at least one item of which is not subject to change without government action or authorization."

Regarding the first condition, requiring identity-proofing before the signature device is used helps prevent systems from accepting electronic signatures that cannot be proved to be valid in the context of an enforcement proceeding. This is at least a potential concern in any case of electronic signature, but it is also a very real concern in cases where what is signed is a priority report. The second condition anticipates the need to prove signature device ownership in court, by ensuring the availability of someone credible to offer testimony about the device owner's identity who does not have an interest in repudiating device ownership. This is the idea of verification by a "disinterested individual," the term defined under § 3.3 as "a person who is not the employer; the employer's corporate parent, subsidiary, or affiliate; contracting agent; or relative (including spouse or domestic partner) of the individual in whose name the electronic signature device is issued." The condition suggests an identity-proofing process carried out by a trusted third party, and, in the current electronic commerce environment, this would typically be a PKI certificate authority (CA), whose business is to issue certificate-based electronic signature devices that reflect identity-proofing at a specified level of assurance. However, it is important to be clear that verification by a "disinterested individual" does not have to involve a PKI-based approach to electronic signatures. Indeed, it does not have to involve a third party at all; the disinterested individual could simply be an employee of the agency operating the electronic document receiving system, if that agency itself has the resources to provide for identity-proofing as it registers signature device owners to use the system. Additionally, if a trusted third party is wanted, there are alternatives to the CA. For example, with an appropriately defined procedure, a notary public or some local government official could play this role; so could some other governmental agency, such as department of motor vehicles, which is in the business of issuing credentials based (usually) on in-person verification of identity.

The third condition sets a standard for the evidence on which verification of identity would be based—evidence that would be attested to by the disinterested individual provided for by the second condition. The standard refers to "information or objects" and for each requires that they be "of independent origin" and include at least one item that requires "governmental action or authorization" to change. Information "of independent origin" must be knowable empirically, and not simply as a matter of someone's say so; objects of independent origin could provide such information. Such information, where it concerns an individual's identity, would generally come from three sources: first, documented, direct, in-person contact; second, documentation of the individual's history—e.g., as an employee, a consumer, a student, etc.—with objects such as credit cards, passports, etc., sometimes together with corroborating testimony; and third, forensic evidence of unique, immutable traits, from such objects as fingerprints, photos, and handwritten signatures.

Evidence of identity from any of these three sources will meet the § 3.2000(b)(5)(vii)(A) standard, provided that the information used also includes at least one item that cannot be changed without governmental action or authorization—for example, a social security number, a passport number, or a driver's license number. This last requirement helps assure that the identifying information used is sufficiently well-documented and durable to support re-verification of identity at some later date. The requirement also facilitates identity-proofing that relies on database searches, insofar as data on individuals tends to be keyed to government-issued identifiers. Finally, while such

identifiers are items of information, they typically are presented on objects—e.g. a driver's license or a passport—that provide independent evidence of their authenticity.

EPA recognizes that the identity-proofing requirements specified in § 3.2000(b)(5)(vii)(A) may be difficult to implement in some cases. The rule therefore allows a system to meet the § 3.2000(b)(5)(vii)(A) requirements for cases of priority reports in other ways. Under § 3.2000(b)(5)(vii)(C), a system may collect a subscriber agreement (see section VI.E.10) from each signatory of the priority reports received by the system, in lieu of satisfying § 3.2000(b)(5)(vii)(A). Alternatively, the system may collect a certification from a "local registration authority" (LRA) that such a subscriber agreement has been executed and is being securely stored. As defined under § 3.3, an LRA is an individual who plays the role of a custodian of subscriber agreements, maintaining these paper agreements as records and sending the system a certification of receipt and secure storage for each such agreement he or she receives. The presumption is that such certifications would be sent electronically to the system as signed electronic documents. To become an LRA, an individual must have his or her identity established by notarized affidavit, and must be authorized in writing by the regulated entity to issue these "agreement collection certifications" (defined under § 3.3) on its behalf.

A state, tribe, or local government adopting the subscriber agreement alternative might chose to implement through LRAs as a way of reducing the pieces of paper it had to manage in operating its electronic document receiving system. While setting up the LRA relationships requires the collection of affidavits and authorizations on paper, this involves far fewer paper transactions than collecting the individual subscriber agreements from each person who signs priority reports. However, only larger companies or facilities with many employees signing priority reports are likely to be motivated and able to designate a company official as an LRA. Although nothing in the rule prohibits third parties from serving as LRAs for the smaller companies, a subscriber agreement implementation will probably always involve accepting some of these agreements directly from priority report signatories. What is essential under § 3.2000(b)(5)(vii)(C) is that a subscriber agreement be available, as needed, to establish the identity of the associated signature device owner. Identity in this case is established based on the forensic properties of the handwritten signature on the agreement.

Finally, § 3.2000(b)(5)(vii)(B) gives states, tribes, or local governments the flexibility to propose identity-proofing methods that may not meet the specific requirements of § 3.2000(b)(5)(vii)(A), but which are no less stringent than the methods that satisfy § 3.2000(b)(5)(vii)(A). For example, if a method of electronic identity-proofing were proposed that relies on the attestations of an LRA who is not a disinterested party, EPA would look for other features in the identity-proofing method that guarantee the identity of the LRA and the trustworthiness of the identity-proofing that the LRA would conduct. Similarly, if an identity-proofing method were proposed that relies on objects or information that are not of independent origin (e.g., a company identification card), EPA would look for other features in the authentication method that guarantee that the registrant's identity could not have been manufactured by the registrant or another interested party. EPA's expectation is that the advance of technology may also make new methods of identity-proofing available that meet the needs of the enforcement community, and we expect that § 3.2000(b)(5)(vii)(B) could be used to accommodate such new methods when implemented as part of electronic document receiving systems.

VII. What are the costs of today's rule?

A. Summary of Proposal Analysis

The Agency has conducted a number of analyses to ensure that this rule complies with the various statutory and administrative requirements that apply to EPA regulations. The results of the analyses are summarized in this section.

In the proposal, EPA estimated that the proposed rule could result in an average annual reduction in burden of $52.3 million per year for those facilities reporting, $1.2 million per year for EPA, and $1.24 million for each of the 30 states that were assumed to implement programs over the eight years of the analysis. EPA received many comments on the costs associated with the proposed electronic reporting provisions. Comments included concerns about the proposal's assumptions related to the number of affected entities, the number of registered users per facility, the costs to state programs, and the costs of implementing standard formats. Several commenters expressed support for the analysis findings, concurring that electronic reporting will reduce their environmental reporting costs. EPA's response to these comments is explained in the following section. Additional comments on the cost analysis and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

B. Final Rule Costs

In response to comments received on the proposed rule, EPA conducted additional cost analyses to determine the impacts of this rule on regulated entities, states, tribes, and local governments, and EPA programs. In developing the analysis for this final rule, EPA relied heavily on existing sources of data that included:

- EPA's 2002 Government Paperwork Elimination Act (GPEA) Report to OMB;
- Interviews with EPA programs, states, and nine industry representatives currently using CDX to report electronically;
- EPA's Information Collection Requests (ICRs);
- EPA's Envirofacts Warehouse and Facility Registry System;
- Follow-up to comments received from twenty state and local government agencies and several major industry associations; and
- Market research to assess trends of large and small companies using the Internet, costs of technology for electronic signature and data exchange formats, and other technical issues.

Based on the additional analyses, EPA estimates that under this rule there will be a total cumulative cost savings to the Agency, over the period 2003 to 2012, ranging from $64.4 million to $75.4 million, depending on the discount rate used. For those that adopt electronic reporting, EPA estimates a total cumulative cost burden to state and local governments under this rule, over the period 2003 to 2012, ranging from $57.2 million to $65.2 million annually, depending on the discount rate used. These costs result from the incremental burden to states to upgrade their receiving systems to meet the rule's standards and apply for EPA approval of program modifications and revisions. The model does not consider the potential cost savings to state and local governments resulting from processing electronic submittals but believes the savings would likely offset these incremental costs. For facilities, EPA estimates a total cumulative cost during this period ranging from $41.6 million to $51.9 million, depending on the discount rate used. The net total cumulative cost of this rule, over the period 2003 to 2012, ranges from $34.4 million to $41.7 million, depending on the discount rate used.

C. General changes to methodology and assumptions

The research effort for the final rule differed from that conducted for the proposal in that it was much broader and involved far greater engagement with external stakeholders. EPA used this research to reevaluate assumptions made in the proposal and to refine the overall approach to the cost-benefit analysis. The process of reevaluating costs to regulated entities included:

- Analyzing the GPEA report to determine the specific information collections identified as being suitable for electronic reporting and their implementation schedule;
- Evaluating each information collection request for an understanding of the types of activities that would be eliminated (such as mailing paper forms) or reduced (manual data quality checks) through electronic reporting;
- Interviewing trade associations, reviewing comments received, evaluating market trend research, and querying Envirofacts warehouse and Facility Registry System to establish an understanding of the numbers of potential facility representatives that would register for a particular program, the rate of electronic reporting growth in a program, the number of facilities using web forms or file exchanges, and the relative distribution of small to large businesses; and
- Establishing an understanding of the time required by facilities to register with CDX and maintain a CDX account, through interviews with CDX registered users and the CDX hotline.

The process of reevaluating costs and benefits to EPA, state, tribes, and local governments, included:

- Meeting with EPA programs and state program counterparts to identify the broad range of EPA authorized programs and the types and number of agencies under each program;
- Interviewing state and local agencies and their associations as follow-up to public comment to obtain an understanding of their current electronic reporting systems, long-term plans, and perceived impacts to their systems from this rule;
- Evaluating current information technology expenditures of CDX and other program system development efforts, and general costs of EPA rulemakings with respect to federal costs and benefits.

In preparing the CBA, EPA used a computer model to estimate the annual costs to EPA, state and local governments and regulated entities. To evaluate the costs and benefits of this rule, two scenarios were modeled: a "Baseline" scenario in which EPA would enable electronic reporting through an approach other than CROMERR and a "To Be" scenario in which EPA enables electronic reporting under CROMERR. In comparing the cumulative costs of this rule, EPA notes that the "To Be" scenario would be a more efficient approach than the "Baseline" scenario. Under the "Baseline" scenario, EPA programs would be left to implement their own program-specific electronic reporting requirements and electronic document receiving systems. Also, under the "Baseline" scenario, electronic reporting would be delayed, because EPA would have to generate separate rules and guidance to support program-specific electronic document receiving systems. Once these systems were established, reporting entities could conceivably be required to register under different rules and through different systems across EPA programs.

Based on the new research, EPA revised assumptions about the costs associated with authorized programs and corresponding benefits to the reporting entities. In contrast to the proposal, EPA does not claim the costs associated in building electronic document receiving systems for authorized programs (state, tribe, and local) or the benefits for their reporting entities in using these systems. Since it is clear that authorized programs intend to proceed with electronic reporting on their own regardless of this rule, the analyses for the final rule looks at the incremental costs to electronic document receiving systems that would be developed absent this rule, in meeting the final rule's requirements.

Based on research and comments received on the proposal, EPA also revised the following key cost assumptions:

- *Increased costs for XML.* EPA substantially increased the cost estimate of integrating an XML format into a facility's environmental management system (from $4,000 to $10,000).
- *Increased number of registered users.* EPA substantially increased the number of registrants (from 3 registrant/facility to 6 registrants per facility) in large companies that would use CDX.
- *Broadened impacts of authorized programs.* EPA substantially broadened the number of state, tribe, and local environmental agencies potentially impacted by the rule, to include health departments, county air boards, oil and gas agencies, and publicly-owned treatment works.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866

Pursuant to the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

For EPA, the average annual cost to implement and operate electronic reporting under this rule is estimated to be $60.94 million. The average annual cost to implement and operate electronic reporting in the absence of this rule (i.e., where EPA implements electronic reporting on a program-specific basis) is estimated to be $70.36 million for EPA. The average annual cost savings to EPA under this rule is $8.42 million. The average annual cost to states, tribes, and local governments in initially upgrading their electronic receiving systems and obtaining EPA approval for appropriate program modification under the rule ranges from roughly $5,000 to $460,000, depending on the number of systems and extent of the upgrades needed. In addition, states, tribes, and local governments that upgrade their systems are expected to incur system maintenance costs averaging about $10,000 annually. These costs reflect solely the incremental costs resulting from the rule; they do not reflect the cost savings that states, tribes, and local governments will experience in implementing their receiving systems. EPA has not quantified these savings as part of its analysis. It should be noted that EPA expects today's rule to produce a net cost savings for states, tribes, and local governments. However, it is not possible to provide an adequate year-by-year comparison of the costs of the two scenarios, because the Baseline Scenario anticipates a more gradual process of EPA approval for state, tribe, and local government electronic reporting systems, starting at a later point in time.

The average annual cost to facilities to submit electronic reports to EPA in compliance with today's rule ranges from $9 for those entities that choose simply to use a web browser to access CDX and fill out web forms, to $10,000 per facility for those companies that wish to configure their environmental management systems to exchange data with CDX, using agreed-upon data exchange formats.

In addition to the monetary benefits identified by the analysis, EPA also

believes that there are many qualitative benefits that justify the initial costs associated with the rule. These benefits include:

• Responding to federal requirements, such as GPEA, which, among other things, requires federal agencies to allow individuals or entities that deal with the agencies the option to submit information or transact with the agency electronically. This rule sets the legal framework for most major EPA initiatives implementing electronic environmental data exchanges with the various stakeholders.

• Maintaining consistency with emerging industry commercial practices. The implementation of electronic government initiatives is a reflection of the rapid evolution of electronic commerce, which has occurred in industry since the expansion of the Internet and the World Wide Web (WWW), in the early 1990s. In many ways, EPA and state, tribe, and local environmental agencies' implementations of electronic reporting under today's rule will be more consistent with emerging practices and less burdensome to industry than paper reporting.

• Providing sound environmental practice. Part of EPA's mission is conserving environmental resources. The traditional paper-based reporting practices and processes consumes trees and other resources for printing, exchanging, reproducing, storing, and retrieving grants, permits, compliance reports, and supporting documents.

• Fostering more rapid environmental compliance reporting. Organizations have become increasingly environmentally conscientious. This change stems both from a desire to be good corporate citizens and from fear of negative media reporting. Hence, organizations, especially large companies, are becoming increasingly interested in being able to demonstrate their environmental compliance. More rapid and accurate public posting of compliance data by environmental agencies is one way to help achieve this goal.

• Simplifying facility reporting. Electronic reporting and EPA's planned implementation support a single point of entry into agency systems, which will enhance facilities' ability to locate appropriate regulations, obtain information, ask questions, obtain forms, and submit data.

• Providing more accurate data. Replacing paper forms with electronic forms will result in more accurate data. Systems incorporating electronic forms can perform real time edit checks that will reduce the number of input errors. These checks can range from simple verification of valid date formats, to complex validations of proper nomenclature and limits of chemicals emitted into the environment. Improved data quality will also help reduce the time required for data correction and the effects of inaccurate reporting.

• Making data more readily available. The process of creating, mailing, receiving, entering, verifying, and correcting paper reports consumes both resources and time. This delays the analysis of the data by EPA and authorized programs and its availability to decision makers and the public.

• Provides the foundation for further process re-engineering. Moving data from a paper to an electronic system as early in the process as possible creates the foundation on which many work-flow re-engineering initiatives can be constructed.

B. Executive Order 13132

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. EPA has determined that the final rule 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 will not require states to accept electronic reports. The effect of this rule will be to provide an electronic alternative to currently accepted methods of receiving regulatory reports on paper and to give the states the option of choosing to receive electronic submissions in satisfaction of reporting requirements under their authorized programs or continuing to require submissions on paper.

Authorized states and local agencies that choose to receive electronic reports under this rule may incur expenses initially in developing systems or modifying existing systems to meet the standards in this rule. The average annual cost to state agencies in upgrading their electronic receiving systems and obtaining EPA program modification approval depends on the amount of effort required to adhere to the requirements of this rule. However, EPA estimates that for those states deploying systems that meet rule standards, each state will incur a cost of about $12,000 in obtaining EPA approval of its system. For a state where upgrades to its systems are needed to meet rule requirements, the costs can range up to $460,000, depending on the size and complexity of its systems and the extent of the upgrades needed. Maintenance costs for maintaining compliance with this rule will cost each state about $10,000 annually. These costs include both capital costs required for hardware and software upgrades, and labor costs incurred by state employees. EPA analyzed the most likely alternative scenario where, absent this rule, EPA programs would implement rules that would require states to seek program modifications on a program by program basis. It should be noted that these analyses do not quantify the cost savings that states will incur through offering electronic reporting options to their reporting entities. EPA believes these savings will greatly outweigh the costs of complying with the rule. Based on these analyses, EPA believes that although the final rule imposes some compliance costs on state and local governments, the costs for most states are marginal and will result in net benefits over the most likely alternative scenario.

Over the last several years, EPA has provided substantial financial support to states to assist in upgrades to information technology systems. For example, in fiscal years 2002–2004, EPA provided approximately $65 million dollars to states, tribes, and territories through grants to support their efforts to establish EIEN. EPA intends to award additional grants for fiscal year 2005. EPA's fiscal year 2006 budget includes $20 million for the EIEN Grant Program. States, tribes, and territories may apply for these grant funds to generally upgrade their EIEN capabilities, including improvements related to this rule, e.g., to improve data validity and user authentication procedures, as required by today's final rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA has welcomed the active participation of the states; on several separate occasions EPA has held substantial consultations with state and local officials in developing this rule. State participation has resulted in changes to the final rule, including the section 3.1000 approval process and

special provisions such as deferred compliance for existing systems.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003.

The ICR for this rule covers the registration information, which will be collected from individuals wishing to submit electronic reports to EPA on behalf of regulated facilities. The information will be used to establish the identity of that individual and the regulated entity he or she represents. This information will be used by EPA to register and provide individuals with the ability to access the EPA's electronic document receiving system, CDX. In appropriate circumstances this information will also be used to issue an electronic signature to the registered individual. The ICR also covers activities incidental to electronic reporting (*e.g.*, submittal of an electronic signature agreement to EPA as applicable). It should be noted that the submission of environmental reports in an electronic format to EPA and states, tribes, and local governments is voluntary for most examples of electronic reporting, and viewed as a service that EPA and its regulatory partners are providing to the regulated community. The rule allows reporting entities to submit reports and other information electronically, thereby streamlining and expediting the process for reporting. However, it should also be understood that this rule does set forth requirements for regulated entities that submit electronic reports directly to EPA and for states, tribes, and local governments that choose to implement electronic reporting under their authorized programs. EPA is issuing this rule on cross-media electronic reporting, in part, under the authority of GPEA, Public Law 105–277, which amends the PRA.

In addition, the ICR covers state, tribe, and local government activities involved in upgrading their electronic receiving systems to satisfy the standards in the rule and in applying to EPA for approval of program modification. States, tribes, and local governments will undertake these activities only if they intend to collect information electronically under an EPA authorized program.

The total annual reporting and recordkeeping burden this ICR estimates is 151,963 hours, which includes the tasks described above. It is expected that a respondent reporting directly to EPA will take on average ten minutes to register with CDX; however, if the respondent contacts the CDX help desk for assistance with CDX registration, on average the respondent will incur an additional six minutes. The average annual number of respondents registering with CDX is 19,434. It is further expected that 201,331 respondents will report electronically to a state, tribe, or local government receiving system. Respondents reporting to EPA or state, tribe, or local governments may also incur an additional burden of 20 minutes to prepare, sign, and submit an electronic signature agreement. The average annual number of these respondents is 177,009. In addition, the ICR estimates that 7,293 medium-sized and large companies will register local registration authorities (LRA) and incur an additional burden of 1 hour. This includes the time to prepare and submit LRA designation applications, collect and store subscriber agreements, and prepare and submit certification of receipt and secure storage.

Finally, it is expected that a state, tribe, or local government would take between 210 and 330 hours to prepare and submit its program modification application to EPA. The average annual number of states applying to EPA is expected to be 15; the average annual number of tribes and local governments applying to EPA is expected to be 46. In addition, the ICR estimates $4,450,658 in annual capital/start-up costs for states, tribes and local governments to upgrade their receiving systems. The ICR estimates $663,975 in annual operation and maintenance costs. This includes costs to registrants and state, tribes and local governments in submitting information to EPA.

Public Burden Statement

The public reporting burden is estimated to be 10 minutes for an individual that reports electronically to the CDX. This includes time for preparing the on-line application and calling the CDX help desk.

The public reporting burden in this ICR is estimated to be 15 minutes for an individual that prepares and submits a subscriber agreement.

The public reporting burden is estimated to be 30 minutes for a local registration authority. This includes time for preparing and submitting the certification of receipt and secure storage to EPA or state/local agency.

The public reporting burden is estimated to range from 210 hours for a local government to 330 hours for a state seeking to implement an electronic receiving system. This includes time for preparing and submitting the program modification application to EPA.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, 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 the purpose of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Small business as defined by the RFA and based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less then 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, the Agency certifies, pursuant to section 605(b) of the RFA, that this

action will not have a significant economic impact on a substantial number of small entities. Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Elec. Co-op, Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule). This final rule would not establish any new direct requirements applicable to small entities. States that are directly regulated in this rulemaking are not small entities.

This rule provides for EPA review and approval of authorized state, tribe, and local government programs that decide to provide for electronic reporting. This rule includes performance standards against which a state's, tribe's, or local government's electronic document receiving system will be evaluated before EPA will approve changes to the delegated, authorized, or approved program to provide electronic reporting, and establishes a streamlined process that states, tribes, and local governments can use to seek and obtain such approvals. The rule also includes special provisions for existing state electronic reporting systems in place at the time of publication of this rule.

Currently, entities that choose to submit electronic documents directly to EPA submit documents to a centralized Agency-wide electronic document-receiving system, called the CDX, or to alternative systems designated by the Administrator. This rule does not change those systems. In addition, today's rule, does not require the submission of electronic documents in lieu of paper documents.

Because there is no requirement to adopt electronic reporting, EPA has determined that small local governments will not be directly impacted by this rule. Nonetheless, EPA also considered the possible impacts of this rule to determine whether small local governments could potentially be subject to the provisions of § 3.1000, which would require these programs to seek EPA approval for their electronic document receiving systems if they choose to provide electronic reporting. EPA reviewed its programs and conducted follow-up to comments received from industry, state, and local government associations to determine possible impacts to small local jurisdictions. Based on its review, EPA concluded that the only small government jurisdictions possibly subject to the rule are those with Publicly-Owned Treatment Works (POTWs). Only POTWs choosing to deploy electronic document receiving systems would be subject to today's rule. Through analysis and direct discussions with municipal POTWs and trade associations, EPA did not identify any such small government jurisdictions planning to deploy electronic reporting systems.

Although not required by the RFA, (See *Michigan* v. *EPA*, 213 F.3d 663, 668–69 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001)), as a part of the analysis prepared under Executive Order 12866, EPA also considered the costs to small entities that are indirect reporters to authorized state, tribal, and local government programs. For this final rule, EPA prepared a cost/benefit analysis to assess the economic impact of CROMERR, which can be found in the docket for this rule.

Although this rule will not have a significant economic impact on a substantial number of small entities, the Agency nonetheless consulted with small entities as well as organizations such as the Small Business Administration (SBA). We made several changes to the rule based upon these discussions.

E. 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 states, tribes, and local governments and the private sector. Under section 202 of UMRA, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to states, tribes, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a 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 tribes, it must have developed under section 203 of 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 into the development of EPA regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

As described in section VIII.D. of this Preamble, above, EPA also evaluated the possible impacts of this rule to small governments. In particular, EPA was concerned that small governments could potentially be subject to the provisions of § 3.1000, which would require these programs to seek EPA approval for the electronic document receiving systems. EPA reviewed its programs, and also conducted follow-up to comments from industry, state, and local government associations to determine possible impacts to small local governments. As a result of this review, EPA concluded that small local governments would not be adversely impacted by the provisions of § 3.1000 this rule.

The Agency has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements in sections 202 and 205 of UMRA. The Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements in section 202 of UMRA.

F. National Technology Transfer and Advancement Act

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

not to use available and applicable voluntary consensus standards.

The consensus standards relevant to an electronic reporting rule are primarily technical standards that specify file formats for the electronic exchange of data, telecommunications network protocols, and electronic signature technologies and formats. EPA is not setting requirements for electronic reporting at the level of specificity addressed by such formats, protocols and technologies, so consensus standards are not directly applicable to today's rule. For example, the final rule does not stipulate data exchange formats, does not specify electronic signature technologies, and does not address telecommunications issues. At the same time, there is nothing in today's rule that is incompatible with these standards, and in implementing electronic reporting under this rule EPA is adopting standards-based approaches to electronic data exchange.

In the preamble to the proposed rule, EPA described its initial plans to implement a number of standards-based approaches to electronic reporting, including electronic data exchange formats based upon the ANSI Accredited Standards Committee's (ASC) X12 for Electronic Data Interchange or EDI. That preamble also discussed EPA's interest in exploring the use of Internet data exchange formats based on XML, then under development by the World Wide Web Consortium (W3C). As a part of the preamble discussion, EPA solicited comment on these planned standards-based electronic reporting implementations. In response, EPA received considerable feedback both from states and from industry indicating a trend in the direction of XML, and away from the deployment of ANSI ASC X12 standards. In any event, CDX now looks to XML to provide the formats for its Internet data exchanges. EPA currently supports multi-agency Integrated Project Teams to develop XML formats and intends to use standardized formats for this purpose to the extent that they are available. In addition, EPA currently registers XML formats in its System of Registries to facilitate easy access to these formats for partners wishing to exchange data. EPA is attempting to make use of applicable standards-setting work being done by several organizations, including the Electronic Business XML (ebXML), the Organization for the Advancement of Structured Information Standards (OASIS), and, internationally, the United Nation's Center for Administration, Commerce, and Transport (UN/CEFACT) Forum. In any event, today's rule is compatible with any of these current standards-based approaches to electronic reporting, but the rule itself does not set requirements at the level of detail that such standards address.

G. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "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. EPA interprets Executive Order 13045 as encompassing only those regulatory actions that are risk-based or health-based, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation.

This rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not involve decisions regarding environmental health or safety risks. This rule contains general performance standards for the submission of environmental data electronically.

H. Executive Order 13175

Executive Order 13175, entitled, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

This rule does not have tribal implications, as specified in Executive Order 13175, and therefore consultation under the Order is not required. It will not have substantial direct effects on tribes, 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. This action does not require Indian tribes to accept electronic reports. The effect of this rule is to provide additional regulatory flexibility to Indian tribes by giving them the opportunity to submit electronic reports to EPA in satisfaction of EPA reporting requirements and by allowing them to implement electronic reporting under their authorized programs.

I. Executive Order 13211 (Energy Effects)

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 affect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

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 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 become effective on January 11, 2006.

List of Subjects

40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 9

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Electronic records, Electronic reporting requirements, Electronic reports, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 63

Environmental protection, Air pollution control, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 69

Environmental protection, Air pollution control, Electronic records, Electronic reporting requirements, Electronic reports, Guam, Intergovernmental relations.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Electronic records, Electronic reporting requirements, Electronic reports, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 145

Environmental protection, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 162

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, State registration of pesticide products.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 257

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 281

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Insurance, Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

40 CFR Part 403

Environmental protection, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal.

40 CFR Part 745

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

40 CFR Part 763

Environmental protection, Administrative practice and procedure, Asbestos, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 22, 2005.

Stephen L. Johnson,

Administrator.

■ Therefore, Title 40 Chapter I of the Code of Federal Regulations is amended by adding a new Part 3, and amending parts 9, 51, 60, 63, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763 to read as follows:

PART 3—CROSS-MEDIA ELECTRONIC REPORTING

Subpart A—General Provisions

Sec.

3.1 Who does this part apply to?
3.2 How does this part provide for electronic reporting?
3.3 What definitions are applicable to this part?

3.4 How does this part affect enforcement and compliance provisions of Title 40?

Subpart B—Electronic Reporting to EPA

3.10 What are the requirements for electronic reporting to EPA?
3.20 How will EPA provide notice of changes to the Central Data Exchange?

Subpart C—[Reserved]

Subpart D—Electronic Reporting under EPA-Authorized State, Tribe, and Local Programs

3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?
3.2000 What are the requirements authorized state, tribe, and local programs' reporting systems must meet?

Authority: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j–26; 42 U.S.C. 4852d; 42 U.S.C. 6901–6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

Subpart A—General Provisions

§ 3.1 Who does this part apply to?

(a) This part applies to:

(1) Persons who submit reports or other documents to EPA to satisfy requirements under Title 40 of the Code of Federal Regulations (CFR); and

(2) States, tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR.

(b) This part does not apply to:

(1) Documents submitted via facsimile in satisfaction of reporting requirements as permitted under other parts of Title 40 or under authorized programs; or

(2) Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape in satisfaction of reporting requirements, as permitted under other parts of Title 40 or under authorized programs.

(c) This part does not apply to any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data.

§ 3.2 How does this part provide for electronic reporting?

(a) *Electronic reporting to EPA.* Except as provided in § 3.1(b), any person who is required under Title 40 to create and submit or otherwise provide a document to EPA may satisfy this requirement with an electronic document, in lieu of a paper document, provided that:

(1) He or she satisfies the requirements of § 3.10; and

(2) EPA has first published a notice in the Federal Register announcing that EPA is prepared to receive, in electronic form, documents required or permitted by the identified part or subpart of Title 40.

(b) *Electronic reporting under an EPA-authorized state, tribe, or local program.*

(1) An authorized program may allow any document submission requirement under that program to be satisfied with an electronic document provided that the state, tribe, or local government seeks and obtains revision or modification of that program in accordance with § 3.1000 and also meets the requirements of § 3.2000 for such electronic reporting.

(2) A state, tribe, or local government that is applying for initial delegation, authorization, or approval to administer a federal program or a program in lieu of the federal program, and that will allow document submission requirements under the program to be satisfied with an electronic document, must use the procedures for obtaining delegation, authorization, or approval under the relevant part of Title 40 and may not use the procedures set forth in § 3.1000; but the application must contain the information required by § 3.1000(b)(1) and the state, tribe, or local government must meet the requirements of § 3.2000.

(c) *Limitations.* This part does not require submission of electronic documents in lieu of paper. This part confers no right or privilege to submit data electronically and does not obligate EPA, states, tribes, or local governments to accept electronic documents.

§ 3.3 What definitions are applicable to this part?

The definitions set forth in this section apply when used in this part.

Acknowledgment means a confirmation of electronic document receipt.

Administrator means the Administrator of the EPA.

Agency means the EPA or a state, tribe, or local government that administers or seeks to administer an authorized program.

Agreement collection certification means a signed statement by which a local registration authority certifies that a subscriber agreement has been received from a registrant; the agreement has been stored in a manner that prevents unauthorized access to these agreements by anyone other than the local registration authority; and the local registration authority has no basis to believe that any of the collected agreements have been tampered with or prematurely destroyed.

Authorized program means a Federal program that EPA has delegated, authorized, or approved a state, tribe, or local government to administer, or a program that EPA has delegated, authorized, or approved a state, tribe or local government to administer in lieu of a Federal program, under other provisions of Title 40 and such delegation, authorization, or approval has not been withdrawn or expired.

Central Data Exchange means EPA's centralized electronic document receiving system, or its successors, including associated instructions for submitting electronic documents.

Chief Information Officer means the EPA official assigned the functions described in section 5125 of the Clinger Cohen Act (Pub. L. 104–106).

Copy of record means a true and correct copy of an electronic document received by an electronic document receiving system, which copy can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A *copy of record* includes:

(1) All electronic signatures contained in or logically associated with that document;

(2) The date and time of receipt; and

(3) Any other information used to record the meaning of the document or the circumstances of its receipt.

Disinterested individual means an individual who is not connected with the person in whose name the electronic signature device is issued. A *disinterested individual* is not any of the following: The person's employer or employer's corporate parent, subsidiary, or affiliate; the person's contracting agent; member of the person's household; or relative with whom the person has a personal relationship.

Electronic document means any information in digital form that is conveyed to an agency or third-party, where "information" may include data, text, sounds, codes, computer programs, software, or databases. "Data," in this context, refers to a delimited set of data elements, each of which consists of a content or value together with an understanding of what the content or value means; where the electronic document includes data, this understanding of what the data element content or value means must be explicitly included in the electronic document itself or else be readily available to the electronic document recipient.

Electronic document receiving system means any set of apparatus, procedures,

software, records, or documentation used to receive electronic documents.

Electronic signature means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. The electronic document bears or has on it an electronic signature where it includes or has logically associated with it such information.

Electronic signature agreement means an agreement signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signatures requiring such individual to protect the electronic signature device from compromise; to promptly report to the agency or agencies relying on the electronic signatures created any evidence discovered that the device has been compromised; and to be held as legally bound, obligated, or responsible by the electronic signatures created as by a handwritten signature.

Electronic signature device means a code or other mechanism that is used to create electronic signatures. Where the *device* is used to create an individual's electronic signature, then the code or mechanism must be unique to that individual at the time the signature is created and he or she must be uniquely entitled to use it. The *device* is compromised if the code or mechanism is available for use by any other person.

EPA means the United States Environmental Protection Agency.

Existing electronic document receiving system means an electronic document receiving system that is being used to receive electronic documents in lieu of paper to satisfy requirements under an authorized program on October 13, 2005 or the system, if not in use, has been substantially developed on or before that date as evidenced by the establishment of system services or specifications by contract or other binding agreement.

Federal program means any program administered by EPA under any other provision of Title 40.

Federal reporting requirement means a requirement to report information directly to EPA under any other provision of Title 40.

Handwritten signature means the scripted name or legal mark of an individual, handwritten by that individual with a marking-or writing-instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form, where "a writing" means any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form. The physical instance of the scripted name or mark so created constitutes the handwritten signature. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other media.

Information or objects of independent origin means data or items that originate from a disinterested individual or are forensic evidence of a unique, immutable trait which is (and may at any time be) attributed to the individual in whose name the device is issued.

Local registration authority means an individual who is authorized by a state, tribe, or local government to issue an agreement collection certification, whose identity has been established by notarized affidavit, and who is authorized in writing by a regulated entity to issue agreement collection certifications on its behalf.

Priority reports means the reports listed in Appendix 1 to part 3.

Subscriber agreement means an electronic signature agreement signed by an individual with a handwritten signature. This agreement must be stored until five years after the associated electronic signature device has been deactivated.

Transmit means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system.

Valid electronic signature means an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed.

§ 3.4 How does this part affect enforcement and compliance provisions of Title 40?

(a) A person is subject to any applicable federal civil, criminal, or other penalties and remedies for failure to comply with a federal reporting requirement if the person submits an electronic document to EPA under this part that fails to comply with the provisions of § 3.10.

(b) A person is subject to any applicable federal civil, criminal, or other penalties or remedies for failure to comply with a State, tribe, or local reporting requirement if the person submits an electronic document to a State, tribe, or local government under an authorized program and fails to comply with the applicable provisions for electronic reporting.

(c) Where an electronic document submitted to satisfy a federal or authorized program reporting requirement bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document submitted to satisfy the same federal or authorized program reporting requirement.

(d) Proof that a particular signature device was used to create an electronic signature will suffice to establish that the individual uniquely entitled to use the device did so with the intent to sign the electronic document and give it effect.

(e) Nothing in this part limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

Subpart B—Electronic Reporting to EPA

§ 3.10 What are the requirements for electronic reporting to EPA?

(a) A person may use an electronic document to satisfy a federal reporting requirement or otherwise substitute for a paper document or submission permitted or required under other provisions of Title 40 only if:

(1) The person transmits the electronic document to EPA's Central Data Exchange, or to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions, complying with the system's requirements for submission; and

(2) The electronic document bears all valid electronic signatures that are required under paragraph (b) of this section.

(b) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required under Title 40 to sign the paper document for which the electronic document substitutes, unless EPA announces special provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature.

§ 3.20 How will EPA provide notice of changes to the Central Data Exchange?

(a) Except as provided under paragraph (b) of this section, whenever

EPA plans to change Central Data Exchange hardware or software in ways that would affect the transmission process, EPA will provide notice as follows:

(1) *Significant changes to CDX:* Where the equipment, software, or services needed to transmit electronic documents to the Central Data Exchange would be changed significantly, EPA will provide public notice and seek comment on the change and the proposed implementation schedule through the Federal Register;

(2) *Other changes to CDX:* EPA will provide notice of other changes to Central Data Exchange users at least sixty (60) days in advance of implementation.

(3) *De minimis or transparent changes to CDX:* For *de minimis* or transparent changes that have minimal or no impact on the transmission process, EPA may provide notice if appropriate on a case-by-case basis.

(b) *Emergency changes to CDX:* Any change which EPA's Chief Information Officer or his or her designee determines is needed to ensure the security and integrity of the Central Data Exchange is exempt from the provisions of paragraph (a) of this section. However, to the extent consistent with ensuring the security and integrity of the system, EPA will provide notice for any change other than *de minimis* or transparent changes to the Central Data Exchange.

Subpart C—[Reserved]

Subpart D—Electronic Reporting Under EPA-Authorized State, Tribe, and Local Programs

§ 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?

(a) A state, tribe, or local government that receives or plans to begin receiving electronic documents in lieu of paper documents to satisfy requirements under an authorized program must revise or modify such authorized program to ensure that it meets the requirements of this part.

(1) *General procedures for program modification or revision:* To revise or modify an authorized program to meet the requirements of this part, a state, tribe, or local government must submit an application that complies with paragraph (b)(1) of this section and must follow either the applicable procedures for program revision or modification in other parts of Title 40, or, at the applicant's option, the procedures provided in paragraphs (b) through (e) of this section.

(2) *Programs planning to receive electronic documents under an authorized program:* A state, tribe, or local government that does not have an existing electronic document receiving system for an authorized program must receive EPA approval of revisions or modifications to such program in compliance with paragraph (a)(1) of this section before the program may receive electronic documents in lieu of paper documents to satisfy program requirements.

(3) *Programs already receiving electronic documents under an authorized program:* A state, tribe, or local government with an existing electronic document receiving system for an authorized program must submit an application to revise or modify such authorized program in compliance with paragraph (a)(1) of this section no later than October 13, 2007. On a case-by-case basis, this deadline may be extended by the Administrator, upon request of the state, tribe, or local government, where the Administrator determines that the state, tribe, or local government needs additional time to make legislative or regulatory changes to meet the requirements of this part.

(4) *Programs with approved electronic document receiving systems:* An authorized program that has EPA's approval to accept electronic documents in lieu of paper documents must keep EPA apprised of those changes to laws, policies, or the electronic document receiving systems that have the potential to affect program compliance with § 3.2000. Where the Administrator determines that such changes require EPA review and approval, EPA may request that the state, tribe, or local government submit an application for program revision or modification; additionally, a state, tribe, or local government on its own initiative may submit an application for program revision or modification respecting their receipt of electronic documents. Such applications must comply with paragraph (a)(1) of this section.

(5) *Restrictions on the use of procedures in this section:* The procedures provided in paragraphs (b) through (e) of this section may only be used for revising or modifying an authorized program to provide for electronic reporting and for subsequent revisions or modifications to the electronic reporting elements of an authorized program as provided under paragraph (a)(4) of this section.

(b)(1) To obtain EPA approval of program revisions or modifications using procedures provided under this section, a state, tribe, or local government must submit an application to the Administrator that includes the following elements:

(i) A certification that the state, tribe, or local government has sufficient legal authority provided by lawfully enacted or promulgated statutes or regulations that are in full force and effect on the date of the certification to implement the electronic reporting component of its authorized programs covered by the application in conformance with § 3.2000 and to enforce the affected programs using electronic documents collected under these programs, together with copies of the relevant statutes and regulations, signed by the State Attorney General or his or her designee, or, in the case of an authorized tribe or local government program, by the chief executive or administrative official or officer of the governmental entity, or his or her designee;

(ii) A listing of all the state, tribe, or local government electronic document receiving systems to accept the electronic documents being addressed by the program revisions or modifications that are covered by the application, together with a description for each such system that specifies how the system meets the applicable requirements in § 3.2000 with respect to those electronic documents;

(iii) A schedule of upgrades for the electronic document receiving systems listed under paragraph (b)(1)(ii) of this section that have the potential to affect the program's continued conformance with § 3.2000; and

(iv) Other information that the Administrator may request to fully evaluate the application.

(2) A state, tribe, or local government that revises or modifies more than one authorized program for receipt of electronic documents in lieu of paper documents may submit a consolidated application under this section covering more than one authorized program, provided the consolidated application complies with paragraph (b)(1) of this section for each authorized program.

(3)(i) Within 75 calendar days of receiving an application for program revision or modification submitted under paragraph (b)(1) of this section, the Administrator will respond with a letter that either notifies the state, tribe, or local government that the application is complete or identifies deficiencies in the application that render the application incomplete. The state, tribe, or local government receiving a notice of deficiencies may amend the application and resubmit it. Within 30 calendar days of receiving the amended application, the Administrator will respond with a letter that either notifies the applicant that the amended

application is complete or identifies remaining deficiencies that render the application incomplete.

(ii) If a state, tribe, or local government receiving notice of deficiencies under paragraph (b)(3)(i) of this section does not remedy the deficiencies and resubmit the subject application within a reasonable period of time, the Administrator may act on the incomplete application under paragraph (c) of this section.

(c)(1) The Administrator will act on an application by approving or denying the state's, tribe's or local government's request for program revision or modification.

(2) Where a consolidated application submitted under paragraph (b)(2) of this section addresses revisions or modifications to more than one authorized program, the Administrator may approve or deny the request for revision or modification of each authorized program in the application separately; the Administrator need not take the same action with respect to the requested revisions or modifications for each such program.

(3) When an application under paragraph (b) of this section requests revision or modification of an authorized public water system program under part 142 of this title, the Administrator will, in accordance with the procedures in paragraph (f) of this section, provide an opportunity for a public hearing before a final determination pursuant to paragraph (c)(1) of this section with respect to that component of the application.

(4) Except as provided under paragraph (c)(4)(i) and (ii) of this section, if the Administrator does not take any action under paragraph (c)(1) of this section on a specific request for revision or modification of a specific authorized program addressed by an application submitted under paragraph (b) of this section within 180 calendar days of notifying the state, tribe, or local government under paragraph (b)(3) of this section that the application is complete, the specific request for program revision or modification for the specific authorized program is considered automatically approved by EPA at the end of the 180 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(i) Where an opportunity for public hearing is required under paragraph (c)(3) of this section, the Administrator's action on the requested revision or modification will be in accordance with paragraph (f) of this section.

(ii) Where a requested revision or modification addressed by an application submitted under paragraph (b) of this section is to an authorized program with an existing electronic document receiving system, and where notification under paragraph (b)(3) of this section that the application is complete is executed after October 13, 2007, if the Administrator does not take any action under paragraph (c)(1) of this section on the specific request for revision or modification within 360 calendar days of such notification, the specific request is considered automatically approved by EPA at the end of the 360 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(d) Except where an opportunity for public hearing is required under paragraph (c)(3) of this section, EPA's approval of a program revision or modification under this section will be effective upon publication of a notice of EPA's approval of the program revision or modification in the **Federal Register**. EPA will publish such a notice promptly after approving a program revision or modification under paragraph (c)(1) of this section or after an EPA approval occurs automatically under paragraph (c)(4) of this section.

(e) If a state, tribe, or local government submits material to amend its application under paragraph (b)(1) of this section after the date that the Administrator sends notification under paragraph (b)(3)(i) of this section that the application is complete, this new submission will constitute withdrawal of the pending application and submission of a new, amended application for program revision or modification under paragraph (b)(1) of this section, and the 180-day time period in paragraph (c)(4) of this section or the 360-day time period in paragraph (c)(4)(ii) of this section will begin again only when the Administrator makes a new determination and notifies the state, tribe, or local government under paragraph (b)(3)(i) of this section that the amended application is complete.

(f) For an application under this section that requests revision or modification of an authorized public water system program under part 142 of this chapter:

(1) The Administrator will publish notice of the Administrator's preliminary determination under paragraph (c)(1) of this section in the **Federal Register**, stating the reasons for the determination and informing interested persons that they may request a public hearing on the Administrator's determination. Frivolous or insubstantial requests for a hearing may be denied by the Administrator;

(2) Requests for a hearing submitted under this section must be submitted to the Administrator within 30 days after publication of the notice of opportunity for hearing in the **Federal Register**. The Administrator will give notice in the **Federal Register** of any hearing to be held pursuant to a request submitted by an interested person or on the Administrator's own motion. Notice of hearing will be given not less than 15 days prior to the time scheduled for the hearing;

(3) The hearing will be conducted by a designated hearing officer in an informal, orderly, and expeditious manner. The hearing officer will have authority to take such action as may be necessary to assure the fair and efficient conduct of the hearing; and

(4) After reviewing the record of the hearing, the Administrator will issue an order either affirming the determination the Administrator made under paragraph (c)(1) of this section or rescinding such determination and will promptly publish a notice of the order in the **Federal Register**. If the order is to approve the program revision or modification, EPA's approval will be effective upon publication of the notice in the **Federal Register**. If no timely request for a hearing is received and the Administrator does not determine to hold a hearing on the Administrator's own motion, the Administrator's determination made under paragraph (c)(1) of this section will be effective 30 days after notice is published pursuant to paragraph (f)(1) of this section.

§ 3.2000 What are the requirements authorized state, tribe, and local programs' reporting systems must meet?

(a) Authorized programs that receive electronic documents in lieu of paper to satisfy requirements under such programs must:

(1) Use an acceptable electronic document receiving system as specified under paragraphs (b) and (c) of this section; and

(2) Require that any electronic document must bear the valid electronic signature of a signatory if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes, unless the program has been approved by EPA to accept a handwritten signature on a separate paper submission. The paper submission must contain references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or agree to the content of that electronic document.

(b) An electronic document receiving system that receives electronic documents submitted in lieu of paper documents to satisfy requirements under an authorized program must be able to generate data with respect to any such electronic document, as needed and in a timely manner, including a copy of record for the electronic document, sufficient to prove, in private litigation, civil enforcement proceedings, and criminal proceedings, that:

(1) The electronic document was not altered without detection during transmission or at any time after receipt;

(2) Any alterations to the electronic document during transmission or after receipt are fully documented;

(3) The electronic document was submitted knowingly and not by accident;

(4) Any individual identified in the electronic document submission as a submitter or signatory had the opportunity to review the copy of record in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information and had the opportunity to repudiate the electronic document based on this review; and

(5) In the case of an electronic document that must bear electronic signatures of individuals as provided under paragraph (a)(2) of this section, that:

(i) Each electronic signature was a valid electronic signature at the time of signing;

(ii) The electronic document cannot be altered without detection at any time after being signed;

(iii) Each signatory had the opportunity to review in a human-readable format the content of the electronic document that he or she was certifying to, attesting to or agreeing to by signing;

(iv) Each signatory had the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties;

(v) Each signatory has signed either an electronic signature agreement or a subscriber agreement with respect to the electronic signature device used to create his or her electronic signature on the electronic document;

(vi) The electronic document receiving system has automatically responded to the receipt of the electronic document with an acknowledgment that identifies the electronic document received, including the signatory and the date and time of receipt, and is sent to at least one address that does not share the same access controls as the account used to make the electronic submission; and

(vii) For each electronic signature device used to create an electronic signature on the document, the identity of the individual uniquely entitled to use the device and his or her relation to any entity for which he or she will sign electronic documents has been determined with legal certainty by the issuing state, tribe, or local government. In the case of priority reports identified in the table in Appendix 1 of Part 3, this determination has been made before the electronic document is received, by means of:

(A) Identifiers or attributes that are verified (and that may be re-verified at any time) by attestation of disinterested individuals to be uniquely true of (or attributable to) the individual in whose name the application is submitted, based on information or objects of independent origin, at least one item of which is not subject to change without governmental action or authorization; or

(B) A method of determining identity no less stringent than would be permitted under paragraph (b)(5)(vii)(A) of this section; or

(C) Collection of either a subscriber agreement or a certification from a local registration authority that such an agreement has been received and securely stored.

(c) An authorized program that receives electronic documents in lieu of paper documents must ensure that:

(1) A person is subject to any appropriate civil, criminal penalties or other remedies under state, tribe, or local law for failure to comply with a reporting requirement if the person fails to comply with the applicable provisions for electronic reporting.

(2) Where an electronic document submitted to satisfy a state, tribe, or local reporting requirement bears an electronic signature, the electronic signature legally binds or obligates the signatory, or makes the signatory responsible, to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement.

(3) Proof that a particular electronic signature device was used to create an electronic signature that is included in or logically associated with an electronic document submitted to satisfy a state, tribe, or local reporting requirement will suffice to establish that the individual uniquely entitled to use the device at the time of signature did so with the intent to sign the electronic document and give it effect.

(4) Nothing in the authorized program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

Appendix 1 to Part 3—Priority Reports

Category	Description	40 CFR Citation
Required Reports		
State Implementation Plan	Emissions data reports for mobile sources	51.60(c).
Excess Emissions and Monitoring Performance Report Compliance Notification Report.	Excess emissions and monitoring performance report detailing the magnitude of excess emissions, and provides the date, time, and system status at the time of the excess emission.	60.7(c), 60.7(d).
New Source Performance Standards Reporting Requirements.	Semi-annual reports (quarterly, if report is approved for electronic submission by the permitting authority) on sulfur dioxide, nitrous oxides and particulate matter emission (includes reporting requirements in Subparts A through DDDD).	60.49a(e) & (j) & (v), 60.49b(v).
Semi-annual Operations and Corrective Action Reports.	Semi-annual report provides information on a company's exceedance of its sulfur dioxide emission rate, sulfur content of the fresh feed, and the average percent reduction and average concentration of sulfur dioxide. When emissions data is unavailable, a signed statement is required which documents the changes, if any, made to the emissions control system that would impact the company's compliance with emission limits.	60.107(c), 60.107(d).

Category	Description	40 CFR Citation
National Emission Standards for Hazardous Air Pollutants Reporting Requirements.	Include such reports as: Annual compliance, calculation, initial start-up, compliance status, certifications of compliance, waivers from compliance certifications, quarterly inspection certifications, operations, and operations and process change.	61.11, 61.24(a)(3) & (a)(8), 61.70(c)(1) & (c)(2)(v) & (c)(3) & (c)(4)(iv), 61.94(a) & (b)(9), 61.104(a) & (a)(1)(x) & (a)(1)(xi) & (a)(1)(xvi), 61.138(e) & (f), 61.165(d)(2) & (d)(3) & (d)(4) & (f)(1) & (f)(2) &(f)(3), 61.177(a)(2) & (c)(1) & (c)(2) & (c)(3) & (e)(1) & (e)(3), 61.186(b)(1) & (b)(2) & (b)(3) & (c)(1) & (f)(1), 61.247(a)(1) & (a)(4) & (a)(5)(v) & (b)(5) & (d), 61.254(a)(4), 61.275(a) & (b) & (c), 61.305(f) & (i), 61.357(a) & (b) & (c) & (d), 63.9(h).
Hazardous Air Pollutants Compliance Report.	Reports containing results from performance test, opacity tests, and visible emissions tests. Progress reports; periodic and immediate startup, shutdown, and malfunction reports; results from continuous monitoring system performance evaluations; excess emissions and continuous monitoring system performance report; or summary report.	63.10(d), 63.10(e)(1), 63.10(e)(3).
Notifications and Reports	Reports that document a facility's initial compliance status, notification of initial start-up, and periodic reports which includes the start-up, shutdown, and malfunction reports discussed in 40 CFR 65.6(c).	65.5(d), 65.5(e).
Continuous Emissions Monitoring	Quarterly emissions monitoring reports and opacity reports which document a facility's excess emission.	75.64, 75.65.
Notice of Fuel or Fuel Additive Registration and Health Effects Testing.	Registration of new fuels and additives, and the submission and certification of health effect data.	79.10, 79.11, 79.20, 79.21, 79.51.
Manufacture In-Use and Product Line Emissions Testing.	Reports that document the emissions testing results generated from the in-use testing program for new and in-use highway vehicle ignition engines; non-road spark-ignition engines; marine spark-ignition engines; and locomotives and locomotive engines.	86.1845, 86.1846, 86.1847, 90.113, 90.1205, 90.704, 91.805, 91.504, 92.607, 92.508, 92.509.
Industrial and Publicly Owned Treatment Works Reports.	Discharge monitoring reports for all individual permittees—including baseline reports, pretreatment standards report, periodic compliance reports, and reports made by significant industrial users.	122.41(l)(4)(i), 403.12(b) & (d) & (e) & (h).
Event Driven Notices		
State Implementation Plan	Owners report emissions data from stationary sources	51.211.
Report For Initial Performance Test	Report that provides the initial performance test results, site-specific operating limits, and, if installed, information on the bag leak detection device used by the facility.	60.2200 (initial performance tests).
Emissions Control Report	Report submitted by new sources within 90 days of set-up which describes emission control equipment used, processes which generate asbestos-containing waste material, and disposal information.	61.153(a)(1), 61.153(a)(4)(i), 61.153(a)(5)(ii).
State Operating Permits—Permit Content.	Monitoring and deviation reports under the State Operating Permit	70.6(a)(3)(iii)(A), 70.6(a)(3)(iii)(B).
Title V Permits—Permit Content	Monitoring and deviation reports under the Federal Operating Permit	71.6(a)(3)(iii).
Annual Export Report	Annual report summarizing the amount and type of hazardous waste exported.	262.56(a).
Exceptions Reports	Reports submitted by a generator when the generator has not received confirmation from the Treatment, Storage, and Disposal Facility (TSDF) that it received the generator's waste and when hazardous waste shipment was received by the TSDF. For exports, reports submitted when the generator has not received a copy of the manifest from the transporter with departure date and place of export indicated; and confirmation from the consignee that the hazardous waste was received or when the hazardous waste is returned to the U.S.	262.42, 262.55.
Contingency Plan Implementation Reports.	Follow-up reports made to the Agency for all incidents noted in the operating record which required the implementation of a facility's contingency plan.	264.56(j), 265.56(j).
Significant Manifest Discrepancy Report.	Report filed by Treatment, Storage, and Disposal Facilities (TSDF) within 15 days of receiving wastes, when the TSDF is unable to resolve manifest discrepancies with the generator.	264.72(b), 265.72(b).
Unmanifested Waste Report	Report that documents hazardous waste received by a Treatment, Storage, and Disposal Facility without an accompanying manifest.	264.76, 265.76.
Noncompliance Report	An owner/operator submitted report which documents hazardous waste that was placed in hazardous waste management units in noncompliance with 40 CFR sections 264.1082(c)(1) and (c)(2); 264.1084(b); 264.1035(c)(4); or 264.1033(d).	264.1090.

Category	Description	40 CFR Citation
Notification—Low Level Mixed Waste.	One-time notification concerning transportation and disposal of conditionally exempted waste.	266.345.
Notification—Land Disposal Restrictions.	One-time notification and certification that characteristic waste is no longer hazardous.	268.9(d).
Underground Storage Tank Notification.	Underground Storage Tank system notifications concerning design, construction, and installation. As well as when systems are being placed in operation. (EPA Form 7530–1 or state version.).	280.22.
Free Product Removal Report and Subsequent Investigation Report.	Report written and submitted within 45 days after confirming a free product release, including information on the release and recovery methods used for the free product, and when test indicate presence of free product, response measures.	280.64, 280.65.
Manufacture or Import Premanufacture Notification.	Premanufacture notification of intent to begin manufacturing, importing, or processing chemicals identified in Subpart E for significant new use (forms 7710–56 and 7710–25).	720.102, 721.25.
Permit Applications[1]		
State Implementation Plan	Information describing the source, its construction schedule, and the planned continuous emissions reductions system.	52.21(n).
State Operating Permits	Reports, notices, or other written submissions required by a State Operating Permit.	70.6(c)(1).
Title V Permits—Permit Content	Reports, notices, or other written submissions required by a Title V Operating Permit.	71.6(c)(1), 71.25(c)(1).
Title V Permits	Specific criteria for permit modifications and or revisions, including a certification statement by a responsible official.	71.7(e(2)(ii)(c).
Reclaimer Certification	Certification made by a reclaimer that the refrigerant was reprocessed according to specifications and that no more than 1.5% of the refrigerant was released during the reclamation.	82.164.
Application for Certification and Statement of Compliance.	Control of Emissions for New and In-Use Highway Vehicles and Engines statement of compliance made by manufacturer, attesting that the engine family complies with standards for new and in-use highway vehicles and engines.	86.007–21 (heavy duty), 1844–01 (light duty).
Application for Certification	Application made by engine manufacturer to obtain certificate of conformity.	89.115, 90.107, 91.107, 92.203, 94.203.
National Pollutant Discharge Elimination System.	National Pollutant Discharge Elimination System (NPDES) Permits and Renewals (includes individual permit applications, NPDES General Form 1, and NPDES Forms 2A–F, and 2S).	122.21.
Resource Conservation and Recovery Act Permit Applications and Modifications.	Signatures for permit applications and reports; submission of permit modifications. (This category excludes Class I permit modifications (40 CFR 270.42, Appendix I) that do not require prior approval).	270.11, 270.42.
Certifications of Compliance/Non-Applicability		
State Implementation Plan Requirements.	State implementation plan certifications for testing, inspection, enforcement, and continuous emissions monitoring.	51.212(c), 51.214(e).
Certification Statement	Chemical Accident Prevention Provisions—Risk Management Plan certification statements.	68.185.
Title V Permits	Federal compliance certifications and permit applications	70.5(c)(9), 70.5(d), 70.6(c)(5).
State Operating Permits	State compliance certifications and permit applications	71.5(c)(9), 71.5(d), 71.24(f).
Annual and Other Compliance Certification Reports.	Annual compliance certification report and is submitted by units subject to acid rain emissions limitations.	72.90.
Annual Compliance Certification Report, Opt-In Report, and Confirmation Report.	Annual compliance certification report which is submitted in lieu of annual compliance certification report listed in Subpart I of Part 72.	74.43.
Quarterly Reports and Compliance Certifications.	Continuous Emission Monitoring certifications, monitoring plans, and quarterly reports for NO_X emissions.	75.73.
Certification Letters Recovery and Recycling Equipment, Motor Vehicle Air Conditioners Recycling Program, Detergent Package.	Protection of Stratospheric Ozone: Recycling & Emissions Reduction. Acquisition of equipment for recovery or recycling made by auto repair service technician and Fuels and Fuel Additives Detergent additive certification.	79.4, 80.161, 82.162, 82.42.
Response Plan Cover Sheet	Oil Pollution Prevention certification to the truth and accuracy of information.	112 (Appendix f).
Closure Report	Report which documents that closure was in accordance with closure plan and/or details difference between actual closure and the procedures outlined in the closure plan.	146.71.
Certification of Closure and Post Closure Care, Post-Closure Notices.	Certification that Treatment, Storage, and Disposal Facilities (TSDF) are closed in accordance with approved closure plan or post-closure plan.	264.115, 264.119, 264.119(b)(2), 264.120, 265.115, 265.119(b)(2), 265.120, 265.19.
Certification of Testing Lab Analysis	Certification that the testing and/or lab analyses required for the treatment demonstration phase of a two-phase permit was conducted.	270.63.

Category	Description	40 CFR Citation
Periodic Certification	Certification that facility is operating its system to provide equivalent treatment as in initial certification.	437.41(b).

[1] Included within each permit application category, though sometimes not listed, are the permits submitted to run/operate/maintain facilities and/or equipment/products under EPA or authorized programs.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended by adding a new entry in numerical order for part 3 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Cross-Media Electronic Reporting	
Part 3	2025–0003
* * * * *	

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.286 is added to Subpart O to read as follows:

§ 51.286 Electronic reporting.

States that wish to receive electronic documents must revise the State Implementation Plan to satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

Authority: 42 U.S.C. 7401–7601.

■ 2. Section 60.25(b)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 60.25 Emission inventories, source surveillance, reports.

* * * * *

(b)(1) * * * Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

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

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

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

■ 2. Section 63.91 is amended by adding a new paragraph (d)(5)to read as follows:

§ 63.91 Criteria for straight delegation and criteria common to all approved options.

* * * * *

(d) * * *

(5) Electronic documents. Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

■ 1. The authority citation for part 69 continues to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

■ 2. Section 69.13 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.13 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

■ 3. Section 69.22 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.22 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

■ 4. Section 69.32 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.32 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Section 70.1 is amended by adding a new paragraph (f) to read as follows:

§ 70.1 Program overview.

* * * * *

(f) States that choose to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting) in their program.

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 71 continues to read as follows:

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

■ 2. Section 71.10 is amended by adding a new sentence to the end of paragraph (a) to read as follows:

§ 71.10 Delegation of part 71 program.

(a) * * * Delegate agencies that choose to receive electronic documents as part of their delegated program must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Section 123.25 is amended by revising paragraphs (a)(44) and (a)(45), adding the phrase "Except for paragraph (a)(46) of this section," at the beginning of the Note to paragraph (a), and adding a new paragraph (a)(46) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(44) § 122.35 (As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?);

(45) § 122.36 (As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?); and

(46) For states that wish to receive electronic documents, 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

■ 2. Section 142.10 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(g) Has adopted regulations consistent with 40 CFR Part 3—(Electronic reporting) if the state receives electronic documents.

* * * * *

PART 145—REQUIREMENTS FOR STATE PROGRAMS

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

■ 2. Section 145.11 is amended by revising paragraphs (a)(30), (a)(31), (a)(32), and adding paragraph (a)(33) to read as follows:

§ 145.11 Requirements for permitting.

(a) * * *

(30) Section 124.12(a)—(Public hearings);

(31) Section 124.17 (a) and (c)—(Response to comments);

(32) Section 144.88—(What are the additional requirements?); and

(33) For states that wish to receive electronic documents, 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 162—STATE REGISTRATION OF PESTICIDE PRODUCTS

■ 1. The authority citation for part 162 continues to read as follows:

Authority: 7 U.S.C. 136v, 136w.

■ 2. Section 162.153 is amended by adding a paragraph (a)(6) to read as follows:

§ 162.153 State registration procedures.

(a) * * *

(6) *Electronic Reporting under State Registration of Pesticide Products for Special Local Needs.* States that choose to receive electronic documents under the regulations pertaining to state registration of pesticides to meet special local needs, must ensure that the requirements of 40 CFR Part 3—(Electronic reporting) are satisfied by their state procedures for such registrations.

* * * * *

PART 233—404 STATE PROGRAM REGULATIONS

■ 1. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. A new § 233.39 is added to Subpart D to read as follows:

§ 233.39 Electronic reporting.

States that choose to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting) in their state program.

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.30 is amended by adding a new paragraph (d) to read as follows:

§ 257.30 Recordkeeping requirements.

* * * * *

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

■ 2. Section 258.29 is amended by adding a new paragraph (d) to read as follows:

§ 258.29 Recordkeeping requirements.

* * * * *

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

Authority: 42 U.S.C. 6905, 6912 and 6926.

■ 2. Section 271.10 is amended by revising paragraph (b) to read as follows:

§ 271.10 Requirements for generators of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR 262.40 and 262.41. States must require that generators keep these records at least 3 years. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests and/or permit the use of electronic manifests must comply with any applicable requirements for e-manifest in this section of this section).

* * * * *

■ 3. Section 271.11 is amended by revising paragraph (b) to read as follows:

§ 271.11 Requirements for transporters of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all transporters to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR 263.22. States must require that transporters keep these records at least 3 years. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests

and/or permit the use of electronic manifests must comply with any applicable requirements for e-manifest in this section of this section).

* * * * *

■ 4. Section 271.12 is amended by revising paragraph (h) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(h) Inspections, monitoring, recordkeeping, and reporting. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests and/or permit the use of electronic manifests must comply with paragraph (i) of this section);

* * * * *

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 281 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991 (c), (d), (e), (g).

■ 2. Section 281.40 is amended by revising paragraph (d) to read as follows:

§ 281.40 Requirements for compliance monitoring program and authority.

* * * * *

(d) State programs must have procedures for receipt, evaluation, retention and investigation of records and reports required of owners or operators and must provide for enforcement of failure to submit these records and reports. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their state program.

* * * * *

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 403.8 is amended by adding a new paragraph (g) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(g) A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

■ 3. Section 403.12 is amended by adding a new paragraph (r) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(r) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 501.15 is amended by adding a new paragraph (a)(4) to read as follows:

§ 501.15 Requirements for permitting.

(a) * * *

(4) Information requirements: All treatment works treating domestic sewage shall submit to the Director within the time frames established in paragraph (d)(1)(ii) of this section the information listed in paragraphs (a)(4)(i) through (xii) of this section. The Director of an approved state program that chooses to receive electronic documents must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Section 745.327 is amended by adding a new paragraph (f) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(f) *Electronic reporting under State or Indian Tribe programs.* States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3—(Electronic reporting) are satisfied in their lead-based paint program.

PART 763—ASBESTOS

■ 1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

■ 2. Section 763.98 is amended by revising paragraphs (a)(1), (b)(3), and (d)(3) to read as follows:

§ 763.98 Waiver; delegation to state.

(a) *General.* (1) Upon request from a state Governor and after notice and comment and an opportunity for a public hearing in accordance with paragraphs (b) and (c) of this section, EPA may waive some or all of the requirements of this subpart E if the state has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this subpart. In addition, if the state chooses to receive electronic documents, the state program must include, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

(b) * * *

(3) Detailed reasons, supporting papers, and the rationale for concluding that the state's asbestos inspection and management program provisions for which the request is made are at least as stringent as the requirements of Subpart E of this part, and that, if the state chooses to receive electronic documents, the state program includes, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

(d) * * *

(3) The state has an enforcement mechanism to allow it to implement the program described in the waiver request and any electronic reporting requirements are at least as stringent as 40 CFR part 3—(Electronic reporting).

* * * * *

■ 3. Appendix C to subpart E of part 763 is amended by adding paragraph (I) to section I to read as follows:

Appendix C to Subpart E of Part 763—Asbestos Model Accreditation Plan

I. Asbestos Model Accreditation Plan for States

* * * * *

(I) Electronic Reporting.

States that choose to receive electronic documents must include, at a minimum, the requirements of 40 CFR Part 3—(Electronic reporting) in their programs.

* * * * *

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purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 12, 2005.

Alan J. Steinberg,

Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(109) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

* * * * *

(109) Revisions to the State Implementation Plan submitted on June 16, 1996 and May 27, 2005, by the New York State Department of Environmental Conservation, which consist of administrative changes to Title 6 of the New York Code, Rules and Regulations, Part 201, "Permits and Certificates."

(i) Incorporation by reference:

(A) Regulations Subparts 201–7.1, "General" and 201–7.2, "Emission Capping Using Synthetic Minor Permits" of Part 201–7, "Federally Enforceable Emission Caps" of Title 6 of the New York Code of Rules and Regulations (NYCRR), filed on June 7, 1996, and effective on July 7, 1996.

■ 3. In 52.1679, the table is amended by revising the entry under Title 6 for Part 201 and adding new entries under Title 6 for Subparts 201–7.1 and 201–7.2, in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * * *	*	*	* *
Part 201, "Permits and Certificates"	4/4/93	10/3/05 [Insert FR page citation]	This action removes subpart 201.5(e) from the State's federally approved SIP.
Subpart 201–7.1, "General"	7/7/96	10/3/05 [Insert FR page citation]	
Subpart 201–7.2, "Emission Capping Using Synthetic Minor Permits".	7/7/96	10/3/05 [Insert FR page citation]	
* * * *	*	*	* *

[FR Doc. 05–19712 Filed 9–30–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0084; FRL–7978–4]

RIN 2060–AN38

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On March 23, 2000, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production under section 112 of the Clean Air Act (CAA), and on December 30, 2002, we published final amendments to the standards based on two separate settlement agreements. This amendment corrects a punctuation error in the definition of "clean charge" previously promulgated in the December 30, 2002 amendments and a typographical error in the operating temperature of a scrap dryer/delacquering kiln/decoating kiln afterburner. We are making the amendment by direct final rule, without prior proposal, because we view the revision as noncontroversial and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for secondary aluminum production, if adverse comments are filed.

If we receive any adverse comments on the direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. If we do not receive adverse comment on the direct final rule, it will become effective on the date set out below. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

DATES: The direct final rule will be effective on December 2, 2005 without further notice, unless EPA receives adverse written comments by November 2, 2005 or by November 17, 2005 if a public hearing is requested. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating that the rule is being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0084, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• E-mail: *a-and-r-docket@epa.gov* and *colyer.rick@epa.gov.*

• Fax: (202) 566–1741 and (919) 541–5600.

• Mail: U.S. Postal Service, EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, Attention Docket ID No. OAR–2002–0084, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

• Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0084, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies, if possible.

We request that a separate copy of each comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2002–0084. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2002–0084, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the Federal Register of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the EPA Docket Center, Docket ID No. OAR–2002–0084, EPA West Building, Room B–102, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, EPA Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, NC 27711; telephone number (919) 541–5262; fax number (919) 541–5600; e-mail address: *colyer.rick@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS[1]	Examples of regulated entities
Industry	331314	Secondary smelting and alloying of aluminum facilities.
		Secondary aluminum production facility affected sources that are collocated at:
	331312	Primary aluminum production facilities.
	331315	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	Aluminum extruded product manufacturing facilities.
	331319	Other aluminum rolling and drawing facilities.
	331521	Aluminum die casting facilities.
	331524	Aluminum foundry facilities.

[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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1500 of the secondary aluminum production NESHAP. 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www.epa.gov/ttn/caaa*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 2, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments 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 the direct final rule amendments may not be challenged separately in any civil or criminal

proceeding brought by EPA to enforce these requirements.

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

I. Background and Technical Corrections
II. 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. Congressional Review Act

I. Background and Technical Corrections

On March 23, 2000 (63 FR 15690), we promulgated the NESHAP for secondary aluminum production (40 CFR part 63, subpart RRR). The standards were established under the authority of section 112(d) of the CAA to reduce emissions of hazardous air pollutants from major and area sources.

On December 30, 2002 (67 FR 79808), we promulgated amendments to the NESHAP in response to two petitions for judicial review. Among other things, the amendments revised the definition of "clean charge."

The final rule promulgated in 2000 defined "clean charge" as "* * * furnace charge materials including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; uncoated/unpainted thermally dried aluminum chips; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher; other oil- and lubricant-free unpainted/uncoated gates and risers; oil- and lubricant-free unpainted/uncoated aluminum scrap, shapes, or products (e.g., pistons) that have not undergone any process (e.g., machining, coating, painting, etc.) that would cause contamination of the aluminum (with oils, lubricants, coatings, or paints); and internal runaround."

The June 14, 2002 proposed amendments (67 FR 41132) revised the definition of "clean charge" to "* * * furnace charge materials including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried or treated by a centrifugal cleaner; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher, and runaround scrap."

The December 30, 2002 final amendments (67 FR 79815) promulgated the June 14, 2002 proposed definition of "clean charge" as "* * * furnace charge materials including molten aluminum, T-bar, sow, ingot, billet, pig, alloying elements, aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried or treated by a centrifugal cleaner; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher, and runaround scrap."

While the basic substance of the definition of "clean charge" did not change between the 2002 proposal and promulgation, the punctuation did. The replacement of certain semicolons with commas had an inadvertent effect on the interpretation of parts of the definition. These typographical errors unintentionally applied the phrase "entirely free of paints, coatings, and lubricants" to molten aluminum, T-bar, sow, ingot, billet, pig, and alloying elements. The definition of "clean charge" in the June 14, 2002 proposed amendments separated the list of charge materials with semicolons indicating that the phrase "entirely free of paints, coatings, and lubricants" was intended to apply only to "aluminum scrap." This issue came to our attention when questions arose regarding paint and ink markings on aluminum ingots, T-bars, sows, etc. The die casting industry routinely marks aluminum ingots, sows, etc., with paint, ink, and grease pen marking to identify specific alloys and batch numbers. It is our intent that T-bar, sow, ingot, billet, pig, and alloying elements be considered "clean charge," notwithstanding ink, grease, or paint markings.

To clarify our intent and to correct this typographical error, we are revising the definition of "clean charge" to match that previously proposed on June 14, 2002 (67 FR 41132).

We are also correcting a typographical error in 40 CFR 63.1505(e). The operating temperature of the scrap dryer/delacquering kiln/decoating kiln afterburner should be 760 °C (1400 °F) instead of 750 °C (1400 °F).

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule (65 FR 15690, March 23, 2000) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq*, and assigned OMB control number 2060–0433. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1894.01) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the direct final

rule amendments, the ICR has not been revised.

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 purpose 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 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.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. Today's direct final would only correct definitional and typographical errors.

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 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 1 year. Before promulgating a 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 the 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.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's direct final rule amendments are not subject to sections 202 and 205 of the UMRA. The EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's direct final rule amendments are not subject to the requirements of 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" 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."

The direct final rule amendments do not have federalism implications and 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments 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. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of

the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because they are not "economically significant" and 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

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are 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 (NTTAA) of 1995, Public Law 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. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments do not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct 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 direct final rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on December 2, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: September 27, 2005.

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 RRR—[Amended]

■ 2. Section 63.1503 is amended by revising the definition of "Clean charge" to read as follows:

§ 63.1503 Definitions.

* * * * *

Clean charge means furnace charge materials, including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried or treated by a centrifugal cleaner; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher, and runaround scrap.

* * * * *

■ 3. Section 63.1505 is being amended by revising the first sentence of paragraph (e) introductory text to read as follows:

§ 63.1505 Emission standards for affected sources and emission units.

* * * * *

(e) *Scrap dryer/delacquering kiln/decoating kiln: alternative limits.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph (e) as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 760 °C (1400 °F) at all times. * * *

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[FR Doc. 05–19713 Filed 9–30–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158–5237–02; I.D. 090105A]

RIN 0648–AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; extension of effective period.

SUMMARY: The regulations contained in the temporary rule, emergency action, published on September 9, 2005, at the request of the U.S. Food and Drug Administration (FDA), continue through December 31, 2005. In that action NMFS reopened a portion of Federal waters of the Gulf of Maine, Georges Bank, and southern New England that it had previously closed from June 14, 2005, through September 30, 2005, to the harvest for human consumption of certain bivalve molluscan shellfish due to the presence in those waters of the toxin that causes Paralytic Shellfish Poisoning (PSP). The FDA has determined that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish fishing on October 1, 2005.

DATES: The temporary emergency action published September 9, 2005 (70 FR 53580), is effective from September 9, 2005, through December 31, 2005.

ADDRESSES: Copies of the small entity compliance guide prepared for the September 9, 2005, emergency action are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide/permit holder letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the September 9, 2005, emergency action are available from Patricia A. Kurkul, at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION:

■ c. Revising the existing reference in paragraph (c)(5) from "§ 60.49a(b) and (d)" to "§ 60.49Da(b) and (d)";
■ d. Revising the existing reference in paragraph (d) introductory text from "§ 60.44a" to "§ 60.44Da";
■ e. Revising the existing reference in paragraph (d)(2) from "§ 60.49a(c) and (d)" to "§ 60.49Da(c) and (d)";
■ f. Revising the existing reference in paragraph (e)(2) from "§ 60.48a(d)(1)" to "§ 60.48Da(d)(1)";
■ g. Revising the existing references in paragraph (g) introductory text from "§ 60.45a" to "§ 60.45Da" and from "§ 60.46a" to "§ 60.46Da";
■ h. Revising the existing reference in paragraph (h) introductory text from "§ 60.45a" to "§ 60.45Da"; and
■ i. Revising the existing reference in paragraph (h)(1) from "§ 60.49a(p)(4)(i)" to "§ 60.49Da(p)(4)(i)".

§ 60.51Da [Amended]

■ 10. Newly redesignated § 60.51Da is amended as follows:
■ a. Revising the existing references in paragraph (c) introductory text from "§ 60.49a" to "§ 60.49Da" and from "§ 60.48a(h)" to "§ 60.48Da(h)";
■ b. Revising the existing reference in paragraph (d) introductory text from "§ 60.43a" to "§ 60.43Da";
■ c. Revising the existing reference in paragraph (d)(1) from "§ 60.48a(d)" to "§ 60.48Da(d)";
■ d. Revising the existing reference in paragraph (e) introductory text from "§ 60.43a" to "§ 60.43Da";
■ e. Revising the existing reference in paragraph (e)(1) from "§ 60.50a" to "§ 60.50Da"; and
■ f. Revising the existing reference in paragraph (i) from "§ 60.42a(b)" to "§ 60.42Da(b)".

§ 60.52Da [Amended]

■ 11. Newly redesignated § 60.52Da is amended by revising the existing references from "§ 60.45a" to "§ 60.45Da" and from "§ 60.46a" to "§ 60.46Da".

PART 75—[AMENDED]

■ 12. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k.

■ 13. Section 75.6 is amended by revising paragraphs (b) introductory text, (c), (d) introductory text, and (e) introductory text to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(b) The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007–2900:

* * * * *

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, New York 10036:

(1) ISO 8316: 1987(E) Measurement of Liquid Flow in closed Conduits-Method by Collection of the Liquid in a Volumetric Tank, for appendices D and E of this part.

(2) [Reserved].

* * * * *

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74143:

* * * * *

(e) The following American Gas Association materials are available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

* * * * *

[FR Doc. 05–16927 Filed 8–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0121; AD–FRL–7961–9]

RIN 2060–AN09

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On July 1, 2005, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because adverse comment was received, EPA is withdrawing the corresponding parts of the direct final rule. We stated in that direct final rule that if we received adverse comment by August 1, 2005, we would publish a timely withdrawal in the Federal Register. We will address all comments in a subsequent final rule based on the parallel proposal published on July 1, 2005. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of August 30, 2005, EPA withdraws the direct final rule amendments to 40 CFR 63.2485(c)(4) and Table 1 to subpart FFFF of part 63, published on July 1, 2005 (70 FR 38554). The remaining provisions published on July 1, 2005, will be effective on August 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0121. All documents in the docket are listed in the index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at: Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 1, 2005, we published a direct final rule (70 FR 38554) and a parallel proposal (70 FR 38562) amending the NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR part 63, subpart FFFF). We amended the NESHAP by: Clarifying the compliance requirements for flares and the alternative standard, extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specified requirements for effluent from control devices, clarified the definition of the term continuous process vent, and

corrected several referencing and drafting errors. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comment by August 1, 2005, (or if a public hearing was requested by July 11, 2005) on one or more distinct provisions of the direct final rule, we would publish a timely notice in the Federal Register specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received adverse comment from several commenters regarding requirements for effluent from control devices. Commenters also pointed out erroneous changes made to Table 1 of subpart FFFF of part 63.

Accordingly, we are withdrawing the amendments to 40 CFR 63.2485(c)(4) and Table 1 of subpart FFFF of part 63. The amendments are withdrawn as of August 30, 2005. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on August 30, 2005, as provided in the preamble to the direct final rule.

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: August 24, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–17194 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7962–4]

RIN 2060–AN13

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: With this action EPA is taking direct final action to authorize use of 610,665 kilograms of methyl bromide for supplemental critical uses in 2005 through the allocation of additional critical stock allowances (CSAs). This allocation supplements the critical use allowances (CUAs) and CSAs previously allocated for 2005, as published in the Federal Register on December 23, 2004 (69 FR 76982). Further, EPA is amending the list of exempted critical uses. With today's action EPA is exempting methyl bromide for critical uses beyond the phaseout under the authority of the Clean Air Act (CAA or the Act) and in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).

DATES: This rule is effective on October 31, 2005 without further notice, unless EPA receives adverse comment by September 29, 2005, or by October 14, 2005 if a hearing is requested. If adverse comments are received, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect. If anyone contacts EPA requesting to speak at a public hearing by September 9, 2005, a public hearing will be held on September 14, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0506, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *mebr.allocation@epa.gov*.
- Fax: 202–343–2337 attn: Marta Montoro.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0506. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the Federal Register of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility 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 further information about this direct final rule, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov*, or by mail at Marta Montoro, U.S.



Federal Register

Wednesday,
August 10, 2005

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0193; FRL–7948–5]

RIN 2060–AL91

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for cellulose products manufacturing, which were issued on June 11, 2002, under section 112 of the Clean Air Act (CAA). The amendments revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. We are issuing the amendments as a direct final rule, without prior proposal, because we view the amendments as noncontroversial and anticipate no adverse comments. However, in the Proposed Rules section of this Federal Register, we are publishing a separate document that will serve as the proposal to amend the NESHAP for cellulose products manufacturing if adverse comments are filed.

DATES: The direct final rule is effective on October 11, 2005, unless EPA receives adverse comments by September 9, 2005, or by September 26, 2005, if a hearing is requested by August 22, 2005. If adverse comments are received, EPA will publish a timely withdrawal in the Federal Register indicating which sections will become effective, and which provisions are being withdrawn due to adverse comment. If anyone contacts the EPA requesting to speak at a public hearing, a public hearing will be held on August 24, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0193, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *air-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2003–0193. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the Federal Register of May 31, 2002 (67 FR 38102).

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hardcopy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, facsimile number (919) 541–3470, electronic mail (e-mail) address *schrock.bill@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS code*	Examples of regulated entities
Industry	326121	cellulose food casing operations.
	325221	rayon operations.
	326199, 325211	cellulosic sponge operations.
	326199	cellophane operations.
	325199	cellulose ether operations.
Federal Government		Not affected.

Category	NAICS code*	Examples of regulated entities
State/local/tribal government		Not affected.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.5485 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (Mail Code C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605, electronic mail address *schrock.bill@epa.gov.*, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. Bill Schrock to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this action will be posted 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.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for cellulose products manufacturing operations if adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 11, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments which 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
A. Work Practice Standards
B. General Compliance Requirements
C. Initial Compliance Requirements
D. Definitions
E. Applicability of General Provisions
F. Miscellaneous Corrections
II. Summary of Amendments
III. 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 of 1995
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. Congressional Review Act

I. Background

The EPA, under section 112 of the CAA, promulgated the NESHAP for cellulose products manufacturing on June 11, 2002 (67 FR 40044). The final rule, codified at 40 CFR part 63, subpart UUUU, includes emission limits, operating limits, and work practice standards, as well as general, initial, and continuous compliance requirements and notification, reporting, and recordkeeping requirements. Following promulgation of the rule, UCB Films, Inc. and Teepak, LLC petitioned the Agency for specific changes to the final rule, and Dow Chemical Co. informally requested that we issue specific amendments to the final rule.

In response to industry's requests, today's action issues amendments to subpart UUUU of 40 CFR part 63 to revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability. The amendments also include corrections of typographical, formatting, and cross-referencing errors identified after the final rule was published. The amendments are described below.

A. Work-Practice Standards

The cellophane operation at the UCB Films facility in Tecumseh, Kansas includes a number of casting machines, each of which includes concentrated sulfuric acid baths referred to as "A-tanks." Above the A-tanks are retractable hoods that can be moved up or down. To capture emissions, the hoods over the A-tanks are moved into the down position, and the vent streams from the A-tanks are routed to a thermal oxidizer. For operational purposes, the hoods over the A-tanks are at times kept in the up position, and during those times the vent streams from the A-tanks are diverted to the stack. UCB Films has asked whether the provision in the final rule requiring vent streams at cellophane operations to be routed through closed-vent systems to control devices possibly could be construed to apply to these A-tank hoods and, therefore, could require UCB Films to operate its casting machines with the A-tank hoods in the down position at all times.

The cellophane operation at the UCB Films facility is the only one currently

operating in the U.S. Consequently, the maximum achievable control technology (MACT) floor for cellophane operations was established based on the current emission limitation at the UCB Films facility. This MACT floor accounted for the A-tank hoods at the UCB Films facility at times being kept in the up position. Consequently, the closed-vent system requirement, as currently stated, would be inconsistent with MACT for cellophane operations. Therefore, through the amendments to the final rule, we are now making clear that we did not intend for the closed-vent system provision to apply to retractable hoods over sulfuric acid baths at a cellophane operation, such as the A-tank hoods at the UCB Films facility. The final rule does not prohibit UCB Films from operating its casting machines with the A-tank hoods in the up position.

B. General Compliance Requirements

In response to comments on the proposed rule, we changed the deadline for completing a performance test or other initial compliance demonstration from 180 days before to 180 days after the compliance date. To ensure that a record of compliance would be kept between the compliance date and the date when operating limits for the continuous monitoring systems (CMS) are established (*i.e.*, the date of the performance test or other initial compliance demonstration), we included a provision in § 63.5515(b)(1) of the final rule that requires affected sources to maintain an operation and maintenance (O&M) log of the process and emissions control equipment during that period.

Dow has requested that we limit the O&M log to emission control equipment because the amount and type of data associated with operation and maintenance of the process are unclear and onerous. For example, with the current text in the final rule, companies would be required to document when a pump used to inject water treatment chemicals into boiler feedwater for steam generation was replaced or repaired. Plant operators would be required to record literally thousands of data points related to the operation of "any" aspect of the production unit, even though it would have no bearing on emissions or the compliance parameters required by the final rule. According to Dow, this broad scope was certain to be inconsistently applied, and it would be difficult, if not impossible, to demonstrate compliance.

Dow has also requested that we clarify that the O&M log requirement is needed only for those control devices used to comply with the standard, not every control device unassociated with the scope of the final rule. Some control devices may be installed for odor or State requirements and do not need to be included in the O&M log. For example, one of Dow's cellulose ether facilities has a scrubber that, under a State permit, is used to control non-hazardous air pollutants emissions, and the facility does not need to monitor or conduct a performance test on this scrubber in order to comply with the final rule. According to Dow, with the current text in the final rule, the facility would have to maintain data on the scrubber for no other purpose than that stated in § 63.5515(b)(1).

Consequently, Dow has recommended that EPA revise § 63.5515(b)(1) to replace the term "process and emissions control equipment" with the term "control technique used to comply with the rule." Dow has recommended using the term "control technique" rather than "emissions control equipment" because "control technique" is defined in § 63.5610 of the final rule. Dow believes that this revision would clarify the requirement and strike a more appropriate balance without being unnecessarily burdensome. The Agency agrees with the rationale provided by Dow that a more narrow definition for items to be contained in the O&M log is appropriate. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5515(b)(1).

C. Initial Compliance Requirements

1. Material Balance Compliance Option

One of Dow's cellulose ether facilities uses a material balance to calculate the amount of HAP reacted, *i.e.*, destroyed in the process. According to Dow, this facility's demonstration of overall control efficiency is similar to the viscose process material balance. Dow has requested that EPA provide cellulose ether affected sources with a material balance compliance option similar to that for the viscose process affected sources. This option would allow the cellulose ether affected sources to demonstrate initial compliance using a month-long initial compliance demonstration and demonstrate continuous compliance by maintaining a material balance and using it to document the percent reduction of total organic hazardous air pollutants (HAP) emissions. The Agency was unaware that any cellulose ether facilities were using the material balance technique to calculate their control efficiency and, therefore, did not provide this as a compliance option for cellulose ether facilities in the final rule. We consider this a valid approach for calculating control efficiency and extending this option to the cellulose ether affected sources makes the final rule consistent with the viscose process affected sources. Therefore, through the amendments to the final rule, we are providing the requested material balance compliance option for cellulose ether operations, with the clarification that the start point from which the percent reduction is determined must be the onset of extended cookout. Extended cookout is a means of reducing HAP emissions by allowing the reaction to occur for a longer period of time than economically desired, thus allowing for more of the HAP to be consumed in the reaction. This clarification that the start point for the material balance compliance option is necessary because cellulose ether affected sources actually consume much of the HAP in their reaction (*e.g.*, ethylene oxide), while viscose process affected sources eventually regenerate all of the HAP in their reaction (as either carbon disulfide or hydrogen sulfide).

2. Additional Testing

Tables 3 and 5 to the final rule require viscose process affected sources to prepare and maintain a material balance that includes the "pertinent data" used to determine the percent reduction of total sulfide emissions. To prepare and maintain such a material balance, emissions information to determine control efficiency would be needed in addition to that gathered through the initial performance test. According to Teepak, the "pertinent data" language in the final rule possibly could be construed to require additional testing to complete the material balance, although such additional testing is not explicitly required in the final rule and would be inconsistent with language in the preamble. Teepak has recommended that EPA revise § 63.5535(g)(1) to clarify that no additional emission tests are required. The Agency did not intend to require additional emissions tests be conducted by use of the term "pertinent data" and agrees with Teepak's request. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5535(g)(1) for viscose process affected sources. For consistency, we are providing the same clarification for those cellulose ether affected sources that choose the material balance compliance option.

3. Batch Emission Episodes

For those sources that choose to conduct an initial performance test, Dow has noted that the final rule does

not address the testing of batch emission episodes lasting less than 1 hour. According to Dow, the final rule is unclear and has conflicting requirements between the regulatory text and tables regarding whether (1) the batch emission episode provisions in § 63.490(c) apply to calculating the emission rate, as stated in table 4 to the final rule, (2) three 1-hour tests are required, as stated in § 63.5535(d), or (3) a 3-hour test is required, as stated in table 3 to the final rule. Dow has recommended that EPA clarify in § 63.5535(d) and (e) that batch process vent tests follow the provisions listed in table 4 and § 63.490(c), which Dow has interpreted as allowing testing on a batch emission episode. Upon review of the subject testing requirements the Agency agrees with Dow's assessment that the language in the text and tables conflict and need clarification. Therefore, through the amendments to the final rule, we are making the suggested revision to § 63.5535(d) and (e). To account for the testing of batch emission episodes, which may last less than 1 hour per test run, we are also removing the "3-hour" term used in table 3 to the final rule to describe the performance test. This revision also eliminates any confusion with the requirement in § 63.5535(d) for three 1-hour test runs.

4. Uncontrolled Emissions

Both Teepak and Dow have noted that table 3 to the final rule requires operations to demonstrate initial compliance with the emission limit by "measuring" the average uncontrolled emissions during the compliance demonstration or performance test. However, the final rule does not require month-long initial performance tests, nor does it require any additional testing after the initial performance tests of control device efficiency. Teepak has recommended that EPA change the term "measured" in table 3 to the final rule to "determined" to clarify that no additional testing or measurement was intended for cellulose food casing operations or any other viscose process affected source. Dow has recommended that EPA revise tables 3 and 4 to the final rule to allow engineering assessments to be used as an alternative for determining the uncontrolled emissions from process vents. According to Dow, engineering assessments are allowed in other NESHAP, including the Hazardous Organic NESHAP (HON), the Pharmaceutical NESHAP, and the Pesticide Active Ingredient NESHAP.

The Agency agrees with Dow and Teepak that using the term "determined" instead of "measured" is consistent with the approach of using an engineering assessment as an alternative for determining uncontrolled emissions. Through the amendments to the final rule, we are making the clarification to table 3 to the final rule suggested by Teepak for viscose process affected sources. For consistency, we are providing the same clarification for those cellulose ether affected sources that choose to demonstrate initial compliance using a month-long compliance demonstration. We are also making the revision to table 3 to the final rule suggested by Dow for cellulose ether affected sources. This revision should provide cellulose ether affected sources with some flexibility in determining uncontrolled emissions, whether they are conducting an initial performance test or a month-long compliance demonstration. For consistency, we are also providing the viscose process affected sources with the same option to use engineering assessments. We are not making the revision to table 4 to the final rule suggested by Dow because this issue will already be addressed in the revision to table 3 of the final rule. Table 4 of the final rule is designed to describe the performance testing requirements, and if a source is using other means (*e.g.*, engineering assessments) to determine uncontrolled emissions, then those means should be described in table 3 of the final rule.

5. Equations

Dow has noted that § 63.5535(e)(2) requires sources to calculate the "total sulfide emission rate." According to Dow, it is not necessary for a source to calculate the total sulfide emission rate if it does not use sulfur compounds, specifically carbon disulfide, in its process. Dow has recommended that EPA clarify the final rule so that § 63.5535(e)(2) is used only for viscose processes that actually use carbon disulfide. Through the amendments to the final rule, we are revising § 63.5535(e) to require sources to use the equations "as applicable." This revision should account for those sources (*e.g.*, cellulose ether affected sources) for which an equation (*e.g.*, total sulfide emission equation) may not apply.

6. Establishing Operating Limits

Section 63.5535(h)(1) of the final rule references § 63.505(b)(2) regarding the establishment of operating limits for continuous processes. Section 63.505(b)(2) requires sources to use the average of the maximum values to establish a maximum level and the average of the minimum values to establish a minimum level. Teepak has argued that this procedure inappropriately restricts the range in which their scrubbers can be operated to ensure compliance with the emission reduction requirements. According to Teepak, the capabilities of the scrubber under a range of conditions, not simply the average capabilities, should be used to determine maximum and minimum operating limits. Teepak has recommended that we replace the procedures of § 63.505(b)(2) with those of § 63.505(c), which require sources to establish parameter operating levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations. According to Teepak, this change would allow the development of true operating limits of the control or recovery device. Teepak has also recommended that we revise table 3 to the final rule to clarify that a range of scrubber operating values is acceptable.

The Agency agrees with Teepak that the use of average values to establish the minimum and maximum operating limits for the scrubbers will not result in an effective measure for assessing the operational performance of the scrubbers. By using the averages for establishing both the minimum and maximum values for the scrubber operating range, an overly restrictive range is set, while the scrubbers can be demonstrated to operate effectively operate over a much broader range. Therefore, through the amendments to the final rule, we are making the suggested revisions to § 63.5535(h)(1), (5), and (6). We are also revising tables 2, 3, and 6 to final rule. For consistency, we are applying the requirement to use § 63.505(c) to both continuous and batch processes.

D. Definitions

1. Process Unit/Source Category

In response to a comment on the proposed rule, we added a definition for "cellulose ether process unit" to the final rule to help define the boundaries around equipment for equipment leak monitoring. We also revised the definition for "cellulose ether operation" to provide greater clarification of what it includes, and we revised the definition for "cellulose ether process" to specifically exclude solids handling. However, the requirements in the final rule refer only to the definitions for "cellulose ether operation" and "cellulose ether process unit," which do not exclude solids handling equipment. Dow has argued that, without clear definitions, the

regulated industry cannot delineate the equipment included in the process unit and subject to the final rule. As "cellulose ether process unit" is currently defined, equipment in the solids handling process would be a part of the cellulose ether process unit and would be subject to the equipment leak provisions. According to Dow, it is doubtful that the HAP concentration in the solids handling equipment would exceed 5 percent, and unnecessary records would be needed to document that the equipment is not monitored. Dow has recommended that EPA revise the definition for "cellulose ether process unit" to specifically include the term "cellulose ether process." According to Dow, revising this definition would be a clear and simple approach to exclude equipment not a part of the cellulose ether process unit and, therefore, not subject to equipment leaks monitoring. Dow has also recommended that EPA revise the definition for "Cellulose Ethers Production source category" to refer to "the collection of *cellulose ether* operations" to provide a similar clarification.

The Agency agrees with Dow that revising the definitions will provide clarity and consistency to what equipment is subject to the equipment leak monitoring. Additionally, based on a review of the information presented to EPA during the initial development of these provisions the solids handling equipment is unlikely to exceed the 5 percent HAP threshold and, as the rule is currently written, unnecessary records would need to be kept. Through the amendments to the final rule, we are making the suggested revisions to the definitions for "cellulose ether process unit" and "Cellulose Ethers Production source category." For consistency, we are also revising several other definitions. We are revising the definitions for "cellulose food casing process unit," "cellulosic sponge process unit," and "rayon process unit" to specifically include the term "viscose process." We are revising the definition for "cellophane process unit" to specifically include the terms "viscose process" and "solvent coating process." Finally, we are revising the definition for "Miscellaneous Viscose Processes source category" to specifically include the collection of "cellulose food casing, rayon, cellulosic sponge, and cellophane operations."

Dow has also recommended that EPA revise the tables in the final rule to refer to the definition for "cellulose ether process unit" instead of "cellulose ether operation." According to Dow, this change would allow EPA to clearly define the equipment subject to control. Specifically, Dow believes that EPA needs to define the boundaries of the process unit to determine where a wastewater process stream is discarded and, thus, becomes a wastewater. According to Dow, with the broadly defined term "cellulose ether operation," no stream ever exits the process and becomes discarded.

We do not believe that replacing the term "cellulose ether operation" with "cellulose ether process unit" in the tables is necessary or even desirable. Such a revision would effectively exclude from regulation those equipment, such as heat exchanger systems, wastewater and waste management units, and cooling towers, that are not associated with the cellulose ether process unit but are located at a cellulose ether operation. Additionally, these sources were considered in establishing the MACT floor. Consequently, we are not making this suggested revision to the final rule.

2. Process Vent

In response to a comment on the proposed rule, we revised the definition of "process vent" in the final rule to refer to "a point of discharge to the atmosphere * * * of a HAP-containing gas stream from the process operation." Noting that the term "process operation" is not defined in the final rule, Dow has recommended that EPA replace it with the term "unit operation." According to Dow, the term "unit operation" is already defined in the final rule because § 63.5610 references the definitions from § 63.101 of the HON. Dow has also expressed concern that the definition for "process vent" in the final rule does not define the basis for the concentration of a process vent, *e.g.*, HAP or total organic compound (TOC). Consequently, Dow has recommended that EPA revise the definition for "process vent" to state that it does not include "* * * vents with * * * a concentration less than 50 parts per million by volume (ppmv) of *HAP or TOC* * * *" EPA agrees with Dow's comment concerning the definition of process vent. Specifically, we agree that through the reference to § 63.101 of the HON and our definition of "process vent" we have created an inconsistency in the rule. To correct this inconsistency we are incorporating the characteristics of the vent stream from the HON into our process vent definition. Through the amendments to the final rule, we are making the suggested clarifications to the definition for "process vent."

E. Applicability of General Provisions

Facilities subject to the final rule are required to submit periodic compliance reports containing, among other things, information on episodes of startup, shutdown, or malfunction that occurred during each reporting period. UCB Films has asked whether the routine breaks of film (commonly called "wet breaks") that occur in its casting machines possibly could be construed as falling within the definition for "malfunction." The wet breaks would not affect UCB's ability to meet the standards. We do not consider this type of routine event to fall within the definition for "malfunction" and believe it should not be included within the reporting requirement. See 67 FR 72875, 72881 (December 9, 2002); 68 FR 32586, 32592–32593 (May 30, 2003). For consistency, this interpretation also applies to routine breaks of cellulose food casing and rayon.

UCB Films also requested clarification of the reporting obligations for its casting machines when they are temporarily turned off to fix wet breaks. Clarification may also be needed, according to UCB Films, regarding the subsequent restart of the casting machines after the wet breaks are fixed. The recent revisions to the 40 CFR part 63 General Provisions state that there is no duty to report the number or duration of these events or to describe each one individually in the startup, shutdown, and malfunction report as long as the provisions of the startup, shutdown, and malfunction plan are followed and the report contains a statement to that effect; see § 63.10(d)(5)(i) and 68 FR 32592. No changes to subpart UUUU of 40 CFR part 63 are needed to address this issue.

F. Miscellaneous Corrections

Through the amendments to the final rule, we are also correcting various typographical, formatting, and cross-referencing errors found in the final rule and updating the cross-references, where necessary, to include the amended sections.

II. Summary of Amendments

Today's amendments to subpart UUUU are described in Table 1 of this preamble.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART UUUU OF 40 CFR PART 63

Citation	Change
§ 63.5490(d)	Change "meet" to "met" for verb tense consistency.
§ 63.5515(b)(1) and (f) introductory paragraph	Remove the requirement in paragraph (b)(1) to maintain a log for O&M of process equipment and state that the O&M log is only required for control devices used to comply with the rule. Replace the phrase "to of this subpart" in (f) introductory paragraph with "to this subpart."
§ 63.5535 (d), (e) introductory paragraph, (g)(1), and (h)	Revise paragraph (d) to reference § 63.490(c) for batch process vents. Revise (e) introductory paragraph to reference § 63.490(c) for batch process vents. Also note that sources must use the equations as applicable. Revise paragraph (g)(1) to specify that no additional testing is required for viscose process affected sources required to conduct an initial performance test to determine the control efficiency of their non-recovery control devices. Replace references to § 63.505(b) (2) and (3) in paragraphs (h) (1) and (2) with references to § 63.505(c) for procedures used to establish operating limits. Combine paragraphs (h) (1) and (2) to apply to both continuous and batch processes. Renumber paragraphs (h) (3) through (10) as paragraphs (h) (2) through (9). Revise paragraphs (h) (5) and (6) to require affected sources to record the range of scrubber parameter values, rather than the average. Renumber paragraph (h) as paragraph (i) and add a new paragraph (h) that includes an initial compliance option for cellulose ether operations similar to the material balance option for the viscose process affected sources. For cellulose ether operations using extended cookout under this option, specify that the start point from which the percent reduction is determined must be the onset of extended cookout. Also specify that no additional testing is required for cellulose ether affected sources required to conduct an initial performance test to determine the control efficiency of their non-recovery control devices.
§ 63.5545(e)(4)	Change the citation, which describes the data to be excluded from continuous emissions monitoring system (CEMS) data averages, from paragraph (a)(5) to paragraph (e)(5) of this section.
§ 63.5610 (a) and (g)	Revise paragraph (a) by changing the citation for operating limit provisions from § 63.505(b) to § 63.505(c). Revise the definitions of "Cellulose Ethers Production source category" and "Miscellaneous Viscose Processes source category" in paragraph (g) to include a reference to the types of operations that are included in the source categories (cellulose ether, cellophane, cellulose food casing, cellulosic sponge, and rayon). Revise the definition of "cellulose ether process unit" in paragraph (g) to include the term "cellulose ether process." Revise the definitions of "cellulose food casing process unit," "cellulosic sponge process unit," and "rayon process unit" to include the term "viscose process." Revise the definition of "cellophane process unit" to include the terms "viscose process" and "solvent coating process." Revise the definition of "process vent" in paragraph (g)to replace the undefined term "process operation" with the defined term "unit operation" and to define the concentration basis for process vents as HAP or TOC.
Table 1, items 1.c. i and ii, 1.f. ii and iii, 9, 10, and 11	Remove the numbering for individual requirements under items 1.c. i and ii. Revise items 1.f. ii and iii, item 10, and item 11 to clarify that the standards for closed-vent systems at cellophane operations do not apply to retractable hoods over sulfuric acid baths at a cellophane operation. Revise item 9 to replace the phrase "liquid streams in open system 2" with "liquid streams in open systems." Designate the affected source text under item 11 as "a."
Table 2, items 3 and 4	Revise items 3 and 4 to require affected sources to maintain the scrubber parameters within a range of values established during the compliance demonstration, rather than above or below an average value.
Table 3, introductory statement and items 1.a.i. (1) and (2); 1.b.i. (1) and (2); 1.c.i.(1); 1.c.ii.(1); 1.d.i.(1); 1.e.i.(1); 1.f.i.(1); 1.f.ii and 2.a.i.(1); 3.a; 6.a.i.(1); and 12.a.i.(2).	Revise the introductory statement for Table 3 to include § 63.5535(h) in the list of referenced provisions. Regarding the requirement in items 1.a.i.(1), 1.b.i.(1), 1.c.i.(1), 1.c.ii.(1) 1.d.i.(1), 1.e.i.(1), 1.f.i.(1), 2.a.i.(1), 3.a, and 6.a.i.(1) to "measure" average uncontrolled emissions during the month-long compliance demonstration, change "measured" to "determined." Provide sources with the option to use engineering assessments to determine uncontrolled emissions.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART UUUU OF 40 CFR PART 63—Continued

Citation	Change
	Revise items 1.a.i.(2) and 1.b.i.(2) to replace the term "average operating parameter values" with "range of operating parameter values."
	Revise items 1.f. ii and iii to clarify that the standards and initial compliance requirements for closed-vent systems at cellophane operations do not apply to retractable hoods over sulfuric acid baths at a cellophane operation.
	Revise item 2.a.i to change "folling" to "rolling."
	Split item 3.a. into two parts—items 3.a and 3.b. Item 3.a applies to cellulose ether operations using a performance test to demonstrate initial compliance. Item 3.b applies to cellulose ether operations using a material balance compliance demonstration to demonstrate initial compliance. Include under item 3.b the requirements associated with the material balance compliance demonstration. Include under items 3.a and 3.b the option to use engineering assessments to determine uncontrolled emissions.
	Revise items 3.a.i. (1) and (2) to remove the term "3-hour."
	Remove the numbering for individual requirements under item 12.a.i.(2).
Table 4, introductory statement and items 3 and 4.a.i.(2).(b)	Revise the introductory statement for Table 4 to include § 63.5535(h)(1) in the list of referenced provisions. Reposition the requirements for item 3 into their proper columns. Correct the misspelling for "potentially" in item 4.a.i.(2).(b).
Table 5, items 1.a. ii and iii; 3.a; 5.a. i, ii, and iv; and 8	Revise items 1.a. ii and iii to clarify that the standards and continuous compliance requirements for closed-vent systems do not apply to retractable hoods over sulfuric acid baths at a cellophane operation.
	Under item 1.a.ii, designate the work practice standard for closed-vent systems as "iii," instead of "c."
	Split item 3.a. into two parts—items 3.a and 3.b. Item 3.a applies to cellulose ether operations using a performance test to demonstrate initial compliance. Item 3.b applies to cellulose ether operations using a material balance compliance demonstration to demonstrate initial compliance. Include under item 3.b the requirements associated with the material balance continuous compliance option.
	Under items 5.a. i, ii, and iv, remove the numbering for individual emission limits and standards (*e.g.*, remove "(1)," "(2)," and "(3)"). Also, change the numbering for individual continuous compliance requirements (*e.g.*, change "(a)," "(b)," and "(c)" to "(1)," "(2)," and "(3)").
	Correct the misspelling for "wastewater" in item 8.
Table 6, items 3 and 4	Revise items 3 and 4 to require affected sources to maintain the scrubber parameters within a range of values established during the compliance demonstration, rather than above or below an average value.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final rule amendments are not a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. This action revises a work practice standard, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paper Work Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0488 (EPA ICR No. 1974.02).

Copies of the Information Collection Request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, 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. A copy may also be downloaded off the Internet at *http://*

www.epa.gov/icr. Include the ICR number in any correspondence.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) a small business that has fewer than 1,000 employees for NAICS codes 325221, 325188, and 325199; fewer than 750 employees for NAICS code 325211; or fewer than 500 employees for NAICS codes 326121 and 326199; (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 direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act of 1995

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 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the direct final rule amendments significantly or uniquely impact small governments, because the amendments contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule amendments.

E. Executive Order 13132: Federalism

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

The direct final rule amendments do not have federalism implications. The amendments 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. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA, State and local governments, the EPA specifically solicits comment on the direct final rule amendments from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments in the direct final rule. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, then 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 that EPA considered.

The EPA interprets Executive Order 13045 as applying only to 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 rule. The direct final rule amendments are not subject to Executive Order 13045, because the action is based on technology performance and not on health or safety risks. Furthermore, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because the amendments are not considered 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 (NTTAA) (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement 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. The EPA will submit a report containing the direct final rule 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 direct final rule amendments in the Federal Register. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule will become effective on October 11, 2005, unless adverse comments are received by September 26, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Cellulose products manufacturing, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 1, 2005.

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 UUUU—[Amended]

■ 2. Section 63.5490 is amended by revising paragraph (d) to read as follows:

§ 63.5490 What parts of my plant does this subpart cover?

* * * * *

(d) An affected source is a new affected source if you began construction of the affected source after August 28, 2000 and you met the applicability criteria in § 63.5485 at the time you began construction.

* * * * *

■ 3. Section 63.5515 is amended by revising paragraphs (b)(1) and (f) introductory text to read as follows:

§ 63.5515 What are my general requirements for complying with this subpart?

(b) * * *

(1) During the period, if any, between the compliance date specified for your affected source in § 63.5495 and the date upon which continuous monitoring systems (CMS) have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of any control technique used to comply with this subpart.

* * * * *

(f) You are not required to conduct a performance test when you use any of the units specified in paragraphs (f)(1) through (5) of this section to comply with the applicable emission limit or work practice standard in table 1 to this subpart. You are also exempt from the continuous compliance, reporting, and recordkeeping requirements specified in tables 5 through 9 to this subpart for any of these units. This exemption applies to units used as control devices or wastewater treatment units.

* * * * *

■ 4. Section 63.5535 is amended by:
■ a. Revising paragraphs (d), (e) introductory text, (g)(1), and (h);
■ b. Redesignating paragraph (h) as paragraph (i); and
■ c. Adding a new paragraph (h).

The revisions and additions read as follows:

§ 63.5535 What performance tests and other procedures must I use?

* * * * *

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour, except as specified in § 63.490(c) for batch process vents.

(e) Except as specified in § 63.490(c) for batch process vents, you may use the equations in paragraphs (e)(1) through (3) of this section as applicable to determine the control efficiency for each performance test.

* * * * *

(g) * * *

(1) Viscose process affected sources that must use non-recovery control devices to meet the applicable emission limit in table 1 to this subpart must conduct an initial performance test of their non-recovery control devices according to the requirements in table 4 to this subpart to determine the control efficiency of their non-recovery control devices and incorporate this information in their material balance. No additional performance tests are required.

* * * * *

(h) Cellulose ether affected sources using the material balance compliance demonstration must conduct a month-long initial compliance demonstration according to the requirements in paragraphs (h)(1) through (4) of this section and table 3 to this subpart.

(1) Cellulose ether affected sources that must use non-recovery control devices to meet the applicable emission limit in table 1 to this subpart must conduct an initial performance test of their non-recovery control devices according to the requirements in table 4 to this subpart to determine the control efficiency of their non-recovery control devices and incorporate this information in their material balance. No additional performance tests are required.

(2) Cellulose ether affected sources that use recovery devices to meet the

applicable emission limit in table 1 to this subpart must determine the quantity of organic HAP fed to the process and the quantity of organic HAP recovered using the recovery device and incorporate this information in their material balance.

(3) Cellulose ether affected sources that use cellulose ether process changes to meet the applicable emission limit in table 1 to this subpart must determine the quantity of organic HAP used before and after the process change and incorporate this information in their material balance. For cellulose ether affected sources that use extended cookout, the start point from which the percent reduction is determined must be the onset of extended cookout.

(4) Using the pertinent material balance information obtained according to paragraphs (h)(1) through (3) of this section, cellulose ether affected sources must calculate the monthly average percent reduction for their affected source over the month-long period of the compliance demonstration.

* * * * *

(i) During the period of each compliance demonstration, you must establish each site-specific operating limit in table 2 to this subpart that applies to you according to the requirements in paragraphs (i)(1) through (9) of this section.

(1) For continuous, batch, and combinations of continuous and batch process vents, establish your site-specific operating limit using the procedures in § 63.505(c), except that, if you demonstrate initial compliance using a month-long compliance demonstration, references to "performance test" mean "compliance demonstration" for purposes of this subpart.

(2) For condensers, record the outlet (product side) gas or condensed liquid temperature averaged over the same period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the temperature sensor in a position that provides a representative temperature.

(3) For thermal oxidizers, record the firebox temperature averaged over the same period as the compliance demonstration. Locate the temperature sensor in a position that provides a representative temperature.

(4) For water scrubbers, record the range of the pressure drop and flow rate of the scrubber liquid over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure and flow sensors in a position that provides a representative measurement of the parameter.

(5) For caustic scrubbers, record the range of the pressure drop, flow rate of the scrubber liquid, and pH, conductivity, or alkalinity of the scrubber liquid over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure sensors, flow sensors, and pH, conductivity, or alkalinity sensors in positions that provide representative measurements of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(6) For flares, record the presence of a pilot flame. Locate the pilot flame sensor in a position that provides an accurate and continuous determination of the presence of the pilot flame.

(7) For biofilters, record the pressure drop across the biofilter beds, inlet gas temperature, and effluent pH averaged over the same time period as the compliance demonstration while the vent stream is routed and constituted normally. Locate the pressure, temperature, and pH sensors in positions that provide representative measurement of these parameters. Ensure the sample is properly mixed and representative of the fluid to be measured.

(8) For carbon adsorbers, record the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the period of the compliance demonstration. Record the temperature of the carbon bed after each carbon bed regeneration cycle during the period of the compliance demonstration (and within 15 minutes of completion of any cooling cycle(s)). Record the operating time since the end of the last carbon bed regeneration cycle and the beginning of the next carbon bed regeneration cycle during the period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

(9) For oil absorbers, record the flow of absorption liquid through the absorber, the temperatures of the absorption liquid before and after the steam stripper, and the steam flow through the steam stripper averaged during the same period of the compliance demonstration. Locate the temperature and flow sensors in positions that provide representative measurement of these parameters.

■ 5. Section 63.5545 is amended by revising paragraph (e)(4) to read as follows:

§ 63.5545 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(e) * * *

(4) The CEMS data must be reduced to operating data averages computed using valid data from at least 75 percent of the hours during the averaging period. To have a valid hour of data, you must have four or more data points equally spaced over the 1-hour period (or at least two data points during an hour when calibration, quality assurance, or maintenance activities are being performed), except as specified in paragraph (e)(5) of this section.

* * * * *

■ 6. Section 63.5610 is amended by revising paragraph (a) and the paragraph (g) definitions for cellophane process unit, cellulose ether process unit, Cellulose Ether Production source category, cellulose food casing process unit, cellulosic sponge process unit, Miscellaneous Viscose Processes source category, process vent, and rayon process unit to read as follows:

§ 63.5610 What definitions apply to this subpart?

(a) For all affected sources complying with the batch process vent testing provisions in § 63.490(c) and the operating limit provisions in § 63.505(c), the terms used in this subpart and in subpart U of this part are defined in § 63.482 and paragraph (g) of this section.

* * * * *

(g) * * *

Cellophane process unit means all equipment associated with the viscose process or solvent coating process which collectively function to manufacture cellophane and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellophane.

* * * * *

Cellulose ether process unit means all equipment associated with a cellulose ether process which collectively function to manufacture a particular cellulose ether and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161 or 63.1020) that are used in the manufacturing of a particular cellulose ether.

Cellulose Ethers Production source category means the collection of cellulose ether operations that use the cellulose ether process to manufacture a particular cellulose ether.

* * * * *

Cellulose food casing process unit means all equipment associated with the viscose process which collectively function to manufacture cellulose food casings and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellulose food casings.

* * * * *

Cellulosic sponge process unit means all equipment associated with the viscose process which collectively function to manufacture cellulosic sponges and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of cellulosic sponges.

* * * * *

Miscellaneous Viscose Processes source category means the collection of cellulose food casing, rayon, cellulosic sponge, and cellophane operations that use the viscose process to manufacture a particular cellulose product. These cellulose products include cellulose food casings, rayon, cellulosic sponges, and cellophane.

* * * * *

Process vent means a point of discharge to the atmosphere (or the point of entry into a control device, if any) of a HAP-containing gas stream from the unit operation. Process vents do not include vents with a flow rate less than 0.005 standard cubic meter per minute or with a concentration less than 50 parts per million by volume (ppmv) of HAP or TOC, vents on storage tanks, vents on wastewater emission sources, or pieces of equipment regulated under equipment leak standards.

* * * * *

Rayon process unit means all equipment associated with the viscose process which collectively function to manufacture rayon and any associated storage vessels, liquid streams in open systems (as defined in § 63.149), and equipment (as defined in § 63.161) that are used in the manufacturing of rayon.

* * * * *

■ 7. Table 1 is amended by revising entries 1.c.i and ii, 1.f.ii and iii, and 9 through 11 to read as follows:

TABLE 1 TO SUBPART UUUU OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS

* * * * * * * *

For . . .	at . . .	You must . . .
* * * * * * *		
1. the sum of all viscose process vents.	c. each existing rayon operation ...	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; and ii. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.
* * * * * * *		
	f. each existing or new cellophane operation.	i. * * * ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation).
* * * * * * *		
9. liquid streams in open systems	each existing or new cellulose ether operation.	comply with the applicable provisions or § 63.149, except that references to "chemical manufacturing process unit" ether means "cellulose ether process unit" for the purposes of this subpart.
10. closed-vent system used to route emissions to a control device.	each existing or new affected source (except for retractable hoods over sulfuric acid baths at a cellophane operation).	conduct annual inspections, repair leaks, and maintain records as specified in § 63.148.
11. closed-vent system containing a bypass line that could divert a vent stream away from a control device, except for equipment needed for safety purposes (described in § 63.148(f)(3).	a. each existing or new affected source (except for retractable hoods over sulfuric acid baths at a cellophane operation).	(i) install, calibrate, maintain, and operate a flow indicator as specified in § 63.148(f)(1); or (ii) secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration and inspect the seal or closure mechanism at least once per month as specified in § 63.148(f)(2)).
* * * * * * *		

■ 8. Table 2 is amended by revising entries 3 and 4 to read as follows:

TABLE 2 TO SUBPART UUUU OF PART 63—OPERATING LIMITS

For the following control technique . . .	You must . . .
3. water scrubber	maintain the daily average scrubber pressure drop and scrubber liquid flow rate within the range of values established during the compliance demonstration.
4. caustic scrubber	maintain the daily average scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity within the range of values established during the compliance demonstration.

■ 9. Table 3 is amended by:
■ a. Revising the introductory statement;
■ b. Revising entries 1.a.i.(1) and (2), 1.b.i.(1) and (2), 1.c.i.(1), 1.c.ii.(1), 1.d.i.(1), 1.e.i.(1), 1.f.i.(1), and 1.f.ii and iii;
■ c. Revising entries 2.a.i and 2.a.i.(1);
■ d. Revising entry 3.a and adding item 3.b;
■ e. Revising entry 6.a.i.(1); and
■ f. Revising entry 12.a.i.(2) to read as follows:

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
1. the sum of all viscose process vents.	a. each existing cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 25% based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 25%; (2) you have a record of the range of operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 25%;
	b. each new cellulose food casing operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%; (2) you have a record of the range of operating parameter values over the month-long compliance demonstration during which the average uncontrolled total sulfide emissions were reduced by at least 75%;
	c. each existing rayon operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 35% within 3 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems; and	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 35% within 3 years after the effective date;
		ii. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 40% within 8 years after the effective date based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems.	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 40% within 8 years after the effective date;

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
*	*	*	*
	d. each new rayon operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75%; based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
*	*	*	*
	e. each existing or new cellulosic sponge operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average;	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
*	*	*	*
	f. each existing or new cellophane operation.	i. reduce total uncontrolled sulfide emissions (reported as carbon disulfide) by at least 75% based on a 6-month rolling average; ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation)	(1) the average uncontrolled total sulfide emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 75%;
*	*	*	*
2. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average;	(1) the average uncontrolled toluene emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 95%;
*	*	*	*
3. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation using a performance test to demonstrate initial compliance; or.	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems; or	(1) average uncontrolled total organic HAP emissions, measured during the performance test or determined using engineering estimates are reduced by at least 99%; (2) you have a record of the average operating parameter values over the performance test during which the average uncontrolled total organic HAP emissions were reduced by at least 99%; and (3) you comply with the initial compliance requirements for closed-vent systems; or
	b. each existing or new cellulose ether operation using a material balance compliance demonstration to demonstrate initial compliance.	i. reduce total uncontrolled organic HAP emissions by at least 99% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system the control device; and iii. comply with the work practice standard for closed-vent systems.	(1) average uncontrolled total organic HAP emissions, determined during the month-long compliance demonstration or using engineering estimates are reduced by at least 99%; (2) you have a record of the average operation parameter values over the month-long compliance demonstration during which the average uncontrolled total organic HAP emissions were reduced by at least 99%; (3) you prepare a material balance that includes the pertinent data used to determine the percent reduction of total organic HAP emissions; (4) if you use extended cookout to comply, you measure the HAP charged to the reactor, record the grade of product produced, and then calculate reactor emissions prior to extended cookout by taking a percentage of the total HAP charged.

TABLE 3 TO SUBPART UUUU OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5530(a) and 63.5535(g) and (h), you must demonstrate initial compliance with the appropriate emission limits and work practice standards according to the requirements in the following table]

For . . .	At . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
*	*	* * *	* *
6. each toluene storage vessel.	a. each existing or new cellophane operation.	i. reduce uncontrolled toluene emissions by at least 95% based on a 6-month rolling average;	(1) the average uncontrolled toluene emissions, determined during the month-long compliance demonstration or using engineering assessments, are reduced by at least 95%;
*	*	* * *	* *
12. heat exchanger system that cools process equipment or materials in the process unit.	a. each existing or new affected source.	i. monitor and repair the heat exchanger system according to § 63.104(a) through (e), except that reference to "chemical manufacturing process unit" mean "cellulose food casing, rayon, cellulosic sponge, cellophane, or cellulose either process unit" for the purposes of this subpart.	* * * (2) if your heat exchanger system is not exempt, you identify in your Notification of Compliance Status Report the HAP or other representative substance that you will monitor, or you prepare and maintain a site-specific plan containing the information required by § 63.104(c) (1) (i) through (iv) that documents the procedures you will use to detect leaks by monitoring surrogate indicators of the leak.

■ 10. Table 4 is amended by revising the introductory statement and entries 3 and 4.a.i.(2)(b) to read as follows:

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
*	*	*	*	* *
3. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. measure toluene emissions.	(1) EPA Method 18 in appendix A to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the initial compliance demonstration; or

TABLE 4 TO SUBPART UUUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table]

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
*	*	*	*	* * *
4. the sum of all cellulose either process vents.	a. each existing or new cellulose either operation.	i. measure total organic HAP emissions.	* * * (2) ASTM D6420–99	* * * (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; target concentration is between 150 ppbv and 100 ppmv; for target compound(s).
*	*	*	*	* * *

■ 11. Table 5 is amended by:
■ a. Revising entries 1.a. ii. and iii;
■ b. Revising entry 3.a and adding entry 3.b;
■ c. Revising entries 5.a. i, ii, and iv; and
■ d. Revising entry 8 to read as follows:

TABLE 5 TO SUBPART UUUU OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS

For . . .	At . . .	For the following emission limit or work practice standard . . .	You must demonstrate continuous compliance by . . .
*	*	*	* * *
1. the sum of all viscose process vents.	a. each existing or new viscose process affected source.	* * * ii. for each vent stream that you control using a control device (except for retractable hoods over sulfuric acid baths at a cellophane operation), route the vent stream through a closed-vent system to the control device; and iii. comply with the work practice standard for closed-vent systems (except for retractable hoods over sulfuric acid baths at a cellophane operation).	* * *
*	*	*	* * *
3. the sum of all cellulose either process vents.	a. each existing or new cellulose ether operation using a performance test to demonstrate initial compliance; or	i. reduce total uncontrolled organic HAP emissions by at least 99%; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and, iii. comply with the work practice standard for closed-vent systems; or	(1) complying with the continuous compliance requirements for closed-vent systems; or
	b. each existing or new cellulose ether operation using a material balance compliance demonstration to demonstrate initial compliance	i. reduce total uncontrolled organic HAP emissions by at least 99% based on a 6-month rolling average; ii. for each vent stream that you control using a control device, route the vent stream through a closed-vent system to control device; and iii. comply with the work practice standard for closed-vent systems.	(1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total organic HAP emissions; (2) documenting the percent reduction of total organic HAP emissions using the pertinent data from the material balance; (3) if using extended cookout to comply, monitoring reactor charges and keeping records to show that extended cookout was employed; (4) complying with the continuous compliance requirements for closed-vent systems.

TABLE 5 TO SUBPART UUUU OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

For . . .	At . . .	For the following emission limit or work practice standard . . .	You must demonstrate continuous compliance by . . .
5. each carbon disulfide unloading and storage operation.	a. each existingor new viscose process affected source.	i. reduce uncontrolled carbon disulfide emissions by at least 83% based on a 6-month rolling average if you use an alternative control technique not listed in this table for carbon disulfide unloading and stroage operations; if using a control device to reduce emissions, route emissions through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems;	(1) keeping a record documenting the 83% reduction in carbon disulfide emissions; and (2) if venting to a control device to reduce emissions, complying with the continuous compliance requirements for closed-vent systems;
		ii. reduce total uncontrolled sulfide emissions by at least 0.14% from viscose process vents based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems;	(1) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; (2) documenting the percent reduction of total sulfide emissions using the pertinent data from the material balance; and (3) complying with the continuous compliance requirements for closed-vent systems;
		iv. install a nitrogen unloading system; reduce total uncontrolled sulfide emissions by at least 0.045% from viscose process vents based on a 6-month rolling average; for each vent stream that you control using a control device, route the vent stream through a closed-vent system to the control device; and comply with the work practice standard for closed-vent systems	(1) keeping a record certifying that a nitrogen unloading system is in use; (2) maintaining a material balance that includes the pertinent data used to determine the percent reduction of total sulfide emissions; (3) documenting the percent reduction of total sulfide emissions using the pertinent data from the material balance; and (4) complying with the continuous compliance requirements for closed-vent systems.
8. all sources of wastewater emissions.	each existing or new cellulose either operation.	applicable wastewater provisions of § 63.105 and §§ 63.132 through 63.140.	complying with the applicable wastewater continuous compliance provisions of §§ 63.105, 63.143, and 63.148.

■ 12. Table 6 is amended by revising entries 3 and 4 to read as follows:

TABLE 6 TO SUBPART UUUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For the following control technique . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
3. water scrubber.	maintain the daily average scrubber pressure drop and scrubber liquid flow rate within the range of values established during the compliance demonstration.	collecting the scrubber pressure drop and scrubber liquid flow rate data according to § 63.5545; reducing the scrubber parameter data to daily averages; and maintaining the daily scrubber parameter values within the range of values established during the compliance demonstration.
4. caustic scrubber.	maintain the daily average scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity within the range of values established during the compliance demonstration.	collecting the scrubber pressure drop, scrubber liquid flow rate, and scrubber liquid pH, conductivity, or alkalinity data according to § 63.5545; reducing the scrubber parameter data to daily averages; and maintaining the daily scrubber parameter values within the range of values established during the compliance demonstration.

[FR Doc. 05–15733 Filed 8–9–05; 8:45 am]
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From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segmement Is Amended to Modify Changeover Point			
Great Falls, MT VORTAC	Missoula, MT VOR/DME	84	Great Falls

[FR Doc. 05–15179 Filed 8–1–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC–2004–0004; FRL–7947–3]

RIN 2060–AM83

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 13, 2004, the EPA issued amendments to the national emission standards for coke oven pushing, quenching, and battery stacks as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. Because an adverse comment was received on the provisions related to operation and maintenance requirements, we have previously withdrawn the corresponding part of the direct final rule. After considering the comment, EPA is promulgating the provisions that were withdrawn based on the proposed rule published on October 13, 2004.

EFFECTIVE DATE: August 2, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OGC–2004–0004. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OGC–2004–0004, EPA Docket Center (EPA/DC), EPA West, Room B102, 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: Bob Schell, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4116, e-mail address *schell.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331111, 324199	Coke plants and integrated iron and steel mills.
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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.7281 of the national emission standards for hazardous air pollutants (NESHAP) for coke ovens: pushing, quenching, and battery stacks. 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.

Worldwide Web. In addition to being available in the docket, an electronic copy of today's final rule amendments 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 amendments 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 3, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under CAA section 307(b)(2), the requirements established by the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Summary of the Final Rule Amendments
III. Response to Comments on the Proposed Amendments to the NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks

IV. Summary of Environmental, Energy, and Economic Impacts
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. Congressional Review Act

I. Background

On April 14, 2003 (68 FR 18008), EPA issued the NESHAP for pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The NESHAP implement section 112(d) of the CAA by requiring all major sources to meet emission standards for hazardous air pollutants reflecting application of the maximum achievable control technology.

After publication of the NESHAP, the American Iron and Steel Institute (AISI)/American Coke and Coal Chemicals Institute (ACCCI) Coke Oven Environmental Task Force (COETF) filed a petition for review challenging the final rule (*AISI/ACCCI Coke Oven Environmental Task Force* v. *U.S. Environmental Protection Agency*, No. 03–1167, D.C. Cir.). The petitioners raised issues concerning:

- The provisions requiring owners or operators of coke plants having a pushing emission control device to install, operate and maintain devices to monitor daily average fan motor amperes (or volumetric flow rate at the inlet of the control device and maintain daily average volumetric flow rate) at or above minimum levels established during initial performance tests. These provisions are included in 40 CFR 63.7290, 63.7323(c), 63.7326(a)(4), 63.7330(d), 63.7331(g) and (h), and 63.7333(d).
- The provisions requiring monthly inspections of pressure sensors, dampers, damper switches and other equipment important to the performance of the total emissions capture system which also require that a facility's operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection. These provisions are included in 40 CFR 63.7300(c)(1).

Amendments developed to resolve these concerns were set out in attachment A to a proposed settlement agreement between EPA and COETF. In accordance with CAA section 113(g), we published a notice of the proposed settlement agreement (69 FR 31372, June 3, 2004) and provided a 30-day comment period which ended July 6, 2004. We received no comments on the proposed settlement agreement.

On October 13, 2004, we issued a direct final rule (69 FR 60813) and a parallel proposal (69 FR 60837) to amend the NESHAP. We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comments by November 12, 2004 (or by November 29, 2004 if a public hearing was requested), we would publish a timely withdrawal in the Federal Register indicating which provisions would become effective and which provisions would be withdrawn due to adverse comment. We subsequently received an adverse comment from one commenter on the provisions related to the operation and maintenance requirements and withdrew the amendments to 40 CFR 63.7300(c)(1) on January 10, 2005 (70 FR 1670). The remaining provisions, for which we did not receive any adverse comments, became effective on January 11, 2005. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on October 13, 2004.

II. Summary of the Final Rule Amendments

The final rule amendments affect the requirement in 40 CFR 63.7300(c)(1) for the repair of any defect or deficiency in the capture system before the next scheduled inspection. In the event a defect or deficiency is found in the capture system (during a monthly inspection or between inspections), the final rule amendments require the plant owner or operator to complete repairs within 30 days after the date that the defect or deficiency is discovered. If the repairs cannot be completed within 30 days, the plant owner or operator must submit a written request to the permitting authority for an extension of time to complete the repairs. The permitting authority must receive the request no more than 20 days after the date that the defect or deficiency is discovered. The request must contain a description of the defect or deficiency, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect or deficiency, and a proposed schedule for completing the repairs. The request is deemed approved unless and until such time as the permitting authority notifies the plant owner or operator that it objects to the request. The permitting authority may consider all relevant factors in deciding whether to approve or deny the request (including feasibility and safety). Each approved schedule must provide for completion of repairs as expeditiously as practicable, and the permitting authority may request modifications to the proposed schedule as part of the approval process.

We are also making a minor technical clarification to the sampling procedures in 40 CFR 63.7322(b)(2). This clarification is simply that the minimum sample volume is measured as "dry standard" cubic feet.

III. Response to Comments on the Proposed Amendments to the NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks

We received one significant adverse comment on the amendments contained in the parallel proposal published on October 13, 2004. The commenter objected to the proposed requirement that would have allowed the owner or operator an additional 30 days (a total of 60 days) to repair a defect in the capture system applied to pushing emissions. The commenter stated that EPA had many years of experience in reviewing malfunction reports and suggested that any such extension be restricted to specific defects and historical repair times.

We reviewed the proposal and discussed in detail with coke plant operators the types of defects that might require 60 days to repair and their frequency of occurrence. Such defects occur very infrequently and are usually related to structural problems that require an engineering evaluation, scheduling a contractor to make the repairs, and coordinating with the plant's production schedule to allow the repair to be made safely. It is not possible to identify in advance what defects may require more than 30 days, and the events are so infrequent, there is not much historical information on repair times. However, we agree with the commenter in that EPA or the permitting authority should decide when additional time is needed, and that this decision should not be left solely to the discretion of the owner or operator. Consequently, we have revised the operation and maintenance requirement to require the owner or operator to submit a request for approval by the permitting authority for an extension of time to complete a

repair that cannot be completed within 30 days. The request must be received by the permitting authority within 20 days after the defect is first discovered. The owner or operator must provide enough information for the permitting authority to evaluate the request, including a description of the defect, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect, and a proposed schedule for completing the repairs. The permitting authority may approve or disapprove the request or request additional information to aid in the decision.

The commenter also suggested that the owner or operator notify EPA by fax within 24 hours of finding a deficiency with confirmation in writing by mail within 7 days. We do not agree that this notification is necessary because the notification and recordkeeping requirements for startups, shutdowns, and malfunctions (SSM) in 40 CFR 63.6(e) of the General Provisions (40 CFR part 63, subpart A) are in full effect in this case. The specific requirements in these amendments for capture systems as applied to pushing emissions are in addition to the SSM requirements and do not replace them. The SSM notification requirements have been designed to provide the permitting authority with timely and relevant information in the event that all steps in the SSM plan are not implemented. These requirements attempt to strike a balance between providing relevant information and avoiding unnecessary reporting of minor events (*e.g.*, when a malfunction is promptly corrected) that would increase the burden to both the permitting authority and the owner or operator.

IV. Summary of Environmental, Energy, and Economic Impacts

The final rule amendments will have no effect on environmental, energy, or non-air health impacts because none of the changes affect the stringency of the existing emission limits. No costs or economic impacts are associated with the amendments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12886 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The costs of the information collection requirements associated with the amendments to the operation and maintenance requirements do not increase the existing burden estimates for the final rule. The OMB has previously approved the information collection requirements in the existing rule (40 CFR part 63, subpart CCCCC) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0521, EPA ICR number 1995.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 number for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For purposes of assessing the impact of today's final rule amendments on small entities, small entity is defined as: (1) A small business, as defined by the Small Business Administration's 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 amendments on small entities, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may conclude 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 believe there will be a positive impact on small entities because the final rule amendments increase flexibility by providing more time for plants to make repairs that can not be completed within 30 days. These changes are voluntary and do not impose new costs. We have, therefore, concluded that today's final rule amendments will relieve regulatory burden for all small entities.

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, the 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 rule amendments 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 1 year. No new costs are attributable to the final rule amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments 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" 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."

The final rule amendments 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. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate any plants subject to the NESHAP for coke oven pushing, quenching, and battery stacks. Thus, Executive Order 13175 does not apply to the final rule amendments.

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, the 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.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because the final rule (and these amendments) 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 amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule 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 rule amendments in the Federal Register. A major rule cannot take effect until 60 days after its publication in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective on August 2, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous

substances, Reporting and recordkeeping requirements.

Dated: July 26, 2005.

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 CCCCC—[Amended]

■ 2. Section 63.7300 is amended by removing the third (last) sentence in paragraph (c)(1) and adding in its place six new sentences to read as follows:

§ 63.7300 What are my operation and maintenance requirements?

* * * * *

(c) * * *

(1) * * * In the event a defect or deficiency is found in the capture system (during a monthly inspection or between inspections), you must complete repairs within 30 days after the date that the defect or deficiency is discovered. If you determine that the repairs cannot be completed within 30 days, you must submit a written request for an extension of time to complete the repairs that must be received by the permitting authority not more than 20 days after the date that the defect or deficiency is discovered. The request must contain a description of the defect or deficiency, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect or deficiency, and a proposed schedule for completing the repairs. The request shall be deemed approved unless and until such time as the permitting authority notifies you that it objects to the request. The permitting authority may consider all relevant factors in deciding whether to approve or deny the request (including feasibility and safety). Each approved schedule must provide for completion of repairs as expeditiously as practicable, and the permitting authority may request modifications to the proposed schedule as part of the approval process.

* * * * *

■ 3. Section 63.7322 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7322 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

* * * * *

(b) * * *

(2) During each particulate matter test run, sample only during periods of actual pushing when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 dry standard cubic feet of gas during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a push and finish at the end of a push (*i.e.*, sample for an integral number of pushes).

* * * * *

[FR Doc. 05–15217 Filed 8–1–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–5204–23; I.D. 072705A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,240 nm² (4,253 km²), east of Boston, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours August 4, 2005, through 2400 hours August 18, 2005.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

Approved: June 30, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–13801 Filed 7–13–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[OAR–2003–0185; FRL–7938–5]

RIN 2060–AE46

National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: EPA is amending the national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting to correct the monitoring requirements for control systems other than baghouses and venturi wet scrubbers.

DATES: Effective July 14, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0185. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR–2003–0185, EPA/DC, EPA West, Room B102, 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: Mr. Steve Fruh, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2837, e-mail address: *fruh.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	331411	Primary copper smelters.
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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1441 of the NESHAP for primary copper smelting. 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). A copy of the final amendments 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.

I. Background

We promulgated the NESHAP for primary copper smelting (40 CFR 63, subpart QQQ) on June 12, 2002 (68 FR 40478). The final rule establishes emissions limitations and work practice standards for primary copper smelters that use batch copper converters and are a major source of hazardous air pollutant (HAP) emissions. We received a petition (included in the docket for today's final amendments) asking us to review the requirements for specific operating parameters that must be monitored when an owner or operator uses a control device other than a baghouse (fabric filter) or a venturi wet scrubber to comply with the rule. Upon review of the monitoring requirements in subpart QQQ, we discovered an error in the regulatory language for the final rule that references the operating parameters to be monitored when a control device other than a baghouse or a venturi wet scrubber is used.

If an owner or operator of a primary copper smelter elects to use a control device other than a baghouse or venturi wet scrubber for an emissions source subject to a particulate emissions limit under the final rule (*e.g.*, use an electrostatic precipitator), the rule requires that the owner or operator continuously monitor and record appropriate operating parameters for the type of control device used to demonstrate compliance with the applicable emissions standard. In such cases, the final rule does not specify the individual operating parameters that must be monitored. Instead, the owner or operator is required to select specific operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance. During the initial performance test that the owner or operator conducts to demonstrate compliance with the applicable emissions standard, operating limits for each of the selected operating parameters are established on a site-specific basis using the actual operating values for the control device recorded while the performance test is conducted. Continuous compliance with the emissions standard is demonstrated by maintaining the selected operating parameters within the operating limits established during the performance test.

Under the monitoring requirements for control devices other than baghouses or venturi wet scrubbers in 40 CFR 63.1452(d) and 40 CFR 63.1453(e), language referencing the operating parameters for venturi wet scrubbers (*i.e.*, hourly average pressure drop and water flow) was incorrectly included in these paragraphs. In place of the reference to venturi wet scrubbers, the rule language in 40 CFR 63.1452(d) and 40 CFR 63.1453(e) should implement

IDAHO ADMINISTRATIVE PROCEDURES ACT (IDAPA) CHAPTER 58, RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, PREVIOUSLY CODIFIED AT IDAPA CHAPTER 39 (APPENDIX A.3)

58.01.01—Rules for the Control of Air Pollution in Idaho

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
600	Rules for Control of Open Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
601	Fire Permits, Hazardous Materials and Liability	3/21/03	07/11/05 [Insert page number where the document begins].	
602	Nonpreemption of Other Jurisdictions	3/21/03	07/11/05 [Insert page number where the document begins].	
603	General Restrictions	3/21/03 5/1/94	07/11/05 [Insert page number where the document begins].	
606	Categories of Allowable Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
607	Recreational and Warming Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
608	Weed Control Fires	5/1/94	07/11/05 [Insert page number where the document begins].	
609	Training Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
610	Industrial Flares	3/21/03	07/11/05 [Insert page number where the document begins].	
*	*	*	*	*
612	Landfill Disposal Site Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
613	Orchard Fires	3/21/03 5/1/94	07/11/05 [Insert page number where the document begins].	
*	*	*	*	*
615	Dangerous Material Fires	3/21/03	07/11/05 [Insert page number where the document begins].	
616	Infectious Waste Burning	3/21/03	07/11/05 [Insert page number where the document begins].	
617	Crop Residue Disposal	3/21/03	07/11/05 [Insert page number where the document begins].	

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[FR Doc. 05–13557 Filed 7–8–05; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0038, FRL–7935–4]

RIN 2060–AK52

National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are amending table 1 to subpart B of part 63 to reflect the revised deadlines in a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces that burn hazardous waste. We are making the amendment by final rule, without prior proposal, because we view the amendment as a technical correction to an existing regulation.

DATES: *Effective Dates:* July 11, 2005.

ADDRESSES: *Docket:* The docket for the final rule amendment is Docket ID No. OAR–2002–0038. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (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 in EDOCKET or in hard copy at the HQ EPA Docket Center, Docket ID No. OAR–2002–0038, EPA West Building, Room B–102, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, North Carolina 27711; telephone number (919) 541–5262; fax number (919) 541–5600; e-mail address: *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for public comment because the change is simply a conforming change to be

consistent with a judicial consent decree date change. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Regulated Entities. Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS [1]	Examples of regulated entities
Industrial/commercial /institutional boilers and process heaters, and hydrochloric acid production furnaces that combust hazardous waste.	327992	Ground or treated mineral and earth manufacturing.
	325	Chemical manufacturers.
	324	Petroleum refiners.
	331	Primary aluminum.
	333	Photographic equipment and supplies.
	488, 561, 562	Sanitary services, N.E.C.[2]
	421	Scrap and waste materials.
	422	Chemical and allied products, N.E.C.[2]
	512, 541, 561, 812	Business services, N.E.C.[2]
	512, 514, 541, 711	Services, N.E.C.[2]
	924	Air, water, and solid waste management.

[1] North American Industry Classification System.
[2] Not elsewhere classified.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. 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.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page at *http://www.epa.gov/ttn/caaa.* 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 the final rule amendment is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by September 9, 2005. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendment may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

I. New Schedule for Part 2 Permit Applications

Section 112(j) of the CAA provides a mechanism for subjecting major sources to emission standards reflecting performance of maximum available control technology (MACT) in the event that EPA fails to issue a MACT standard within the deadlines established in CAA section 112(e). In essence, if EPA fails to issue a timely MACT standard, section 112(j) requires major sources to submit permit applications to the relevant permitting authority. The permitting authority must then establish emission limitations for the source representing the authority's best estimate of what the MACT standard for the source would have been.

On May 30, 2003 (68 FR 32586), EPA issued final rules establishing dates for submitting CAA section 112(j) Part 2 permit applications, and provisions relating to the substance of those applications should they become due. Today's action deals solely with the issue of applicable dates for submitting applications.

Section 112(j) Part 2 permit application submittal dates are codified in subpart B of 40 CFR part 63 by source category. The dates are 60 days after the scheduled MACT rule completion dates for the respective source category established by the consent decree entered in *Sierra Club* v. *Johnson,* no. 1:01CV01537 (D.C.D.C.). In adopting these dates, and in particular by which the dates are tied to consent decree deadlines, we considered the possibility of what would happen if the consent decree deadlines were modified. We stated that if the deadline for promulgation of any MACT standards which appear in the consent decree is extended by the District Court in accordance with the provisions of that decree, we will consider at that time whether any corresponding adjustment in the schedule for section 112(j) Part 2 applications set forth in 40 CFR part 63, subpart B, is necessary and appropriate. We added that if we conclude that a change in the schedule for section 112(j) Part 2 applications is warranted, we will consider the use of expedited procedures. (*See* 68 FR 32594–32595.)

That possibility has now occurred. On March 30, 2005, EPA filed an unopposed motion to modify the consent decree dates for completing MACT standards for two source categories, boilers that burn hazardous waste and hydrochloric acid production furnaces that burn hazardous waste. The court entered its order modifying the decree on April 1, 2005. EPA is now required to complete the MACT standards for these source categories by September 14, 2005, a 90-day extension of the original date.

The current deadline for submitting CAA section 112(j) Part 2 permit applications is August 13, 2005 (60 days from the original rule completion date in the consent decree). We are amending the section 112(j) Part 2 permit application date so that it now follows the revised consent decree date by 60 days. Consequently, the new date in table 1 to subpart B of part 63 is November 14, 2005. The EPA fully expects to meet the revised consent decree deadline (and so informed the court in our extension motion), so we do not anticipate these permit applications having to be submitted.

We are issuing today's amendment as a final rule without prior proposal. We view this as a technical correction to the original rule, since permit applications are tied to consent decree dates (an issue discussed and fully commented upon in the initial rulemaking). Today's rule thus simply conforms the permit application date to the date in the revised consent decree. Under these circumstances, we believe that opportunity for comment is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, we believe there is good cause within the meaning of 5 U.S.C. 553(d)(3) to make this amendment effective immediately.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995, (15 U.S.C. 272 note) do not apply. This action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing the final rule amendment, EPA has taken necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the final rule amendment in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 30, 2003 Federal Register action.

The Congressional Review Act (CRA), (5 U.S.C. 801, *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 11, 2005. The EPA will submit a report containing this action 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. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 5, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ 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 B—[Amended]

■ 2. Table 1 to subpart B of part 63 is amended by revising the entry dated "8/13/05" to read as follows:

TABLE 1 TO SUBPART B OF PART 63—SECTION 112(J) PART 2 APPLICATION DUE DATES

Due date	MACT standard
* * * * *	
11/14/05 ..	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters.[5]
	Hydrochloric Acid Production.[6]
* * * * *	

[FR Doc. 05–13555 Filed 7–8–05; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050325082–5165–02; I.D. 031705E]

RIN 0648–AS90

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which modifies the gear endorsements under the License Limitation Program (LLP) for the scallop fishery. This action is necessary to allow increased participation by LLP license holders in the scallop fisheries off Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective on August 10, 2005.

ADDRESSES: Copies of Amendment 10 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, website at *http://www.fakr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: Notice of availability for Amendment 10 was



Federal Register

Friday,
July 1, 2005

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0121; FRL–7932–2]

RIN A2060–AN09

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On November 10, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing under the authority of section 112 of the Clean Air Act (CAA). We are amending the NESHAP by clarifying the compliance requirements for flares and the alternative standard, which limits the outlet concentration to 20 parts per million. We are amending the NESHAP by extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specify requirements for effluent from control devices, clarify the definition of the term continuous process vent, and correct several referencing and drafting errors. We are issuing the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

In the Proposed Rules section of this Federal Register, we are publishing a separate document that will serve as the proposal in the event that timely adverse comments are received.

DATES: The direct final rule is effective on August 30, 2005, without further notice, unless EPA receives adverse written comment by August 1, 2005, or if a public hearing is requested by July 11, 2005. If EPA receives such comments or a hearing is requested, EPA will publish a timely withdrawal in the Federal Register indicating which provisions will become effective, and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0121, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *air-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0121. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the Federal Register of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), Office of Air Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3251, 3252, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.2435 of the NESHAP. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the direct final rule amendments will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the direct final rule amendments will be posted 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.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely adverse comments are received. If we receive such adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by August 30, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Why are we amending the rule?
II. What amendments are we making to the rule?
III. 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 for Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Why Are We Amending the Rule?

On November 10, 2003, we promulgated NESHAP for Miscellaneous Organic Chemical Manufacturing as subpart FFFF in 40 CFR part 63 (68 FR 63852). Since promulgation of the NESHAP, we determined that the alternative standard, which limits the outlet concentration to 20 parts per million, did not contain several provisions that have been included in the same alternative standard in other rules, that the flare provisions are not consistent with other rules, that the procedures to account for dilution air added to vent streams before a combustion device are unnecessarily restrictive, and that the vapor balancing alternative for storage tanks could be extended to vapor balancing to barges.

II. What Amendments Are We Making to the Rule?

Amendments to the Procedure for Correcting Measured Concentrations to Account for Supplemental Gases. If you comply with an outlet concentration emission limit and use a combustion device, the NESHAP require you to correct the measured outlet concentration to 3 percent oxygen to account for dilution caused by adding supplemental gases to the emission stream prior to the control device. The direct final rule amendments add a second option that allows you to correct only for the actual amount of supplemental gas. This option is consistent with the correction requirement in the final rule for noncombustion devices.

The correction to 3 percent oxygen was originally used in new source performance standards for air oxidation unit processes, distillation operations, and reactor processes in the synthetic organic chemical manufacturing industry (40 CFR part 60, subparts III, NNN and RRR). The value of 3 percent represents good engineering practice when oxygen-deficient streams are combusted with supplemental combustion air (*i.e.*, a supplemental gas). To prevent owners or operators from diluting streams to meet the outlet concentration emission limit for noncombustion devices, the NESHAP require correction of the actual flowrate of supplemental gases. The direct final rule amends 40 CFR 63.2450(i) to allow a correction based on the actual flowrate of supplemental gases, as well as the correction to 3 percent oxygen for combustion devices if supplemental gases are used as allowed by the NESHAP. In addition, the direct final rule amends the definition of supplemental gas to mirror the definition of supplemental combustion air in 40 CFR 63.1312, which is appropriate for both combustion and noncumbustion devices.

Clarification of the Initial Compliance Requirements for Flares. The direct final rule clarifies the initial compliance requirements for flares because we understand the promulgated language has caused some confusion. If you use a flare to comply with an emission limit, the NESHAP specify that you must comply with the requirements in 40 CFR 63.982(b), which in turn, references 40 CFR 63.987. These are the only compliance requirements that apply to flares, including flares used to control batch process vents. Thus, the procedures in § 63.2460(c)(2)(i) of the NESHAP to demonstrate compliance with a percent reduction emission limit by comparing the uncontrolled and controlled emission limits apply only if you use a non-flare control device. You never have to demonstrate the percent reduction for a flare; you only have to meet the requirements in 40 CFR 63.987. The direct final rule adds a sentence to 40 CFR 63.2460(c)(2)(i) to clarify this point.

The requirement in 40 CFR 63.2460(c)(2)(ii) to establish emission profiles before conducting a performance test or design evaluation for a control device that controls emissions from batch process vents also applies when you use a non-flare control device. The direct final rule

revises 40 CFR 63.2460(c)(2)(ii) to clarify this point.

Amendments to the Initial Compliance Requirements for Flares Used to Control Batch Process Vents. The direct final rule adds a new paragraph (b)(4)(iii) to 40 CFR 63.2460 to specify that you may designate emission streams that are controlled with a flare as Group 1. By meeting the requirements in 40 CFR 63.987, the owner or operator demonstrates compliance with the HAP destruction requirements in the NESHAP.

Amendments to Performance Testing for Demonstrating Initial Compliance with a Percent Reduction Requirement. Section 63.2450(d) through (f) of the NESHAP specify that you must comply with various requirements of 40 CFR part 63, subpart SS, for performance testing provisions. One exception is that the option in 40 CFR 63.997(e)(2)(iv) to demonstrate compliance with a percent reduction emission limit by measuring total organic compounds (TOC) was prohibited by 40 CFR 63.2450(n) of the NESHAP. Since promulgation, we have determined that this restriction is unwarranted because 40 CFR 63.997(e)(2)(iv)(G) and (H) describe procedures for using Methods 25 and 25A of 40 CFR part 60, appendix A, for measuring TOC. The direct final rule removes 40 CFR 63.2450(n) to allow compliance with a percent reduction limit to be demonstrated by measuring either total organic HAP or TOC as specified in 40 CFR 63.997(e)(2)(iv).

Amendments to the Alternative Standard. The direct final rule amendments add additional options for the monitoring provisions to the alternative standard and adds planned routine maintenance provisions for storage tanks. The direct final rule amendments also permit compliance with the emission limits and work practice standards in Tables 1 through 4 to subpart FFFF of part 63 to be met by limiting the outlet concentration and demonstrating compliance with the outlet concentration emission limit through continuous emission monitoring. The direct final rule amendments allow monitoring of operating parameters as an alternative to adjusting measured concentrations to account for dilution caused by supplemental gases, indicate that the planned routine maintenance provisions apply under the alternative standard for control devices that are used to control emissions from storage tanks, and clarify a couple of references.

The introductory text in 40 CFR 63.2505(b) of the NESHAP currently requires you to meet the requirements specified in 40 CFR 63.1258(b)(5)(i) to demonstrate compliance with the alternative standard. This reference inadvertently excludes the options in 40 CFR 63.1258(b)(5)(ii) for monitoring operating parameters as an alternative to adjusting the measured concentrations to account for the dilution caused by adding supplemental gases to the emission stream prior to the control device. For combustion devices, the option requires operation above minimum temperature and residence time limits and monitoring to demonstrate continuous compliance with the limits. For noncombustion devices used to control emissions from dense gas systems (*i.e.*, systems with oxygen levels less than 12 percent), the option requires calculation of a flowrate setpoint and monitoring of the flowrate to demonstrate continuous compliance with the setpoint. These options are as valid for miscellaneous organic chemical manufacturing sources as for pharmaceuticals production sources. The preamble to the proposed amendments to the NESHAP for pharmaceuticals production describes the rationale for these alternatives (65 FR 19152, April 10, 2000). As detailed therein, available data indicate that a properly designed and operated combustion device will reduce emissions by 98 percent if it maintains the specified residence time and temperature. With respect to dense gas systems, the flowrate setpoint calculated for dense gas systems is an indicator of HAP concentration in the gas stream into the control device, and maintaining the flowrate below this value would demonstrate that significant dilution is not occurring. Therefore, the direct final rule amendments modify the introductory text in § 63.2505(b) to reference all of the provisions in § 63.1258(b)(5).

The direct final rule amendments also add language specifying that the alternative standard does not apply to emissions from storage tanks during periods of planned routine maintenance of the control device. All of this language is identical to the planned routine maintenance language in 40 CFR 63.2470 that applies if you comply with the percent reduction emission limit. The exemption was included for compliance with the percent reduction emission limit because the storage tank cannot necessarily be shutdown while the control device is shutdown for maintenance. The same rationale applies for the alternative standard.

Section 63.2505(b)(5)(ii) in the NESHAP specifies requirements for continuous parameter monitoring systems (CPMS) for scrubbers used to comply with the option to reduce hydrogen halide and halogen HAP emissions after a combustion device by 95 percent. The current language specifies that you must install, operate, and maintain CPMS for the scrubber as specified in 40 CFR 63.2450(k). Since the actual requirements are in 40 CFR 63.994(c), which is modified by § 63.2450(k), the direct final rule amendments revise the provision to reference both sections. Finally, the direct final rule amendments reorder two of the paragraphs in § 63.2505(b) to improve readability.

Amendments to the Vapor Balancing Alternative for Storage Tanks. The direct final rule amendments extend vapor balancing to cover liquid transfers from barges to storage tanks. The NESHAP allow vapor balancing from storage tanks to tank trucks and railcars. Since promulgation of the NESHAP, we have determined that barges are used to supply materials to storage tanks in the miscellaneous organic chemical manufacturing industry, and the vapor balancing procedures are as valid for barges as for tank trucks and railcars. The only difference is that the testing procedures to determine vapor-tightness of barges are specified in 40 CFR 61.304(f).

Amendments to the Definition of Group 1 Wastewater. The direct final rule amendments add a new paragraph (4) to § 63.2485(c) to specify that effluent from a water scrubber or any other control device that has been used to comply with an emission limit for process vents is Group 1 wastewater, provided the process vent emission stream is Group 1 for HAP listed in Table 8 to 40 CFR part 63, subpart FFFF. This change is needed to ensure that HAP removed from an emission stream are destroyed or otherwise treated so that they are not simply re-emitted. The new language is similar to requirements the NESHAP for Pharmaceuticals Production.

Amendment to the Definition of Continuous Process Vent. Section 63.2550(i) of the NESHAP defines "continuous process vent" using the same language as in 40 CFR 63.107 of the Hazardous Organic NESHAP (HON), except that references to other sections in the HON are replaced by references to provisions in 40 CFR part 63, subpart FFFF. Section 63.107(d) of the HON specifies that a gas stream must contain greater than 0.005 weight percent total organic HAP to be a continuous process vent. The direct final rule amendments change "total organic HAP" to "total HAP" for the purposes of subpart FFFF, to clarify the applicability of the emission limits for inorganic HAP

emissions from process vents that are specified in Table 3 to subpart FFFF.

According to the current definition of *Continuous process vent* in the NESHAP, if the only HAP in a gas stream is inorganic HAP, then it would not be a continuous process vent (or any kind of process vent), even if it meets all of the other criteria specified in 40 CFR 63.107. This means it also would not be subject to the emission limits for inorganic HAP in Table 3 to subpart FFFF of part 63. However, in setting the MACT floor for inorganic HAP emissions, we used all available data for gas streams from processing operations, not just data for streams that also had organic HAP. Changing § 63.107(d) for the purposes of subpart FFFF ensures that such streams from continuous operations are subject to the emission limits for inorganic HAP, as we intended. This change also makes the definition for continuous process vent consistent with the definition for batch process vent, which already includes a threshold based on total HAP.

Clarification of Notification of Compliance Status Reporting Requirements. The introductory text in 40 CFR 63.9(h)(2)(i) requires the owner or operator of an affected source to submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy. Table 12 to subpart FFFF of part 63 inadvertently stated that this paragraph does not apply to subpart FFFF. This was not our intent. We intended to specify only that the subparagraphs (A) through (G) do not apply because the types of information to include in the report are specified in § 63.2520(d) of subpart FFFF rather than § 63.9(h)(2). Therefore, the direct final rule amendments revise the references in the entry for § 63.9(h)(1)—(6) in Table 12 to subpart FFFF to clarify this point.

Miscellaneous Technical Corrections. The direct final rule amendments include several changes to correct references and drafting errors.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that the direct final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action gives a source owner or operator several additional compliance options. Since they are only options, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0533 (EPA ICR No. 1969.02).

Copies of the information collection request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, 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. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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

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

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's 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, EPA has concluded 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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.

The direct final rule amendments add several compliance options granting greater flexibility to small entities subject to the final rule that may result in a more efficient use of resources. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

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 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 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.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The direct final rule amendments provide a source owner or operator with additional options to comply with the standards. Therefore, the direct final rule 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" 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."

The direct final rule amendments 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. The direct final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the direct final rule amendments from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. The direct final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

The EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the direct final rule amendments. Therefore, EPA is not proposing or adopting any voluntary consensus standards in the direct final rule amendments.

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 the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct 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 direct final rule in the Federal Register. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on August 30, 2005.

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: June 24, 2005.

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.*

Subpart FFFF—[Amended]

■ 2. Section 63.2450 is amended as follows:

■ a. Revising paragraph (i); and

■ b. Removing and reserving paragraph (n).

§ 63.2450 What are my general requirements for complying with this subpart?

* * * * *

(i) *Outlet concentration correction for combustion devices.* When § 63.997(e)(2)(iii)(C) requires you to correct the measured concentration at the outlet of a combustion device to 3 percent oxygen if you add supplemental combustion air, the requirements in either paragraph (i)(1) or (2) of this section apply for the purposes of this subpart.

(1) You must correct the concentration in the gas stream at the outlet of the combustion device to 3 percent oxygen if you add supplemental gases, as defined in § 63.2550, to the vent stream, or;

(2) You must correct the measured concentration for supplemental gases using Equation 1 of § 63.2460; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas.

* * * * *

(n) [Reserved]

* * * * *

■ 3. Section 63.2460 is amended as follows:

■ a. Revising paragraph (b)(4) introductory text;

■ b. Adding new paragraph (b)(4)(iii); and

■ c. Revising paragraphs (c)(2)(i) and (ii).

§ 63.2460 What requirements must I meet for batch process vents?

* * * * *

(b) * * *

(4) You may elect to designate the batch process vents within a process as Group 1 and not calculate uncontrolled emissions under either of the situations in paragraph (b)(4)(i), (ii), or (iii) of this section.

* * * * *

(iii) If you comply with an emission limit using a flare that meets the requirements specified in § 63.987.

(c) * * *

(2) * * *

(i) To demonstrate initial compliance with a percent reduction emission limit in Table 2 to this subpart FFFF, you must compare the sums of the controlled and uncontrolled emissions for the applicable Group 1 batch process vents within the process, and show that the specified reduction is met. This requirement does not apply if you comply with the emission limits of Table 2 to this subpart FFFF by using a flare that meets the requirements of § 63.987.

(ii) When you conduct a performance test or design evaluation for a non-flare control device used to control emissions from batch process vents, you must establish emission profiles and conduct the test under worst-case conditions according to § 63.1257(b)(8) instead of under normal operating conditions as specified in § 63.7(e)(1). The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for batch process vents. For purposes of this subpart FFFF, references in § 63.997(b)(1) to "methods specified in § 63.997(e)" include the methods specified in § 63.1257(b)(8).

* * * * *

■ 4. Section 63.2470 is amended by adding new paragraph (e)(4) to read as follows:

§ 63.2470 What requirements must I meet for storage tanks?

* * * * *

(e) * * *

(4) You may comply with the vapor balancing alternative in § 63.1253(f) when your storage tank is filled from a barge. All requirements for tank trucks and railcars specified in § 63.1253(f) also apply to barges, except as specified in § 63.2470(e)(4)(i).

(i) When § 63.1253(f)(2) refers to pressure testing certifications, the requirements in 40 CFR 61.304(f) apply for barges.

(ii) [Reserved]

■ 5. Section 63.2485 is amended by adding paragraph (c)(4) and revising paragraph (d)(2) to read as follows:

§ 63.2485 What requirements must I meet for wastewater streams and liquid streams within an MCPU?

* * * * *

(c) * * *

(4) Effluent from a water scrubber or any other control device that has been used to comply with an emission limit for process vents specified in Table 1 or Table 2 to this subpart FFFF, provided the process vent emission stream is Group 1 for HAP listed in Table 8 to this subpart FFFF.

(d) * * *

(2) When § 63.133(a) refers to Table 10 of subpart G of this part 63, the maximum true vapor pressure in the table shall be limited to the HAP listed in Tables 8 and 9 of this subpart FFFF.

* * * * *

■ 6. Section 63.2505 is amended by revising paragraph (b) to read as follows:

§ 63.2505 How do I comply with the alternative standard?

* * * * *

(b) *Compliance requirements.* To demonstrate compliance with paragraph (a) of this section, you must meet the requirements of § 63.1258(b)(5) beginning no later than the initial compliance date specified in § 63.2445, except as specified in paragraphs (b)(1) through (9) of this section.

(1) You must comply with the requirements in § 63.983 and the requirements referenced therein for closed-vent systems.

(2) When § 63.1258(b)(5)(i) refers to §§ 63.1253(d) and 63.1254(c), the requirements in paragraph (a) of this section apply for the purposes of this subpart FFFF.

(3) When § 63.1258(b)(5)(i)(B) refers to "HCl," it means "total hydrogen halide and halogen HAP" for the purposes of this subpart FFFF.

(4) When § 63.1258(b)(5)(ii) refers to § 63.1257(a)(3), it means § 63.2450(j)(5) for the purposes of this subpart FFFF.

(5) You must submit the results of any determination of the target analytes of predominant HAP in the notification of compliance status report.

(6) If you elect to comply with the requirement to reduce hydrogen halide and halogen HAP by greater than or equal to 95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must meet the requirements in paragraphs (b)(6)(i) and (ii) of this section.

(i) Demonstrate initial compliance with the 95 percent reduction by conducting a performance test and setting a site-specific operating limit(s) for the scrubber in accordance with § 63.994 and the requirements referenced therein. You must submit the results of the initial compliance demonstration in the notification of compliance status report.

(ii) Install, operate, and maintain CPMS for the scrubber as specified in §§ 63.994(c) and 63.2450(k), instead of as specified in § 63.1258(b)(5)(i)(C).

(7) If flow to the scrubber could be intermittent, you must install, calibrate, and operate a flow indicator as specified in § 63.2460(c)(7).

(8) Use the operating day as the averaging period for CEMS data and scrubber parameter monitoring data.

(9) The requirements in paragraph (a) of this section do not apply to emissions from storage tanks during periods of planned routine maintenance of the control device that do not exceed 240 hr/yr. You may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr in accordance with the procedures specified in § 63.2470(d). You must comply with the recordkeeping and reporting specified in §§ 63.998(d)(2)(ii) and 63.999(c)(4) for periods of planned routine maintenance.

■ 7. Section 63.2520 is amended by revising paragraphs (d)(2)(viii) and (e)(9) to read as follows:

§ 63.2520 What reports must I submit and when?

* * * * *

(d) * * *

(2) * * *

(viii) Identify storage tanks for which you are complying with the vapor balancing alternative in § 63.2470(e).

* * * * *

(e) * * *

(9) Applicable records and information for periodic reports as specified in referenced subparts F, G, SS, TT, UU, WW, and GGG of this part 63.

* * * * *

■ 8. Section 63.2525 is amended by revising paragraph (a) to read as follows:

§ 63.2525 What records must I keep?

* * * * *

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts F, G, SS, TT, UU, WW, and GGG of this part 63.

* * * * *

■ 9. Section 63.2550 is amended as follows:

■ a. Adding new paragraph (5) to the definition of the term *Continuous process vent*; and

■ b. Revising the definition for the terms *Supplemental gases* and *Wastewater stream*.

§ 63.2550 What definitions apply to this subpart?

* * * * *

(i) * * *

Continuous process vent * * *

(5) The reference to "total organic HAP" in § 63.107(d) means "total HAP" for the purposes of this subpart FFFF.

* * * * *

Supplemental gases means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental gases. Air required to operate combustion device burner(s) is not considered supplemental gases.

* * * * *

Wastewater stream means a stream that contains only wastewater as defined in this paragraph (i).

* * * * *

■ 10. Table 1 to subpart FFFF is amended by revising entry "1" to read as follows:

TABLE 1 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS

For each . . .	For which . . .	Then you must . . .
1. Group 1 continuous process vent.	a. Not applicable	i. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total Reduce organic HAP by venting emissions through a closed vent system to a flare; or iii. Use a recovery device Reduce to maintain the TRE above 1.9 for an existing source or above 5.0 for a new source.
*	*	* * * * * *

■ 11. Table 8 to subpart FFFF is amended by revising entry "51" to read as follows:

TABLE 8 TO SUBPART FFFF OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
* * * * * * *	
51. Tetrachloroethylene (perchloroethylene)	127184
* * * * * * *	

■ 12. Table 9 to subpart FFFF is amended by revising entries "4," "8," "9," and "10" to read as follows:

TABLE 9 TO SUBMIT FFFF OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
* * * * * * *	
4. Dimethyl hydrazine (1,1)	57147
* * * * * * *	
8. Ethylene glycol dimethyl ether	110714
9. Ethylene glycol monobutyl ether acetate	112072
10. Ethylene glycol monomethyl ether acetate	110496
* * * * * * *	

■ 13. Table 12 to subpart FFFF is amended by revising the entry for § 63.9(h)(1)–(6) to read as follows:

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
* * * * * * *		
63.9(h)(1)–(6)	Notification of Compliance Status.	Yes, except subpart FFFF has no opacity or VE limits, and 63.9(h)(2)(i)(A) through (G) and (ii) do not apply because 63.2520(d) specifies the required contents and due date of the notification of compliance status report.
* * * * * * *		

[FR Doc. 05–13055 Filed 6–30–05; 8:45 am]
BILLING CODE 6560–50–P

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing.	05/06/04 12/15/04	07/01/03 12/03/04				
MMMMM	Flexible Polyurethane Foam Fabrication Operation.	05/06/04 12/15/04	07/01/03 12/03/04				
NNNNN	Hydrochloric Acid Production.	05/06/04 12/15/04	07/01/03 12/03/04				
PPPPP	Engine Test Cells/Stands	05/06/04 12/15/04	07/01/03 12/03/04				
QQQQQ	Friction Materials Manufacturing Facilities.	05/06/04 12/15/04	07/01/03 12/03/04				
RRRRR	Taconite Iron Ore Processing.						
SSSSS	Refractory Prdocuts Manufacturing.	05/06/04 12/15/04	07/01/03 12/03/04				
TTTTT	Primary Magnesium Refining.						

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This notice informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This notice is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: June 15, 2005.

Martha R. Cuppy,

Acting Regional Administrator, Region 7.

[FR Doc. 05–12577 Filed 6–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0193; FRL–7925–8]

RIN 2060–AL91

National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Cellulose Products Manufacturing. This amendment will correct the date in the definition of a process change that was included in the final rule. Without this amendment, the earliest date on which changes could qualify as process changes for compliance purposes would be January 1992. With this action, process changes implemented in January 1991 and later can qualify as process changes for compliance purposes.

This action corrects an error by the Agency and makes the regulatory language consistent with the technical background work that was performed during the development of the standards. Thus, it is proper to issue this final rule correction without notice and comment.

DATES: *Effective Date:* The correction is effective on June 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, facsimile number (919) 541–3470, electronic mail (e-mail) address *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA, under section 112 of the CAA, promulgated the NESHAP for cellulose products manufacturing on June 11, 2002 (67 FR 40044). The final rule, codified at 40 CFR part 63, subpart UUUU, includes definitions of a process change for the viscose industry, as well as the cellulose ether industry. Following promulgation of the rule, Teepak, Inc., requested that we issue specific amendments to the final rule changing the date that process changes that reduced emissions could be utilized for the purpose of demonstrating compliance. Their request was based on the calculations for the maximum achievable control technology (MACT) floor which included these process changes.

II. Summary of Amendment

This document corrects the definition for "viscose process change" under 40 CFR 63.5610 which states that the process change must occur "no earlier than January 1992." In the CAA section 114 information collection request sent to the industry in 1998, EPA requested information on source reduction measures implemented since 1987. In their response, Teepak provided information on three projects that reduced emissions per unit length of food casing produced, and one of these projects was implemented in January 1991. According to Teepak, EPA indicated it would credit Teepak for emission reductions from that project. Noting that the Teepak level of control was chosen as the MACT floor, Teepak has recommended that the definition for "viscose process change" be amended to "no earlier than January 1991."

The definition for "viscose process change" as promulgated effectively excludes the 1991 process change at Teepak that was accounted for in our MACT floor calculations. Since we established the MACT floor for cellulose food casing operations based on the level of emission control achieved at Teepak, we are making the suggested revision to the definition for "viscose process change." For consistency, we are revising the definition for "cellulose ether process change" similarly.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR

51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget ("OMB"). This action is not a "major rule" as defined by 5 U.S.C. 804(2). The technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The correction does not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical correction also is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant.

The correction 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.

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 today's action final without prior proposal and opportunity for comment because the change to the rule corrects an error, is noncontroversial, and is consistent with the technical basis of the rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (*see also* the final sentence of section 307(d)(1) of the CAA, 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to rulemaking under section 307(d) of the Clean Air Act (CAA).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes relieve an unintended restriction, we find good cause to make these technical corrections effective immediately.

The correction action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by SBREFA 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 U.S. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on June 24, 2005.

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: June 16, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ 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 UUUU—[Amended]

■ 2. Section 63.5610 is amended by revising the following definitions in paragraph (g) to read as follows:

§ 63.5610 What definitions apply to this subpart?

* * * * *

(g) * * *

Cellulose ether process change means a change to the cellulose ether process that occurred no earlier than January 1991 that allows the recovery of organic HAP, reduction in organic HAP usage, or reduction in organic HAP leaving the reactor. Includes extended cookout.

* * * * *

Viscose process change means a change to the viscose process that occurred no earlier than January 1991 that allows either the recovery of carbon disulfide or a reduction in carbon disulfide usage in the process.

* * * * *

[FR Doc. 05–12576 Filed 6–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0155; FRL–7720–2]

Trifloxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of trifloxystrobin in or on soybean, forage; soybean, hay; and soybean, seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes a maximum permissible level for residues of trifloxystrobin in this food commodity. The tolerances will expire and are revoked on December 31, 2009.

DATES: This regulation is effective June 24, 2005. Objections and requests for hearings must be received on or before August 23, 2005.

ADDRESSES: To submit a written objection or hearing request follow the

Federal Register

Tuesday,
June 14, 2005

Part II

Environmental Protection Agency

40 CFR Parts 63, 268, et al.
Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 268, 270, 271, and 279

[RCRA–2002–0025; FRL–7916–1]

RIN 2050–AE41

Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending a variety of testing and monitoring requirements in the Resource Conservation and Recovery Act (RCRA) hazardous and non-hazardous solid waste regulations and for certain Clean Air Act (CAA) regulations that relate to hazardous waste combustors. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing from the regulations a requirement to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846," in conducting various testing and monitoring and by limiting required uses of an SW–846 method to circumstances where the method is the only one capable of measuring the particular property (*i.e.*, the method is used to measure a required method-defined parameter). This action is an important step forward in implementing the use of a performance-based approach, which is part of the Agency's efforts toward Innovating for Better Environmental Results. Additionally, the Agency is making certain other clarifications and technical amendments. These changes should make it easier and more cost effective to comply with the affected regulations, without compromising human health or environmental protection.

DATES: This final rule is effective on July 14, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 14, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2002–0025. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information for which 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 in EDOCKET or in hard copy at the OSWER RCRA Docket, EPA/DC, EPA West, Room B102, 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. 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) 566–0270.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking, contact Kim Kirkland at: Office of Solid Waste (5307W), U. S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW., Washington, DC 20460–0002, (703) 308–8855, e-mail address: *kirkland.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be covered by this action if you conduct waste sampling and analysis for Resource Conservation and Recovery Act (RCRA)-or National Emission Standards for Hazardous Air Pollutants (NESHAP)-related activities. Covered entities include anyone who generates, treats, stores, or disposes of hazardous or nonhazardous solid waste and is subject to RCRA subtitle C or D sampling and analysis requirements; and entities subject to NESHAP final standards for hazardous waste combustors (40 CFR part 63, subpart EEE). All types of industries, governments, and organizations may have entities that generate or manage RCRA-regulated hazardous and nonhazardous solid wastes and may be subject to RCRA-related sampling and analysis requirements.

To determine whether your facility, company, business organization, etc., is covered by this action, you should carefully examine the applicability criteria in part 63 and in parts 258 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult your regulatory authority.

B. How Do I Obtain Copies of SW–846?

The Third Edition of SW–846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIIB will be available in pdf format on the Internet at *http://www.epa.gov/SW–846.* A paper copy of Final Update IIIB is also located in the docket for this rule (see section I.A above). Table 1 below provides sources for both paper and electronic copies of the Third Edition of SW–846 and all of its updates.

TABLE 1.—SOURCES FOR SW–846, THIRD EDITION, AND ITS UPDATES

Source	Available portions of SW–846
Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, phone (202) 512–1800, toll free (866) 512–1800, fax orders (202) 512–2250, and online: *http://bookstore.gpo.gov.*	—Paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates, I, II, IIA, IIB, III, and IIIB and Draft Update IVA. The subscriber must integrate the updates.
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847.	—Paper copy of an integrated version of SW–846, Third Edition, as amended by Final Updates, I, II, IIA, IIB, III, and IIIA. —Individual paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III, IIIA, and IIIB and Draft Updates IVA and IVB.
Internet: *http://www.epa.gov/SW-846*	—CD-ROM of integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III (pdf and WordPerfect electronic copies). —CD-ROM of Draft Update IVA (pdf and WordPerfect electronic copies). —Integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIB (pdf electronic copy). —Draft Update IVA (pdf electronic copy). —Draft Update IVB (pdf electronic copy).

C. What Is the Legal Authority for This Action?

We are promulgating the part 258, 260, 261, 264–266, 268, 270, 271, and 279 regulations under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. We are promulgating the part 63 regulation under the authority of sections 112 and 114 of the Clean Air Act.

D. How Is the Rest of This Preamble Organized?

II. Summary of Today's Rule
III. Background and Purpose of Action To Reform RCRA-Related Testing and Monitoring
A. Public Comments Regarding How to Determine if a Method Is Appropriate
B. Public Comments Regarding Other Approaches
C. Public Comments Regarding Impacts From Removal of Required Uses of SW–846 Methods
IV. Regulatory Revisions Involving Removal of SW–846 Requirements
V. Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations
VI. Action to Withdraw the Reactivity Interim Guidance from SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels from Conditional Delistings
VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics
A. Revision to § 261.22(a)(2) to Clarify that SW–846 Method 1110A Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing
B. Revisions to § 261.21(a)(1) to Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation regarding the Decision to Not Revise the Regulation to Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed
VIII. Availability of Final Update IIIB and Status of Final Update IV to SW–846
IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)
X. Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes Are Not Present at Certain Levels
XI. Status of the RCRA Waste Sampling Draft Technical Guidance
XII. State Authorization Procedures
A. Applicability of Federal Rules in Authorized States
B. Authorization of States for Today's Rule
C. Abbreviated Authorization Procedures
XIII. 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 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

II. Summary of Today's Rule

On October 30, 2002 (67 FR 66251–66301), the Environmental Protection Agency (EPA) proposed to amend the testing and monitoring requirements under the hazardous and nonhazardous solid waste regulations, and a testing requirement under the Clean Air Act (CAA) in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors. EPA is finalizing those regulatory revisions at this time. Some of the public comments are summarized and addressed in the sections to follow, and a background document containing our responses to all public comments can be found in the docket to this rule, RCRA–2002–0025. After consideration of all comments and for the reasons summarized in today's rule, we are finalizing the following actions:

1. Reforming RCRA-related testing and monitoring by restricting requirements to use SW–846 to only those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW–846.

2. Withdrawing the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW–846 Chapter Seven and withdrawing required uses of reactive cyanide and sulfide methods and threshold levels from conditional delistings.

3. Amending the regulations for the ignitability and corrosivity hazardous waste characteristics. As part of this, we are clarifying in § 261.22(a)(2) that SW–846 Method 1110A, "Corrosivity Toward Steel," is the "standardized" (as described in § 261.22(a)(2)) SW–846 method that is required to be used to determine the characteristic of corrosivity for steel. We are also removing the unnecessary reference to equivalency petitions in the ignitability characteristic at § 261.21(a)(1). However, regarding the methods required for the determination of flash point under the characteristic of ignitability, the Agency decided not to replace the standard test methods ASTM D 3278–78 and D 93–79 with the latest versions of those methods.

4. Incorporating by reference Update IIIB to SW–846, which includes the revised Chapter Seven, and eleven revised methods, including method revisions to remove a requirement to use the SW–846 Chapter Nine, "Sampling Plan."

5. Adding Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

6. Removing a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

7. Removing from the regulations unnecessary references to SW–846, which do not affect the intent of the RCRA regulation.

This rule does not add any additional requirements to the regulations. Instead, this rule removes the requirement to use SW–846, and it clarifies what the Agency believes should be considered during the selection of other appropriate methods. Our purpose for the regulatory revisions is to make it easier and more cost effective to comply with the RCRA regulations by allowing more flexibility in method selection and use. If you prefer, where you find that a specific SW–846 method yields data that is suitably effective for demonstrating compliance in the particular matrix being analyzed, you can still use the SW–846 methods.

III. Background and Purpose of Action to Reform RCRA-Related Testing and Monitoring

Typically, the hazardous and nonhazardous solid waste RCRA regulations for testing and monitoring activities or the permits or waste analysis plans of facilities regulated by RCRA specify the analytes of concern to be determined in a matrix of concern at a particular regulatory level of concern. Additionally, some recently promulgated regulations specify the confidence level of concern. Most of the RCRA regulations leave the how (*i.e.*, which test method to use) up to the regulated community. Some RCRA regulations, however, specify the use of methods from the EPA publication

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846."

Initially, EPA issued SW–846 in 1980 soon after the first RCRA regulations were published. At that time, we intended that SW–846 serve two roles. First, the Agency intended that it serve as a guidance manual of generally appropriate and reliable analytical methods for RCRA-related testing and monitoring. Second, we intended that it serve as a readily-available source of those few analytical methods which were required in order to comply with the RCRA regulations. Since that time, EPA published regulations that required the use of SW–846 methods in general. Subsequently, members of the regulated public made it clear to EPA that they would like the opportunity to use other reliable methods, and EPA also decided that some of the SW–846 requirements were not necessary.

The regulatory requirement to use SW–846 in general (*e.g.*, as in the delisting regulations at § 260.22 prior to this final rule) did not identify specific SW–846 methods. Rather, this requirement typically included the regulation of many different analytes which could be determined by many different methods. Almost every update to SW–846 includes at least one method that may be applicable to one or more of these general analytical requirements. Therefore, whenever SW–846 was updated to revise or add methods, EPA had to incorporate by reference all of the new and revised methods into the RCRA regulations as part of a rulemaking. EPA issued the updates as a proposed rule, requested public comment, and then promulgated the update in a final rule. This lengthy process delayed the timely use of the new analytical technologies.

On October 30, 2002 (67 FR 66251–66301), EPA proposed to remove from the regulations a requirement to use a method found in SW–846, except when that method is the only one capable of measuring the particular property. At that time, we described our reasons for wanting to remove this requirement from the regulations, including the Agency's desire to fully implement a performance-based measurement system (PBMS) in the RCRA program. Specifically, we noted that such a change would: (1) Allow the regulated community more flexibility in method use during RCRA-required testing; (2) stimulate the development and timely use of innovative and more cost-effective monitoring technologies and approaches in the RCRA program; (3) allow more efficient and timely releases of SW–846 methods by decoupling most of the methods from required uses in the RCRA regulations; and (4) make the RCRA program more effective by focusing on measurement objectives rather than on measurement technologies. As noted, the Agency proposed to restrict the requirement to use a specific SW–846 method to only those situations where its particular procedure is the only one that is capable of measuring the property (*i.e.*, a method-defined parameter, or MDP). For example, to determine whether the levels of hazardous constituents in a particular waste stream are equal to or greater than the toxicity characteristic (TC) levels specified in § 261.24, waste generators must test their waste using SW–846 Method 1311, the "Toxicity Characteristic Leaching Procedure," or "TCLP." If levels in the waste are greater than or equal to the TC levels, the waste is a hazardous waste and is subject to the RCRA hazardous waste regulations. This is the only reliable method for determining whether TC levels are met. Thus, testing of any material to determine whether it meets the Toxicity Characteristic levels must be done using the TCLP. EPA describes the measurement obtained from the TCLP, as well as from certain other methods, as a required "method-defined parameter."

We requested public comment on the proposed revisions to the RCRA regulations, although not to the method-defined parameters, and received comments on the proposed action from over 20 different commenters, which included representatives of Federal Government agencies, State Government agencies, industry, waste generation and management entities, and analytical laboratories. The majority (86%) of the commenters generally supported, with comment, the MIR action and EPA's efforts to allow more flexibility in method selection when conducting RCRA-related sampling and analysis. Regarding the positive comments, one commenter, a state agency representative, applauded EPA for recognizing that regulating does not have to be prescriptive. Another commenter, a representative of analytical laboratories, believed that the additional flexibility will result in data quality improvements. Two representatives of waste generation or management entities concurred with EPA that the majority of the MIR revisions should make it easier and more cost effective to comply with RCRA-related regulations.

For the most part, the negative public comments may have reflected a misunderstanding of certain important aspects and premises of the MIR, which we are clarifying in our responses to those comments. With respect to other negative comments, the Agency expects that the discussion below will further clarify the purposes and premises of the MIR, and will clarify options for dealing with the inherent flexibility of this approach. Also, the Agency will continue to provide training on the concepts of this rule to further clarify its intent and support its implementation. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA–2002–0025, at the location listed above under ADDRESSES. Some of the public comments are also addressed within this preamble to the final rule.

Based on our review of the public comments regarding the October 30, 2002 proposed rule, we are proceeding with publication of this final rule, which finalizes the proposed revisions to the RCRA regulations. That is, this rule removes unnecessary required uses of SW–846 in general and it removes any unnecessary required uses of specific SW–846 methods. Other reliable methods can now be used by the regulated public for compliance with the affected regulations. This action also encourages the timely use of new and innovative methods outside of SW–846 in that, for most sampling and analysis scenarios, it will not be necessary to submit an equivalency petition when using a non-SW–846 method. However, some regulations will still require use of a specific SW–846 method when that method is for determination of a RCRA-required method-defined parameter (MDP); in those cases, a regulated entity has to submit an equivalency petition and receive approval of that petition from the Agency before an alternative method can be used.

This final rule will allow the Agency to make final updates to SW–846 available in a more timely manner. For example, soon after publication of this document, we will announce the availability of Final Update IV (see section VIII of this document). The methods of Final Update IV did not have to go through the rulemaking process because, with publication of this final rule, SW–846 is no longer required in general by any existing RCRA regulation and none of the new or revised methods in Update IV are specifically required by any RCRA regulation for the analysis of method-defined parameters (MDPs). However, we did solicit and consider public comments on the methods through **Federal Register** notices, see 63 FR 25430–25438, May 8, 1998 (Draft

Update IVA), and 65 FR 70678–70681, November 27, 2000 (Draft Update IVB).

A. Public Comments Regarding How To Determine if a Method Is Appropriate

In section III.A of the preamble to the October 30, 2002 proposed rule, we discussed our proposed revisions to remove the requirement to use SW–846 methods by adding regulatory language allowing the use of appropriate methods such as those found in SW–846 or other reliable sources. In the preamble of the proposed rule, we provided guidance on how to determine if a method is appropriate for its analytical purpose. Specifically, we mentioned that such a method might be one published by EPA in a different manual or regulation or published by another government agency, a voluntary standards setting organization, or other well-known sources. We also proposed to retain mention of the SW–846 methods in the regulations as guidance and as examples of methods that could be appropriate.

In the proposed rule preamble, we gave two primary considerations in selecting an appropriate method, which together serve as our general definition of an appropriate method. As done in the preamble to the proposed rule, the text to follow explains each of these concepts and identifies other guidance that may be helpful to the regulated community.

1. Appropriate methods are reliable and accepted as such in the scientific community.

2. Appropriate methods generate effective data.

Regarding the first consideration, we noted that methods which are reliable and accepted in the scientific community might include those published by the Agency or other government entities using techniques that have documented reliability. SW–846 methods, for example, are reviewed by a technical workgroup composed of national expert-level chemists who provide peer input and determine whether method reliability is sufficiently documented. The technical reliability and acceptance of other methods published by other governmental or non-governmental organizations may also be documented, especially if the methods are subjected to some form of objective scientific review. For instance, to qualify for recognition as having developed a voluntary consensus standard (*e.g.*, analytical method) under the National Technology Transfer & Advancement Act of 1995 (NTTAA), an organization must produce standards by consensus, observe the principles of openness and balance of interests, and provide due process, including an appeals process.

Regarding the second consideration in the identification of appropriate methods—generation of effective data—we described in the preamble to the proposed rule examples of tools that might be used in this determination. *This consideration is project-specific* and therefore the tools and criteria will be different for each analytical effort. As stated in the proposed rule preamble, effective data are data of sufficiently known and appropriate quality to be used in making project-specific decisions. An example of such a decision is whether a particular waste is hazardous because a constituent of concern is present above a level of concern. Before sampling and analysis begins, project planners should identify why the analysis is being done, how the data will be used, and how "good" the data has to be (*e.g.*, the quality objectives for the project as established through a systematic planning process). Effective data meet the quality objectives set by the project planners for the specific project. The quality objectives should be rationally and systematically identified during the planning of the project and development of the project-specific Quality Assurance Project Plan (QAPP), Waste Analysis Plan (WAP), Sampling and Analysis Plan (SAP), or other appropriate systematic planning document. Sampling and analysis documentation should be sufficient to confirm that the data are effective and that the selected method is appropriate.

Quality objectives generally refer to the necessary quality of the overall decision to be made or, in other words, the tolerable error (*i.e.*, acceptable level of uncertainty for the decision). For example, a quality objective for waste analysis may be that one must demonstrate that an analyte is not present above the reported level at the 80 percent upper confidence around the mean, and that the method could have detected the presence of the analyte at that level and confidence limit. A quality objective may be specified in a regulation, a permit, a corrective action agreement, or other regulatory or enforcement document. Sometimes you must consider a quality objective regulatory specification when selecting an appropriate method. For example, the RCRA comparable fuels' provisions include quality objectives in lieu of naming the use of specific methods (see 63 FR 33781, June 19, 1998). You can find guidance on the development of formal data quality objectives (DQOs) in EPA's "Guidance for the Data Quality Objectives Process" (EPA QA/G–4) found at EPA's Quality Staff's Web site (*http://www.epa.gov/quality/*), in Chapter One, "Quality Control," of SW–846, and in ASTM D 5792, "Standard Practice for Generation of Environmental Data Related to Waste Management Activities: Development of Data Quality Objectives." You may also use other scientifically valid systematic planning processes for developing quality objectives based on specific project needs.

In the project planning document, you should identify the types of quality control (QC) concepts (*e.g.*, spike recovery analyses, blanks, etc.) you will use to determine if you meet your objectives. For example, selection of an appropriate method is sometimes demonstrated by adequate recovery of spiked or surrogate analytes and reproducible results, or through successful analysis of a standard reference material of a matrix-type analogous to that of the actual sample matrix. The method may not be appropriate for its intended use if your data show inadequate recovery of an analyte at a level that impairs a decision regarding whether the analyte is present at or below its regulatory level. Such a method would not generate effective data. Based on your QC data, you should determine whether the method generates results that are sufficiently sensitive, unbiased, and precise to demonstrate compliance with the subject regulation.

However, you should not just focus on controlling or documenting analytical quality, because regulatory decisions are also susceptible to error due to sampling procedures. If the contaminant variability is not properly addressed during the planning and collection of samples, an incorrect decision could be reached even though the method performed well in terms of laboratory quality control. No matter how accurate or precise the laboratory analysis, the data will provide misleading information if excessive error is introduced by improper sampling procedures. Guidance on identifying the necessary quality control procedures and on minimizing the potential for both analytical and sampling error can be found at the EPA Quality Staff's Web site (*http://www.epa.gov/quality/*) or in Chapters One, Two, and Nine of SW–846. In addition, guidance on determining and demonstrating the appropriateness of a selected measurement method for a particular application may be found in ASTM D 6956–03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement

System Provides Analytical Results Consistent with Their Intended Use."

Finally, EPA noted in the proposed rule preamble that you should identify appropriate methods for a specific project *before* sampling and analysis begins. As the regulated entity, you are ultimately responsible for compliance with a particular regulation. Therefore, you should not rely on the laboratory or other project participant to select an appropriate method. We recommend that you consult with your regulating authority during identification of performance goals and the selection of appropriate methods.

We requested and received public comment on the above considerations and on the proposal to allow the use of appropriate methods such as those found in SW–846 or other reliable sources. One supportive commenter believed the Agency had provided sufficient guidance in the preamble to the proposed rule on how to identify appropriate methods. As discussed below, a few commenters requested additional guidance regarding the selection of appropriate methods or had questions regarding the approach.

One commenter requested that an appropriate method definition be codified in the regulations. The Agency believes that codification of an appropriate method definition would be both very difficult and contrary to the intent and purpose of this rule, given the project-specific nature of "appropriate method selection" and the wide variety of data collection objectives that may be encountered. In the paragraphs above, the Agency has provided the key generic considerations for appropriate method selection, which together serve as our general definition for an appropriate method, and identified guidance sources, in the hope that this information will assist readers of this rule during the selection of appropriate methods, regardless of whether the methods are from SW–846 or other sources. In addition, since publication of the proposed rule, ASTM International published D 6956–03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with Their Intended Use." This guidance document is not required by any EPA program, but may be useful to the regulated community during the selection of appropriate methods and during the evaluation of analytical results. The document can be obtained from ASTM by visiting its Web site at *http://www.ASTM.org* or by writing to: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19418–2959. EPA also plans to continue to provide training to affected entities on the concepts of this rule and to support its implementation. When using any appropriate method, you should be able to determine the analyte of concern (e.g., the regulated constituent to be measured), in the matrix of concern (e.g., the physical substance which might contain the regulated constituent), at the level of concern (e.g., the regulated level of or the action level for the analyte).

One commenter was concerned that the regulated public might use other methods that do not meet the QC criteria in the SW–846 methods. The Agency does not believe that this should be a concern. The performance data and QC criteria given in the SW–846 methods are only examples, and are not requirements for analysis. The SW–846 example criteria may not be appropriate for every analytical purpose. Establishing QC criteria is a project planning issue and not a method issue. Methods should be adapted into standard operating procedures (SOPs) to meet QC criteria from systematic planning documents, not the other way around. Some analytical applications may require more or less stringent QC criteria than that given as examples in the SW–846 methods, and it would be contrary to promoting a PBMS approach if all analyses using any methods are expected to conform to the example criteria published in SW–846 methods. Sometimes, even when using an SW–846 method, it may not be necessary to fully meet its example performance criteria because project-specific quality objectives may not require evaluation of the same performance indicators or the criteria may not be appropriate to the specific application. In keeping with a PBMS approach and the goals of this rule, performance criteria should be determined on a project-specific basis during the planning stage.

Another commenter was concerned that some regulated entities might use methods that were not originally developed for environmental purposes, and thus data validity may be suspect. Provided that the method is appropriate based on the factors discussed above and in the proposed rule preamble, we do not believe that this should be a concern. If the data are suspect or otherwise not of sufficient quality for their intended use, then the method is not appropriate, regardless of its source, and thus the data are not acceptable for demonstrating compliance. Regardless of the original purpose or source of a method, it can be an appropriate method if it generates effective data, *e.g.*, the data quality objectives and performance criteria are met. Even an SW–846 method may not be appropriate for a particular application if it does not generate effective data. In addition, the application of method technologies from other disciplines promotes the use of innovative approaches and technologies, which may benefit RCRA-related analyses. Finally, many of the analytical techniques used today in environmental analyses were initially developed for other purposes.

One commenter agreed with EPA's approach to appropriate method selection, but had comments regarding the data quality objectives approach. The commenter believed that the DQO approach can be expensive and is not usually used during small analytical projects. In response, the Agency notes that, when data are being used in decision making involving two clearly alternative conditions (*e.g.*, compliance vs. noncompliance with a regulatory standard), the Agency's recommended systematic planning tool is the DQO process. While there is no regulatory obligation to use the DQO process, it is the recommended planning approach for many EPA data collection activities. However, the DQO process may be too complicated for some projects and is not the only way to generate quality data through systematic planning. It is presented here in the MIR only as an example of an approach involving systematic planning. However, at a minimum, the Agency recommends that some form of systematic planning be implemented for every data collection effort in order to generate effective data, and notes that such systematic planning should also involve consideration of cost. Systematic planning is a common sense approach, designed to ensure that the level of detail in planning is commensurate with the importance and intended use of the work and the available resources.

One commenter supported EPA's proposed flexibility, but thought that EPA should continue to use SW–846 as the primary vehicle for making recommendations regarding procedures that will meet minimum quality objectives for RCRA analyses. Thus, one would not be required to use SW–846 methods, but could choose to use them and be confident that they are appropriate sampling and analysis procedures, provided that they can be demonstrated to meet project quality objectives. Another commenter believed that it would be unrealistic for a regulated entity to agree to the use of other methods if EPA has not approved them. The commenter believed that such approval would guarantee

acceptance of the data, provided that the method was properly followed.

First, it should be noted that there are no "PBMS methods." PBMS is a regulatory approach where what has to be accomplished is specified, rather than how the monitoring is to be conducted. Under such a system, regulated entities are permitted to employ any method that is technically adequate to accomplish the compliance demonstration. Regarding EPA's approval of PBMS, EPA has already stated its objective to employ the performance approach in its regulatory and other monitoring programs to the extent feasible. On October 6, 1997 (62 FR 52098–52100), EPA published in the **Federal Register** its intent to adopt PBMS agency-wide. Subsequently, on May 8, 1998 (63 FR 25430–25438), EPA published in the **Federal Register** a notice of intent and request for comment regarding its plans to reform implementation of RCRA-related monitoring by formally adopting PBMS and by removing unnecessary required uses of methods from the RCRA regulations (part of PBMS).

EPA also believes that method selection should be a project-specific decision and therefore cannot recommend or approve any methods—even SW–846 methods—as always being appropriate for any given application. For that very reason, with this rule, EPA removed the requirement to use SW–846 methods, except when the methods are the only ones capable of measuring a particular property. Relying on the fact that a method is contained in SW–846 does not guarantee that the method will always generate effective data under any situation. If the SW–846 method is not an appropriate method for its intended application, following it exactly could generate erroneous data and could fail to demonstrate compliance with the RCRA requirements.

Second, EPA does not agree with the recommendation that it categorically state that any method is always an effective means of demonstrating compliance (with the exception of methods for the analysis of method-defined parameters) since the Agency has no way of knowing that a particular method is going to yield valid data in all potential situations and it goes counter to the performance approach which requires that regulated entities demonstrate compliance using data of known and documented quality. The Agency believes that it is up to the individual regulated entity to decide which methods are appropriate to use for any given compliance demonstration and that this determination should be initiated during the project planning stage. When considering method selection, the analytical performance indicators are key to the specific project goals that should be considered. Examples of analytical performance indicators that might be addressed include method sensitivity and selectivity, precision, bias, and reproducibility. The data user may even choose to revise method selection if additional information gathered during the project indicate that the initial selection was not appropriate. Therefore, method selection is a project-specific activity implemented by the regulated entity, and EPA's only concern is that the generated data be effective for its purpose, regardless of the method selection. The Agency does recommend that a regulated entity seek assistance from its regulating authority should the regulated entity have concerns regarding the use of any particular method. EPA also notes that guidance regarding demonstrating the performance of a given analytical method can be found in EPA-published guidance documents (some of which are listed above) and documents published by other Agencies (*e.g.*, ASTM).

One commenter was concerned regarding how method performance would be demonstrated under PBMS. The commenter claimed that implementation of a PBMS approach is very difficult and that, for it to work, there must be a "reference method" to be used as a benchmark against which to measure other methods.

EPA notes that the RCRA program does not use reference methods. Many different methods produce effective data for a particular project, which are not necessarily "equivalent," but all could be "applicable." For example, there are many analytical methodologies that can be used in analyzing a particular metal species (*e.g.*, ICAP, AA). In selecting a particular method for metal analysis, the analyst will consider analytical costs, accuracy and sensitivity needed, freedom from potential interferences, amount of sample required for an analysis, reagents to be used, and other factors in the overall process to select a method that will yield effective data at the lowest cost to the user. These factors should be considered when evaluating any method, including those published in SW–846, and the user needs to conduct the appropriate verifications to demonstrate the appropriateness of any method that is selected against its intended application. There are a number of approaches that can be used to demonstrate that a method is valid for a particular use. These include: use of appropriate reference standards, analysis of spiked samples, comparison of results to results generated using a method that employs a fundamentally different measurement process and would not be subject to the same potential interferences, etc. For further guidance in demonstrating method validity, see the previously cited ASTM document D 6956–03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with their Intended Use."

B. Public Comments Regarding Other Approaches

As explained in section III.B of the proposed rule preamble, EPA considered several approaches to promoting "method use" flexibility in the RCRA regulations. We selected the "appropriate method" approach because it is universally applicable to the subject RCRA regulations. It also requires only minimal revisions to the regulations for implementation.

In addition, the option to use "appropriate methods" is not new to the RCRA regulations. For example, use of the TCLP, SW–846 Method 1311, is required for determining whether a waste is hazardous for the toxicity characteristic (the TC). It generates an extract (the leachate) which is subject to a determinative analysis for comparison with the TC regulatory limits. However, the TCLP procedure does not require specific analytical methods for the leachate determinative analysis, nor does it specify the use of even SW–846 methods in general for such analysis of the leachate. It allows method flexibility similar to that proposed by this rule by stating in section 7.2.14: "The TCLP extract shall be prepared and analyzed according to appropriate analytical methods."

Nevertheless, in the proposed rule preamble, the Agency requested the public's opinion on two alternative approaches that we considered during development of this rulemaking.

1. As a variation to the "appropriate method" approach described above, should we remove mention of SW–846 methods as examples of potentially appropriate methods from the subject regulations?

2. In lieu of the "appropriate method" approach, should we instead add specific measures of required measurement system performance or data quality objectives to each regulation, such as done in the comparable fuel rulemaking, and not mention or require the use of an appropriate method (including any SW–846 methods)? In the proposed MIR, we did not select this approach because it

might require significant regulatory changes with difficult to quantify impacts.

Most of the commenters preferred that EPA retain mention of SW–846 in the regulations as examples of potentially appropriate methods. However, some of these commenters appeared to believe that, by mentioning SW–846 methods as examples, it meant that such methods will always be appropriate for every data collection effort addressed by the regulation, and thus the performance of other candidate methods should be compared with the performance of the similar SW–846 method. One commenter wanted the Agency to legally recognize that the SW–846 methods are appropriate methods under the RCRA regulations.

The Agency strongly disagrees with commenters that SW–846 methods should be identified as always appropriate. As explained in section III.A of this rule, the determination of an appropriate method should be made on a project-specific basis and involves consideration of various project-specific objectives and criteria. As noted, an appropriate method might be one published by EPA in a different manual from SW–846 or might be a method published by a different government agency, a voluntary standards setting organization, or other well-known scientific sources. Whether a method is contained in SW–846 is not a primary criterion for determining if a method is appropriate. For example, there is a common misconception that the different SW–846 methods for sample extraction all have the same extraction efficiency, which is not the case at all, since the methods were intended to be appropriate for different applications. Methods found in other publications may be more appropriate based on the project-specific considerations.

Regarding the addition of performance criteria to the regulations, a few commenters did prefer that such criteria be added to the regulations. However, these commenters did not provide suggestions regarding how to best resolve those instances when such an approach might result in requiring use of methods which are more accurate or sensitive than necessary (with the result that monitoring costs may increase unnecessarily) or in other cases would not yield data of a sufficient quality to definitively determine if a facility is in compliance with a regulatory or permit level. Given these impact issues and the project-specific nature of what determines an appropriate method, it would be contrary to the purpose of this rulemaking and very difficult to develop and implement performance criteria and definitions that would be universally applicable. EPA therefore decided against adding criteria at this time to all of the regulations. We strongly believe that the appropriate method determination should be made on a project-specific basis by those familiar with the purpose of the analysis and should not be dictated by regulatory definition. EPA believes that generic performance criteria assigned by EPA would not assure consistent application of PBMS, but rather might discourage a PBMS application and flexibility in method selection and use. However, to further evaluate this issue, the Agency's Forum on Environmental Measurements (FEM) has formed an Action Team to address issues related to implementation of the performance approach. It is anticipated that the Action Team will address issues related to data quality and data quality documentation for use by all Agency programs.

In conclusion, as a result of consideration of all comments, we decided to not add performance criteria to the regulations. In addition, unlike the proposal, we decided to not include any references to SW–846 or "using appropriate methods such as those found in * * * SW–846" in the regulatory provisions because those references to SW–846 were unnecessary and, based on public comment, the regulated community may continue to believe that SW–846 methods will always be most appropriate.

C. Public Comments Regarding Impacts From Removal of Required Uses of SW–846 Methods

In the preamble to the proposed rule, we summarized the expected impacts on the regulated entities and the states, and requested public comment on the assumptions made in the analysis. We also requested public comment on the impact of this rule and how we might promote its successful implementation. The paragraphs to follow summarize our impact assumptions and provide our responses to some of the public comments regarding these topics.

As a result of this final rule, you can use any appropriate analytical test method in demonstrating compliance with the RCRA regulations, except for those regulatory provisions involving method-defined parameters. We believe that this action will not significantly or adversely impact the regulated community or other potentially affected parties because the Agency is not adding any additional regulatory requirements to the RCRA regulations, but rather is clarifying and expanding the flexibility that regulated entities have had in selecting appropriate methods to employ to demonstrate compliance whether or not such methods were described in SW–846. By making it clear that one may use any appropriate method, regulated entities may be able to cut the cost of compliance monitoring by using less expensive methods. Regulated entities may continue to use SW–846 methods to demonstrate compliance when it is appropriate to do so, and thus experience no impact from this rulemaking. EPA will also continue to publish and update SW–846 methods and ensure their scientific soundness by following peer review guidelines and requesting public comment on the methods through **Federal Register** notices.

Thus, as we noted in section III.C of the proposed rule preamble, the primary impact of this rule will be better analytical results (*e.g.*, due to paying better attention to method performance). The Agency also anticipates a tendency toward lower costs during compliance with the affected RCRA regulations because project planners may identify methods that are potentially less costly to use. Meanwhile, EPA also will continue to provide training and utilize our pool of Agency technical experts to serve the public by answering questions regarding the use of test methods during RCRA-related compliance activities.

Also, a demonstration that another method is appropriate is already allowed within RCRA-related sampling and analysis and will not involve much more than what regulated entities already should be doing. For example, as the regulated entity, you should already be setting method performance goals in your Quality Assurance Project Plan (QAPP), Sampling and Analysis Plan (SAP), or other systematic planning document and then evaluating compliance with those goals based on data quality indicators, including when using SW–846 methods.

Regarding public concerns about the comparability of data generated by different methods for the same purpose, we noted in the proposed rule preamble that this practice is not new because some regulations already allow the use of more than one method. We also do not believe that this should be a concern, provided that any alternative method is also an appropriate method as defined above. Specifically, if both methods generate effective data and meet the data quality objectives of the project, then results from both methods will be acceptable for demonstrating compliance. In addition, for situations where trends or comparability are to be

determined, measurement quality objectives should be selected for use in selecting methods to be used that will ensure that, for whatever desired level of difference one desires to determine, the data will be suitable for the purpose. This has always been EPA's approach in comparing data by different methods, and it is not affected or changed by this rule.

Some commenters preferred a more prescriptive approach in the regulations because method-specific requirements remove the burden of method-selection as it is believed that this translates into lower costs and greater agreement between permit writers and other project participants who may not have method-selection expertise. Because of consequences of this approach, the Agency believes it is undesirable. A major problem with the prescriptive-or mandated-methods approach is that it can lead to data of poor quality which can result in an incorrect assessment of compliance. Another problem is that the regulated community may not systematically plan their data collection efforts and thus not fully understand their project-specific goals. Method-selection decisions should be project specific and thus, specific methods should not be required in the regulations.

Some commenters also expressed concern regarding the impact of this rule on existing RCRA permits. RCRA permits are typically effective up to ten years. This rule will only effect new or reissued permits, and only to allow more flexibility in method selection. Therefore, RCRA permits will not be adversely impacted by this action.

Finally, this rule does not add new information collection or reporting requirements for regulated entities. Section 260.22(i) (reporting requirements for petitions to exclude wastes) and §§ 264.13(b) and 265.13(b) (reporting requirements for owners and operators of hazardous waste management facilities) provide sufficient reporting requirements to cover RCRA-related testing and analysis documentation regarding the use of other appropriate methods.

One commenter agreed, regarding impact of the rule, that the MIR will greatly benefit those situations where repeated analyses are needed, such as for a RCRA corrective action or for a WAP for a hazardous waste treatment, storage, or disposal facility (TSDF). However, the commenter also believed that smaller entities involved in waste analyses, such as small quantity generators (SQGs) will probably not benefit from the MIR. For the reasons given above, EPA believes that the impact of this rule will not be significant for any generator, including small quantity generators (SQGs), largely because the flexibility of method selection will provide better analytical results at a lower cost. Project planners and laboratories used by SQGs will identify methods that are potentially less costly and yet provide effective data. EPA believes that the regulated community will choose appropriate methods based on cost and data quality advantages, and therefore all regulated entities, including SQGs, could benefit from this rule.

One other commenter believed that if PBMS is adopted, prior approval by the State or other regulator of the method should be mandatory. The commenter argued that State reviewers are more familiar with SW–846 methods and data indicators and that a state's unfamiliarity with other methods might mean the State may not perform a timely review of the data.

As explained in the previous section, EPA believes that method approval prior to use would be contrary to the intent and philosophy of the performance concept and would negate the positive impacts of this rule. However, as also noted, the regulated community can consult with their regulating authority during the identification of performance goals and the selection of appropriate methods. EPA appreciates the commenter's concern regarding potentially negative impacts on the timely review of data. It is true some delay in data review may occur if the reviewer is not familiar with the procedure. Nevertheless, review of data should not be a new step in the process since effected entities should already be reviewing data indicators from the SW–846 methods during RCRA-related sampling and analysis. Once the reviewer and user become more familiar with a new method, less time will be needed to perform an equally thorough review. In the end, we believe the benefits of modifying the rules will far outweigh these potential impacts on data review time through the improvement of data effectiveness and a decrease in other costs. To help mitigate any potential negative impacts, we will continue to provide training and our staff are available to assist you during all stages of the process.

Some commenters expressed a concern that this action will impose an additional resource burden on States. In response, we note that the regulatory changes in this rule are equivalent to or less stringent than the existing Federal regulations which they amend. Therefore, authorized States are not required to adopt and seek authorization for this rulemaking within their programs. If a State believes that adoption may be too burdensome on their resources, then they need not adopt the revised regulations. Nevertheless, we encourage the adoption of these or similar revisions by authorized States in order to promote the national adoption of the performance approach in environmental regulations, permits, and monitoring. In addition, if States choose to adopt these revisions, the impact should not be significant since they already conduct method selection and data quality reviews to determine compliance with their testing and monitoring regulations.

Some commenters expressed a need for communication and training to assist in implementation of the MIR. We agree and the Agency plans to continue to provide education and training to States, EPA Regions, and the regulated community regarding the implementation of this rule, through such mechanisms as workshops, fact sheets, and Internet training modules. Over the past seven years, OSW has offered program-specific training (e.g., "Analytical Strategy for the RCRA Program: A Performance-Based Approach") for EPA Headquarters, Regional, and State personnel involved in RCRA activities that include sampling and analysis. The Agency plans to expand its performance approach training program and offer other courses on the evaluation of data and permit writing from a PBMS and effective data standpoint. These communication and training efforts will help ensure consistency in implementation of this and other Agency performance-based rules by the States, Regions, and regulated community and help limit any associated costs.

IV. Regulatory Revisions Involving Removal of SW–846 Requirements

In section IV of the proposed rule preamble, EPA listed and discussed each of the proposed regulatory revisions which removed the requirement to use SW–846 methods and stated that appropriate methods may be used. We requested public comment on these individual regulatory section revisions (e.g., comments regarding any impacts on implementation of each affected regulation that we may have overlooked) and in general did not receive any significant negative comments regarding the removal of the SW–846 requirements from any of the regulations. We are therefore finalizing the removal of the requirement to use SW–846 in those regulatory sections.

In addition, we are finalizing revisions to three conditional delistings in part 261, appendix IX, which were not included in the proposed rule, but which, like those delistings that were included in the proposal, unnecessarily require the use of SW–846 methods. We announced our intent to revise these delistings in a memorandum to the facilities and to the relevant EPA Regional offices. We gave the entities three weeks to comment on the revisions. One of the affected companies did not respond to the memorandum, while the other two companies responded, but did not have comments regarding the revisions.

Therefore, we decided to proceed with finalizing the revisions to these three delistings. The revisions to the conditional delistings are very similar to the other conditional delistings. We did not receive negative comments regarding the general removal of required uses of SW–846 in any of the conditional delistings listed in the proposed rule. We believe that these revisions are fully consistent with EPA's original intent to make such changes to any conditional delisting, or other regulations, which unnecessarily required the use of SW–846 methods for analyses other than for required MDPs.

The additional conditional delistings revised by this final rule are found in Table 1 of appendix IX of part 261 and address delisted wastes at the following facilities:

—Bekaert Corp., Dyersburg, TN
—OxyVinyls, L.P., Deer Park, TX
—Tokusen USA, Inc., Conway, AR

In addition, since publication of the proposed MIR, the Office of Federal Register (OFR) revised its format for incorporation by reference. Specifically, the OFR requires that the MDP methods incorporated by reference at § 260.11 be specifically mentioned in the relevant sections of the regulations, and not just include referrals to § 260.11. Therefore, in the conditional exclusion listings of part 261, appendix IX, we included a listing of the method-defined parameter methods to replace our proposed language stating that the methods listed in § 260.11 must be used without substitution when required. Those methods must be used as applicable to the particular delisting.

Finally regarding the conditional delistings, we are taking this opportunity to make several editorial corrections to Tables 1, 2 and 3 of appendix IX of part 261, which in no way substantially change or remove any requirements. We are removing repeats of the Bekaert Corp., Dyersburg, TN, conditional delisting from Tables 2 and 3 of appendix IX of part 261 because those entries were added to the tables in error. The Bekaert Corp. conditional delisting is for an F006 waste, which is from a non-specific source, and therefore the delisting only belongs in Table 1, which lists wastes excluded from non-specific sources (i.e., "F" coded listed wastes). Tables 2 and 3 of appendix IX of part 261 are meant to only list the conditional delistings of wastes excluded from specific sources (Table 2, i.e., "K" coded listed wastes) or from commercial chemical products, off-specification species, container residues, and soil residues thereof (Table 3, i.e., "P" and "U" coded listed wastes). Similarly, we are removing the OxyVinyls, Dear Park, TX, delisting from Table 1 and adding it to Table 2 of appendix IX. This is necessary because the OxyVinyls' delisting addresses K017, K019, and K020 wastes and was incorrectly placed in Table 1. Since these are changes that do not affect the implementation of the regulations, or add new or remove existing regulatory requirements, the Agency is providing notice of the changes without opportunity for comment.

Table 2 lists the regulatory revisions finalized by this rule to remove the requirement to use SW–846 methods and allow the flexibility to use other appropriate methods. As noted in the previous section of this preamble, the proposed references to "using appropriate methods such as those found in * * * SW–846" is not being included in the final regulation because the Agency decided that those references to SW–846 were unnecessary and because the regulated community may continue to believe that SW–846 methods will always be most appropriate. Finally, we corrected our proposed revision to § 261.35(b)(2)(iii)(B) by adding the relevant data from Table 1 of Method 8290 to the regulatory text so that Method 8290 (which contained the table but is not an MDP method) no longer has to be incorporated by reference. In the proposed rule, § 261.35(b)(2)(iii)(B) read as follows: "Not detected means at or below the lower method calibration limit (MCL) in SW–846 Method 8290, Table 1. Other appropriate methods from other reliable sources may be used provided that these criteria are met." In the final rule, we copied the relevant data from Table 1 directly into § 261.35(b)(2)(iii)(B) and so it is no longer necessary to mention Method 8290.

TABLE 2.—REVISIONS TO RCRA REGULATIONS TO REMOVE REQUIRED USES OF SW–846 METHODS

Regulation	Affected topic or program
§ 260.22(d)(1)(i)	Petitions to exclude waste from a particular facility.
Appendix IX to part 261	Wastes excluded under §§ 260.20 and 260.22.
§§ 261.35(b)(2)(iii)(A) and (B)	Deletion of certain waste codes following equipment cleaning.
§ 261.38(c)(7)	Comparable/syngas fuel exclusion.
§§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2).	Air emission standards for process vents and equipment leaks.
§§ 265.1084(a)(3)(iii) and (b)(3)(iii), and 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i).	Air emission control requirements for tanks, surface impoundments, and containers.
§§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)	Hazardous wastes burned in boilers and industrial furnaces (BIFs).
§ 266.106(a)	Control of metal emissions at BIFs.
§§ 266.112(b)(1) and (b)(2)(i)	Residues from burning of wastes in BIFs.
Appendix IX, part 266	Methods Manual for BIF regulations.
§§ 270.19(c)(1)(iii) and (iv), 270.22(a)(2)(ii)(B), 270.62(b)(2)(i)(C) and (D), 270.66(c)(2)(i) and (ii).	Part B information and trial burn plan requirements for incinerators and BIFs.

This rule also revises the incorporation by reference of SW–846 in § 260.11 so that the paragraph only includes SW–846 methods that are required for method-defined parameters. Therefore, for each section where we removed the requirement to use only SW–846 methods, we also removed the SW–846 incorporation by reference.

Prior to this rule, all methods of SW–846 were incorporated by reference at § 260.11 "when used" within the RCRA regulations. All of SW–846 had to be incorporated by reference because some RCRA regulations required in general the SW–846 methods, *e.g.*, the delisting regulations at § 260.22(d)(1)(i). The required methods had to be incorporated by reference because their full text is too lengthy for publishing directly in the regulations and the methods are readily available to the public in the SW–846 manual. As a result of this rule, we are limiting the requirement to use SW–846 methods to when the methods analyze required method-defined parameters. Therefore, we revised § 260.11 to remove the incorporation by reference of all SW–846 methods, except those SW–846 methods that may be required for the analyses of method-defined parameters. Those methods will remain incorporated by reference when used for method-defined parameters and required by the RCRA regulations.

It is important to note that, while a method is listed in § 260.11 because it is used for analysis of a method-defined parameter, it also may be used for non-mandatory purposes. In those cases where the method is required by a specific regulation and is listed in 260.11, it is a method-defined parameter. For example, Method 9010C, "Total and Amenable Cyanide: Distillation," and Method 9012B, "Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation)" are required under § 268.44, the universal treatment standards of the land disposal restrictions regulations, and are listed in § 260.11 as required by § 268.44. In that case, the methods cannot be substituted. However, in other circumstances, these two methods may be used when they are not required by their regulations (*e.g.*, during delistings) and in those cases they will only be considered appropriate methods and not MDPs. It is the application of a method in a regulation that determines whether a method is being used to analyze a required method-defined parameter—not simply whether the method is listed in § 260.11.

The SW–846 methods that remain as incorporated by reference in § 260.11 are listed in Table 3. The final list is different from that proposed in that Methods 3542 ("Extraction of Semivolatile Analytes Collected Using Method 0010 (Modified Method 5 Sampling Train)") and 5041A ("Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST)") are no longer included. The methods were removed because they are currently not used as method-defined parameters under the RCRA program.

TABLE 3.—SW–846 METHODS TO REMAIN IN § 260.11

SW–846 method	Chapter location	Method title
0010	Ten	Modified Method 5 Sampling Train.
0011	Ten	Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources.
0020	Ten	Source Assessment Sampling System (SASS).
0023A	Ten	Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
0030	Ten	Volatile Organic Sampling Train.
0031	Ten	Sampling Method for Volatile Organic Compounds (SMVOC).
0040	Ten	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Ten	Isokinetic HCl/Cl_2 Emission Sampling Train.
0051	Ten	Midget Impinger HCl/Cl_2 Emission Sampling Train.
0060	Ten	Determination of Metals in Stack Emissions.
0061	Ten	Determination of Hexavalent Chromium Emissions from Stationary Sources.
1010A	Eight	Pensky-Martens Closed-Cup Method for Determining Ignitability.
1020B	Eight	Setaflash Closed-Cup Method for Determining Ignitability.
1110A	Eight	Corrosivity Toward Steel.
1310B	Eight	Extraction Procedure (EP) and Structural Integrity Test.
1311	Eight	Toxicity Characteristic Leaching Procedure.
1312	Six	Synthetic Precipitation Leaching Procedure.
1320	Six	Multiple Extraction Procedure.
1330A	Six	Extraction Procedure for Oily Wastes.
9010C	Five	Total and Amenable Cyanide: Distillation.
9012B	Five	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	Eight	pH Electrometric Measurement.
9045D	Six	Soil and Waste pH.
9060A	Five	Total Organic Carbon (TOC).
9070A	Five	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9071B	Five	n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples.
9095B	Six	Paint Filter Liquids Test.

Please note that we are not adding any new methods to § 260.11—each method listed in Table 3 is already a part of SW–846 and was incorporated by reference during previous rulemakings. For each method retained as incorporated by reference, we are listing in § 260.11 the promulgated version of the method which was last incorporated by reference and thus which must be used during regulatory compliance.

In addition, since proposal of this rule, the Office of Federal Register (OFR) has revised the format of incorporation by reference sections within the Federal regulations, for instance, to include information regarding those regulatory sections or parts that specify use of the methods. We revised § 260.11(a) to reflect this new format.

V. Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations

In section V of the preamble to the proposed rule, the Agency proposed to correct inaccurate references to SW–846 (some of which are logical outgrowths to the revision to § 260.11), and to clarify method selection flexibility in the RCRA regulations. We did not receive any negative comments regarding that

section of the proposed rule and thus are finalizing the editorial corrections, as proposed.

In addition, we are correcting certain regulations so that they include the appropriate suffix of the SW–846 MDP method required by them. As a result of these corrections, the method number in the regulation includes the suffix and matches the respective method number and suffix listed in § 260.11.

Table 4 lists and summarizes the editorial corrections to the RCRA regulations made by this final rule.

TABLE 4.—CORRECTIONS, CLARIFICATIONS OR REMOVALS

Regulation	Text correction, clarification, or removal
§ 258.28(c)(1)—Liquids restrictions	Correction to add "incorporated by reference in § 260.11" after "Paint Filter Liquids Test," and addition of the suffix "B" to the method number "9095."
Appendix I to part 258—Constituents for detection monitoring	Removal of footnote 1 to the table, which contains unnecessary references to SW–846.
Appendix II to part 258—List of inorganic and organic hazardous constituents.	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (µg/L)" columns, removing footnotes 1, 5 and 6 and revising and renumbering the remaining footnotes, as appropriate.
§ 260.21(d)—Petitions for equivalent methods	Clarification that equivalent methods will be added to § 260.11, instead of just added to SW–846.
§ 260.22(d)(1)(i)—Petitions to amend part 261 to exclude a waste produced at a particular facility.	Removal of unnecessary reference to SW–846.
§§ 261.3(a)(2)(v), 279.10(b)(1)(ii), 279.44(c), 279.53(c), and 279.63(c)—Rebuttable presumption for used oil.	Removal of unnecessary references to SW–846.
§ 261.22(a)(1)—Characteristic of corrosivity	Addition of the suffix "C" to method number "9040."
Appendix I to part 261—Representative sampling methods	Removal of unnecessary references to SW–846.
Appendix II to part 261—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP).	Removal of text in Appendix II to part 261; appendix reserved.
Appendix III to part 261—Chemical analysis test methods	Removal of text in Appendix III to part 261; appendix reserved.
§§ 264.190(a) and 265.190(a)—Applicability	Addition of the suffix "B" to method number "9095."
§ 264.314(c) and § 265.314(d)—Special requirements for bulk and containerized liquids.	Addition of the suffix "B" to method number "9095."
§§ 264.1034(f) and 265.1034(f)—Test methods and procedures.	Clarification that direct measurement is allowed to resolve disagreements regarding concentration estimates, and removal of unnecessary references to SW–846.
Appendix IX to part 264—Ground-water monitoring list	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (µg/L)" columns and removing footnotes 1, 5 and 6 and revising and renumbering the subsequent footnotes, as appropriate.
§ 265.1081—Definitions	Correction to SW–846 reference in definition of "waste stabilization process."
Appendix IX to part 266—Methods manual for compliance with BIF regulations.	Corrections to reflect removal of SW–846 methods from the BIF Methods Manual on June 13, 1997 and clarification in existing guidance regarding use of other appropriate methods and SW–846.
§ 268.40(b) and table—Applicability of treatment standards	Addition of the suffix "B" to method number "1310," addition of the suffix "C" to method number "9010," and addition of the suffix "B" to method number "9012."
§ 268.44, table—Variance from a treatment standard	Addition of the suffix "C" to method number "9010" and the addition of the suffix "B" to method number "9012."
§ 268.48, table—Universal treatment standards	Addition of the suffix "C" to method number "9010" and addition of the suffix "B" to method number "9012."
Appendix IX to part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310).	Addition of the suffix "B" to method number "1310."

VI. Action To Withdraw the Reactivity Interim Guidance From SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels From Conditional Delistings

In section VI of the preamble to the proposed rule, the Agency proposed to withdraw the reactivity interim threshold levels and reactive cyanide and sulfide methods from Chapter Seven of SW–846 and from certain conditional delistings found in appendix IX to 40 CFR part 261. EPA proposed these actions based on conclusions it reached and announced in an April 21, 1998 memorandum, a copy of which is available in the docket to this rulemaking, in which EPA addressed concerns about the effectiveness of the reactivity analysis procedures (see the proposed rule preamble for details regarding the content of this memo and its history). (See the April 21, 1998 memorandum at *http://www.epa.gov/SW–846/* for detailed information regarding NEIC's concerns and EPA's conclusions.) EPA consequently withdrew the July 1985 guidance through the aforementioned April 21, 1998 memorandum. To summarize, EPA concluded that the guidance had the following significant problems:

(1) The test conditions evaluate a single pH condition and not the range of pH conditions (2 to 12.5) specified in the reactivity regulation;

(2) The test conditions do not adequately recover the analyte and thus the tests predict low percentages of analyte releases in the waste;

(3) The mismanagement scenario and test conditions are not correctly scaled between each other; and

(4) The mismanagement scenario of an open pit is not the only exposure of concern and may not represent a plausible worst case scenario.

EPA received comments from eleven different commenters regarding this topic. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA–2002–0025, at the location listed above under **ADDRESSES.** Three commenters supported the removal of the reactivity test procedures, stating that they believed

the test and guidance is flawed and that appropriate waste classifications can be made in the absence of guidance. On the other hand, three other commenters opposed the removal of the reactivity test procedures. One of these commenters stated that there are a number of concerns about the technical reasons for removal of the procedures, and believed that these warrant reconsideration of the proposed deletion of the guidance. In reviewing these concerns, the Agency found that the commenter may be misreading the Agency's basis for deletion of the guidance from SW–846. The commenter was concerned both about the impact of certain pH testing conditions and the use of Henry's Law in the guidance. However, these topics were not the reasons for withdrawing the guidance from SW–846. The Agency will investigate the commenter's concerns regarding pH testing conditions and Henry's Law as it develops revised guidance. Another one of the commenters asserted that the narrative criteria alone can be used for classification of high concentration cyanide wastes, but that additional guidance is needed for classifying lower level cyanide-bearing wastes. The other commenter understood the difficulties associated with the reactivity method guidance, but believed that the regulated community needed something other than the "honor system" to classify these reactive wastes.

The remaining five commenters had general concerns about making the reactivity characteristic determinations, but did not specifically support or oppose deletion of the tests or threshold levels. Four commenters out of the total of eleven commenters requested that EPA replace the deleted tests with other method guidance.

In response to all comments, the Agency is currently reviewing several test methods for possible inclusion in SW–846 as methods for characterizing cyanide-bearing wastes. However, the Agency still believes it inappropriate to retain the reactive cyanide and reactive sulfide methods in SW–846 for the reasons presented in the proposed rule preamble and listed above. Regarding the characteristic of reactivity, regulated parties have always been responsible for complying with the regulation at § 261.23—Characteristic of reactivity, which does not require any particular test methods for the characterization. Therefore, generators and other persons can use other appropriate methods or process knowledge in determining whether a particular waste is hazardous due to its reactivity.

VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics

In sections VII.A and VII.B of the preamble to the proposed rule, the Agency proposed revisions to the corrosivity characteristic and the ignitability characteristic testing requirements. The proposed revisions included changes to references to ASTM standards and SW–846 methods. We considered these revisions to be non-substantive updates of the methods presently used in the regulations and we believed the revisions would not affect which wastes are determined to be hazardous based on the characteristics. We requested public comment on each of the proposed revisions. Significant comments and our responses are provided below.

A. Revision to § 261.22(a)(2) To Clarify That SW–846 Method 1110A Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

In section VII.A of the preamble to the proposed rule, EPA addressed proposed revisions to the corrosivity characteristic testing requirements, which included a clarification to § 261.22(a)(2). Section 261.22(a)(2) defines the hazardous waste characteristic of corrosivity for a liquid which corrodes steel. The required test method is identified as "the test method specified in NACE * * * Standard TM–01–69 as standardized in * * * SW–846 * * *" As explained in the May 19, 1980 regulations (see 45 FR 33084) which added § 261.22 to the RCRA regulations, EPA standardized the NACE Standard TM–01–69 in SW–846. As also explained in the background document to the corrosivity characteristic of the 1980 regulations, NACE Standard TM–01–69 describes a simple immersion test to determine the rate of corrosion. However, the procedure described in the background document, in fact, was not completely standardized because it was designed to test the suitability of metals for a variety of uses. As a result, a comment was submitted at that time which expressed concern with the incomplete standardization of the NACE Standard which allowed variation in test conditions. EPA agreed and, in response to the comment, put a standardized version of the method in SW–846 so that the procedure more clearly defined the appropriate test conditions. At the time, we did not specify which test method of SW–846 included the standardized version of the NACE method. This SW–846 method has always been Method 1110 (now Method 1110A as of Update IIIB), "Corrosivity Toward Steel." Therefore, in the proposed MIR, we proposed adding the number of this method to § 261.22(a)(2) for clarification of which SW–846 test method is the standardized version of NACE. This revision to § 261.22(a)(2) does not represent a change to the characteristic.

Three commenters addressed this section of the proposed MIR. Two of these commenters explicitly supported the clarification in § 261.22(a)(2) that SW–846 Method 1110A, "Corrosivity Toward Steel," is the standardized version of the NACE Standard TM–01–69. The other commenter did not comment on the proposed revision, but instead requested that EPA address a unrelated concern regarding the content of Method 1110A. None of the commenters disagreed with the Agency statement that the revisions were non-substantive.

Regarding SW–846 Method 1110A, the commenter believed that the method significantly differed from the corresponding Department of Transportation (DOT) corrosivity method. Specifically, Method 1110A suggests that a 24-hour test duration be used, while the DOT method indicates use of a longer test period. The commenter requested that EPA either clarify this difference or amend the regulations to allow the use of DOT's comparable corrosivity characteristic procedure, as set out in 49 CFR 173.137(c)(2), as an alternative test method for corrosivity under the hazardous waste regulations.

First, EPA notes that the test duration time in Method 1110A was not addressed or proposed for revision by the MIR. The MIR only proposed to clarify that Method 1110A is "the test method * * * standardized * * * in SW–846" for the corrosivity characteristic determination. The commenter does not appear to disagree with the proposed clarification. Because the Agency did not take comment, or even raise an issue, with the test duration time, we believe it inappropriate to address this provision in this final rule. Nevertheless, the Agency plans to evaluate the commenter's concerns to determine if future regulatory changes are warranted.

Therefore, in response to the comments submitted, the Agency is finalizing the regulatory revision whereby Method 1110A will be specified in § 261.22(a)(2). It is not necessary to also reference the NACE Standard TM–01–69 in the regulatory text. The NACE method was used to

initially develop Method 1110A and the two methods are not identical.

B. Revisions to § 261.21(a)(1) To Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation Regarding the Decision To Not Revise the Regulation To Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed

In section VII.B of the preamble to the proposed rule, the Agency addressed proposed revisions to the ignitability characteristic testing requirements in § 261.21(a)(1). Section 261.21(a)(1) of the RCRA regulations defines the hazardous waste characteristic of ignitability as a liquid which has a flash point less than 60 °C (140 °F) as determined by the use of ASTM Standard D 93–79 or D 93–80 (Pensky-Martens Closed Cup Tester) or ASTM Standard D 3278–78 (Setaflash Closed Cup Tester). Since publication of the regulation, the ASTM Standard has been revised. However, before proposing to replace the ASTM Standard now in the regulation with the newer versions D 93–99c and D 3278–96, EPA compared the newer versions of the test protocol with the older versions of the protocol and found only non-substantive differences. Therefore, EPA proposed and requested comment on replacing the older versions of the ASTM Standard in § 261.21(a)(1) with the more recent versions. In addition, although ASTM Standard D 93–00 is newer than D 93–99c, EPA proposed that D 93–99c replace D 93–80 because EPA found that D 93–00 differed in a possibly substantial manner from D 93–80 and, if it were to be specified instead of D 93–99c, characteristic results may be significantly affected. Specifically, we found that the D 93–00 version specifies different sample container volumes for different sample types. It requires that all matrices, except residual fuel oil, be collected in containers not more than 85% or less than 50% full. This revision may significantly affect the characteristic results, since the potential to lose flammable volatile constituents will be greater from sample containers that may now have as much as 50% headspace. The Agency requested comment on this evaluation.

Finally, the Agency proposed to revise § 261.21(a)(1) to clarify that the ASTM standards for ignitability characteristic determinations are used and referenced by SW–846 Methods 1010A and 1020B. The Agency believed these revisions to § 261.21(a)(1) to be non-substantive and that the changes would not affect which wastes are determined to be hazardous based on the characteristic.

Five commenters addressed this section of the proposed MIR. Two commenters supported EPA's proposal to update the references to ASTM standards in § 261.21(a)(1). Two other commenters had general concerns about the ignitability characteristic and the ASTM standards, but did not appear to specifically support or oppose the replacements. Only one commenter commented on revising § 261.21(a)(1) to clarify that the ASTM standards for the ignitability characteristic are used and referenced by SW–846 Methods 1010A and 1020B. The commenter supported the regulatory revision.

Regarding ASTM Standards D 93–99c and D 93–00, the two commenters that supported updating the references agreed with EPA that D 93–99c and D 93–00 could yield different results and therefore, different conclusions as to whether or not a waste would be identified as hazardous. The two commenters that disagreed with the Agency's conclusion regarding D 93–00 maintained that the potential to lose volatile compounds also existed in the 1999 version. One of these commenters noted that an even newer version than D 93–00 was now available from ASTM, namely D 93–02. The commenter recommended that the Agency study that standard for any significant differences.

The Agency has considered all of the comments and decided to retain the existing ASTM regulatory standards and not replace them with the newer versions at this time. The Agency agrees with the commenter who suggested that EPA further study and review the new versions of the ASTM standards. Both newer versions of D 93 require that certain ASTM sampling procedures be used, which are unnecessarily prescriptive and often inapplicable to hazardous waste collection. The newer version of D 93 may also promote potential problems with requirements for sampling and automated test equipment. As a result, the Agency believes that a more detailed evaluation is warranted. In addition, the Agency believes that, although the newer versions of D 93 allows for automated test equipment, including the use of an electric igniter which may save time, a rigorous comparison of the electrical igniter versus the flame igniter should be conducted.

In addition, the Agency decided to not finalize the addition of references to Methods 1010A and 1020B in the regulations as proposed, but rather Methods 1010A and 1020B were revised as part of Final Update IIIB (final today as part of this rule, see section VIII), whereby all method text was replaced with direct references to the ASTM standards listed in § 261.21(a)(1).

Finally, as proposed regarding § 261.21(a)(1), we are removing that portion of the last sentence which refers to the equivalent test method demonstration. This information is adequately addressed in §§ 260.20 and 260.21. It is not necessary to repeat the information regarding method equivalency petitions in each section of a RCRA regulation which requires use of a specific test method(s). Also, this revision is consistent with similar sections on testing in part 261 and other parts of the RCRA regulations.

VIII. Availability of Final Update IIIB and Status of Final Update IV to SW–846

SW–846 is a guidance document that changes over time as new information and data are developed. On October 30, 2002, we proposed to revise several methods and chapters of SW–846 and release these revisions as Update IIIB to the Third Edition of SW–846. To date, EPA has finalized Updates I, II, IIA, IIB, III, and IIIA to the Third Edition of the SW–846 manual. On May 8, 1998 (see 63 FR 25430) and on November 27, 2000 (see 65 FR 70678), we also announced the availability of Draft Update IVA and IVB, respectively, which we published for guidance purposes only.

As part of this rule, we are finalizing Update IIIB. The Methods Team Web site at *http://www.epa.gov/SW–846* has been revised to remove Proposed Update IIIB and include an integrated electronic version of SW–846 which incorporates the final version of that update. In the near future after publication of this rule, Draft Updates IVA and IVB will be replaced by Final Update IV and its availability will be announced by a Federal Register notice.

The revised methods of Update IIIB are used for method-defined parameters and thus, any required uses of those methods will remain in the RCRA regulations. Therefore, we revised § 260.11 to include the Update IIIB methods.

In the proposed rule preamble, we also requested comments on certain parts of the Update IIIB methods and chapters. We did not consider comments on the other sections or parts of the methods or chapters because those portions were not proposed for revision. Most of the comments concerned the removal of the reactivity guidance methods from Chapter Seven and updating the ASTM standards. Those comments are addressed in previous sections of this preamble. The

Agency received a few other comments regarding the documents contained in Proposed Update IIIB. The docket to this rule (RCRA–2002–0025) contains a background document with our responses to all the comments submitted. The responses also identify any revisions made to the methods due to the comments.

Table 5 provides a listing of the four chapters and eleven methods in Final Update IIIB. The method numbers in the table reflect the appropriate method revision letter suffix (*e.g.*, A, B, C, etc.). These suffixes were not always reflected in the RCRA regulations themselves, e.g., the regulations cited the method number without a suffix. The relevant regulations revised by today's rule do reflect the latest suffix. Accordingly, this final rule identifies the latest promulgated version of the methods that remain as incorporated by reference at § 260.11 in the RCRA regulations. During compliance with those regulations, the regulated community must only use the latest promulgated revision of the methods as indicated in § 260.11, *i.e.*, the regulated community must only use the version of the method cited by § 260.11.

TABLE 5.—FINAL UPDATE IIIB METHODS AND CHAPTERS

Chapters or method number	Method or chapter title
Chapter Five	Miscellaneous Test Methods.
Chapter Six	Properties.
Chapter Seven	Characteristics Introduction and Regulatory Definitions.
Chapter Eight	Methods for Determining Characteristics.
1010A	(Referral to) Pensky-Martens Closed Cup Method for Determining Ignitability.
1020B	(Referral to) Setaflash Closed Cup Method for Determining Ignitability.
1110A	Corrosivity Toward Steel.
1310B	Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.
9010C	Total and Amenable Cyanide: Distillation.
9012B	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	pH Electrometric Measurement.
9045D	Soil and Waste pH.
9060A	Total Organic Carbon.
9070A	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9095B	Paint Filter Liquids Test.

Note: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times).

IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)

In section IX of the preamble to the proposed rule, the Agency proposed to revise §§ 264.1034(c)(1)(ii) and (iv) and §§ 265.1034(c)(1)(ii) and (iv) to allow the use of Method 25A, as well as Method 18, during analyses in support of air emission standards for process vents and/or equipment leaks at hazardous waste management facilities. All comments supported these revisions and therefore we finalized these changes, as proposed.

X. Removal of Requirements From §§ 63.1208(b)(8)(i) and (ii) in the NESHAP Standards To Demonstrate Feedstream Analytes Are Not Present at Certain Levels

In section X of the preamble to the proposed rule, the Agency proposed to remove the requirements for analytical DQOs (*e.g.*, 80% upper confidence limit) for feedstream analyses found in §§ 63.1208(b)(8)(i) and (ii) that were previously promulgated in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors on September 30, 1999. All comments supported these revisions and therefore we are finalizing these changes, as proposed.

XI. Status of the RCRA Waste Sampling Draft Technical Guidance

In section XI of the preamble to the proposed rule, we announced the availability of a stand-alone sampling guidance document entitled, "RCRA Waste Sampling Draft Technical Guidance." We intended to replace the original sampling guidance version of Chapter Nine found in EPA publication SW–846 with this new document. We requested comment on the guidance. The Agency received a number of comments which are still under review and consideration. This additional review of the document will help us improve the guidance and ensure that it is most useful in its final form. Therefore, we are not at this time issuing a final version of the sampling guidance. Once we complete our review and evaluation of the comments, we will revise the document as appropriate and announce its availability in the Federal Register.

XII. State Authorization Procedures

A. Applicability of Federal Rules in Authorized States

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

After a state receives initial authorization, new regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to

update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Finally, authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA Program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Therefore, the Agency added the rule to Table 1 in § 271.1(j), which identifies Federal regulations that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions, as discussed in the following section of this preamble.

Today's rule language provides standards that are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those states which are not authorized for the RCRA Program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended. In authorized States, the changes will not be applicable until and unless the State revises its program to adopt the revisions.

(Note: Procedures and deadlines for State program revisions are set forth in § 271.21.)

This rule will provide significant benefits to EPA, the states, and the regulated community, without compromising human health or environmental protection. Therefore, EPA strongly encourages authorized states to amend their programs and seek authorization for today's rule.

C. Abbreviated Authorization Procedures

EPA consider's today's rule to be a minor rulemaking and is adding it to the list of minor or routine rulemakings in Table 1 to § 271.21. Placement in this table will enable states to use the abbreviated procedures located in § 271.21(h) when they seek authorization for today's changes. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998).

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

OMB determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no additional reporting, notification, or recordkeeping provisions associated with today's rule. However, the Office of Management and Budget (OMB) previously approved the information collection requirements contained in some of the existing regulations being revised by this rule, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers for those information collection requirements, as follows:

—40 CFR 258.28: OMB control number 2050–0122
—40 CFR 260.21 and 260.22: OMB control number 2050–0053
—40 CFR 261.3: OMB control number 2050–0085
—40 CFR 261.35: OMB control number 2050–0115
—40 CFR 264.1034, 264.1063, 265.1034, and 265.1063: OMB control number 2050–0050
—40 CFR 266.100, 266.102, 266.106, 266.112, Appendix IX to part 63, and 270.22: OMB control number 2050–0073
—40 CFR 270.19: OMB control number 2050–0009
—40 CFR 270.62: OMB control numbers 2050–0009 and 2050–0149
—40 CFR 270.66: OMB control numbers 2050–0073 and 2050–0149
—40 CFR 279.10, 279.44, 279.53 and 279.63: OMB control number 2050–0124

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

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

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

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 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 that is independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under Section 3 of the Small Business Act for SIC; (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. 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 analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. sections 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. Today's rule is specifically intended to reduce economic burden for all entities. The action will provide greater flexibility and utility to all affected entities, including small entities, by providing an increase in choices of appropriate analytical methods for RCRA applications. It does not create any new regulatory requirements or require any new reports beyond those now required by the revised regulations. In addition, its revisions need not be adopted by regulated entities. If the methods are appropriate, such entities can continue to use the methods previously specified in the regulations before today instead of choosing the option to use other appropriate methods from other reliable sources. We have therefore concluded that today's final rule will relieve regulatory burden for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), Pubic 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed, section 205 of the Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator explains in the final rule why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

First, this rule does not contain a Federal mandate. The rule imposes no enforceable duty on any State, local or tribal governments. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. This is due to the fact that this rule does not add any new regulatory requirements and States need not adopt its revisions. This rule only revises certain regulatory sections to remove the requirement to use SW–846 methods and allow the use of other appropriate methods—that is, clarify allowed flexibility in method selection for meeting RCRA-related testing and monitoring requirements. Under RCRA, regardless of the method used—the one previously specified in the regulation before today or another appropriate method—regulated entities should be demonstrating that the method is appropriate for its intended use. This rule also does not propose new monitoring or information collection requirements. The additional flexibility allowed by this rule should result in improved data quality at reduced cost. Thus, today's rule is not subject to the requirements of sections 202, 203 and 205 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. 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. As explained above, today's rule does not impose new requirements on the States and its regulatory changes need not be adopted by the States. Thus, Executive Order 13132 does not apply to this rule. Because these changes are equivalent to or less stringent than the existing Federal program, States would not be required to adopt and seek authorization for them.

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

Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination With Indian Tribal Governments" requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

Today's rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. For many of the same reasons described above under unfunded mandates, the requirements of the Executive Order do not apply to this rulemaking. As stated above, this rule does not propose any new regulatory requirements and Indian tribal governments need not adopt it. It does not impose any direct compliance costs on tribal governments.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Also, 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action discussed in today's rule is intended to provide increased flexibility in the use of methods for RCRA-related testing and monitoring, and thus is not subject to Executive Order 13045.

H. Executive Order 13211: Actions 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 of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule increases flexibility in the use of methods for RCRA-related testing and monitoring and does not itself identify or require the use of new methods or other technical standards. In fact, this rule, may increase the use of available voluntary consensus standards for some RCRA applications, provided that such methods are appropriate for the regulatory application.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, requires that regulatory actions be accompanied by an environmental justice analysis. This analysis must look at potentially disproportionate impacts the action may have on minority and/or low-income communities.

The Agency has determined that the action does not raise environmental justice concerns. The impact of this rule will be to provide increased flexibility in the choice of appropriate analytical methods for RCRA applications. The Agency is not aware of any disproportionate impacts that such flexibility may have on minority and/or low-income communities.

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 July 14, 2005.

List of Subjects

40 CFR Part 63

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

40 CFR Part 258

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, syngas fuels, Excluded hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

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

40 CFR Part 268

Environmental protection, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 270

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

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: May 16, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, EPA amends title 40, chapter I, of the Code of Federal Regulations as follows:

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

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

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

■ 2. Section 63.1208 is amended by revising paragraph (b)(8) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(8) *Feedstream analytical methods.* You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 3. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart C—Operating Criteria

■ 4. Section 258.28 is amended by revising paragraph (c)(1) to read as follows:

§ 258.28 Liquids restrictions.

* * * * *

(c) * * *

(1) Liquid waste means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) which is incorporated by reference. A suffix of "B" in the method number indicates revision two (the method has been revised twice). Method 9095B is dated November 2004. This incorporation by reference was approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. A copy may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, *libraryhq@epa.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

■ 5. Appendix I to part 258 is revised to read as follows:

Appendix I to Part 258—Constituents for Detection Monitoring

Common name [1]	CAS RN [2]
Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
Organic Constituents:	
(16) Acetone	67–64–1
(17) Acrylonitrile 1	107–13–1
(18) Benzene	71–43–2
(19) Bromochloromethane	74–97–5
(20) Bromodichloromethane	75–27–4
(21) Bromoform; Tribromomethane	75–25–2
(22) Carbon disulfide	75–15–0
(23) Carbon tetrachloride	56–23–5

Common name [1]	CAS RN [2]
(24) Chlorobenzene	108–90–7
(25) Chloroethane; Ethyl chloride	75–00–3
(26) Chloroform; Trichloromethane	67–66–3
(27) Dibromochloromethane; Chlorodibromomethane	124–48–1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96–12–8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106–93–4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95–50–1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106–46–7
(32) trans-1, 4-Dichloro-2-butene	110–57–6
(33) 1,1-Dichlorethane; Ethylidene chloride	75–34–3
(34) 1,2-Dichlorethane; Ethylene dichloride	107–06–2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75–35–4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156–59–2
(37) trans-1, 2-Dichloroethylene; trans-1,2-Dichloroethene	156–60–5
(38) 1,2-Dichloropropane; Propylene dichloride	78–87–5
(39) cis-1,3-Dichloropropene	10061–01–5
(40) trans-1,3-Dichloropropene	10061–02–6
(41) Ethylbenzene	100–41–4
(42) 2-Hexanone; Methyl butyl ketone	591–78–6
(43) Methyl bromide; Bromomethane	74–83–9
(44) Methyl chloride; Chloromethane	74–87–3
(45) Methylene bromide; Dibromomethane	74–95–3
(46) Methylene chloride; Dichloromethane	75–09–2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78–93–3
(48) Methyl iodide; Idomethane	74–88–4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1
(50) Styrene	100–42–5
(51) 1,1,1,2-Tetrachloroethane	630–20–6
(52) 1,1,2,2-Tetrachloroethane	79–34–5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127–18–4
(54) Toluene	108–88–3
(55) 1,1,1-Trichloroethane; Methylchloroform	71–55–6
(56) 1,1,2-Trichloroethane	79–00–5
(57) Trichloroethylene; Trichloroethene	79–01–6
(58) Trichlorofluoromethane; CFC–11	75–69–4
(59) 1,2,3-Trichloropropane	96–18–4
(60) Vinyl acetate	108–05–4
(61) Vinyl chloride	75–01–4
(62) Xylenes	1330–20–7

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstract Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

■ 6. Appendix II to part 258 is revised to read as follows:

Appendix II to Part 258—List of Hazardous Inorganic and Organic Constituents

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
Acetophenone	98–86–2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53–96–3	Acetamide, N–9H-fluoren-2-yl-
Acrolein	107–02–8	2-Propenal
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1,4,4a,5,8,8a)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1'-Biphenyl]- 4-amine
Anthracene	120–12–7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

On Monday, July 9, 2007 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ) will hold a public hearing on proposed revisions to existing legislative rules. Oral and written comments shall be limited only to the proposed revisions to the following existing legislative rules:

45CSR6	To Prevent and Control Air Pollution From Combustion of Refuse;
45CSR8	Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter;
45CSR16	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;
45CSR18	To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units;
45CSR25	To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities;
45CSR34	Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63;
45CSR39	Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides;
45CSR40	Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides; and
45CSR41	Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide.

On Monday, July 9, 2007, after public hearings on the above proposed legislative rules, the West Virginia Department of Environmental Protection, DAQ will hold a public hearing on the following proposed legislative rule:

45CSR42	Greenhouse Gas Emissions Inventory Program.

Upon authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40 and 45CSR41, the DAQ will submit the final rules to the U.S. Environmental Protection Agency (U.S. EPA) as revisions to the State Implementation Plan, pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR18, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's Section 111(d)/129 Plan and program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR25, the DAQ will submit the final rule to the U.S. EPA for approval as part of the West Virginia Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR34, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the National Emission Standards for Hazardous Air Pollutants.

Upon authorization and promulgation of 45CSR42, the DAQ will begin implementation of a Greenhouse Gas Inventory Program.

The public hearing will be held at the Department of Environmental Protection, Dolly Sods Conference Room, 601 57th Street SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-0479), U.S. Mail, or e-mail if postmarked or delivered by the close of business on July 9, 2007.

Copies of the proposed legislative rules may be viewed between 8:30 a.m. and 4:30 p.m. at the Division of Air Quality, 601 57th SE, Charleston, WV 25304 beginning June 8, 2007 or electronically upon e-mail request to: tmowrer@wvdep.org. For a copy of the proposed rules, access the following web address: www.wvdep.org/daq. Choose Public Notice and Comment.

Send written comments to John A. Benedict, Director, Division of Air Quality at the above address. Please identify the draft document to which the comments apply, the commenter's name, address, and telephone number. Comments will also be accepted by e-mail if transmitted by 5:00 p.m. on July 9, 2007 to: tmowrer@wvdep.org. Comments submitted by U.S. Mail must be postmarked by July 9, 2007.

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Division of Mining and Reclamation

38CSR2 - Surface Mining Reclamation Rule. The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR5A - Individual State Certification of Activities Requiring a Federal Permit. The public hearing will be held at 6 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR30 - WV/NPDES Rules for Coal Mining Facilities. The public hearing will be held at 6 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

199CSR1 - Surface Mining Blasting Rule. The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DWWM rules, call 926-0490.

Office of Oil and Gas

35CSR3 - Coalbed Methane Wells Rule. The public hearing will be held at 6 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0450.

Division of Land Restoration

33CSR10 - Recycling Assistance Grant Program. The public hearing will be held at 6 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

40CSR3 - Voluntary Remediation and Redevelopment Rule. The public hearing will be held at 6:30 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DLR rules, call 926-0455.

Public Information Office

60CSR8 - Environmental Excellence Rule. The public hearing will be held at 7 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0440.

(287864)

Division of Water and Waste Management

33CSR9 - Standards for Beneficial use of Filtrate from Water Treatment Plants. The public hearing will be held at 6 p.m. on July 2, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

33CSR20 - Hazardous Waste Management System. The public hearing will be held at 6 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

33CSR30 - Underground Storage Tanks. The public hearing will be held at 6:30 p.m. on July 11, 2007, in the Coopers Rock Training Room at DEP's Charleston headquarters. The comment period will end at the conclusion of the hearing.

47CSR2 - Rules Governing Water Quality Standards. The public hearing will be held at 6 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5 p.m. on July 17, 2007. The rule includes a proposed use redesignation for Pat's Branch in the Guyandotte River Basin (see additional information in the information sheet attached to the briefing document).

47CSR10 - National Pollutant Discharge Elimination System (NPDES). The public hearing will be held at 6:30 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

47CSR34 - Dam Safety. The public hearing will be held at 7 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

60CSR5 - Antidegradation Implementation Procedures. The public hearing will be held at 7 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5:00 p.m. on July 17, 2007.

For more information on any of the DWWM rules, call 926-0495.

PUBLIC NOTICE

The West Virginia Department of Environmental Protection has scheduled public hearings for its 2008 proposed legislative rules. All hearings will be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston, WV 25304. Oral and written comments shall be limited to the proposed revisions to the following rules. All comments will be made a part of the rulemaking record. Copies of the rules and other rule documents are available from the Secretary of State's office or from the agency at www.wvdep.org/2008rules. You may also obtain paracopies of the information by calling the phone numbers listed below.

Written comments may be submitted to the Public Information Office at the above address. Comments may also be e-mailed to comments@wvdep.org. The hearing dates, locations and comment deadlines are as follows:

Division of Air Quality

45CSR6 - Control of Air Pollution from Combustion of Refuse.

45CSR8 - Ambient Air Quality Standards.

45CSR16 - Standards of Performance for New Stationary Sources.

45CSR18 - Control of Air Pollution from Combustion of Solid Waste.

45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities.

45CSR34 - Emission Standards for Hazardous Air Pollutants.

45CSR39 - Control of Annual Nitrogen Oxides Emissions.

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions.

45CSR41 - Control of Annual Sulfur Dioxide Emissions.

45CSR42 - Greenhouse Gas Emissions Inventory Program.

The public hearing for all air quality rules will be held at 6 p.m. on July 9, 2007, in the Daily Soas conference room. The comment period will end at the conclusion of the hearing. Upon authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40 and 45CSR41, the DAQ will submit the rules to the U.S. Environmental Protection Agency (EPA) as revisions to the State Implementation Plan pursuant to the federal Clean Air Act (CAA). Rules 45CSR16, 45CSR18, 45CSR25, and 45CSR34 will also be submitted to EPA to fulfill other federal obligations under the CAA, including delegations, plans and program approvals. For more information on any of the air rules, call 926-0475.

ORIGINAL

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of: PROPOSED REVISIONS TO 45CSR34- Emission Standards for Hazardous Air Pollutants

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter, at the West Virginia Department of Environmental Protection, Division of Air Quality, Dolly Sods Conference Room, 601 57th Street, S.E. Charleston, West Virginia, commencing at 6:21 p.m., on the 9th day of July 2007, pursuant to notice.

P R O C E E D I N G S

MS. CHANDLER: The purpose of this public hearing is to accept comments on the proposed revisions to 45CSR34 - Emission Standards for Hazardous Air Pollutants.

This rule establishes and adopts national emission standards for hazardous air pollutants, and NESHAP is the acronym for that, and other regulatory requirements promulgated by the U.S. Environmental Protection Agency pursuant to section 112 of the federal Clean Air Act, as amended.

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 CSR§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, 2007.

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 and 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61, filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2007; Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW Rule 846 Final Update IIIB, Cellulose Products manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens; Pushing, Quenching and Battery Stacks, Cellulose products Manufacturing, Reinforced Plastic Composite Production; Miscellaneous Organic Chemical Manufacturing, Secondary

Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustor, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations.

Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters; Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quanity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing, General Provisions; Printing and Publishing Industry; Source Categories; Integrated Iron and Steel Manufacturing Facilities; Dry Cleaning Facilities; Organic Liquids Distribution, nongasoline; Miscellaneous Coating Manufacturing; Site Remediation; Portland Cement Manufacturing Industry; Synthetic Organic Chemical Manufacturing Industry; Surface Coating of Automobiles and

Light-Duty Trucks; Oil and Natural Gas Production Facilities; Surface Coating of Plastic Parts and Products, and Halogenated Solvent Cleaning.

The following 40 CFR Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas production; Polyvinyl Chloride an Copolymers Production; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals - Zinc Cadmium and Beryllium.

Upon authorization and promulgation of revisions to 45CSR34, the Division of Air Quality will submit the final rules to the U.S. Environmental Protection Agency to fulfill other federal obligations under the Clean Air Act, including delegations, plans and program approvals.

The floor is now open for comments.

There being nothing further, this public hearing for the proposed revisions to 45CSR34 is concluded.

(WHEREUPON, the hearing was concluded at 6:29 p.m.)

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, is to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 20th day of July 2007.

Missy L. Young CCR

Missy L. Young
Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

dep

west virginia department of environmental protection

DAQ 2008 Proposed Rules Hearing
Dolly Sods Conference Room
601 57th Street SE, Charleston
July 9, 2007 6:00 p.m.

Sign-In

NAME (Please Print)	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	COMMENT YES/NO
LINDA K TENNANT	300 KANAWHA BLVD	SPILMAN THOMAS	304.720.3420	ltennant@spilmanlaw.com	Written
Tim Mallan	707 Va. Street E	Appalachian Power	304-348-4136	tpmallan@aep.com	No.
Anne Blankenship	700 Virginia St E	Robinson + McElwee	304-347-8344	acb@ramlaw.com	written only
Jim Mason	601 57th St	WVDEP	9260499 ext 1203	jmason@wvdep.org	No

IOGA
WEST VIRGINIA

RECEIVED
JUL - 9 2007
WV DEP / DIV. OF AIR QUALITY

July 9, 2007

VIA HAND DELIVERY & ELECTRONIC MAIL
Public Information Office
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Re: Proposed Greenhouse Gas Emissions Inventory Program Rule –45 CSR 42; Proposed Revisions to Emission Standards for Hazardous Air Pollutants – 45 CSR 34

Dear Sir or Madam:

On behalf of the Independent Oil and Gas Association of West Virginia, Inc. ("IOGA"), I am submitting comments regarding the proposed Greenhouse Gas Emissions Inventory Program rule (the "Proposed GHG Rule") implementing SB 337 which was passed during the 2007 Regular Session of the West Virginia legislature. IOGA also offers a brief comments below regarding the proposed revisions to Emission Standards for Hazardous Air Pollutants – 45 CSR 34. IOGA is a statewide non-profit trade association representing companies engaged in the exploration, production and development of natural gas and oil resources in West Virginia, and the companies and individuals who support these activities

Proposed GHG Rule

IOGA believes that with limited exceptions, the Proposed GHG Rule succinctly and effectively reflects the legislature's intent in SB 337 and we compliment the Division of Air Quality for its efforts in this proposal. Comments on specific sections of the proposed rule are provided below.

Section 2.4 – The term "area source" is defined in the rule, but we do not find where the term is actually used. We ask that the agency clarify whether it intends some portion of the rule to apply to areas sources and, if so, in what manner.

Section 3.1 – This section sets forth the threshold levels that trigger the obligation for a stationary source to report its emissions of greenhouse gases. IOGA believes that it was the intent of the legislature that the threshold level was established to assure that the burden of reporting was not imposed on de minimis sources of emissions and that a source should be required to report emissions only for those greenhouse gases for

which the threshold is exceeded. We respectfully request that the agency clarify whether this is consistent with its interpretation of this section.

Section 5.3 – This section suggests that the Secretary may mandate industry trade groups, such as IOGA, to provide information regarding greenhouse gas emissions. Assuming such trade groups are not independent sources of greenhouse gas emissions, but rather have members that are sources, we submit that the DEP does not have jurisdiction to require that information be submitted by such groups. However, please be advised that IOGA would be pleased to consult with the DEP in any efforts it undertakes to estimate greenhouse gas emissions for oil and gas facilities.

Emission Standards for Hazardous Air Pollutants

In its proposed revisions to 45 CSR 34, the emissions standards for hazardous air pollutants, the agency has proposed to incorporate by reference federal regulations setting standards for emissions of hazardous air pollutants in effect as of June 1, 2007. See Sec. 4.1. However, the agency also proposes to except from this provision several specific federal regulations including regulations governing emissions from natural gas operations. Specifically, Subsection 4.1.c reads as follows:

> 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 [from incorporation by reference].

Because there are members of IOGA who may be covered by the regulations referenced in Subsection 4.1.c, we are requesting that the agency provide some explanation regarding its reasons for excluding these rules from incorporation by reference. In addition, what guidance will the agency be providing to those sources who may be covered by the excluded regulations? Absent some justification for this proposed exclusion and adequate guidance to the regulated sources regarding how they can achieve compliance with these standards, IOGA must objection to Subsection 4.1.c and requests its deletion from the final version of this rule.

IOGA appreciates the opportunity to present these comments to the agency and requests that they be given careful consideration.

Very truly yours,

Charlie Burd

Charlie Burd

ROBINSON
&McELWEE

ANNE C. BLANKENSHIP
ATTORNEY AT LAW

P.O. BOX 1791
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8344
E-MAIL: acb@ramlaw.com

July 9, 2007

07-10-07P02:06 RCVD

BY HAND DELIVERY
John A. Benedict
Director, Division of Air Quality
West Virginia Department of Environmental Protection
601 57th SE
Charleston, WV 25304

Re: **Comments on DAQ's Proposed Rules**

Dear Director Benedict:

Please find enclosed herewith the **COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION AND THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF AIR QUALITY 2007 PROPOSED RULES.**

Please contact me with any questions you may have regarding the enclosed.

Very truly yours,

Anne C. Blankenship
Counsel to the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association

acb
Enclosures
cc: Ms. Karen Price (w/encl.)
Mr. Nicholas DeMarco (w/encl.)

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION AND THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF AIR QUALITY 2007 PROPOSED RULES

The West Virginia Manufacturers Association ("WVMA") represents numerous manufacturers throughout the state which are subject to the regulations of the West Virginia Department of Environmental Protection, Division of Air Quality ("DAQ"). Likewise, the West Virginia Oil and Natural Gas Association ("WVONGA") also has member companies which are subject to the DAQ's regulations. Therefore, the WVMA and WVONGA (collectively the "Associations") submit the following comments on the DAQ's proposed revisions to its regulations and the new proposed 45 CSR 42, Greenhouse Gas Emissions Inventory Program.

I. 45 CSR 42 – Greenhouse Gas Emissions Inventory Program

The Associations have an interest in the development of a reasonable and effective greenhouse gas emissions inventory program and the implementing rule. During the 2007 West Virginia Legislative Session, the Associations supported the DAQ's bill to develop a greenhouse gas inventory program (SB 337) and provided suggestions on the bill during the legislative process, including suggestions on which sources should be required to report emissions and the appropriate *de minimis* levels which trigger reporting requirements. We appreciate the DAQ's reception to the comments and suggestions made to SB 337 and believe that with the suggested changes to the rule addressed below, 45 CSR 42 will lay the foundation for an effective greenhouse gas inventory program which will be reflective of the state's greenhouse gas emissions and reductions. Many of

the comments below were provided to the DAQ during the DEP Advisory Council Meeting on May 30, 2007, including a proposed mark-up of the rule, attached hereto. We believe the comments and suggestions clarify the provisions set forth in the proposed rule in order to preclude any confusion to what, we believe, was the DAQ's intent in drafting the proposed rule.

Section 2.3 Definitions.

The definition of "anthropogenic" should be revised to state that it is the "result of natural processes that have been influenced significantly by human activities". Adding the term "significantly" makes the definition consistent with the definition of "biogenic" which means a "naturally occurring biological source or process that is not significantly affected by human actions or activity." (emphasis added.)

Section 3.1 Applicability.

Our greatest concern with this proposed regulation is the proposed applicability provision as it relates to what types of emissions an affected source is required to report. As drafted, an affected source which emits any of the listed greenhouse gases above the *de minimis* amounts would be required to report any emissions of the listed greenhouse gases, no matter how insignificant. This means that any greenhouse gas emissions above zero would have to be reported. We do not believe that this was the intent of DAQ in drafting this rule. The reporting of insignificant emissions below the *de minimis* amounts would be meaningless for purposes of an inventory and would be extremely burdensome for the affected sources as it would be nearly impossible for sources to quantify such emissions. Affected sources should only be required to report emissions which are above the *de miminis* amounts listed in Section 3.1. Therefore, this section should be

revised to clarify that only individual greenhouse gases emitted above the *de minimis* amounts are required to be reported. Otherwise, affected sources that trigger any of the *de minimis* amounts could be required to report emissions of all of the greenhouse gases even if they are below the *de minimis* amounts.

Also, this section should be revised to clarify that the *de minimis* amounts do not include biogenic emissions. We do not believe that it is the intent of DAQ for facilities to include biogenic emissions in determining whether they emit more than the *de minimis* amounts of greenhouse gases. As provided for in Section 4.2 of the proposed rule, the affected sources will not be required to report biogenic emissions. Therefore, facilities should not be required to include biogenic emissions to determine whether they emit more than the *de minimis* amount and, as a result, be considered an affected source.

Section 4.1 Reporting Requirements.

This section requires that sources must report their greenhouse gas emissions by March 31, 2007. This section should be revised to require reporting of greenhouse gases at the same time the air emissions inventory reporting is required. During the DEP Advisory Council meeting, the DAQ stated that March 31 will be the reporting date for the air emissions inventory program. Due to the many other reporting deadlines in the month of March, requiring greenhouse gas emissions reporting and air emissions inventory reporting in March would be extremely burdensome to affected sources. Currently, the air emissions inventory reporting is due July 1. There is no statutory or regulatory requirement for when sources must report air emissions inventory and it is our understanding that this date may be moved in the future. Therefore, we believe that the greenhouse gas rule should also remain silent as to a particular reporting date to allow

flexibility to correspond to the air emissions inventory reporting. Otherwise, sources may be subject to two different reporting dates. Sources should not be required to report their emissions at two different times. This section should also be clarified so that only greenhouse gases emitted above the *de minimis* amounts are required to be reported, as discussed above.

Section 4.2

This section should be revised so that "mobile" emissions of greenhouse gases are not required to be reported. This section should also be revised to clarify that only direct emissions and not indirect greenhouse gas emissions (e.g., emissions occurring offsite from electricity consumption) are required to be reported. The references in section 4.3 to programs like Climate Leaders could lead sources to include indirect and direct emissions in their reporting. This would lead to double counting of electric generation greenhouse gas emissions and to higher source emissions compared to the *de minimis* amounts.

Section 4.4

WVONGA requests that Section 4.4 of the rule be modified so that the Interstate Natural Gas Association of America's ("INGAA") greenhouse gas protocol is recognized as an approved greenhouse gas inventory protocol for the natural gas transmission sector. In the proposed rule, use of these protocols would require approval by the Secretary on a case-by-case basis. The INGAA protocol, Greenhouse Gas Emission Estimate Guidelines for Natural Gas Transmission and Storage, Volume 1 – Emission Estimating Methodologies and Procedures, Revision 2, September 28, 2005 can be found and reviewed at http://www.ingaa.org/environment/Climate.htm. We believe that this is the

best source currently available for measuring greenhouse gas emissions from the natural gas transmission sector.

Section 4.6

This section should be revised to clarify that sources will not be subject to fees for reporting greenhouse gas emissions. The DAQ has no statutory authority under W.Va. Code §22-5-19 to require sources to pay fees based on emissions of greenhouse gases. In addition, unlike the air emissions inventory program, the greenhouse emissions reporting serves only to develop a greenhouse gas inventory and is not intended to generate fees. Therefore, we suggest that a provision be added to the rule to provide that affected sources will not be subject to fees under the greenhouse gas emissions inventory program.

Section 5.3 Greenhouse Gas Emissions Inventory.

This section should be revised to delete the requirement that certain entities, including trade associations, must provide relevant information on greenhouse gas emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute and could be interpreted to require such entities to report reductions, which is also not required under the statute. We believe the proposed language in the rule is broader than that in the statute and we request that the language in the rule by made consistent with the statutory language.

Section 7.1 Economic Development Potential.

This section should be revised to require the DEP to also determine whether reduction and sequestration will result in a deterrent to net economic development – not just whether it will be an asset. It is equally important to determine whether the

reduction and sequestration will result in a deterrent to economic development as it is to determine whether it could be as asset.

The Associations also request that a reasonable protocol for reporting greenhouse gas emissions from stationary sources should be developed. Affected sources should be allowed reasonable flexibility to determine the best reporting method. Affected sources should not be required to report emissions from individual units within a stationary source if such emissions are insignificant, as this would be extremely burdensome. Affected stationary sources should have the option to report all of its greenhouse gas emissions in the aggregate. The Associations request that the greenhouse gas emissions reporting program allow the same flexibility as that under the air emissions inventory program.

Finally, the Associations suggest that the DAQ coordinate with nationally recognized greenhouse gas inventory programs, such as "The Climate Registry", which currently includes 31 states, to ensure that West Virginia's program is consistent with other states' programs across the nation.

II. 45 CSR 34 Emissions Standards for Hazardous Air Pollutants

Under Section 4, the Secretary sets forth the federal regulations which the DAQ adopts and incorporates by reference. The DAQ has proposed not to adopt certain federal regulations that apply to area sources, including the provisions in Subpart HH of 40 CFR §63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2). In addition, it is the Associations' understanding that the DAQ does not plan to adopt any federal MACT regulations that will apply to area

sources. The Associations do not favor the DAQ's refusal to accept delegation of these federal programs, as it raises many questions and uncertainties as to how such programs will be implemented and enforced. Therefore, in order to provide certainty and consistency with the current delegation of federal programs, the Associations request that the DAQ reconsider its decision not to adopt the federal regulations for area sources. The Associations appreciate the opportunity to provide comments on the proposed rules and hope that the DAQ seriously considers the suggestions and comments made herein.

Sincerely,

Karen S. Price

Karen S. Price
President, West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25311

Nicholas DeMarco

Nicholas DeMarco
Executive Director, West Virginia Oil & Natural Gas Association
P.O. Box 3231 (25332)
1700 MacCorkle Avenue, S.E.
Charleston, WV 25305

Signed this 9th day of July, 2007.

45CSR34

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

RESPONSE TO COMMENTS

On June 8, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 9, 2007 to accept oral comments on proposed revisions to legislative rule 45CSR34. Written comments were also accepted through 6:00 PM on Monday, July 9, 2007. Two commenters submitted written comments regarding proposed revisions to rule 45CSR34, and no commenter provided verbal comments. DAQ addresses the written comments below.

I. COMMENTER: Independent Oil and Gas Association of West Virginia

COMMENT A. The commenter states, *"In its proposed revisions to 45 CSR 34, the emissions standards for hazardous air pollutants, the agency has proposed to incorporate by reference federal regulations setting standards for emissions of hazardous air pollutants in effect as of June 1, 2007. See Sec. 4.1. However, the agency also proposes to except from this provision several specific federal regulations including regulations governing emissions from natural gas operations. Specifically, Subsection 4.1.c reads as follows:*

> *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 [from incorporation by reference].*

Because there are members of IOGA who may be covered by the regulations referenced in Subsection 4.1.c, we are requesting that the agency provide some explanation regarding its reasons for excluding these rules from incorporation by reference. In addition, what guidance will the agency be providing to those sources who may be covered by the excluded regulations? Absent some justification for this proposed exclusion and adequate guidance to the regulated sources regarding how they can achieve compliance with these standards, IOGA must objection (sic) *to Subsection 4.1.c and requests its deletion from the final version of this rule."*

RESPONSE A. DAQ appreciates IOGA's question, and may provide guidance for some categories of area sources (minor sources) potentially affected by the new air toxics standards.

DAQ considers U.S. EPA's new area source toxics rules, as promulgated, including those under 40 CFR 63, Subpart HH, to be resource-intensive and costly to implement as a practical matter, without achieving commensurate air quality benefits. Over the next two years, U.S. EPA will be promulgating forty six additional area source toxics standards. Some of these categories will be very broad and resource-intensive for DAQ to implement (for example: small boilers; autobody refinishing paint shops, and paint stripping operations).

No additional funding has been provided by U.S. EPA to implement these new federal area source air toxics rules, which are not required to be incorporated by reference in order to go into effect. DAQ is in the midst of implementing the federal major source toxics program using existing resources. U.S. EPA's incorporation of case-by-case, health-based compliance alternatives within the major source air toxics programs has added to the toll on resources required to maintain consistent implementation. U.S. EPA's risk and technology reviews of these major source categories is underway, and may result in additional rulemaking as well.

Therefore, due to the complexity and scope of the new and upcoming federal area source air toxics rules, as well as budget constraints and limited staffing resources, DAQ does not intend at this time to incorporate by reference, nor request delegation of any of the recent area source Generally Available Control Technology standards promulgated by U.S. EPA, including those under 40 CFR 63, Subpart HH.

II. COMMENTER: West Virginia Manufacturer's Association and the West Virginia Oil and Natural Gas Association

COMMENT A. The commenter states, *"Under Section 4, the Secretary sets forth the federal regulations which the DAQ adopts and incorporates by reference. The DAQ has proposed not to adopt certain federal regulations that apply to area sources, including the provisions in Subpart HH of 40 CFR §63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2)..... The Associations do not favor the DAQ's refusal to accept delegation of these federal programs, as it raises many questions and uncertainties as to how such programs will be implemented and enforced. Therefore, in order to provide certainty and consistency with the current delegation of federal programs, the Associations request that the DAQ reconsider its decision not to adopt the federal regulations for area sources."*

RESPONSE A. DAQ appreciates the Association's concerns regarding certainty and consistency with respect to rule implementation. However, since these new area source air toxics standards are federal rules promulgated by U.S. EPA, and the U.S. EPA Regional offices will be implementing these standards, certainty and consistency will be retained nationally among states.

However, as stated in Response I.A, due to the complexity and scope of the new and upcoming federal area source air toxics rules, as well as budget constraints and limited staffing resources, DAQ does not intend at this time to incorporate by reference, nor request delegation of any of the recent area source Generally Available Control Technology standards promulgated by U.S. EPA, including those under 40 CFR 63, Subpart HH.

COMMENT B. The commenter states, *"In addition, it is the Associations' understanding that the DAQ does not plan to adopt any federal MACT regulations that will apply to area sources."*

RESPONSE B. DAQ would like to clarify that the agency indeed plans to continue requesting incorporation by reference and accepting delegation of new federal Maximum Achievable Control Technology regulations for area sources.